



J-CAP

# D2.3: Informative Materials

J-CAP: Judicial cooperation for the enhancement of mutual recognition regarding probation measures and alternative sanctions

Compiled by Walter Hammerschick and Rebecca Walter

Department of applied Sociology of Law and Criminology (IRKS)  
University of Innsbruck, Austria

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**Disclaimer:** This deliverable was compiled by Walter Hammerschick and Rebecca Walter from the Department of applied Sociology of Law and Criminology at the University of Innsbruck, Austria. However, the individual national reports were written by the respective national partners.

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## List of Acronyms and Abbreviations

AISR – Annual Internal Security Report  
APP – Automated processing of personal data for “Enforcement of sentences, probation and integration  
ASR – Adolescent Criminal Law  
CC – Criminal Code  
CCP – Code of Criminal Procedure  
CESMDL – Code of Execution of Sentences and Measures of Deprivation of Liberty  
CTLN – Consolidated Text of Law on Narcotics  
CVv.i. – Team at the Prosecution Service deciding on national conditional release cases  
DGRSP – *Direção Geral da Reinserção e dos Serviços Prisionais*  
DPR – Decree of the President of Republic  
EJN – European Judicial Network  
ES – Executing State  
EU – European Union  
FD – Framework Decision  
GBM – Behavioural Measure  
IS – Issuing State  
ISD – Placement order for repeat offenders  
JAP – Sentence Enforcement Judge  
JCTC – Juvenile Criminal Trial Code  
MS – Member State  
NGO – Non-Governmental Organisation  
PA – Prison Act  
PAA – Probation Assistance Act  
PIJ – Placement Order for juveniles  
PSL – Penitentiary System Law  
SAA – Substance Abuse Act  
SPIP – The penitentiary integration and probation service  
TBS – Hospital Order  
UEPE – *Ufficio di Esecuzione Penale Esterna*  
WETS – Law on the Mutual Recognition and execution of sanctions regarding deprivation of liberty and conditional sanctions  
YCA – Youth Court Act

# Introduction

Framework Decision 2008/947 (FD 2008/947) 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 is a legal instrument issued by the Council of the European Union. Initially proposed in 2007 by Germany and France, the document entered into force on 16<sup>th</sup> December 2008. FD 2008/947 “seeks to extend the principle of mutual recognition of judicial decisions to the implementation of non-custodial sentences” by regulating how Member States (MS) of the European Union (EU) are to proceed in the recognition of judgments and the supervision of probation measures and alternative sanctions issued by other EU MS.<sup>1</sup> FD 2008/947 is thus aimed explicitly at foreign offenders who have been convicted of a criminal offence in an EU MS other than the one from which they originate or in which they habitually reside. Indeed, as research has shown, there is a strikingly high number of foreign prisoners<sup>2</sup> and foreign probationers in the EU (Aebi et al., 2022a, p. 5; Aebi et al., 2022b, p. 12). Nevertheless, FD 2008/947 is not frequently applied in EU MS.<sup>3</sup> In 2022, the EU project J-CAP: Judicial cooperation for the enhancement of mutual recognition regarding probation measures and alternative sanctions was launched to increase awareness, understanding and knowledge of the FD in order to promote its use among practitioners.

The project pursues 3 specific objectives, which are laid out in its Grant Agreement:<sup>4</sup>

1. To lay the groundwork for successfully supporting judges and magistrates, but also lawyers (on a secondary level) in executing FD 2008/947;
2. To contribute to an increased capacity among practitioners to use FD 2008/947, deepening understanding of its goals and operational aspects, as well as of other EU MSs systems and available measures; and
3. To foster reflection among practitioners, which will, in turn, support a higher degree of harmonisation between legal and judicial cultures.

The project has a duration of 2 years and is composed of partners from Austria, Belgium, France, Italy, the Netherlands, Portugal, and Romania. As in some of these countries, foreigners account for a large percentage within the general prison population (notably Austria (50,2%), Belgium (44,2%) or Italy (32,4%) as well as in the general probation population, notably Austria (25,2%), Italy (15,1%), or Belgium (13,6%)) (Aebi et al., 2022b, p. 17), an increased application of FD 2008/947 seems to be particularly relevant in these MSs in order to support the resocialisation of offenders from EU MSs the best possible way.

Each MS represented in the consortium of the J-CAP project has successfully passed legislation implementing the objectives of FD 2008/947 into national law. As F are not directly applicable, EU MSs have to transpose them into national legislation, primarily following their objectives rather than their form or actual wording. The laws and the national implementation of FD 2008/947 may thus differ among EU countries. This factor can prove challenging for practitioners wanting to use FD 2008/947 and partly explains its low application throughout the Union. In light of this challenge, particularly regarding the second objective mentioned above, the following deliverable aims to provide a better understanding of the legal systems

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<sup>1</sup> EUR-Lex Website. <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32008F0947>

<sup>2</sup> Though incarcerated convicts are not covered by FD 2008/947, they might qualify for conditional release at some point, and would then very well fall under its jurisdiction.

<sup>3</sup> see e.g., EJN: Report on activities and management 2017-2018, and Report on activities and management 2019-2020. <https://www.ejn-crimjust.europa.eu/ejn2021/ContentDetail/EN/2/67>

<sup>4</sup> Grant Agreement J-CAP (2021): Annex I, p. 3.

and measures in the project consortium's MS and illustrate the practical implementation of FD 2008/947 in these countries.

Deliverable 2.3, entitled "Informative Materials", presents, firstly, a glossary that allows for a quick comparison of various aspects within the partner countries. It combines information about the national authorities in charge of incoming and outgoing requests; national available probation measures and alternative sanctions; and lists and explains decisions of general criminal law and juvenile justice for which supervision can be requested. Secondly, the deliverable provides a more detailed overview of the situation in each MSs represented in the project consortium. Seven national reports offer a structured overview of regulations and information relevant for the application of FD 2008/947 and are intended for practitioners (judges, prosecutors, magistrates, lawyers and beyond) in EU MS. These reports do not claim to be a complete reflection of the individual national legal situation. Nor was that ever their intention. They are intended to provide insights into some of the most critical aspects of the respective national systems of potential executing States (ES) within the scope of FD 2008/947, and thus promote its application. The national reports are divided into 2 parts. More concretely, Part 1 presents the respective national probation system with its legal basis, nationally available probation and alternative measures that fall within the scope of FD 2008/947, and their national providers. Part 2 covers the national implementation of FD 2008/947 from the perspective of both issuing State (IS) and ES.



## References

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# Glossary

## Explanatory Comment

The glossary intends to support practitioners in applying FD 2008/947 by providing a quick overview of the national legal situation in other EU MSs. The content of the glossary summarises some key information from the 7 national reports of the project partners who have finalised and approved its content. It goes beyond an alphabetical collection of terms and their definitions by introducing an additional comparative component, offering practitioners quick information on:

- National competent authorities in partner countries being IS and ES;
- Nationally available probation and alternative sanctions; and
- Nationally issued decisions of adult criminal law and juvenile justice for which supervision can be requested, including their definitions.

### **National competent authorities**

Although FD 2008/947 explicitly requests to inform the European Council about the authorities responsible for incoming and outgoing requests in the respective EU MS and further offers to have this information distributed (Article 3), national competency is not always clear to practitioners from other EU MSs. To facilitate better communication between EU MSs, information on who to contact regarding questions on the process of supervision is crucial. The glossary names the competent national authorities and provides a link to the European Judicial Network's (EJN) Judicial Atlas, which includes contact details. The EJN is a vital tool to facilitate judicial cooperation in criminal matters between EU MSs and offers a great range of country-specific information on its website. The link to the EJN is sought to further raise awareness of the Network and enable practitioners to obtain supplementary information on the deliverable.

### **Nationally available probation and alternative sanctions**

The types of probation measures and alternative sanctions FD 2008/947 "shall apply to" are listed in its Article 4. The glossary provides information on the transposition of this Article into the national law of the 7 project partners. On the same note, these crucial details will guide practitioners on whether the sanction imposed in their country can be transferred this way or might need to be adapted.

### **Nationally issued decisions for which supervision can be requested**

The sentencing system of the individual countries differs in many respects. The glossary has collected the reported decisions for which supervision can be requested and assigned them to 7 different categories concerning general criminal law:

- Conditional suspension of a sentence (guilty verdict with a sentence duration specified);
- Suspended sentence (guilty verdict without a sentence duration specified);
- Community service;
- Conditional release from imprisonment;
- Conditional release from preventive detention;
- Suspension of the execution of a custodial measure reserved for alcohol and drug addicts; and
- others.

**And grouped them as follows for juvenile justice:**

- Community service;
- Permanent or temporary placement;
- Conduct obligations and supervision;
- Behavioural and educational measures; and
- others.

As this rough classification does not allow for any background information, it is supplemented by short, concise definitions of the individual judgements provided by the partners for their respective countries. These definitions were considered necessary as the same terms can mean different things in different national contexts.

The information about juvenile justice is further complemented by details regarding the age of criminal responsibility in the partner countries and the possible application of general criminal law for juveniles and young adults.

While the glossary has the quality to stand on its own as a source of information for practitioners, it also provides additional shortcuts to the respective national reports.

## Glossary

**Table 1: National Competent Authority**

	Implementation as Issuing State	Implementation as Executing State	EJN Link
<b>AT</b>	The Court that has taken the last decision of first instance	Regional Courts ( <i>Landesgerichte</i> )	<a href="#">Austria</a>
<b>BE</b>	The public prosecutor of the district of the legal and permanent/habitual residence of the sentenced person or of the district where the judgement was rendered	The public prosecutor of the district of the legal and permanent/habitual residence of the sentenced person	<a href="#">Belgium</a>
<b>FR</b>	The public prosecutor of the place of sentencing or the public prosecutor of the Court that issued a probation order	The public prosecutor in whose district the offender resides (alt. public prosecutor at the Paris Judicial Court)	<a href="#">France</a>
<b>IT</b>	The Supervisory Court ( <i>Tribunale di Sorveglianza</i> )	The Court of Appeal in whose district the offender resides	<a href="#">Italy</a>
<b>NL</b>	International Legal Assistance Centre of the Dutch Prosecution Service for region North-Holland ( <i>Internationaal Rechtshulpcentrum / IRC Noord-Holland afd. WETS-ETM</i> )		<a href="#">The Netherlands</a>
<b>PT</b>	The public prosecutor's office together with: - the sentencing Court (alternative measures) - Court of execution of sentence (conditional release)	The Court of Appeal in whose district the offender resides	<a href="#">Portugal</a>
<b>RO</b>	The judge appointed with the execution of the sentence	The District Court where the person resides	<a href="#">Romania</a>

**Table 2: National available probation measures and alternative sanctions**

Measure	AT	BE	FR	IT	NL	PT	RO
To inform a specific authority of any change of residence or working place	✓	✓	✓	✓	✓	✓	✓
To not 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	✓	✓	✓	✓	✓	✓	✓

