

# Common wisdom? European norms and values for offender supervision

*Christine Morgenstern*



International Conference on  
Alternatives to Detention

6-7 October 2016

Bucharest

# Offender Supervision in Europe

COST Action IS1106

<http://www.offendersupervision.eu>



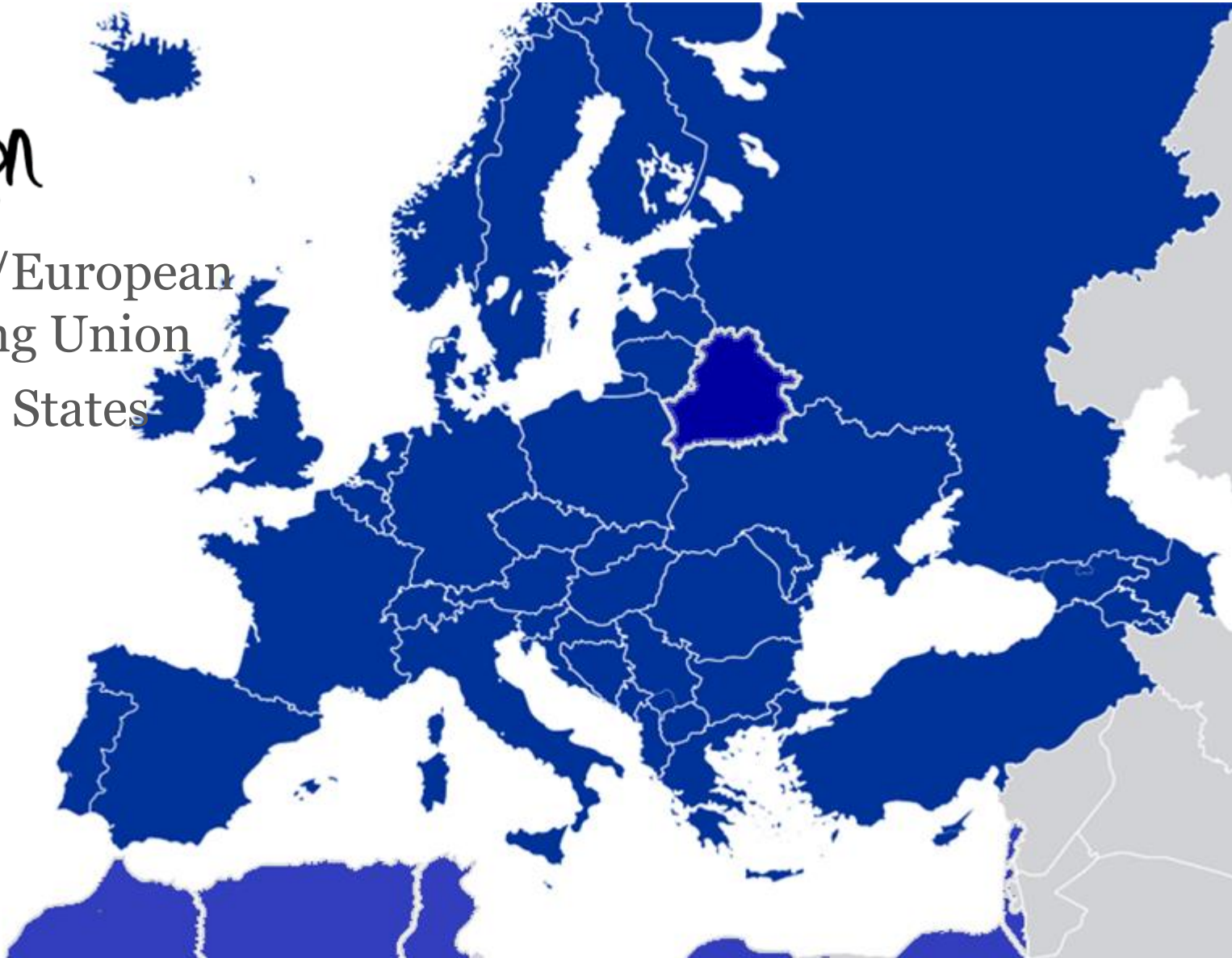
# What Europe?

Music...

