



**European Cooperation
in the field of Scientific
and Technical Research
- COST -**

Brussels, 22 May 2002

Secretariat

COST 238/02

DRAFT MEMORANDUM OF UNDERSTANDING

Subject : Draft Memorandum of Understanding for the implementation of a European
Concerted Research Action designated as COST Action A21 "Restorative Justice
Developments in Europe"

Please find attached the abovementioned draft Memorandum of Understanding.

DRAFT
Memorandum of Understanding
for the implementation of a European Concerted Research Action
designated as COST Action A21
"Restorative Justice Developments en Europe"

The Signatories to this Memorandum of Understanding, declaring their common intention to participate in the concerted Action referred to above and described in the Technical Annex to the Memorandum, have reached the following understanding:

1. The Action will be carried out in accordance with the provisions of document COST 400/01 "Rules and Procedures for Implementing COST Actions", the contents of which the Signatories are fully aware of.
2. The main objective of the Action is to enhance and to deepen knowledge on theoretical and practical aspects of restorative justice in Europe, with a view to supporting implementation strategies in a scientifically sound way.
3. The economic dimension of the activities carried out under the Action has been estimated, on the basis of information available during the planning of the Action, at Euro 7,2 million in 2002 prices.
4. The Memorandum of Understanding will take effect by being signed by at least [five] Signatories.
5. The Memorandum of Understanding will remain in force for a period of 4 years, calculated from the date of the first meeting of the Management Committee, unless the duration of the Action is modified according to the provisions of Chapter 6 of the document referred to in Point 1 above.

COST A21

RESTORATIVE JUSTICE DEVELOPMENTS IN EUROPE

A. BACKGROUND

In the late sixties, the theoretical debate on how the consequences of an offence could be faced and resolved by those immediately involved namely the victim and the offender started in Europe. This was the result of dissatisfaction with the traditional criminal justice system from both victim and offender support side. In that period, concrete proposals for innovative projects were formulated in various European countries. The discussion took place in the same period or even still before the first experiments on victim-offender mediation were set up in Canada and the US in the middle of the 1970s.

In European countries, the present form of victim-offender mediation came into existence in the 1980s. Throughout the years, victim-offender mediation has received great interest not only from criminal justice practitioners and academics, but also from policymakers in charge of defining criminal justice policies. This is reflected in the increasing number of mediation programmes that are being implemented at all levels of the criminal justice system, applied with different types of crimes committed by minors as well as by adults. Not only EU Member States have been experimenting with victim-offender mediation programmes. Some of the Eastern European countries such as Poland, the Czech Republic, Slovenia and Albania have also initiated programmes and even legislation in this field and still others set up pilot programmes or expressed their interest. It is estimated that more than 900 projects were already in operation in Europe in the year 1998.¹ But also at an international level, support for victim-offender mediation is increasing. A plea for additional research and experiments in victim-offender mediation is one of the proposals the European Commission has explicitly called for in the adoption of its *Communication on Crime Victims in the European Union: reflections on Standards and Action*.² Recently, the Council of the

¹ AERTSEN, Ivo, *Restorative Justice Activity in Europe*, Paper presented at a Russian restorative justice conference, Moscow, May 22-24, 2001, 4.

² COM (1999) 349 final.

European Union also adopted the *Council Framework Decision on the standing of victims in criminal proceedings*¹ which, in articles 10 and 17, obliges the Member States of the European Union to adapt their legislation in order to promote victim-offender mediation before March 2006. Within the framework of the Council of Europe, the *Recommendation No. R (99) 19 concerning mediation in penal matters*, encourages Member States to provide mediation as a voluntarily accepted and confidential service.² As a last example, a draft UN Resolution on “The basic principles on the use of Restorative Justice Programmes in Criminal Justice”³, when officially adopted, should guide the development and operation of restorative justice programmes.