**Table 3: Decisions of adult criminal law for which supervision can be requested**

Decision	AT	BE	FR	IT	NL	PT	RO
Conditional suspension of a sentence	✓	✓		✓		✓	✓
Suspended sentence		✓	✓		✓	✓	
Community service	✓	✓	✓		✓	✓	
Conditional release from imprisonment	✓	✓	✓	✓	✓	✓	✓
Conditional release from preventive detention	✓	✓			✓		
Suspension of the execution of a custodial question reserved for alcohol and drug addicts	✓			✓			
Others		✓	✓				

**Table 4: Definitions of national decisions of adult criminal law for which supervision can be requested**

	MS	Title of National Law	Legal Code	Short Definition
Conditional suspension of a sentence (guilty verdict with a sentence duration specified)	AT	Conditional suspension of a sentence	Article 43 CC	A sentence of imprisonment is not executed on the condition that certain requirements are fulfilled.
	AT	Conditional partial suspension of a sentence	Article 43a CC	A part of a sentence of imprisonment is not executed on the condition that certain requirements are fulfilled.
	AT	Conditional suspension of a preventative measure	Article 45 CC	Detention in a mental health facility (§ 21 CC) has to be suspended conditionally if certain requirements are fulfilled.
	BE	Conditional (probationary) suspension of the execution of a sentence	Law of 17 May 2006	The execution of all or part of an imposed custodial sentence will not be executed if certain probationary measures are respected.
	IT	Conditional suspension of the sentence	Articles 163, 164, 165, 166, 167 and 168 CC	A judgement of no more than 2 years can be suspended for the term of 5 years (in the case of a crime) or 2 years (in the case of a contravention).
	IT	Probation with the Social Service	Article 47 PSL	A pronounced prison sentence can be served outside the penitentiary institution at the Social Service.
	PT	Suspension of the execution of the prison sentence	Article 50-70 CC	It consists in the cessation of the prison sentence that would be applied for the crime committed and may only be applied for crimes with imprisonment not exceeding 5 years.
	RO	Postponement of the punishment	Article 83-90 PC	A prison sentence (no more than 2 years) is postponed if certain conditions are met.

	<b>RO</b>	Suspension of the execution of prison sentence	Article 91-98 CC	A prison sentence (no more than 3 years) is suspended if certain conditions are met.
<b>Suspended sentence (guilty verdict without a sentence duration specified)</b>	<b>BE</b>	Conditional (probationary) suspension of the imposition of a sentence	Law of 29 June 1964	No criminal conviction will be pronounced, and therefore no criminal sentence imposed if certain probationary measures are respected.
	<b>BE</b>	The autonomous probation penalty	Articles 37octies, 37novies, 37decies, 37undecies CC	The obligation to respect certain specific conditions during a specified period, as imposed by the Court.
	<b>FR</b>	Probationary Sentence	Article 131-5-1 CC	A prison sentence is suspended if the obligations and prohibitions set by the trial Court or the enforcement Court for a period of time determined at the time the sentence is handed down are followed.
	<b>NL</b>	Suspended sentence	Article 14 CC	A sentence of imprisonment is not executed on the condition that certain requirements are fulfilled during a probationary period.
	<b>PT</b>	Suspension of the execution of the prison sentence	Art. 50-70 CC	The Court believes that the mere threat of imprisonment is effective enough to fulfil the purposes of punishment and prevention.
	<b>Community service</b>	<b>AT</b>	Community services substituting imprisonment in lieu of fines	Article 3, 3a PA
<b>BE</b>		Community service	Article 37 quinquies, 37 sexies, 37 septies CC	Accomplishing some kind of activity or labour in the general public interest
<b>FR</b>		Community service	Article 131-8 CC	Can be ordered instead of offences punishable and not punishable by imprisonment.
<b>NL</b>		Labour Penalty	Article 22b-d CC	Can be ordered as an alternative for offences punishable by imprisonment not exceeding 6 years or a fine.



	<b>PT</b>	Work in favour of the community	Articles 58, 59 CC; Articles 496, 498 CCP	May be applied as a replacement of a prison sentence not exceeding 2 years.
<b>Conditional release from imprisonment</b>	<b>AT</b>	Conditional release from imprisonment	Article 46 CC; Article 152 PA	The remainder of a sentence served is suspended conditionally if certain requirements are fulfilled.
	<b>AT</b>	Judicial supervision in cases of sex offenders or of sexually motivated violent offenders	Article 52a CC	A sex offender conditionally released from imprisonment may be ordered judicial supervision if this is deemed necessary to prevent him/her from further committing such offences.
	<b>BE</b>	Conditional release	Law of 17 May 2006	A person convicted of an effective prison sentence can be released after having served a part of it. Certain general and, in some cases, specific conditions will be attached to the release.
	<b>BE</b>	Placement at the disposal of the Court for the execution of sentences	Articles 34bis, 34ter, 34quater CC	An offender may be released under surveillance at the disposal of the court for the execution of sentences for a minimum of 5 and a maximum of 15 years.
	<b>FR</b>	Conditional release	Article 729-733 CC	The remainder of a sentence served is suspended conditionally if certain requirements are fulfilled.
	<b>NL</b>	Conditional release from imprisonment	Article II PPA	A convicted person can be released under certain conditions after having served part of the prison sentence.
	<b>PT</b>	Conditional release	Article 61-64 CC; Article 187 CESMDL	A measure of restricted freedom that anticipates the release of a sentenced individual, depending on the severity of the crime committed, and applied to sentences of up to 5 years of imprisonment.
	<b>RO</b>	Conditional release	Article 99-106 PC	If certain requirements are fulfilled, a part of the prison sentence is suspended conditionally.

<b>Conditional release from preventive detention</b>	<b>AT</b>	Release from preventive detention	Article 47 CC	A person who is detained in a mental health facility may only be released conditionally.
	<b>AT</b>	Judicial supervision in cases of sex offenders or sexually motivated violent offenders	Article 52a CC	A sex offender conditionally released from preventive detention may be ordered judicial supervision if this is deemed necessary to prevent him/her from further committing such offences.
	<b>BE</b>	Conditional release in internment procedures	Law of 5 May 2014	A person who is detained in a mental health facility may be released conditionally.
	<b>NL</b>	Placement order for repeat offender	Article 38m-p CC	A measure that allows for a period of treatment following a prison sentence for mentally disordered petty crime repeat offenders.
	<b>NL</b>	Hospital Order	Article 37a CC	A measure that allows for a period of treatment following a prison sentence for mentally disordered serious crime offenders.
<b>Suspension of the execution of a custodial measure (reserved for alcohol and drug addicts)</b>	<b>AT</b>	Postponement of the execution of sentence in case of treatment of addiction and subsequent suspension of sentence	Articles 39, 40 SAA	The execution of a prison sentence based on an offence related to the acquisition of narcotics is postponed after enrolment in a treatment programme for addicts.
	<b>IT</b>	Alternative measures reserved for alcohol and drug addicts: suspension of the execution of the custodial sentence	Article 90, 91 CTLN	Avoiding the detention of drug addicts who undergo and pass a therapeutic and social rehabilitation programme.

<b>Others</b>	<b>BE</b>	Electronic surveillance as autonomous sanction	Articles 37ter, 37quater CC	Electronic monitoring accompanied by conditions replacing a custodial sentence.
	<b>FR</b>	Socio-judicial probation	Article 131-36-1 CC	The convict, under the supervision of the judge, has to undergo assistance measures designed to prevent recidivism.
	<b>FR</b>	The sentence of home detention under electronic surveillance	Article 131-4 CC	Obligation to be at home or at the place designated by the judge at the times specified by the surveillance connected with the wearing of an electronic bracelet.

**Table 5: Juvenile Justice – Age of criminal responsibility and application of general criminal law**

<b>AT</b>	Juveniles can be held criminally responsible by the age of 14. The general criminal laws also apply to juveniles unless otherwise stipulated in the Youth Court Act.
<b>BE</b>	Juveniles are criminally responsible by the age of 18. Exceptions are possibly from the age of 16. In that case, the general criminal procedure and sentences will apply.
<b>FR</b>	The general criminal law applies with regard to "socio-judicial probation", "home detention under electronic surveillance" (from the age of 13 up, which is the age of criminal responsibility), and "community service" (from the age of 16 up).
<b>IT</b>	The age of criminal responsibility is 18. The general criminal law applies with regard to "conditional suspension of the sentence" for juveniles under the age of 18 years.
<b>NL</b>	Juveniles can be held criminally responsible by the age of 12. General adult criminal law applies from the age of 18 years. The Dutch Criminal Code stipulates special provisions for juveniles and young adults. General criminal law applies with regard to "suspended sentencing" and "conditional release from prison".
<b>PT</b>	The age of criminal responsibility is 16. Between the ages of 12 to 16, although not criminally liable, the minor who commits a crime is subject to education tutelary measures.
<b>RO</b>	Juveniles are criminally responsible by the age of 14. The court has to impose a non-custodial educational measure for first-time offenders between the ages of 14 and 18 if the punishment is a fine and/or imprisonment of up to 7 years.

**Table 6: Specific definitions of national probation measures and alternative sanctions regarding juveniles and young adults**

<b>Community service</b>	<b>NL</b>	Community service	Article 77m CC	It can either be a labour penalty (with the aim of reparation or work for the public interest), an educational penalty, or a combination of both. With an educational penalty, the convicted youth is ordered to follow aggression regulation training or pro-social modelling training.
	<b>PT</b>	Carrying out economic activities in favour of the community	Article 12 ETL	Consists of the minor delivering a certain amount of money or exercising an activity for the benefit of a non-profit entity (public or private), with a maximum duration of 60 hours, not exceeding 3 months, and it can be executed over the course of weekends or holidays.