**EUROVISION**  
SONG CONTEST

Eurovision/European  
Broadcasting Union

56 Member States

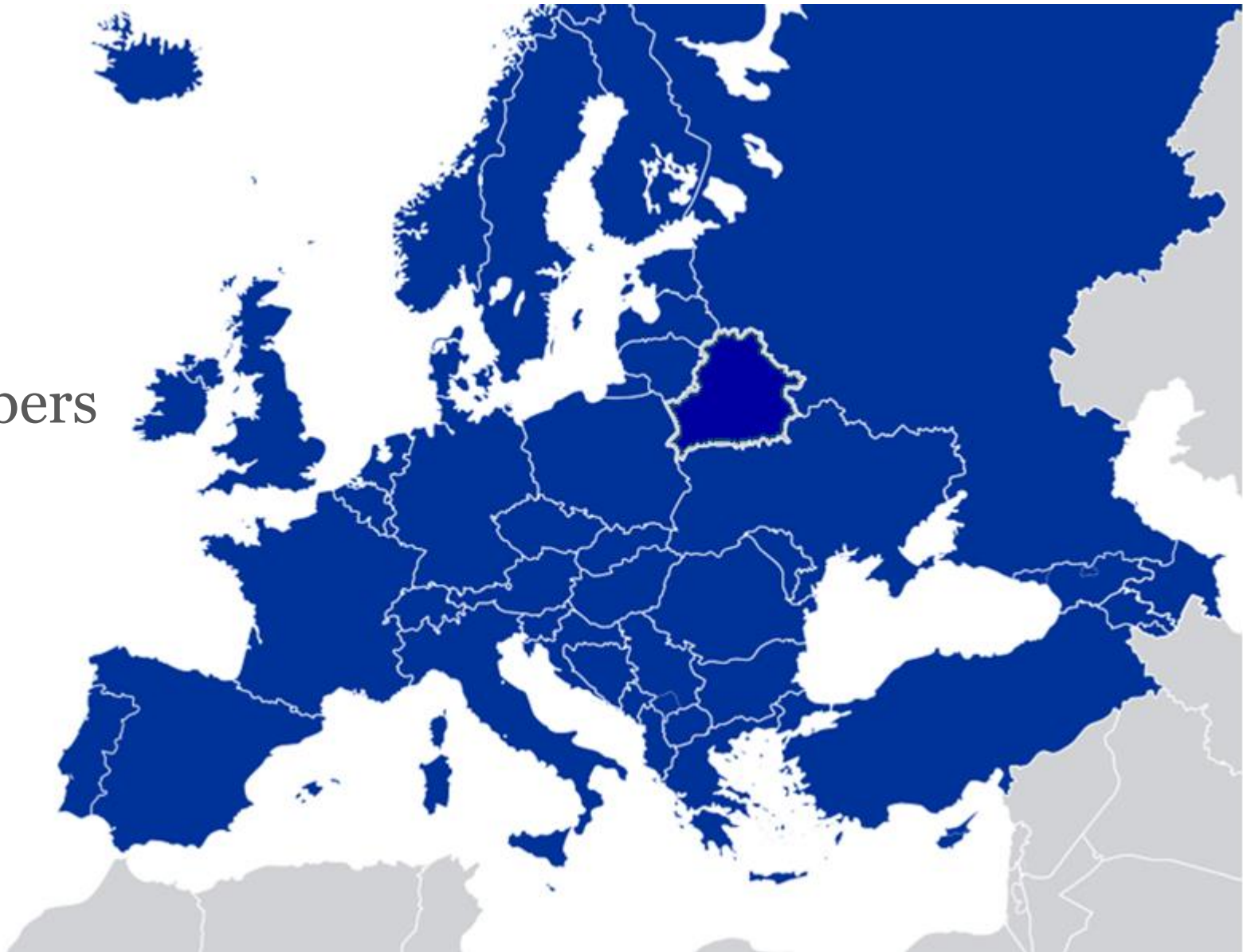


# What Europe?

Football...