Victim-offender mediation can be regarded as just one method in the broader context of ‘restorative justice’. This broader approach is oriented to meet the limitations of the currently prevailing approaches that focus in a too one-sided way on the offender and that are not always very effective. ‘Restorative justice’ is actually aiming to develop a *balanced approach in order to meet the needs of the victim, the offender as well as the community*. In general, restorative justice schemes are implemented by promoting a dialogue between those who provoked harm and those affected by its impact; by stimulating wrongdoers to take responsibility for the harm done, to compensate the victim. They also try to find a solution for the problem; by introducing ways to also meet the interests of the community, and to avoid complicated, long lasting, frustrating formal criminal procedures for both partners not leading to satisfying solutions.

The emergence of this broader ‘restorative justice’ framework in practice and policy goes hand in hand with large theoretical discussions on the conceptualisation and delineation of restorative justice, and the relation with more retributive and rehabilitative models of criminal justice. For Europe, it also brought about the introduction of new techniques to achieve restoration, such as Family Group Conferencing, which is - for the moment - only in operation in the UK and, in an experimental way - in Ireland, the Netherlands, Sweden and Belgium.

¹ Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (20001/220/JHA).

² COUNCIL OF EUROPE, *Mediation in Penal Matters. Recommendation No. R(99)19 and explanatory memorandum*, Strasbourg, Council of Europe Publishing, 2000.

³ ECOSOC resolution 2000/14 of 27 July 2000 on basic principles on the use of restorative justice programmes in criminal matters.

Notwithstanding that the number of cases dealt with by victim-offender mediation is increasing steadily in Europe, its potential is not used to the fullest extent possible. Victim-offender mediation as a restorative justice instrument is still being shaped. It is clear that the ideal model of victim-offender mediation does not exist since each scheme should take into account the characteristics of its own institutional and cultural framework. Nevertheless, there is a common interest at the European level to get a better understanding of the best practices. There is a need to look into ways of how to enhance and extend the use of victim-offender mediation and restorative justice schemes. Learning from experiences in other countries is crucial in this respect. Unfortunately, the bulk of research in the restorative justice area comes from outside Europe.¹ The different socio-legal context does not allow for a simple extrapolation of these research results. For obvious reasons like language, cultural differences, financial and time constraints, research over the borders of the European countries is very scarce. Only a few such initiatives are known. Amongst these there is a publication of the European Forum for Victim-Offender Mediation and Restorative Justice, in which information was brought together for eight countries in a comparative way². There is also a British Home Office research project that describes the legal base, scope, implementation and evaluation of restorative justice programmes for 12 European jurisdictions³. A final example that could be mentioned is a study of victim-offender mediation in Austria and Germany.⁴

¹ To give an overview of existing research results would lead us too far. A good overview of completed research is provided in WEITEKAMP, Elmar, 'Research on victim-offender mediation. Findings and needs for the future', in EUROPEAN FORUM FOR VICTIM-OFFENDER MEDIATION AND RESTORATIVE JUSTICE (ed.), *Victim-Offender Mediation in Europe. Making Restorative Justice Work*, Leuven, Leuven University Press, 2000, 99-121. This overview shows that the bulk of research projects was done in North America, New Zealand and Australia. European research remains limited to specific projects, states or countries and is often not very well known on the international scene.

² EUROPEAN FORUM FOR VICTIM-OFFENDER MEDIATION AND RESTORATIVE JUSTICE (ed.), *Victim-Offender Mediation in Europe. Making Restorative Justice Work*, Leuven, Leuven University Press, 2000. In the second part of this book, information on the history of victim-offender mediation, the legal context, policy and implementation, evaluation and research, and challenges, obstacles and expectations for the future is brought together for following eight countries: Austria, Belgium, France, Finland, Germany, Norway, Poland and the UK.

³ MIERS, David, *An International Review of Restorative Justice*, Crime Reduction Research Series Paper 10, London, Home Office, 2001.

⁴ LÖSCHNIG-GSPANDL, M. and KILCHLING, M., 'Victim/Offender Mediation and Victim Compensation in Austria and Germany - Stocktaking and Perspectives for Future Research', in *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 5, 1997, 314-333.