Permanent or temporary placement	NL	Placement order for juveniles	Article 77s CC	A juvenile judge has the possibility to place the offender in a closed institution for juveniles ( <i>PIJ maatregel</i> ).
	PT	Internment in an educational centre in a semi-open and open regime	Article 17 and 18 ETL	The internment measure in a semi-open or open regime is conducted in an educational centre correspondent with the respective functioning regime and degree of outside exposure of the minor, and is applicable instead of a prison sentence of 3 or more years.
	RO	The weekend consignment	Article 119 CC	Consists of the minor's requirement to remain at home on Saturdays and Sundays for a period of 4 to 12 weeks unless he/she is required to participate in court activities. As with the other non-custodial educational measures, the weekend consignment is under the supervision of the probation service and replaces a fine or imprisonment.
Conduct obligations and supervision	PT	Imposition of rules of conduct for juveniles	Article 13 ETL	The purpose of the sentence is to create or strengthen conditions for the behaviour of the minor to conform to the legal norms and values essential to life in society. These rules can not represent abusive or unreasonable constrictions to the autonomy of decision and the regular life of the minor and have a maximum duration of 2 years.
	RO	Supervision	Article 118 CC	Supervision of the minor's daily activity by the probation officer for a period between 2 and 6 months instead of a fine or imprisonment.
	RO	Daily assistance for juveniles	Article 120 CC	The minor has to follow a daily assistance plan drafted by a probation officer, including a timetable, terms of activities and prohibitions for a period of 3 to 6 months.
Behavioural and educational measures	NL	Behavioural measure for juveniles	Article 77w CC	This measure consists of behavioural training and treatment interventions tailored to the needs of the individual offender, aimed at preventing recidivism.
	PT	Attendance of training programmes	Article 15 ETL	The measure entails the minor's participation in occupational, social and otherwise educational or pedagogical programmes.
	RO	Civic Education	Article 117 CC	The juvenile has to follow a court-ordered and court-created programme for a maximum period of 4 months instead of a fine or imprisonment.

	<b>PT</b>	Imposition of obligations	Article 14 ETL	The purpose of the sentence is to contribute to a better school or professional education and to the strengthening of the psycho-biological conditions necessary to the development of the minor's personality by imposing obligations or following treatment.
	<b>PT</b>	Educational monitoring	Article 16 ETL	A personal educational project as determined by the court.
<b>Others</b>	<b>AT</b>	Suspended Sentencing	Article 13 YCA	In cases concerning juveniles or young adults until the age of 21, the court may decide to suspend the sentencing and impose a probation period.

# National Reports on Probation and Alternative Measures

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- Austria
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## Austria

# National Report on Probation and Alternative Measures

Walter Hammerschick & Rebecca Walter

Department of applied Sociology of Law and Criminology (IRKS)  
University of Innsbruck

# Part 1: Austrian Probation System

## Legal basis

### **Criminal Code / *Strafgesetzbuch* (CC):**

- Conditional suspension of sentences or preventative measures, §§ 43 – 45;
- Conditional release from imprisonment or preventive detention, §§ 46 and 47;
- Probation periods in case of conditional suspension of sentence and conditional release, §§ 48 and 49;
- Court directives and probation assistance orders in the case of conditional suspension of sentence, conditional release or in the case of suspended sentencing (see § 13 Youth Court Act below), §§ 50, 51, 52 and 52a;
- Directive to undergo treatment of addiction, psychotherapy, or medical treatment, § 51(3);
- Revocation of conditional suspension of sentence and of conditional release, §§ 53 – 56.

### **Code of Criminal Procedure / *Strafprozessordnung* (CCP):**

- Procedural steps in the case of conditional suspension of a sentence and related orders and directives, §§ 492, 493;
- Revocation of conditional suspension, conditional release or suspended sentencing § 494a – 496.

### **Prison Act / *Strafvollzugsgesetz* (PA):**

- Community services substituting imprisonment in lieu of paid fines, §§ 3 and 3a
- Decision on conditional release, § 152;
- Directive to undergo treatment of addiction, psychotherapy, or medical treatment in case of conditional release, § 179a.

### **Substance Abuse Act / *Suchtmittelgesetz* (SAA):**

- Postponement of execution of sentence in case of treatment of addiction, subsequent suspension of sentence and waiver of revocation, §§ 39 and 40;

### **Youth Court Act / *Jugendgerichtsgesetz* (YCA):**

- Special features regarding the punishment of juvenile offences (in relation to §§ 43 and 43a CC – conditional suspension of sentences), § 5/9;
- Suspended sentencing, § 13;
- Conditional release from imprisonment, § 17.

### **Probation Assistance Act / *Bewährungshilfegesetz* (PAA):**

- Regulates the implementation of probation services and defines the scope of duties of probation officers.

# Detailed overview on available probation and alternative measures in Austria

## General Criminal Law

### 1. Conditional suspension of a sentence (§ 43 CC)

#### Short definition

- A sentence of imprisonment is not executed on the condition that certain requirements are fulfilled (§ 43 CC).

#### Who initiates

- The parties (suspect/counsellor, prosecutor) may request a conditional suspension.

#### Who decides

- A conditional suspension must be included in the judge's judgement (§ 492 CCP).

#### Prerequisites

- A judgement of no more than 2 years of imprisonment if reoffending is not to be expected. The limits do not apply to juveniles (§ 5/9 YCA);
- It is not a sentence for rape;
- It can be presumed that the mere prospect of the enforcement of the sentence, possibly combined with other measures (orders or directives), will suffice to prevent the person from committing further offences;
- The enforcement of the sentence is not needed to thwart offences by others;
- To be particularly considered: the nature of the offence, the character of the person, the degree of the person's culpability, the person's prior record, and the person's behaviour after the offence.

#### Probation period

- No less than 1, and no more than 3 years.

#### What can be ordered in connection with the judgement

- A court can place the person under directives or order probation assistance if necessary or appropriate to prevent the person from committing further offences (§ 50 (1) CC). The court is free to order any directive deemed useful to prevent the offender from committing additional offences, provided it does not intrude unreasonably into the personal rights or life of the person. The law lists the following examples (§ 51 CC):
  - to reside in a certain place, with a certain family or in a certain home;
  - to avoid a certain dwelling, certain places or certain company;
  - to abstain from alcoholic beverages;

- to learn or pursue a suitable occupation that best suits his/her knowledge, abilities and inclinations;
  - to report any change in his/her place of residence or employment; and
  - to report to the court or other authority at certain intervals;
  - The person may also be ordered to repair or restore, to the best of the person's abilities, any damage caused by his/her offence if this is relevant to the need to enforce the sentence to prevent the commission of offences by others;
  - If the person consents, he/she might further be ordered to undergo treatment of addiction, psychotherapy, or medical treatment (§ 51 (3) CC).
- If the court orders probation assistance, the probation officer has to advise and assist the person in changing his/her lifestyle and attitude in a way that will deter the person from committing offences in the future. If necessary, the probation officer adequately supports the person's efforts to cover the necessities of life, especially the person's efforts to find accommodation and employment (§ 52 CC). The probation officer reports to the court:
- to the extent required by the court or considered necessary and appropriate for the probation assistance;
  - if there is cause to revoke the probation assistance;
  - in any event, however, 6 months after the probation assistance has been ordered and upon its termination.
- Directives and orders for probation assistance apply for the duration of the period determined by the court, but at most until the end of the probation period (unless they are revoked) (§ 50 (3) CC);
- During the probation period, a court may issue subsequent directives, or alter or suspend existing directives, if deemed necessary.

### **Consequences of failures to comply**

- If the offender is convicted of a crime committed during the probation period, wilfully fails to comply with a directive despite a formal warning or persistently evades the influence of the probation officer, the court can revoke the conditional sentence and have the sentence executed if this appears necessary to deter the offender from committing criminal acts.
- Alternatively, the court can prolong the probation period (§ 53 CC).

### **Consequence of successful completion of the probation period and of directives**

- The sentence is suspended definitively.

## **2. Conditional partial suspension of a sentence (§ 43a CC)**

### **Short definition**

- A part of a sentence of imprisonment is not executed on the condition that certain requirements are fulfilled.

### **Who initiates**

- The parties (suspect/counsellor, prosecutor) may ask for a conditional partial suspension.



#### Who decides

- A conditional partial suspension has to be included in the judge's judgement (§ 492 CCP).

#### Prerequisites and restrictions

- The person is sentenced to imprisonment for more than 6 months but no more than 2 years, considering previous convictions, which do not allow for a conditional suspension of the whole sentence;
- The person is sentenced to imprisonment for more than 2 years but no more than 3 years, considering the high probability that he/she will not commit any further offences;
- The part to be served has to be a minimum of 1 month and must not exceed 1/3 of the sentence.

#### Probation period, orders and directives, consequences of failure and consequences of successful completion

- All regulations concerning a suspension of a sentence (Point 1) apply.

### 3. Conditional suspension of preventative measures (§ 45 CC)

#### Short definition

- Detention in a mental health facility (§ 21 CC) has to be suspended conditionally, if specific requirements are fulfilled.

#### Who initiates

- The parties (suspect/counsellor, prosecutor) may ask for a conditional suspension.

#### Who decides

- A conditional suspension must be included in the judge's judgement (§ 492 CCP).

#### Prerequisites

- It can be presumed that the mere prospect of the enforcement of the sentence, combined with specific treatment outside the facility and possibly other orders or directives, will suffice to contain the dangerousness against which the preventative measure was imposed;
- *To be particularly considered:* the person's character, health, prior record, the nature of the offence and the prospect of the person's upright development, successful treatment conducted during a period of provisional arrest or remand according to § 429 para. 4 and § 438 CCP;
- The placement under § 21 (2) CC – a person, not being of unsound mind, committed an offence punishable by imprisonment for more than 1 year whilst affected by a serious mental or psychological abnormality – may only be conditionally suspended at the same time as the sentence (§ 45 (1) CC).

### **Probation period**

- 10 years or 5 years, the latter if the offence that gave rise to the detention carries a penalty of imprisonment of no more than 10 years.

### **What can be additionally ordered in connection with the judgement**

- All regulations presented with respect to orders and directives under Point 1 – conditional suspension of a sentence - also apply here (§§ 50 – 52 CC).

### **Consequences of failures to comply**

- If the offender is convicted of a crime committed during the probation period, wilfully fails to comply with a directive despite a formal warning or persistently evades the influence of the probation officer, the court can revoke the conditional suspension and have the preventative measure continued, if it is also assumed that the dangerousness grounding this measure continues to exist (§ 54 CC). Alternatively, the court can prolong the probation period up to 15 years or 10 years, depending on the probation period initially ordered, also examining again what directives may be needed.

### **Consequence of completion of the probation period and of directives**

- The preventative measure is suspended definitively.
  - Unless the court concludes that the threat of a measure's execution is still needed to handle the dangerousness. In such cases, the court may prolong the probation period for a maximum of 3 years with the possibility of a further extension.

## **4. Postponement of the execution of sentence in case of treatment of addiction and subsequent suspension of sentence (§§ 39 and 40 SAA)**

### **Short definition**

- The execution of a prison sentence based on an offence related to the acquisition of narcotics is postponed after enrolment in a treatment programme for addicts.

### **Who initiates**

- The parties (suspect/counsellor, prosecutor) may ask for a postponement.

### **Who decides**

- The judge, after hearing the public prosecutor.

### **Prerequisites**

- A prison sentence of no more than 3 years based on an offence related to acquiring narcotics (excluded are serious offences involving drug trafficking (§ 28a SAA)).
  - Additionally, in the case of a sentence of imprisonment exceeding 18 months, the execution of the term of imprisonment does not appear necessary, given the offender's dangerousness.