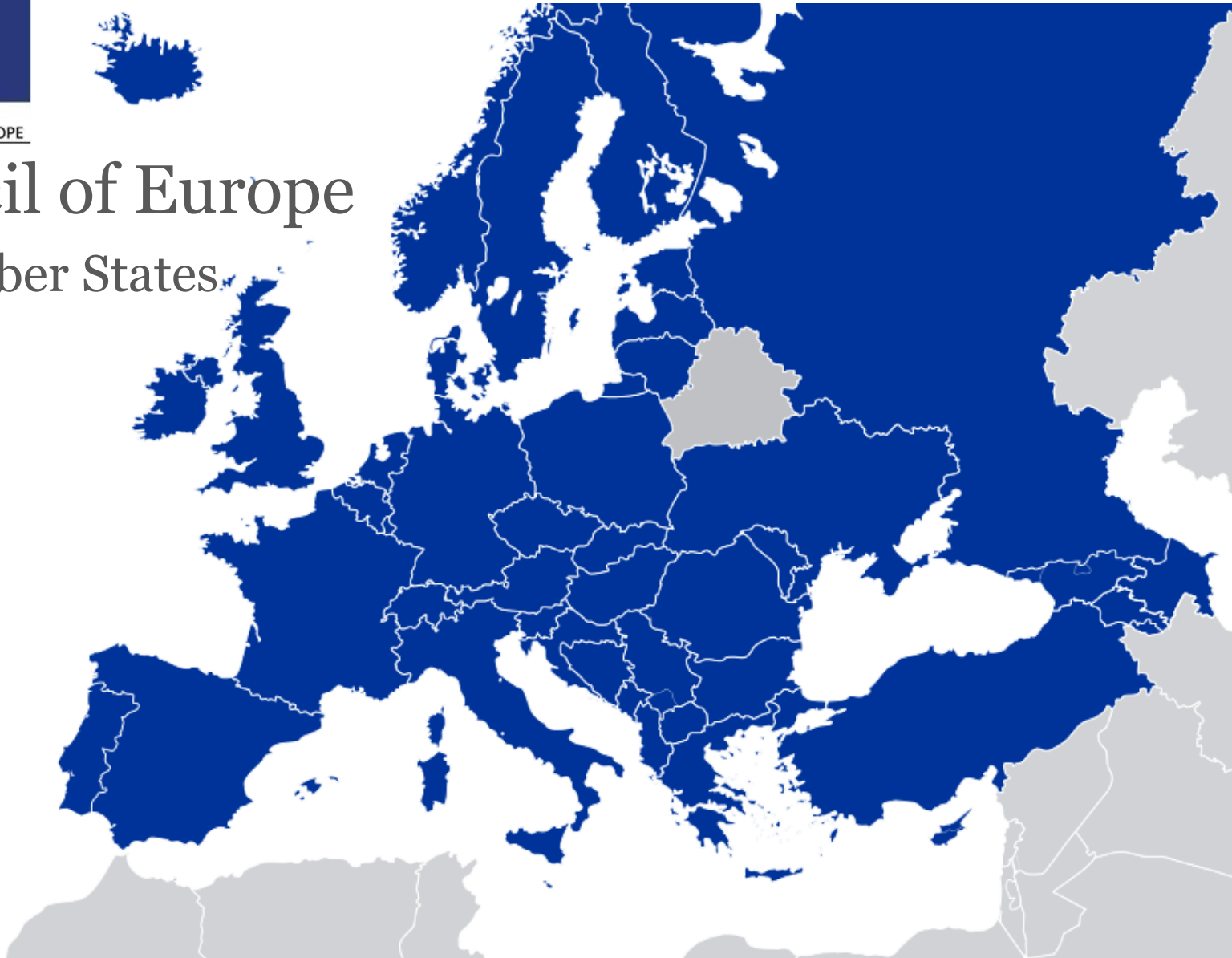
54 Members



# What Europe?



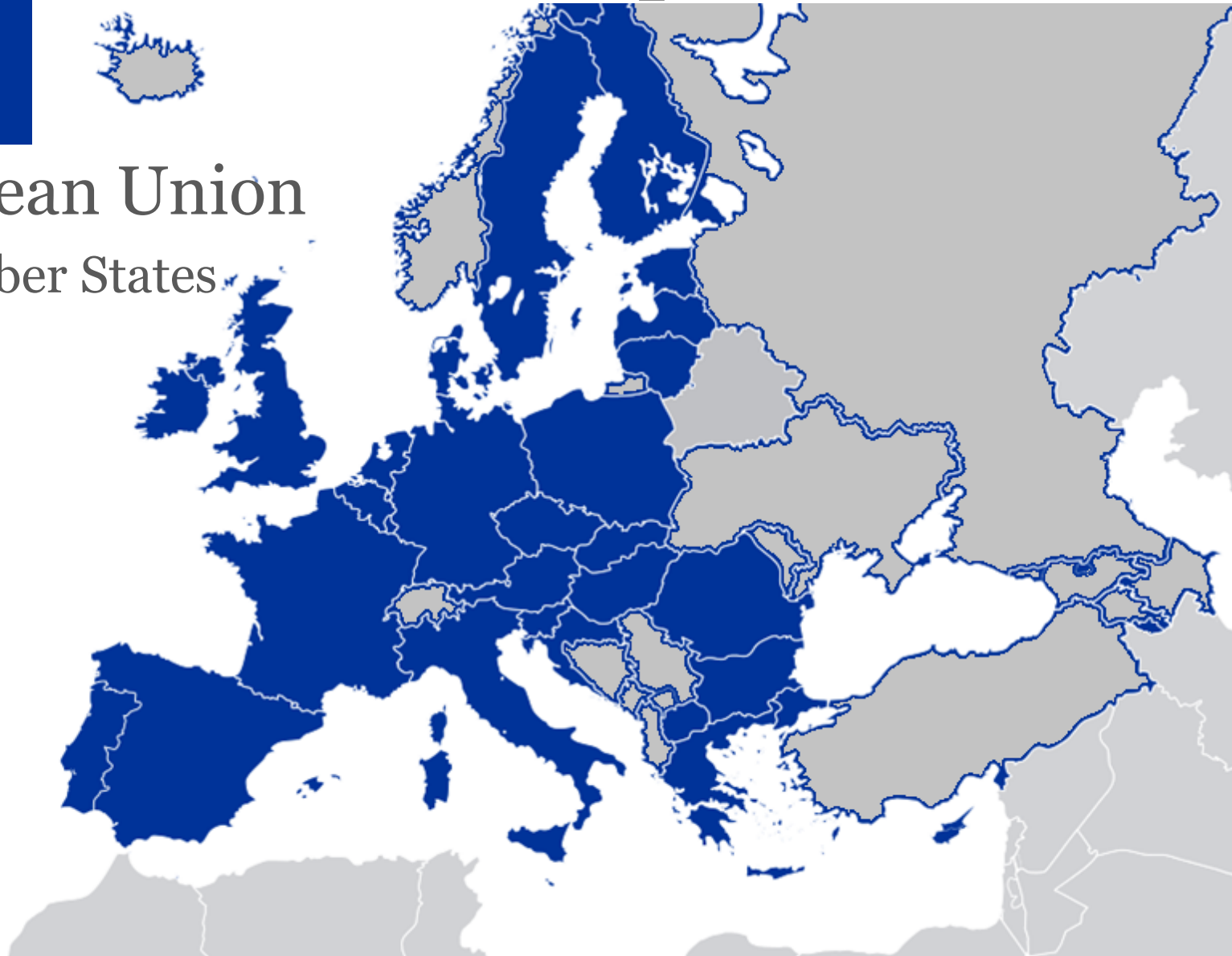
Council of Europe  
47 Member States



# What Europe?



European Union  
28 Member States

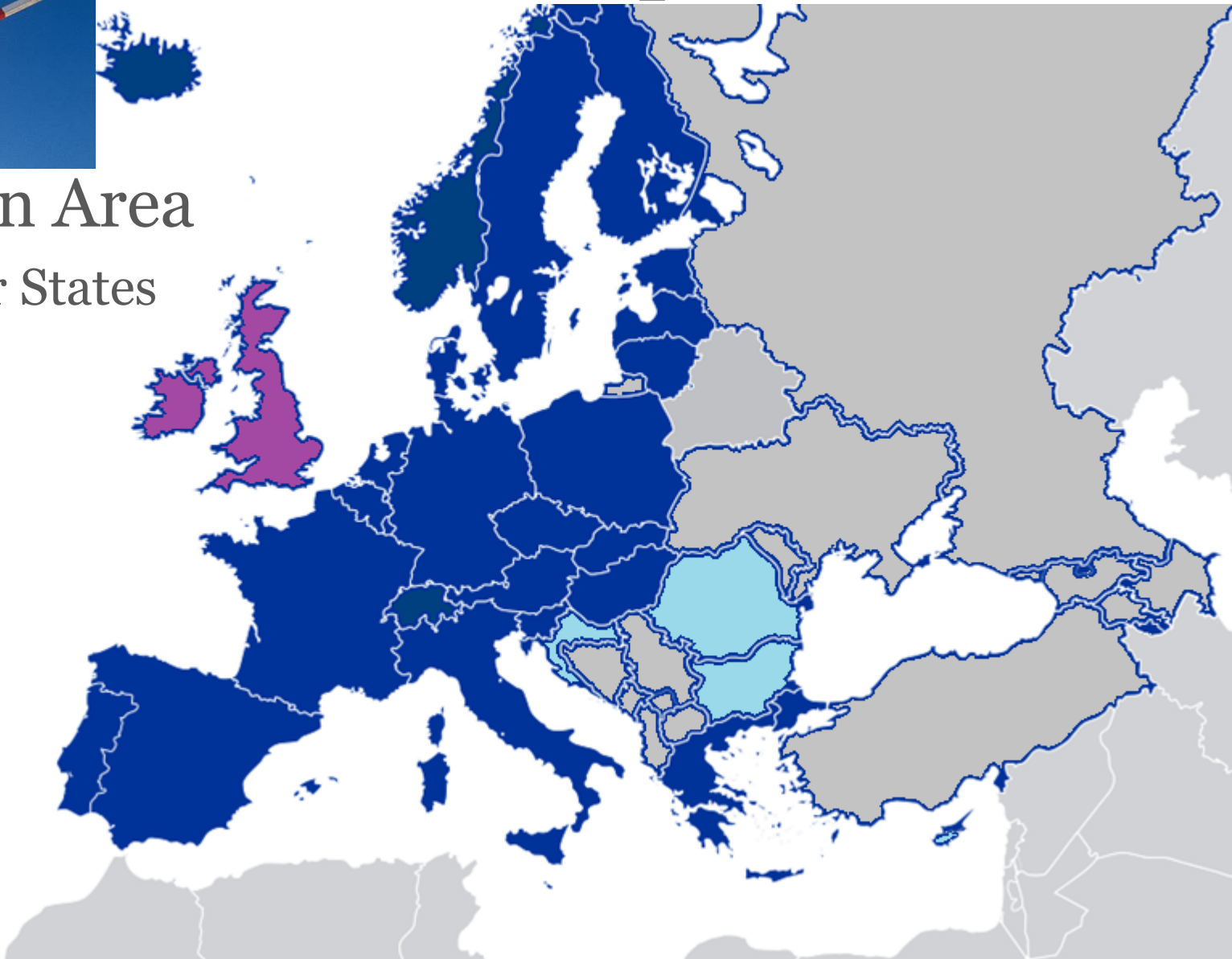


# What Europe?



Schengen Area

26 Member States

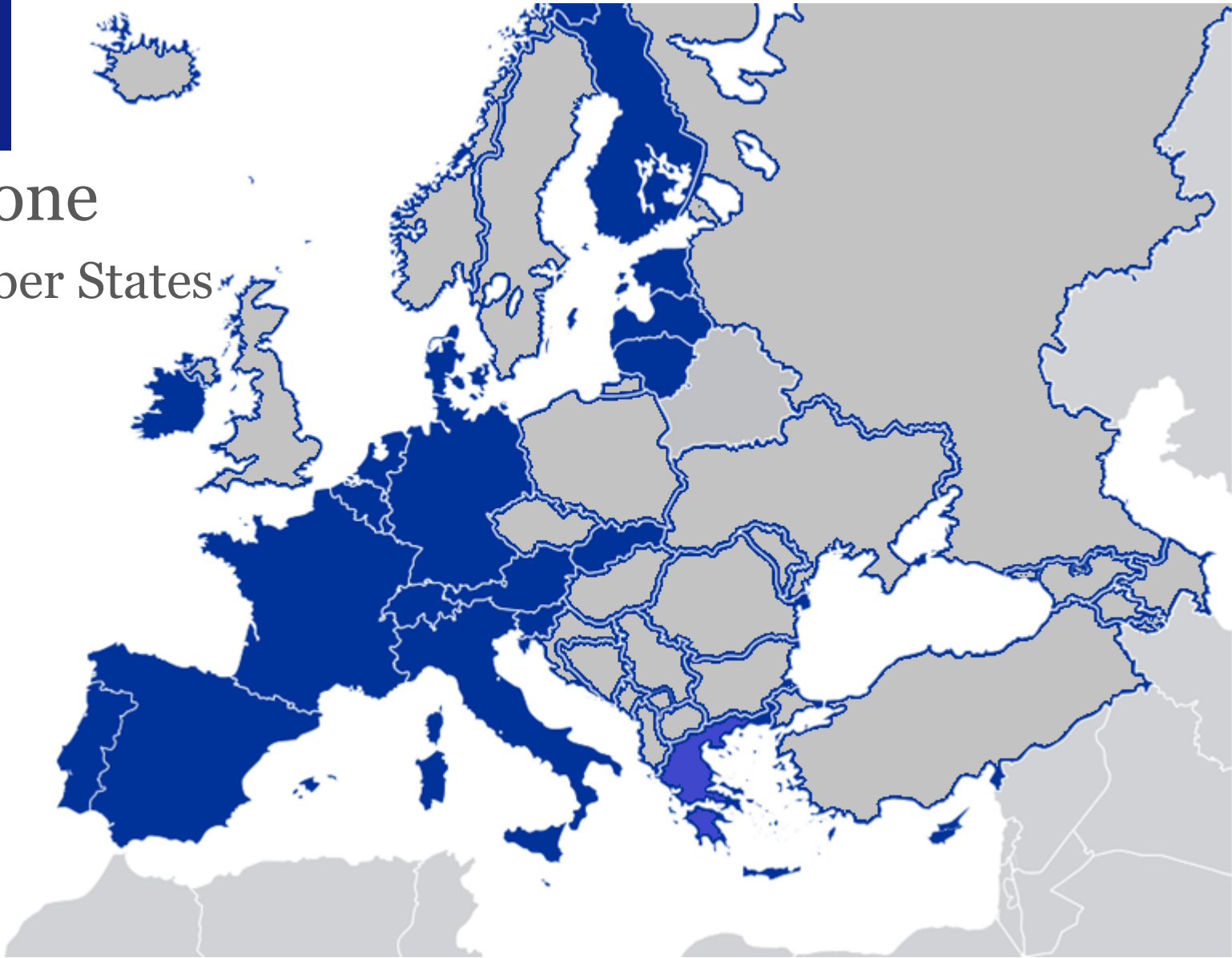


# What Europe?



Eurozone

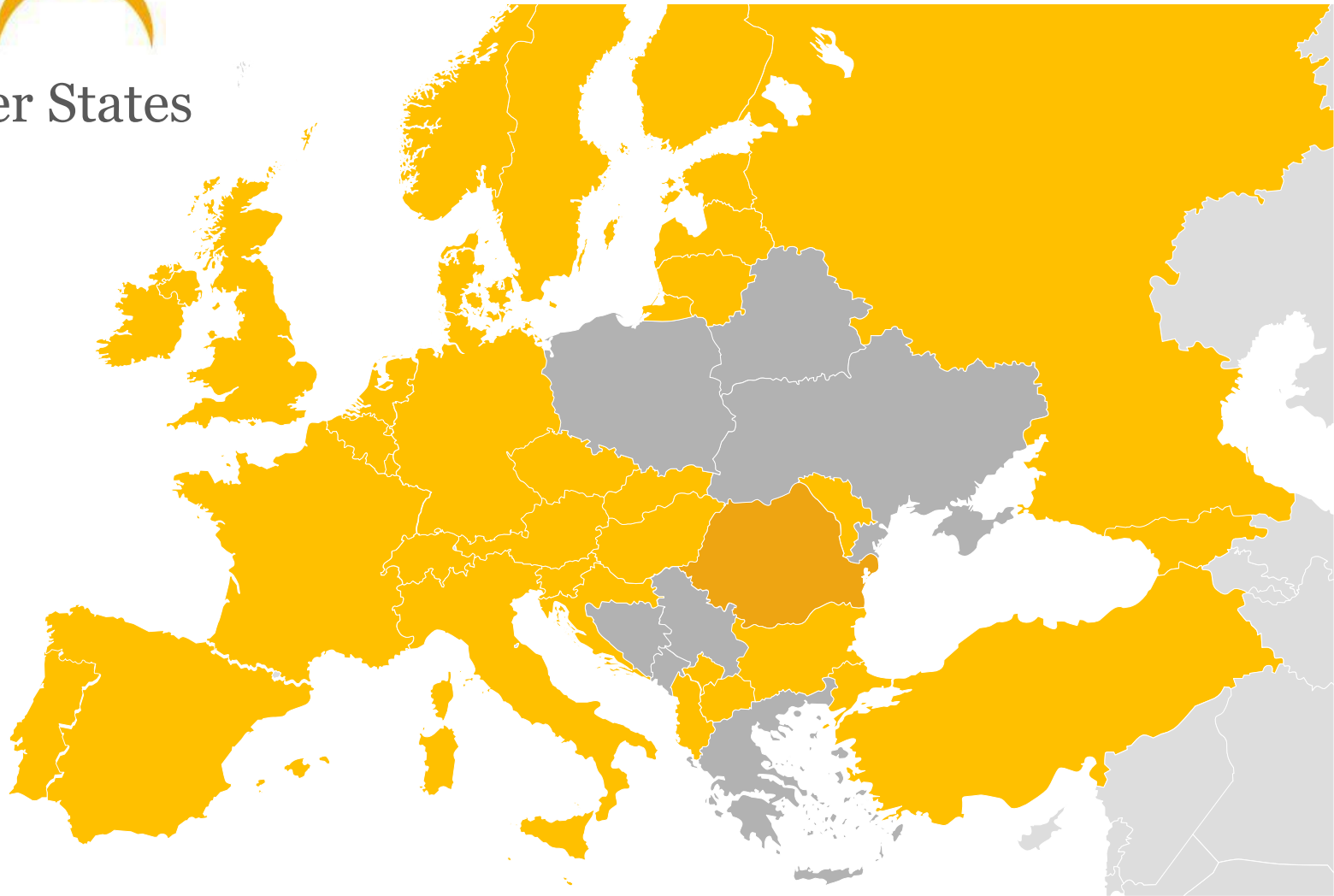
19 Member States





# What Europe?

36 Member States



# What Europe?



© Rem Kolhaas,  
Office for Metropolitan  
Architecture