In order to better understand and improve the restorative justice practices in Europe, research is needed with regard to policy, practice, available research results and legislation. The research carried out in Europe should be compared with research done in other countries, since an overview of restorative research and practices is available within other countries (US, Canada, Australia, New Zealand) but not in Europe as a whole. Eastern European countries merit special attention because of their transitory state. Looking at how restorative justice can be developed and implemented in these states is a particularly interesting area for research.

Practice and policy oriented research in the domain of restorative justice is of an interdisciplinary nature. Most research is done from the perspective of criminal law, criminology, sociology or psychology. More recently, also the ethical dimension has gained importance. In some countries practice came before theory. In other countries pilot programmes were clearly set up based on a theoretical framework. In any case, theoretical research has gone forward strongly in the last few years. It is oriented more specifically on the definition of restorative justice (maximalist versus purist approach), the devising of integral, explanatory and normative models (e.g. reintegrative shaming and ‘republican justice’ of John Braithwaite). This also includes the place for coercion in restorative justice practices, the applicability of legal and procedural safeguards, the influence of the judicial system (common law versus European continental legal systems), the applicability of restorative justice principles in international conflicts and human right violations.

The issue of victim-offender mediation and other restorative justice practices is an innovating area of research, not being covered explicitly by any other EU research programme. The establishment of a *COST Action on restorative justice developments in Europe* would be significant in order to provide scientific grounding and support for new and promising practices in the field of criminal justice and to further implement policy decisions in the EU and other European countries.

B. OBJECTIVES AND BENEFITS

The main objective of the Action is to enhance and to deepen knowledge on theoretical and practical aspects of restorative justice in Europe, with a view to supporting implementation strategies in a scientifically sound way.

In order to reach this general objective, a network of researchers will be created to:

- (1) exchange and discuss research needs, methods and results;
- (2) co-ordinate research projects in the respective countries as far as possible and desirable;
- (3) stimulate or support further (common) research projects.

More precisely, the Action is focused on analysing:

- the process and the effects of victim-offender mediation and conferencing,
- national recording systems,
- national legislation in relation to victim-offender mediation,
- the relation between criminal justice and restorative justice practices and agencies,
- training models and the experience of training legal professionals in the restorative justice area
- new restorative justice models and applications
- theoretical concepts, approaches and frameworks on restorative justice

The expected benefits are manifold and can be situated on different levels:

1. Scientific benefits:

Developing an analysis of practices, research, legislation and policy enhances the knowledge on what restorative justice is (not), how it can be evaluated and what the possible benefits and disadvantages are. The theoretical discussion on the concepts, as well as ways to evaluate good practice can be developed. Also, researchers can get a better view on what topics with regard to restorative justice theory and practice have to be studied more in depth. Restorative justice is a relatively new field and thus new practices and domains within which to implement restorative practices are still to be discovered.

2. Policy benefits:

Getting an overview of different policies with regard to restorative justice in the various countries leads to a better understanding for policy makers on what the possibilities are and what works best. Having a look at different legislative initiatives can broaden the view on what legislation is possible, as well as on the effects on actual practices. EU policy making can be better informed about lacunas and how to accommodate these.

3. Practice benefits

An overview of best practices can guide practitioners in developing their own practice. They can learn from other solutions thus working out what could work best for their own programme. Working together with different agencies can be difficult and it is always good to know what solutions can be found to enhance the co-operation. Thus, referrals as well as follow-up of the restorative processes and outcomes are enhanced.

4. Benefits for specific training initiatives

An increasing number of universities and European organisations (e.g. ERA, European Police College) are setting up training sessions for their students or target groups. These initiatives will also benefit from the results from this research project.

C. SCIENTIFIC PROGRAMME

The scientific programme of the COST Action can be split up in three parts.¹

1. Evaluative research on restorative justice practices

This domain focuses on completed or ongoing research in the respective countries on victim-offender mediation and family group conferencing. Attention will be paid to the research questions, the design, methodologies and findings. Two sub-domains can be discerned:

1.1. Study of the process and the effects of victim-offender mediation and conferencing

Different models of the victim-offender mediation or conferencing processes can be analysed. The effects to be studied relate to the psychological, material and legal consequences for the victim and the psychological and social impact on the offender (e.g. on re-offending). The study will also include the financial cost of particular practices, the impact on the functioning of the criminal justice system and the influence on the perception of crime and criminal justice by persons involved and others.