- An offender dependent on narcotics declares readiness to undergo necessary and reasonable medical treatment, which is not obviously hopeless, possibly including (stationary) admission for up to 6 months. The court may define health-related measures.

#### **Duration of the postponement**

- Up to a maximum of 2 years.

#### **Possible additional orders**

- To provide prove of the medical measures.

#### **Consequences of failures to comply or of new offences related to the addiction**

- Revocation of the postponement and execution of the sentence if this is considered necessary to prevent the offender from reoffending.

#### **Consequence of successful completion of health-related measure**

- Conditional suspension of the sentence according to Point 1 with all options (e.g., directives) and rules presented there.

### **5. Conditional release from imprisonment (§ 46 CC and § 152 PA)**

#### **Short definition**

- The remainder of a sentence served is suspended conditionally if certain requirements are fulfilled (§ 46 CC).

#### **Who initiates**

- The parties (suspect/counsellor, prosecutor) may ask for a conditional release.

#### **Who decides**

- The judge, after hearing the public prosecutor, the prisoner and the prison governor.
- The court may decide that the release will only become effective in up to 3 months if this is considered necessary to prepare the inmate for life in freedom.

#### **Prerequisites**

- The convicted person has served at least 3 months and half of the prison term imposed in the judgment, determined by clemency or of the part of such a sentence that has not been conditionally suspended.
  - In exceptional circumstances, a person who has served more than half but no more than 2/3 of the sentence may not be released conditionally despite fulfilling the requirements if the continued enforcement of the sentence is necessary to prevent the commission of further offences by others (does not apply with juveniles - § 17 YCA);
  - A person sentenced to life imprisonment may not be released before having served 15 years and if it is assumed that he/she will not commit further offences;

- Juveniles shall have served at least 1 month before a conditional release may apply (§ 17 YCA).
- It can be presumed that the conditional release does not prevent future offences any less than an execution of the remainder sentence, considering voluntary treatment already carried out during imprisonment and the effects of directives and orders.

### **Probation period**

- No less than 1, and no more than 3 years;
- If needed for medical treatment or therapy the offender agreed on, the probation period may last up to 5 years;
- If the remainder sentence is more than 3 years, and in the case of sexual offences, the probation period always lasts 5 years;
- In cases of lifelong imprisonment, the probation period lasts 10 years.

### **What can be additionally ordered in connection with the judgement**

- All regulations presented with respect to orders and directives under Point 1 – conditional suspension of a sentence - also apply here (§§ 50 – 52 CC);
- Directives based on §§ 51 and 52 CC may also be issued with the provision that an ordered medical or psychotherapeutic treatment or treatment of addiction shall be continued outside prison, free of charge by an institution with a contract with the Ministry of Justice (§ 179a PA).

### **Consequences of failures to comply**

- If the offender is convicted of a crime committed during the probation period, wilfully fails to comply with a directive despite a formal warning or persistently evades the influence of the probation officer, the court can revoke the conditional release and have the remainder of the sentence executed if this appears necessary to deter the offender from committing criminal acts;
- Alternatively, the court can prolong the probation period (§ 53 CC).

### **Consequence of successful completion of the probation period and of directives**

- Release is declared to be permanent and the sentence is considered served.

## **6. Release from preventive detention (§ 47 CC)**

### **Short definition**

- A person detained in a mental health facility may only be released conditionally.
  - Unconditional release is possible only for persons who have been committed to a facility for the treatment of addiction or a facility for dangerous repeat offenders once the period of detention has lapsed; or
  - if a person is detained in a facility for the treatment of addiction and if a continuation of the treatment has no prospect of success.

### **Who initiates and decides**

- The judge deciding on release.

### **Prerequisites**

- It can be presumed that the dangerousness against which the preventive detention was imposed does not exist anymore, considering the person's behaviour and development in the facility, his/her character, health, prior records and the prospect of the person's upright development.

### **Probation period**

- 10 years or 5 years, the latter if the offence that gave rise to the detention carries a penalty of imprisonment of no more than 10 years. If a person is detained in a facility for the treatment of addiction the probation period is to be determined with at least 1 and a maximum 5 years.

### **What can be additionally ordered in connection with the judgement**

- All regulations presented with respect to orders and directives under Point 1 – conditional suspension of a sentence - also apply here (§§ 50 – 52 CC).

### **Consequences of failures to comply**

- If the offender is convicted of a crime committed during the probation period, wilfully fails to comply with a directive despite a formal warning, or persistently evades the probation officer's influence, the court can revoke the conditional release and have the measure continue. If it is also assumed that the dangerousness grounding the preventive measure continues to exist (§ 54 CC);
- Alternatively, the court can prolong the probation period up to 15 years or 10 years, depending on the probation period initially ordered, also examining again what directives may be needed.

### **Consequence of completion of the probation period and of directives**

- Release from preventive detention is declared to be permanent;
- Unless the court concludes that the threat of an execution of the measure is still needed to handle the dangerousness. In such cases, the court may prolong the probation period for a maximum of 3 years with the possibility of a further extension.

## **7. Judicial supervision in cases of sex offenders or sexually motivated violent offenders (§ 52a CC)**

### **Short definition**

- A sex offender conditionally released from imprisonment or preventive detention may be ordered judicial supervision if necessary to prevent him/her from committing further such offences.

### **Who initiates**

- The judge or the prosecutor.

### **Who decides**

- The judge deciding on release.

### **Prerequisites**

- A sex offender or a sexually motivated violent offender is planned to be conditionally released from imprisonment or preventive detention;
- Supervision or monitoring of the behaviour of the offender is necessary to:
  - secure adherence to ordered directives, especially ones ordering psychotherapeutic or medical treatment;
  - refrain from carrying out certain activities or occupations; and
  - prevent him/her from committing further such offences.

### **Probation period**

- The same applies to conditional release from imprisonment or preventive detention (Points 6 and 7).

### **What can be ordered in connection with the judgement**

- In addition to the legal regulations presented above (Point 1), the following applies to secure closer monitoring and supervision:
- Probation service has to be ordered;
- Probation officers report to the court:
  - at the occasion of the order of the judicial supervision;
  - whenever the court requires;
  - at least every 3 months during the first half of the court supervision period and every 6 months in the second half of that period (§ 52a CC).
- Additionally, in suitable cases, the court may also involve the court aid, police or other suitable services to supervise adherence to the ordered directives. All these services are required to report to the court about the measures they themselves carry out as well as about their observations.

### **Consequences of failure to comply**

- See the consequences of failures in the case of conditional release from imprisonment and from preventive detention, respectively (Points 6 and 7).

### **Consequence of completion of the probation period and of directives**

- See consequences in case of conditional release from imprisonment and preventive detention, respectively (Points 6 and 7).

## **8. Community services substituting imprisonment in lieu of fines (§§ 3 and 3a PA)**

### **Short definition**

- An offender facing imprisonment in lieu of fines may carry out community services as a substitute for imprisonment.

### **Who initiates**

- The prison informs the offender about the option of community service instead of paying the fine in the call to start serving the sentence.

### **Who decides**

- The offender must report his/her readiness to carry out unpaid community services to the court within 1 month of receiving the call to start serving the sentence. This situation triggers a deferral of the execution of the sentence. The court supervises the realisation.

### **Prerequisites**

- Community service is not permitted for prison sentences in lieu of fines of 9 months or longer:
  - 4 hours of community service substitute 1 day of imprisonment.
- The offender has to reach an arrangement with a suitable facility within 1 month and inform the court about it:
  - At the request of the prosecutor's office and of the courts, a person with experience in social work may be assigned to the offender to provide information about community services and to make the needed arrangements (§ 29b PAA);
  - Prosecution authorities must each maintain a list of facilities suitable for community service.

### **Regulations with respect to the realisation of community services**

- The person assigned to the offender shall, in cooperation with the offender, define the period of time required for the performance of community service while taking into account training and educational measures, as well as work, etc., the offender is enrolled in;
- The period of community service may not be longer than the convicted person would need if he or she worked 10 hours per week.

### **Consequences of failure**

- In case of failure to provide suitable arrangements with suitable facilities, the court has to inform the offender about the required improvements to provide within 14 days. If this deadline is not met successfully, the sentence is executed;
- In case of the offender not or not fully fulfilling his/her obligations, the deferral is revoked, and the sentence is executed. Already fulfilled community service reduces the sentence's remaining execution period.

### **Consequence of completion of the community services**

- The assigned person reports the successful implementation of community service to the court, and the sentence is considered served.

## **Juvenile Justice**

The age of criminal responsibility in Austria is 14 years. All of the legal provisions listed above apply to both adults and juveniles/young adults. The Austrian Youth Court Act (YCA) contains an additional criminal provision that applies exclusively to juveniles and young adults:



## 9. Suspended sentencing – Only for juveniles and young adults (§ 13 YCA)

### Short definition

- In cases concerning juveniles or young adults until the age of 21 the court may suspend the sentencing and impose a probation period.

### Who initiates

- The parties (suspect/counsellor, prosecutor) may ask for a suspended sentencing.

### Who decides

- A suspended sentencing has to be included in the judgement of the judge (§ 13 (2) YCA).

### Prerequisites

- It can be presumed that the guilty verdict and the mere prospect of the sentencing, possibly combined with other measures (order and directives), will suffice to prevent the person from committing other offences;
- The judge has to consider whether a sentence may be needed to prevent the commission of offences by others.

### Probation period

- 1 to 3 years.

### What can be additionally ordered in connection with the judgement

- All regulations presented with respect to orders and directives under Point 1 – conditional suspension of a sentence - also apply here (§§ 50 – 52 CC);
- The judge must instruct the juvenile on the conditions, directives and what may happen if the conditions are violated.

### Consequences of failures to comply

- If the offender is convicted of a crime committed during the probation period, wilfully fails to comply with a directive despite a formal warning or persistently and deliberately evades the influence of the probation officer, the court can determine a sentence if this appears necessary to deter the offender from committing criminal acts;
- If no sentence is determined, the judge has to decide what directives should be continued or newly ordered.

### Consequence of successful completion of the probation period and of directives

- The court declares that the sentencing is suspended definitely.

## Austrian provider(s) of services in the context of probation and alternative sanctions

Services with respect to orders and directives issued by criminal courts are provided mainly by privately organised institutions, often only active in one place or region. Most of these institutions are organised as independent, private societies (*Vereine*), mostly subsidised or largely financed by public organisations, some of them directly by the Ministry of Justice. The legal regulation allowing judges to individually design orders or directives (§ 51 CC) brings about that also a wide range of organisations may be involved in such cases. Apart from providing these services, the organisations regularly provide certifications about activities and achievements to clients and courts. The leading actor in the field is NEUSTART, which provides probation services and other social work services for offenders and victims of crime all over Austria. Probation services are the most often issued orders, often in combination with other directives, sometimes also to assure adherence to directives or orders for which no other supervision or control is available.