# **Offender Supervision**

## **Offender Supervision/Community Sanctions and Measures**

- Sanctions and measures that maintain offenders in the community (= outside prison) and involve restrictions of their liberty, controlled by the state or bodies with a mandate by the state

# Offender Supervision + **Human Rights**

# Offender Supervision + **Human Rights**

- “While supervision has many diverse forms, they share an immanent, pervasive quality in which people are made subject to life-altering and freedom-limiting conditions and live under the constant threat of further (worse) sanctions being imposed should they be judged as somehow ‘failing’. Their status as semi-free citizens feels precarious.”

*(From the COST Action’s Final Report)*

# Offender Supervision + Human Rights + **Europe**

▶ Patrick Stewart sketch: what has the ECHR ever done for us? - video



<https://www.theguardian.com/culture/video/2016/apr/25/patrick-stewart-sketch-what-has-the-echr-ever-done-for-us-video>

# Offender Supervision + Human Rights + **Europe**

## ➤ Council of Europe

European Convention on Human Rights

Jurisprudence of the European Court of Human Rights (Strasbourg)

## ➤ European Union

Charter of Fundamental Rights

Jurisprudence of the European Court (Luxemburg)

# Offender Supervision + Human Rights + **Europe**

## ➤ Council of Europe

European Convention on Human Rights

Jurisprudence of the European Court of Human Rights (Strasbourg)

## ➤ European Union

Charter of Fundamental Rights

Jurisprudence of the European Court (Luxemburg)

# Offender Supervision + Human Rights + **Europe**

## ➤ Relevant Human Rights dimensions

- Human Dignity
- Proportionality
- Privacy
- Fairness

# Offender Supervision + Human Rights + **Europe**

## ➤ Relevant Human Rights dimensions

- Human Dignity
- Proportionality
- Privacy
- Fairness



# Offender Supervision + Human Rights + Europe

## ➤ Relevant Human Rights dimensions

- Human Dignity
- Proportionality
- Privacy
- Fairness



But: hardly any cases relating to OS at the European Court of Human Rights

Exceptions - recall to prison (right to liberty, Art. 5 ECHR) and supervision measures in the pre-trial phase (presumption of innocence, Art. 6 II ECHR)