The results of research projects carried out in the different countries involved in the Action will be brought together according to a common scheme. Based on this scheme, national reports will be composed. These reports will then be brought together, after which they will be analysed for results and lacunas in content and methodology of the research referred to. This will allow to:

- (a) get a better understanding of the kind of research being carried out in Europe
- (b) get a better understanding of the mainly qualitative methodologies being used for such research, and their respective strengths and weaknesses
- (c) create an objective overview of the results of these evaluative research projects, from which conclusions could be drawn to support policy development in the restorative justice field

¹ The scientific programme is set up in a broad way. It is not excluded that priorities will need to be set at the start of the Action.

- (d) discern gaps in the scientific research in this field for Europe, and to set up a research agenda for the future
- (e) achieve agreement on the methodological framework best suited to carry out specific types of research projects

1.2. Study of national (annual) recording systems of data

This rather quantitatively oriented research study can be seen in the perspective of harmonising national recording systems. Comparative research is made difficult because of the lack of, or differences between such national recording systems, but also because of language issues, the differences in legal context and the different definitions being used. It is clear that figures cannot be compared unless they measure the same thing. This part of the research will allow to:

- (a) get an idea about what data collection system is being used in which country
- (b) get an idea about what information can be and is collected in the different countries
- (c) set up common criteria to stimulate all countries to collect comparable information, which will - in the long run - allow for interpretation and further research in a comparable and reliable way
- (d) compare data once common criteria are used

1.3. Study of organisational features, job evaluation and satisfaction

Elements that will be looked at include the legal status of restorative justice services and facilitators and mediators, the internal organisation of restorative justice services, the task perception and educational and professional background of practitioners. The creation of such an overview will allow to get a better view on the organisation of restorative justice services, the strengths and weaknesses of the different organisation types, the content of the work of facilitators, their view on and satisfaction with their work.

2. Policy oriented research on restorative justice developments

Several developments in national and international policymaking demand that one should get a better view of how exactly the restorative justice field is organised in the different European countries. Just to give one example: the European Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings stipulates in articles 10 and 17 that Member States should adapt their national laws in order to implement mediation by the year 2006. With the current state of affairs, Member States have little guidance on what works and what doesn't in the restorative justice field in terms of organising the practice. This research domain intends to give a better view of just this. Again, the domain can be split up in several sub-domains.

2.1. Comparative study of national legislation in relation to victim-offender mediation

National regulation can be present in criminal law, criminal procedure or specific statutes. Besides positive law, also lower guidelines and instructions can be of importance.

This research domain will allow to:

- (a) study the different kinds of legislation used
- (b) make a common framework for analysis, to be able to compare legislation in the broad sense
- (c) compare the presence of legislation in general on restorative justice
- (d) study the lacunas in the legislative framework supporting restorative justice
- (e) study the effect of the introduction of legislation on the restorative justice practice
- (f) put national legislation against international standards of juridical or practical nature

2.2. Study of the relation between criminal justice and restorative justice practices and agencies

Even with national legislation in place, the restorative justice field is still dependent on the co-operation of the criminal justice practitioners. Since in Europe most of the criminal justice systems are legalistic, restorative justice projects depend on the criminal justice system to get their referrals. A good referral procedure is therefore crucial. Research, however, shows that it is difficult to get enough referrals. Another crucial aspect is the follow-up of cases. Lack of good co-operation is suspected to be the main reason for the under-use of restorative justice measures. That is why it is intended to make an analysis of the different kinds of referral procedures and schemes for following-up mediation dossiers within criminal justice procedures.