This chapter presents some details on probation in Austria and other services regularly addressed with orders and directives of criminal courts.

### Probation services and social work with offenders

#### General Information

NEUSTART is the sole provider for probation services in Austria and one of the largest non-profit organisations in Austria's social economy. Since 1957, NEUSTART has been working in the field of justice-related social work, assistance for offenders, help and support for victims and prevention work. Besides probation services, NEUSTART assists with diversionary measures – victim-offender-mediation, community services – aftercare services, social work assistance during electronically monitored house arrest, trial support for victims, social net conferences (with juveniles in the pre-trial stage or preparation for release), prevention work – especially violence prevention work – and housing.

#### Fundamental principles of probation work in Austria

- The role of the probation officer is to advise and assist the person in changing his/her lifestyle and attitude in a way that will deter the person from committing offences in the future. Insofar as necessary, the probation officer adequately supports the person's efforts to cover basic needs, especially in his/her efforts to find accommodation and employment (§ 52 para 1 CC);
- Probation work in Austria does not have a "policing" function but exercises social control;<sup>5</sup>
- The quality of interpersonal relationships and social ties is vital for successful social work with offenders;<sup>6</sup>
- The probation officer maintains the most significant possible discretion concerning what he/she knows about the personal sphere of the client;<sup>7</sup>

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<sup>5</sup> Koss, C., Graf, C. (2013): Austria, in: van Kalmthout, A., Durnescu, I (Eds.), Probation in Europe, CEP, p. 31, <https://www.cep-probation.org/wp-content/uploads/2018/10/Probation-in-Europe-2013-Chapter-Austria.pdf>

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

- Probation officers in Austria work along the “Risk-Need-Responsivity-Principles”, an evidence-based model of probation work determining the intensity of care.<sup>8</sup>

### Organisational aspects

NEUSTART is a private non-profit organisation legally organised as an independent society. Though initially only entrusted with the organisation of probation work carried out by staff (civil servants) provided for by the Justice System, the so-called “General Contract” between the Austrian Ministry of Justice and NEUSTART was signed in 1994. This agreement entrusted NEUSTART with various services and regulates obligations, duties and rights in detail, for instance, also describing controlling and monitoring duties. NEUSTART constantly works on quality standards of services, also providing training opportunities for staff and volunteers.

- 32 locations all over Austria, with settlements close to all regional courts;
- 681 professional social workers and 955 volunteers (assisting 28,9% of the probation clients) guided by professionals;
- 90% of the needed financial means are provided by the Ministry of Justice, and the remaining parts by communities and federal states;
- Probation services represent the most extensive field of activity (66% of the budgetary means).

### Data

In 2021, NEUSTART handled 15.585 probation service cases (including probation as a diversion measure) and 6.084 community services cases (mainly as a diversion measure).

### Legal bases of the work of NEUSTART

- Probation Assistance Act (PAA).

### Potential involvement of NEUSTART in FD 947 cases

- Court-ordered probation services in connection with:
  - Conditional (partial) suspension of a sentence (§§ 43 and 43a CC);
  - Conditional suspension of a preventive measure (§ 45 CC);
  - Suspended sentencing (§ 13 YCA);
  - Conditional release from a prison sentence (§ 46 CC and § 152 PA);
  - Release from a preventive measure (§ 47 CC);
  - Judicial supervision in cases of sex offenders or sexually motivated violent offenders (§ 52a CC).
- Support in cases of community services substituting imprisonment in lieu of paid fines (§§ 3 and 3a PA).

### [Link to NEUSTART](#)

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<sup>8</sup> Bundesministerium für Justiz (2022): Sicherheitsbericht 2020, p. 128, <https://www.justiz.gv.at/file/2c94848525f84a630132fdbd2cc85c91.de.0/Sicherheitsbericht%202020.pdf?forcedownload=true>

## Health-related measures addressing addiction and substance abuse

Convictions and court decisions related to addiction and substance abuse regularly include orders to undergo specific treatment.

Suitable institutions in this respect are controlled and published by the Austrian Ministry of Social Affairs, Health, Care and Consumer Protection (§ 15 SAA).

Often such services start with a clarification phase, in which it is checked what the most suitable treatment will be. Regularly written contracts are signed between the patient and the institution on the treatment and related obligations. Orders of the courts but often also the institutions' regulations include testing to assure abstinence.

There are many organisations all over Austria providing such services:

### Exemplary providers of services

- Verein Dialog
  - Organisational aspects: Several settlements of the society in Vienna, primarily financed by the city of Vienna;
  - Services: Counselling, medical treatment, therapies, substitution, etc.;
  - [Link](#)
- Verein b.a.s. (betrifft Abhängigkeit und Sucht – concerning addiction and dependency)
  - Organisational aspects: 12 settlements in the federal state Styria, financed by the Ministry of Social Affairs, Health, Care and Consumer Protection, the Austrian Federal Chancellery and others;
  - Services: Information, advice, and treatment;
  - [Link](#)

## Anti-Aggression-Trainings – Violence Prevention

Anti-Aggression-Trainings support mostly men to refrain from violence.

### Exemplary providers of services

- Mannsbilder – Counselling for Men
  - Organisational aspects: 5 settlements in Tirol, financed by the Austrian Ministries of Education, Science and Research; Interior; Social Affairs, and Health, Care and Consumer Protection, and the federal state of Tirol;
  - Services: Counselling and advice in case of life crises, violence, etc.
  - [Link](#)
- CARITAS Männerberatung – Counselling for Men
  - Organisational aspects: Several settlements in 3 federal states; being an aid organisation of the Catholic Church, Caritas supports people affected in many ways, with counselling for men constituting only one of many services;
  - Services: The anti-violence programme supports men to no longer exercise violence and to learn non-violent alternatives. The programme comprises 20 units;
  - Link: [Männerberatung: Caritas St. Pölten \(caritas-stpoelten.at\)](http://Männerberatung: Caritas St. Pölten (caritas-stpoelten.at))
- NEUSTART – Anti-Aggression-Training;

- See information about NEUSTART above;
- [Link](#)

### Housing and After Care

People convicted and/or released from prison are often burdened by bundles of problems. To help them and guide them to stay out of trouble may require orders and directives addressing these bundles of problems. This can include housing, work or other day structuring measures as well as leisure pedagogical measures. There are a few organisations in Austria offering such broad support and assistance.

#### Exemplary provider of services

- WOBES – Verein zur Förderung von Wohnraumbeschaffung (Society for the provision of housing);
  - Organisational aspects: The society offers diverse services in Vienna and is financed by the Ministry of Justice, the Austrian Federal Chancellery and Vienna;
  - Special target groups: WOBES provides services above all to offenders with conditionally suspended preventive measures as well as to offenders released from preventive detention;
  - Services: tailor-made and multi-professional care management, providing a place to live by the association, care in another/own apartment in Vienna, placement in day-structured employment, and recreational pedagogical support;
  - **Link:** [WOBES - Über uns.](#)

## Available, relevant figures (latest)<sup>9</sup>

### Convictions in Austria

The table below gives an overview on the sentences imposed by Austrian criminal courts in 2020, differentiating between Austrian citizens, other EU-citizens and third-country nationals.

- About 40% of all convictions concern non-Austrian nationals, 15% nationals of EU MS;
- The coloured fields indicate the proportion of judgements concerning EU-citizens potentially open to probation measures or alternative sanctions to be carried out in other EU MS according to FD 947;
- Altogether, more than half of the sentences concerning non-Austrian EU-Nationals – or about 2000 persons – could be subject to such measures in the sentencing stage;
- Without any figures available, we, however, have to assume that quite a few are regular residents in Austria with social ties here and, therefore, possibly subject to such measures to be carried out in Austria.

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<sup>9</sup> Figures for this chapter were taken from the Ministry of Justice's 2020 Security Report. <https://www.justiz.gv.at/file/2c94848525f84a630132fdbd2cc85c91.de.0/Sicherheitsbericht%202020.pdf?forcedownload=true>

	Austrian Nationals	EU-Country Nationals	Third Country Nationals	Total
Conviction without sentence § 12 YCA	0,1%	0,1%	0,1%	0,1%
Suspended Sentencing § 13 YCA	1,0%	0,5%	0,5%	0,8%
Fine	31,3%	25,9%	21,6%	28,0%
Fine combined with conditional prison sentence	6,4%	4,0%	3,4%	5,3%
Conditional prison sentence § 43 CC	36,2%	33,2%	34,6%	35,3%
Partly Conditional Prison Sentence § 43a CC	5,6%	12,8%	13,1%	8,6%
Unconditional Prison Sentence	17,0%	22,1%	25,0%	19,8%
Other Measures (mostly preventive)	2,4%	1,5%	1,7%	2,1%
Total %	100,0%	100,0%	100,0%	100,0%
Total - Persons convicted	15 262	3 852	6 472	25 586

Table 1 - Sentences imposed by Austrian criminal courts in 2020. Source: Security Report of the Austrian Ministry of Justice 2020 p. 121 and own calculations.

- In 2020, 2.452 convicted persons did not pay the fines imposed on them by Austrian criminal courts in time:
  - This situation equals more than a quarter of those subject to fines and who would be the target group for community services substituting imprisonment in lieu of fines;
  - 53.8 % of these finally paid the fine or carried out community services;
  - The remaining 46 % could not be contacted or refused this option;
  - Although no empirical data is available, we can easily assume that citizens from other EU MS have been part of the group not having paid fines and of the sub-group having refused the option of community services to be carried out in Austria;
  - The possibility of serving community services in one's home country could incentivise some of them.

### Postponement of the execution of sentence in case of treatment of addiction and subsequent suspension of sentence (§§ 39 and 40 Substance Abuse Act)

- In a total of 476 cases in 2020, deferrals of the execution of the sentence were ordered in connection with § 39 of the Substance Abuse Act.

### Release from prison (pp. 201)

- About 6.500 people were released from Austrian prisons in 2020 after having served sentences, parts of sentences or after having been subjected to preventive detention;
- More than 40% have been released conditionally;
- 442 foreign nationals were granted early release based on § 133a PA. This regulation allows for a preliminary suspension of the remaining sentence after half of the sentence has been served and the convict has declared his/her readiness to leave the country (Austria);
- Lately, an average of about 17% of the overall prison population have been EU MS citizens. With no detailed data on releases and nationalities available, we can estimate that a similar proportion is released yearly. On an estimate, about a quarter of them is released based on the just mentioned § 133a PA;

- We have to assume that release based on § 133a PA considerably reduces the potential for other conditional releases of EU-citizens.

### Probation Services (pp. 129)

In 2020 a total of 4.156 cases of probation services were ordered.