# Offender Supervision + Human Rights + Europe

**Recommendation on Community Sanctions and Measures, 1992, currently being updated**

- safeguard the rights of the offender, supply guidelines for good practice

## **European Probation Rules, 2010**

- instruct and promote good practice, focus on enforcing agencies and their work



The screenshot shows the Council of Europe website page for 'Prisons and Community Sanctions and Measures'. The page features a navigation menu with options like 'The Council in brief', 'Human Rights', 'Democracy', 'Rule of Law', 'Organisation', '47 Countries', 'Topics', and 'Newsroom'. The main content area includes a sidebar with sections for 'Committees' (Council for Penological Co-operation (PC-CP), Terms of reference), 'Conferences' (Directors of Prison and Probation Services, Other conferences), and 'Legal instruments' (Conventions, Recommendations, Recommendations in other languages, EU Framework Decisions). The main text area contains a large graphic of a white hand reaching down to a black hand behind barbed wire, with the title 'Prisons and Community Sanctions and Measures' above it. The text explains the Council of Europe's experience in promoting humane and socially effective prisons, mentioning the European Prison Rules and recommendations on education in prison, prison staff, health care in prison, and prison overcrowding. It also mentions the Council for Penological Co-operation and the European Committee on Crime Problems. A section for 'European Prison Rules' is visible at the bottom right, with options for English, French, and other languages.

[http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/default\\_en.asp](http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/default_en.asp)

Offender Supervision

+ Human Rights

+ Europe

+ **interdisciplinary research**

Offender Supervision + Human Rights + Europe  
+ **interdisciplinary research**

„European“ approach to comparative  
research

European standards as common yardstick  
for research and basis for a „common  
language“

# Offender Supervision + Human Rights + Europe + **interdisciplinary research**

## *Critical criminologists*

“have a moral obligation to incorporate social justice and human rights into their theorizing and research methodologies”

(Weber et al. 2014 referring to Hudson 2002)

# Offender Supervision + Human Rights + Europe + **interdisciplinary research**

- Human dignity as ability of all people, including offenders, to hope, to reflect, to make choices, to exercise social responsibilities and to develop – *desistance* research
- Human Dignity /Proportionality – *pains of probation* need to be acknowledged and may be experienced as excessive
- Proportionality - *Flexibility*, individual circumstances, in breach decisions assessing the violation as such, assessing the achievements

# Offender Supervision + Human Rights + Europe + **interdisciplinary research**

- Human dignity as ability of all people, including offenders, to hope, to reflect, to make choices, to exercise social responsibilities and to develop – *desistance* research
- Human Dignity /Proportionality – *pains of probation* need to be acknowledged and may be experienced as excessive
- Proportionality - Flexibility, individual circumstances, in breach decisions assessing the violation as such, assessing the achievements
- Fairness /Transparency/Information - satisfy the need to know, to comprehend and the need to make sense (*sense of coherence*), satisfy the requirements of *procedural justice*, enhance compliance

# Offender Supervision + Human Rights + Europe + **interdisciplinary research**

- Social rights? – need for practical help, fair inclusion of vulnerable/minority groups
- Legitimacy of decisions, Accountability of enforcing authorities – role and burden of probation staff

“The structure, status and resources of probation agencies shall correspond to the volume of the tasks and responsibilities they are entrusted with and shall reflect the importance of the public service they implement.” (European Probation Rules, Nr. 18)

# Offender Supervision

+ Human Rights

+ Europe

+ interdisciplinary research

+ **policy and practice**

Offender Supervision + Human Rights + Europe  
+ interdisciplinary research + **policy and practice**

- Impact of norms and values as formulated by the Council of Europe?
- ☞ update of the European Rules on Community Sanctions and Measures to be expected in 2016! (see consultation on [www.offendersupervision.eu](http://www.offendersupervision.eu) and new proposal on the CoE website)
- Common standards as tool for cross-border cases, enhancing mutual trust
- ☞ (important eg for the implementation of FD 947 and FD 829 in the European Union)

# Common wisdom? European norms and values for offender supervision

To conclude...

“It cannot be too strongly emphasised that CSM (... ) are of value both for offenders and for the community: offenders are in a position to continue to exercise choice and assume their social responsibilities, while the implementation of penal sanctions within the community itself rather than through a process of isolation from it may well offer in the long term better protection for society. (...), the imposition and the implementation of CSM must be guided by these considerations as well as the essential aim of treating offenders with respect as responsible human beings.” *(from the draft preamble of the revised European Rules on Community Sanctions and Measures)*

**But: HR are not instruments to reach better results, we have to honor them as human idea(l), as this will prove the moral quality of what we – what you – do with offenders**

Common wisdom? European norms and values for  
offender supervision

**Thank you for your attention!**