This will allow to:

- (a) study the types of relationship between restorative justice programmes and criminal justice
- (b) draw conclusions on how co-operation agreements can best be set up to improve the use of restorative justice practices
- (c) analyse what types of referral procedures work best and why
- (d) analyse whether agreements reached in a restorative justice scheme are referred back to the criminal justice system
- (e) analyse which effect the agreements reached in a restorative justice scheme have on the further criminal justice procedure (are they taken into account? do any other measures follow? which measures?)
- (f) study how criminal justice practitioners and restorative justice practitioners experience the relation they have, and how they feel this relation can be improved

2.3. Study of training models and experiences of training legal professionals in the restorative justice area

Linked to the previous item is the fact that legal authorities (prosecutors, judges) and lawyers are often hard to convince or to motivate to co-operate in restorative justice programmes. Training on knowledge, attitudes and skills is of the utmost importance in order to involve this crucial group. For that reason, some examples of good co-operation will be selected, on the basis of which conclusions might be drawn on the kind of training needed for these legal professionals. This will allow to:

- (a) get a view on whether training for criminal justice practitioners exists, in what form and on what level
- (b) get a view on whether criminal justice practitioners are motivated to follow such training

2.4. Study on new restorative justice models and applications

The restorative justice field is in continual development. New models and applications are being experimented with. It is important to get a good overview of these new developments in order to make sure that the restorative field does not stagnate in a particular country. New models, such as family group or community conferences should be discussed on their objectives, concepts, processes and first results. Moreover, the application of restorative justice methods in particular settings, such as prison, police services, schools and within the family context offers new perspectives. An overview of these new developments can be an impetus for other countries to broaden their view on restorative practices. This study will allow to:

- (a) get a better view of new methods being applied in the restorative justice field in Europe and on when to use them
- (b) get a better view on the possibility of implementing restorative justice in other domains

3. Theoretical research

Looking at all the domains mentioned above, it is clear that practice and policy development influence theory and vice versa. All these domains cannot be studied loose from the theoretical conceptualisation of restorative justice. More theoretical research is needed to guide the development of practice, policy and legislation. A need is felt to clarify and further theoretical concepts, approaches and frameworks on restorative justice. The key questions concern the relation of restorative justice to criminal law and punishment, to crime prevention and rehabilitation, and to societal developments. This domain is to be studied from the perspectives of legal theory and philosophy, ethics, sociology of the law, pedagogy and social psychology and criminology. A start is already made more precisely to study mediation processes from the framework of procedural justice, conflict transformation and moral learning. The organisation of restorative justice models can be studied theoretically from the sociology of law (“new informalism” and “interactive settings”). Finally, the relation of restorative justice to (criminal) law can be conceptualised from the notions of “law as communication” (a.o. Habermas) and “law as reflexivity” (Teubner).

D. ORGANISATION

For each of the domains of the scientific programme, a working group will be established. If necessary, the working groups on evaluative research and policy oriented research could (temporarily) be split up according to the sub-domains mentioned. This will need to be decided at the start of the COST Action. The management committee will co-ordinate the work of the different working groups.

Each working group will come together two times a year in order to exchange and analyse the information collected in their national research projects and other programmes. The meetings of the different working groups will be organised together so that there is sufficient exchange of information in between the working groups. This is of crucial importance since the different domains on the research agenda cannot be studied in isolation from the others. Also the management committee will meet at the same moment to allow co-ordination of the work of the different groups. Having all the groups meet at the same time will not only allow for exchange and co-ordination, but will also help to reduce costs since it is possible that individual researchers will participate in more than one research domain.

In order to allow for a regular contact between the members of the respective working groups and between the different working groups, a website will be established. On this web-site a discussion forum will be established, which will contain 'meeting rooms' for each of the working groups. These meeting places will allow the posting of messages and documents. All the members of the respective working groups will have access to all the 'meeting rooms' so that not only exchange between members of a specific working group is possible, but that also exchange in between the working groups is possible. Also the members of the management committee will have access to the 'meeting rooms'. The broader website will of course also serve the purpose of informing researchers, restorative justice practitioners, legal practitioners and policymakers about the aims, objectives and results of the Action.