- 2.694 were ordered with the conditional suspensions of sentences, preventive measures or conditional sentencing (YCA):
  - Probation was ordered in 19.7% of all conditional suspensions of sentences, in 14,5% of all conditional partial suspensions of sentences, in 2% of all preventative measures and in 46% of suspended sentencing (§ 13 YCA).
- 1.462 were ordered with conditional release:
  - In the case of release from imprisonment 52% were ordered probation services and 80% of all released from preventive detention.

Recidivism: The latest available numbers on recidivism date back to a study from 2018 comparing data from 2013 to mid-2016 (Hofinger & Peschak, 2018). According to this, 70.5% of offenders receiving probation services were not re-sentenced after completing services, meaning that 29.5% of offenders receiving probation services were convicted again after completing services (*ibid.*, p. 38). Of these:

- 30.5% re-offended after conditional (partly) suspension of sentence; and
- 29.5% after conditional release (*ibid.*, p. 41) – for comparison, 47.7% of offenders released after fully completing a sentence and therefore released without order were reported to re-offend (p. 259).

### Conclusions on the available data

Unfortunately, no data is available in Austria on the application of directives and orders apart from probation orders, nor details on sanctions and releases from prison concerning foreign nationals. The lack of data makes it difficult to develop estimates on the potential of probation and alternative measures to be carried out based on the FD 2008/947 in other EU MS. However, presuming that the rules with respect to the necessity and suitability of probation and alternative measures apply to non-nationals no less than to Austrian citizens and knowing about the considerable numbers of convicted EU-citizens apart from Austrians, we can conclude that the practice does not mirror the need.

We certainly do not want to promote an extensive application of probation and alternative measures and oppose any tendencies towards a net-widening. We are however convinced that there are many offenders convicted or already released in Austria, aiming back to their home countries, who need support, assistance, supervision and other suitable measures to find a way to stay out of trouble with criminal justice systems. This is also in the very interest of our countries and people. It seems that chances in this respect are missed.

If we, for instance, only apply the rates of probation services ordered with convicted or released people (obviously) staying in Austria to estimated numbers of parallel groups of other EU-Nationals with no ties to Austria, a potential of hundred cases a year transferred from Austria could be a realistic estimate (apart from § 133a PA).



## **Part 2: National Implementation of Framework Decision 2008/947**

### **Legal basis/incorporation into Austrian law**

Austria implemented FD 2008/947 through the amendment of its “Federal Law on judicial cooperation in criminal matters with the MSs of the European Union (EU-JZG)”. It went into force after being published in the “Federal Law Gazette” No. 175/2013 on 06.08.2013.

- [German version \(V. Hauptstück: Überwachung justizieller Entscheidungen, §§ 81 – 99\);](#)
- [English/German version \(Chapter V.: Supervision of Judicial Decisions, pp. 114\).](#)

### **Implementation as issuing State – Competencies and procedures**

#### **Competent authority and beginning of the procedure**

- The Court that has taken the last decision of first instance;
- The Court has to give the public prosecutor's office the opportunity for a statement and the sentenced person to be heard (§ 95 (1) EU-JZG).

#### **Conditions to forward a judgement or probation decision**

- According to § 95 (2) EU-JZG, Austrian Courts can only request the supervision in another MS of the following probation measures and alternative sanctions:
  - Orders and directions according to § 51 para. 1 and 2 CC (see pp. 4);
  - An obligation to cooperate with a probation officer according to § 52 CC (see pp. 5);
  - Court supervision for sexual delinquents according to § 52a CC (see p. 11);
  - Health-related measures according to § 39 SMG (see p. 8);
  - An obligation to undergo treatment for addiction, psychotherapeutic or medical treatment or medical supervision according to §§ 51 (3) CC (see pp. 4), 179a StVG (see pp. 9); and
  - community service according to §§ 3, 3a StVG (see p. 12).

#### **Procedure on forwarding a judgement or probation decision**

- The Austrian Court has to transmit to the competent authority of the ES:
  - The decision to be supervised, including a translation, if already existing;
  - As well as a completed and signed certificate (Published in Annex X to the code).
- Once a transfer has been accepted by an ES, further procedures and measures follow the law of the ES (except for cases subject to retransfer);
- Before *the transfer of a supervision based on suspended sentencing* (§ 13 YCA, see p. 6), the Court must request information from the competent authority of the ES about the maximum term of imprisonment or preventive measure involving

deprivation of liberty that may be imposed under its law in the event of a violation of the probation measure (§ 95 (5) EU-JZG).

### **Mandatory deadlines**

- If the supervision has not begun in the ES, the Court may, up to 10 days after receiving this information, notify the ES that the certificate is revoked (§ 96).

### **Accepted means of communication**

- The Federal Minister of Justice has to announce by decree which MS accept which official languages (§ 95 (4) EU-JZG);
- Unless the ES has declared to accept certificates also in the German language, a translation to the official or accepted languages of the ES is required (§ 95 (4) EU-JZG);
- Documents shall be forwarded by mail, fax, electronic data transmission, or any other safe technical means (§ 14 (3) EU-JZG).

The ES may request a certified copy or certified version of the decision as well as the original of the certificate by mail from the competent Austrian authority (§ 95 (6) EU-JZG).

### **Information obligations towards the ES during execution (without delay)**

- About violations of probation measures;
- About any decision presumably leading to a revocation of a conditionally suspended sentence or a conditional release;
- About any decision presumably leading to a prison sentence or preventive measure involving deprivation of liberty; and
- about all matters of relevance for further decisions of the ES.

### **Retransfer of supervision**

- In case:
  - The offence is not punishable according to the criminal law of the ES;
  - The verdict ordering an alternative sanction does not order a sentence or a preventive measure involving deprivation of liberty to be executed in case of violations – also if a supplementary sentencing (in analogy to §15 YCA) cannot be considered.

### **Information obligations towards the ES after retransfer**

- About the revocation of the conditionally suspended sentence or a conditional release;
- About the decision on the execution of the sentence or the preventive measure laid down in the verdict;
- About the supplementary sentencing in case of a suspended sentencing; and
- about the adherence to the probation measures.

## Implementation as executing State – Competencies and procedures

### Competent authorities and jurisdiction

Decisions on the supervision of probation measures and alternative sanctions, as well as subsequent decisions:

- Are taken by the regional Courts (*Landesgerichte*);
- In subsequent decisions, the regional Court decides as a senate of 3 judges if the prison sentence or preventive detention possibly to be enforced is at least 5 years;
- The region depends on where the person lives, permanently resides or has special ties;
- If a Court receives a request outside of its jurisdiction, it delegates to the competent Court and informs the IS about it (§ 83 EU-JZG);
- Austrian national contact point of the EJN at the Ministry of Justice: Dr Johannes Martetschläger, Head of the Criminal Justice Section, Federal Ministry of Justice;
- [Link to EJN Judicial Atlas to search competent authorities in Austria.](#)

### Prerequisites concerning the offender / Reasons for inadmissibility

- He/she is at least 14 years old (age of criminal responsibility in Austria);
- He/she is living or permanently residing in Austria (§ 82 (1) EU-JZG) or has ties to Austria of such intensity that it can be assumed that supervision in Austria serves his/her resocialisation and reintegration into society;
- He/she has not been granted amnesty or pardon in Austria or in the IS (§ 82 (6) EU-JZG);
- His/her fundamental rights or fundamental legal principles within the meaning of Article 6 of the Treaty on EU have not been violated (§ 82 (12) EU-JZG).

If a Court deems the supervision inadmissible due to a breach of the named prerequisites, it has to inform the competent authority of the IS without delay and by using the form in Annex XI (§ 91 (2) EU-JZG).

### Procedure of accepting a supervision request

- The competent authority of the IS forwards the judgement/decision of supervision and the signed certificate to the respective Austrian regional Court;
- The transmitted certificate needs to be complete and in line with the judgement/decision. If not, the Court can request re-submission within a set period, indicating that the request may be denied otherwise;
- The final decision on supervision has to be taken in the form of an order from the Court, and needs to indicate:
  - the denomination of the authority whose decision is supervised, including file number, a short description of the facts of the case with time and place and the ordered probation measures;
  - the denomination of the criminal act and the relevant legal provisions applied by the IS; as well as
  - the corresponding Austrian decision with its respective measures; and

- if applicable, the duration of the probation measure and the probation period.
- The Court has to inform the competent authority of the IS without delay (§ 92 (5) EU-JZG) about all subsequent decisions in connection with the supervision, especially the modification of the probation measure or alternative sanction or the duration of the probation period (§ 90 EU-JZG);
- A decision to accept a supervision request has to be taken within 60 days after the decision with the certificate has been received by the competent regional Court (Article 12 FD/947; § 88 EU-JZG);
- After the decision is final and binding, the necessary measures to supervise the probation measures have to be taken without delay (§ 85 (3) EU-JZG).

#### **Circumstances under which an execution can be denied and procedure of denial**

- Reasons for denial are in line with Article 11 FD/947;
- If a Court deems the supervision inadmissible (e.g. due to prerequisites not met concerning the offender), it has to inform the competent authority of the IS without delay and by using the form in Annex XI (§ 91 (2) EU-JZG).

#### **Availability of legal remedies for the offender and the public prosecution to appeal the decision on transfer of supervision**

- Pre-decision: The sentenced person has to be heard regarding the conditions of supervision and the measures to be ordered in Austria (§ 84 (5) EU-JZG);
- Post-decision: The public prosecutor's office and the persons affected by the decision have the right to complain against the transfer decision within 14 days to the Higher Regional Court (*Oberlandesgericht*). A complaint filed in time has a suspensory effect (§ 85 (2) EU-JZG).

#### **Probation and alternative measures the State is ready to execute**

- All measures listed in Article 4 (1) FD 2008/947.

#### **National adaptation process of a probation measure or an alternative sanction**

- Coinciding with Article 9 FD 2008/947;
- The Court shall further inform the competent authority in the IS about the possible sentence if probation measures are being violated (§ 84 EU-JZG).

#### **Accepted means of communication**

- Accepted are certificates in any official language of those MS that accept certificates in German issued by Austrian authorities;
- Information can be exchanged by mail, fax, electronic data transmission, or any other safe technical means that facilitates the production of a written version under conditions that make it possible for the recipient to verify their authenticity (§ 14 (3) EU-JZG).

## Available information on the status quo of the implementation

- Austria being the ES: No data is available; however, practitioners assume hardly any cases;
- Austria being the IS: No data is available. Reports indicate that there are single cases.

## References

- Hofinger, V., Peschak, J. (2018). Legalbiografien von NEUSTART KlientInnen II: Replikation einer Rückfalluntersuchung. Final report;
- Austrian Federal Ministry of Justice (2021). Security Report 2020. <https://www.justiz.gv.at/file/2c94848525f84a630132fdbd2cc85c91.de.0/Sicherheitsbericht%202020.pdf?forcedownload=true>.



# Belgium

## National Report on Probation and Alternative Measures

Dirk Merckx

Instituut voor Gerechtelijke Opleiding – Institut de Formation  
Judiciaire



# Part 1: Belgian Probation System

## Legal basis

- Articles 7 e.s. Criminal Code (CC) (general definitions of offences and penalties);
- Articles 34bis, 34ter and 34quater CC (placement at the Court's disposal for the execution of sentences);
- Articles 37ter and 37quater CC (electronic surveillance);
- Articles 37quinquies, 37sexies and 37septies CC (community service);
- Articles 37octies, 37novies, 37decies and 37undecies CC (autonomous probation penalty);
- Articles 91 – 93 CC (time limitations for the execution of sentences);
- Law of 29 June 1964 concerning suspension, probationary suspension and probation;
- Law of 18 April 1965 on the protection of juveniles;
- Law of 17 May, 2006, created the Court for the execution of sentences;
- Law of 17 May 2006, concerning the external legal position of persons convicted to custodial sentences and the victims' rights related to the sentence execution modalities;
- Law of 21 May 2013, concerning 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 imposed in an EU MS;
- Compulsory confinement Act of 5 May 2014.

## Detailed overview on available probation and alternative measures in Belgium

### General Criminal Law

#### 1. General provisions (Articles 7 e.s. Criminal Code)

The general classification of Belgian offences comprises 3 categories:

- Crimes: imprisonment from 5 - 40 years or life;
- Correctional offences: imprisonment from 8 days up to 5 years (or, in case of crimes with attenuating circumstances, up to 40 years);
- Police offences: imprisonment from 1 to 7 days.

For correctional and police offences, the following penalties are also possible:

- Electronic surveillance;
- Community service;
- Autonomous probation.

These various sentences cannot be imposed simultaneously.

## 2. Conditional release (Law of 17 May 2006 concerning the external legal position of persons convicted to custodial sentences and the rights of the victims related to the sentence execution modalities)

### 2.1. General provisions

#### Short definition

- A person convicted of an effective prison sentence can be released after serving a part. Certain general and, in some cases, specific conditions will be attached to the release.

#### Who initiates

- The convicted person.

#### Who decides

- For sentences up to 3 years, the judge for the execution of sentences;
- For sentences of more than 3 years, the Court for the execution of sentences.

#### Prerequisites

- As a general principle, 1/3 of the total of effective custodial sentences must be served;
- In the case of repeat offenders, the principle is 2/3 of the sentence, although the application of this last rule is uncertain for the moment after the rulings of different Courts;
- In case of a correctional sentence of 30-40 years or a criminal sentence of 30 years or more or life detention:
  - At least 15 years must be served;
  - Under certain conditions, a minimum of 19 years must be served after a previous conviction to an effective correctional custodial sentence of at least 3 years;
  - A minimum of 23 years applies in case of a previous conviction to a criminal sentence.
- Conditional release for sentences up to 3 years will be granted if no counter-indications exist, including:
  - The lack of means of living;
  - A manifest risk for the physical integrity of others;
  - The possibility that the person concerned would importune victims;
  - The attitude of the convicted person vis-à-vis the victims of his/her offence;
  - The lack of effort to compensate the victims.
- Conditional release for sentences exceeding 3 years will be granted if no counter-indications exist, including:
  - The lack of prospects for social reinsertion;
  - The risk of committing new serious offences;
  - The risk that the person concerned would importune victims;
  - The attitude of the convicted person vis-à-vis the victims of his/her offence;
  - The lack of effort to compensate the victims.

## Probation period

- The probationary period is as follows:
  - Equal to the duration of the custodial sentence still to be executed at the date the decision of conditional release becomes enforceable, with a minimum period of 1 year;
  - Between 5 and 10 years in case of conviction for a criminal sentence of less than 30 years or one or more correctional sentences, together exceeding 5 years;
  - 10 years in case of conviction for a criminal sentence of lifetime detention or detention for 30 years and a correctional sentence of 30-40 years.

## What can be ordered in connection with the judgment

- 3 conditions always accompany the probationary suspension:
  - Not commit any new criminal offences;
  - Have a fixed address, and, in case of change, immediately notify the public prosecutor and the social services in charge of the follow-up of the case;
  - Respond to the convocations of the probation commission and justice assistant.
- These conditions can be supplemented with individualised conditions:
  - For sentences up to 3 years, if necessary, aimed at preventing repeat offences or protecting the victim's interest;
  - For sentences exceeding 3 years, aimed at facilitating the execution of the social reinsertion plan or addressing one of the counter-indications, preventing repeat offences or protecting the victim's interest;
  - The consent of the person concerned with the conditions that are imposed is required.
- In case of sexual offences or terrorism, or violent extremism-related offences, a specific guidance project or therapy can be imposed, the duration of which will be determined by the Court or the judge.

## Supervision

- The public prosecutor, the police and the competent justice assistants will supervise;
- In case of specific conditions have been imposed, the justice assistant will report to the judge or the Court for the execution of sentences within a month and further on whenever necessary, but at least once every 6 months.

## Consequences of failure to comply

- The conditional release can be repealed, amongst other reasons:
  - In case of a judgment related to a new offence committed during the probationary period;
  - When the person concerned poses a serious threat to the physical or psychological integrity of third persons;
  - When the specific conditions are not respected or when the general obligations of responding to invitations or communicating a new address have not been complied with.

- When the conditional release is repealed, the person concerned will be put in custody again;
- If needed, the person concerned can also be detained pending the judgment regarding the repeal;
- In both aforementioned cases, the judge or Court can also review the conditions, including imposing more severe or additional ones. The conditional release will be repealed if the person concerned does not agree with these new conditions;
- In case of repeal of the conditional release, the judge or Court will determine the part of the sentence still to be served, taking into account the way the probationary period has gone and the efforts of the person concerned.

### **Consequence of successful completion of the probation period**

- The conditional release becomes final, and the sentence will be considered fully executed.

#### **2.2. Specific procedure – placement at the disposal of the Court for the execution of sentences (Articles 34bis, 34ter and 34quater Criminal Code)**

The trial Court can, and in certain cases must impose, on top of the custodial sentence, a measure whereby the person convicted is placed at the Court's disposal for the execution of sentences for a minimum of 5 and a maximum of 15 years. For this period of time, the offender can be released under surveillance. This release can also be granted upon the end of a conditional release if that has been decided upon regarding the effective custodial sentence.

The above-mentioned general conditions accompanying a conditional release will apply, and specific individual conditions can be imposed as well.

#### **2.3. Specific procedure – conditional release in internment procedures (Compulsory confinement Act of 5 May 2014)**

When the offender is in a mental state whereby he/she is considered unable to control his/her actions and poses a danger to society, forced psychiatric treatment can be imposed. In Belgian law, it is referred to as “internment”.

The measure of internment is, in principle, for an undetermined period of time, as long as the chamber for the protection of society (a specialised chamber of the Court of first instance) thinks the legal conditions are still reunited. As long as the person concerned remains in custody, the case will be reviewed at least once a year.

The Court can grant a conditional release. Specific conditions can be imposed, such as treatment in a psychiatric hospital, ambulatory treatment, or electronic surveillance.

The probationary period is 3 years but is extendable with a maximum of 2 years without any overall limit.

The final release may be granted on expiry of the specified trial period and if the mental disorder has stabilised sufficiently, it cannot reasonably be feared that the interned person still would pose a threat.

### 3. Conditional (probationary) suspension of the imposition of a sentence (Law of 29 June 1964 concerning suspension, probationary suspension and probation)

#### Short definition

- No criminal conviction will be pronounced; therefore, no criminal sentence will be imposed if certain probationary measures are respected.

#### Who initiates

- The public prosecutor or the Court.

#### Who decides

- The trial Court or the pre-trial (investigative) Court.

#### Prerequisites

- Conditional suspension of the imposition of the sentence is possible whenever:
  - The trial Court considers the offence proven;
  - The offence is punishable with not more than 20 years imprisonment;
  - The Court believes it does not need to impose a sentence of more than 5 years.
- Under the same conditions, a pre-trial Court can order the suspension when it is of the opinion that the referral to a trial Court with a public hearing could be detrimental to the defendant's social position or jeopardise his/her social reintegration;
- If the defendant has been previously convicted of a sentence of more than 6 months, the suspension of the imposition of the sentence will always be a probationary one;
- The defendant must agree to this measure.

#### Probation period

- Minimum 1 year and maximum 5 years, counting from the day the judgment becomes final.

#### What can be ordered in connection with the judgment

- 3 conditions always accompany the conditional suspension:
  - Not commit any new criminal offences;
  - Have a fixed address, and, in case of change, immediately notify the justice assistant in charge of the follow-up of the case;
  - Respond to the convocations of the probation commission and justice assistant.
- These conditions can be supplemented with individualised ones aimed at preventing repeat offences and creating a better framework for the coaching of the person concerned;
- If the suspension of the imposition of the sentence is pronounced, one of the additional conditions can consist of the obligation to follow a certain training in the function of the offender's physical and mental abilities and the practical feasibility to attend training;

- Only training dispensed by public services or associations with a cultural, social or scientific purpose is allowed;
- The training obligation can amount to a minimum of 20 hours and a maximum of 240 hours, and it needs to be fulfilled within 12 months of the day the judgment has become final.

### **Supervision procedure**

- The supervision rests with the probation commission, which can wholly or partially suspend, define or adapt the conditions imposed by the Court without however aggravating them;
- The person concerned will also be socially guided by a justice assistant of the district justice house with a view to prevent repeat offences and controlling the probationary measures;
- If one of the measures consists of following training or therapy, external services can be appointed, which will report to the commission and the justice assistant.

### **Consequences of failure to comply**

- In case a new offence has been committed during the probation period that has led to a correctional penalty of at least 1 month:
  - the suspension of the imposition of the sentence can be revoked; or
  - conditions can be modified.
- The suspension of the imposition of the sentence can also be revoked when the person concerned does not respect the conditions or new conditions that can be attached to the first judgment;
- If the suspension is revoked, the prison sentence imposed cannot exceed 5 years.

### **Consequence of successful completion of the probation period**

- The suspension becomes final, and no criminal conviction or record will exist.

## **4. Conditional (probationary) suspension of the execution of a sentence**

### **Short definition**

- The execution of all or part of an imposed custodial sentence will not be executed if certain probationary measures are respected.

### **Who initiates**

- The public prosecutor or the Court.

### **Who decides**

- The trial Court.

### **Prerequisites**

- Probationary suspension of the execution of the sentence is possible whenever the trial Court imposes a principal prison sentence of no more than 5 years. If

- the defendant has already been previously convicted of a sentence of more than 12 months, the suspension of the execution will always be a probationary one;
- The defendant must commit himself/herself to respect the conditions proposed by the Court.

### **Probation period**

- The probationary period cannot be less than 1 year and cannot exceed 5 years, counting from the day the judgment becomes final.