E. TIMETABLE

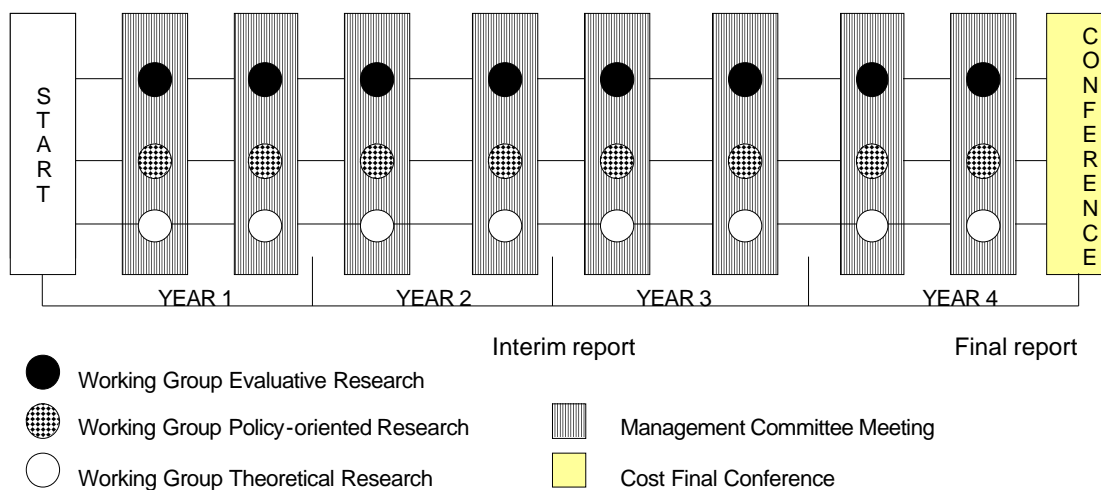
The working groups and the management committee will meet twice a year, over a period of four years.

After two years a first report should be presented, which would report on the activities and the findings of the different working groups.

At the end of the Action, after four years, a second - global - report will be presented. This will contain a report on the activities, findings and recommendations of each of the working groups, but also a more general part that will contain the findings that transcend the specific working groups, and integrate these.

At the end of the four years it is also planned to organise a conference at which these findings will be presented to researchers, restorative justice practitioners, legal practitioners and policy makers.

This provides the following picture of the activities:



F. ECONOMIC DIMENSION

The following COST countries have actively participated in the preparation of the Action or otherwise indicated their interest: Austria, Belgium, Bulgaria, Finland, France, Germany, Ireland, Italy, the Netherlands, Portugal, Slovenia and the United Kingdom.

On the basis of national estimates provided by the representatives of these countries, the economic dimension of the activities to be carried out under the Action has been estimated, in 2002 prices, at roughly Euro 7,2 million.

This estimate is valid under the assumption that all the countries mentioned above but no other countries will participate in the Action. Any departure from this will change the total cost accordingly.

G. DISSEMINATION PLAN

The results of the Action will be disseminated amongst other researchers, but also amongst policymakers, restorative justice practitioners and legal practitioners all over Europe and beyond. For each of these groups, the correct channels will have to be chosen.

Four important general strategies will be that:

- (1) the results will be posted on the website of the Action
- (2) the interim and final reports will be made available (the final report will be published),
- (3) the final conference will allow to reach about 200 people
- (4) the researchers involved in the Action will deal with the research project at other conferences and seminars. They will also be encouraged to publish articles about the research results in well-known European and international scientific journals.

With regard to the dissemination of the results to policymakers, a copy of the final report will be sent out to not only to national Ministries of Justice, but also to relevant commissions in international bodies like the EU and the Council of Europe. All will be invited to the final conference.

Legal practitioners will be informed with the help of European organisations like the European Law Association. Articles about the research project and its results will be included in newsletters or journals edited by such associations, with an invitation to order a copy of the final report if interested. Invitations for the conference will be distributed through these organisations.

Practitioners and researchers will be reached through organisations active in or linked to the restorative justice field (e.g. the European Forum for Victim-Offender Mediation and Restorative Justice, but also the European Forum for Victim Services and the Conference Permanent de la Probation), but also through articles in professional journals. Again, invitations to the final conference will be distributed through above-mentioned organisations.