### **What can be ordered in connection with the judgment**

- 3 conditions always accompany the conditional suspension:
  - Not to commit any new criminal offences;
  - Have a fixed address, and, in case of change, immediately notify the justice assistant in charge of the follow-up of the case;
  - Respond to the convocations of the probation commission and justice assistant.
- These conditions can be supplemented with individualised conditions aimed at preventing repeat offences and creating a better framework for the coaching of the person concerned;
- If the suspension of the imposition of the sentence is pronounced, one of the additional conditions can consist of the obligation to follow a certain training in the function of the offender's physical and mental abilities and the practical feasibility to attend training;
- Only training dispensed by public services or associations with a cultural, social or scientific purpose is allowed;
- The training obligation can amount to a minimum of 20 hours and a maximum of 240 hours and needs to be fulfilled within 12 months of the day the judgment has become final.

### **Supervision procedure**

- The supervision rests with the probation commission, which can wholly or partially suspend, define or adapt the conditions imposed by the Court without however aggravating them;
- The person concerned will also be socially guided by a justice assistant of the district justice house with a view to prevent repeat offences and controlling the probationary measures;
- If one of the measures consists of following training or therapy, external services can be appointed, which will report to the commission and the justice assistant.

### **Consequences of failure to comply**

- In case a new offence has been committed during the probation period, the conditional suspension of the execution of the sentence:
  - Will automatically be revoked when the new offence has led to a criminal or correctional penalty of more than 6 months and no new suspension of the execution has been granted;
  - Can be revoked when the new offence has led to a correctional penalty of at least 1 and a maximum 6 months.



- The suspension of the execution of the sentence can also be revoked when the person concerned does not respect the conditions. The Court is not obligated to revoke, but if it does not, it can attach new conditions to the first judgment;
- In case of non-compliance with the conditions imposed, the person concerned can be arrested before bringing the case to Court.

### **Consequence of successful completion of the probation period**

- The suspension becomes final, and the prison sentence subject to the suspension can no longer be executed.

## **5. Electronic surveillance as autonomous sanction**

### **Short definition**

- Electronic surveillance as an autonomous sanction, is an alternative sanction imposed instead of a custodial sentence and consists of the obligation to be present at a certain location, with the exception of authorised absences or movements, during a certain period of time. This presence is electronically monitored and is accompanied by conditions;
- The application of this measure under FD 2008/947 is debatable, given Article 4.6 of the Decision, but it seems nevertheless possible, depending on the specific conditions imposed (cf. preamble 11 of the Decision).

### **Who initiates**

- The public prosecutor, the Court or the defendant.

### **Who decides**

- The trial Court.

### **Prerequisites**

- The offence must be punishable with a maximum of 1-year imprisonment;
- Electronic surveillance is, however, not possible for a series of sexual offences if they are committed on or using minors, as well as for offences of murder and voluntary manslaughter.

### **Probation period**

- The probation period consists of the same amount of time as the prison sentence that would otherwise be imposed and varies between at least 1 month and a maximum of 1 year;
- A suspension of the execution of the sentence is not possible;
- The execution of the sentence must start within 6 months of the judgment becoming final. If this period is exceeded:
  - Due to the convicted person, the public prosecutor will decide whether the period allowing the electronic surveillance will be extended or to execute the subsidiary prison sentence imposed by the Court;
  - not due to the convicted person, the time limit for the execution of the sentence will be considered expired.



- If the electronic surveillance measure is 3 months or less, the person concerned can ask for a suspension of the surveillance after 1 month. When no new offences have been committed and the surveillance conditions, including, when applicable, the individualised conditions, have been met, a probationary period will be granted for the part of the sentence still to be executed. The general conditions will always be applicable, and specific ones can be added.

### **What can be ordered in connection with the judgment**

- The Court can give guidance as to the concrete implementation of the sentence;
- The following conditions are always attached to an electronic surveillance sentence:
  - Not commit any new criminal offences;
  - Have a fixed address, and, in case of change, immediately notify the public prosecutor and the services in charge of the surveillance;
  - Respond to the convocations of the surveillance authorities.
- The Court can, moreover, impose specific individualised conditions in the interest of the victim, such as the interdiction of visiting certain places or coming into contact with the victim, as well as conditions related to the compensation of the victim.

### **Supervision procedure**

- The regional service in charge of monitoring electronic surveillances will supervise.

### **Consequences of failure to comply**

- In case of non or partial compliance with the imposed conditions, the subsidiary imprisonment sentence as determined in the judgment can be executed;
- In the case of partial execution, the part of the sentence already served under electronic surveillance will be deducted. Each day of electronic surveillance that has been executed equals a day of detention;
- If the non or partial compliance actually consists of new offences that have been committed, a final judgment of conviction is required before the electronic surveillance measure can be withdrawn;
- When a probationary period has been granted (cf. supra under “Probation period”), the non-respect of the general or specific conditions can result in the withdrawal of the suspension, and the electronic surveillance will be resumed. In case of new offences, a final judgment of conviction for these offences committed during the suspended surveillance period is required. Each day of probation that has been executed equals a day of electronic surveillance.

### **Consequence of successful completion of the probation period**

- After either the normal execution of the imposed monitoring period or the execution of at least 1 month combined with a probationary period, and if there is no revocation of the measure, the sentence will be considered fully executed.

## **6. The community service (or “work penalty”) (Articles 37quinquies, 37sexies and 37septies Criminal Code)**

### **Short definition**

- The so-called “work penalty”, more commonly known as “community service”, consists in accomplishing some kind of activity or labour in the general public interest. This measure is a principal penalty and cannot be combined with other sanctions, nor can it be a part of other probationary measures.

### **Who initiates**

- The public prosecutor or the Court.

### **Who decides**

- The trial Court.

### **Prerequisites**

- Community service is possible when the offence is punishable with a police or correctional penalty. The prison sentences carried by the offences will also determine the subsidiary imprisonment the Court will impose in case of non-compliance;
- Community service cannot be imposed for offences punishable with more than 20 years of imprisonment, certain sexual offences and offences involving minors, as well as for murder and voluntary manslaughter;
- A suspension of the execution of the sentence is not possible;
- The offender has to agree to the measures and sign the concrete plan, which will be worked out with the probation commission.

### **Probation period**

- In principle, community service comprises a minimum of 20 hours and a maximum of 300 hours to be executed within 12 months of the final judgment.

### **What can be ordered in connection with the judgment**

- The Court can give directives as to the concrete implementation of the penalty;
- The person convicted must fulfil the service for free, during his/her own time, and on top of any professional or school obligations;
- Public service must be fulfilled in public services like government institutions or social, cultural or scientific associations. The service cannot be used to carry out tasks that usually would be handled by paid employees.

### **Supervision procedure**

- The probation commission will supervise;
- The person concerned will also be followed-up by a justice assistant of the district justice house.

### **Consequences of failure to comply**

- In the case of non or partial compliance, the public prosecutor can decide to effectively execute the subsidiary prison sentence.

### **Consequence of successful completion of the probation period**

- The sentence will be considered fully executed when all conditions have been met.

### **Specific provision**

- The judge for the execution of sentences has the possibility to convert a custodial sentence, of which 1 year or less still needs to be executed, into a community service penalty when the personal, social or professional situation of the convicted person has changed drastically since the judgment. The penalty can vary between 45 and 300 hours.

## **7. The autonomous probation penalty (Articles 37octies, 37novies, 37decies and 37undecies Criminal Code)**

### **Short definition**

- The autonomous probation penalty consists of the obligation to respect certain conditions during a specified period, as imposed by the Court.

### **Who initiates**

- The public prosecutor or the Court.

### **Who decides**

- The trial Court will decide.

### **Prerequisites**

- Autonomous probation is possible whenever an offence is punishable with a police or correctional penalty;
- The prison sentences carried by the offences will also determine the subsidiary imprisonment the Court will impose in case of non-compliance;
- Autonomous probation cannot be imposed for offences punishable with more than 20 years of imprisonment, certain sexual offences and offences involving minors, as well as for murder and voluntary manslaughter.

### **Probation period**

- Autonomous probation comprises a minimum period of 6 months and a maximum of 2 years;
- A suspension of the execution of the sentence is not possible;
- If the obligations cannot be fulfilled within the imposed time frame, and this is not due to the person concerned, the probationary period can be extended once with a maximum of 1 year;
- The probation commission can suspend, modify or adapt the conditions, and it can end the probation prematurely if it considers that the sentence has been

carried out, even before the end of the probationary period as indicated in the judgment.

### **What can be ordered in connection with the judgment**

- The Court can give directives as to the concrete implementation of the penalty;
- A concrete plan will be worked out in consultation with the convicted person, and the latter has to sign the agreement.

### **Supervision procedure**

- The Court will inform the probation commission;
- The person concerned will also be followed-up by a justice assistant of the district justice house.

### **Consequences of failure to comply**

- In the case of non or partial compliance, the public prosecutor can decide to effectively execute the subsidiary prison sentence.

### **Consequence of successful completion of the probation period**

- The sentence will be considered fully executed when all conditions have been met.

## **Juvenile Justice**

Under Belgian law, juveniles up to the age of 18 years are considered minors and are, therefore, subject to a separate legal system. They are not criminally responsible, and the offences they commit are not defined as “criminal offences” but as “facts defined as criminal offences”.

Up to the age of 16 years, this system is absolute. The minors can only be tried by the juvenile Courts, and no criminal sentences are possible, only educational measures in either open or closed facilities.

Between the ages of 16 and 18 years, the juvenile Court can hand over the case to the regular criminal Courts for certain offences (e.g., murder, certain sexual offences and violent robbery). The juvenile Court can also hand over these types of cases if previous juvenile measures have already been used if it deems the available measures of the juvenile justice system inadequate and given the offender’s personality.

In that case, the standard criminal procedure and sentences will apply.

## **Belgian provider(s) of services in the context of probation and alternative sanctions**

### **Institutions executing and overseeing probation**

In case of conditional release for sentences exceeding 3 years, the Court for the execution of sentences will ensure the follow-up (composed of 1 specialised judge and 2 assessors

specialised in penitentiary matters or social reintegration). For sentences up to 3 years, a single judge in that Court will supervise.

The probation commission will oversee the measures imposed:

- When specific conditions have been attached to a conditional release;
- When the trial or investigative Court has granted probational measures.

This commission is a particular service created within each Court of first instance and is composed of 1 presiding judge, 1 attorney and 1 civil servant appointed by the Minister of Justice.

In case of a conditional release in an internment procedure, the chamber for the protection of the society (a special chamber of the Court for the execution of sentences) will ensure the follow-up.

If an electronic surveillance has been pronounced, the regional services competent for this measure will monitor the condition.

The concrete follow-up and social guidance of the sentenced persons in these abovementioned procedures reside in the justice houses. These institutions are a part of the various regional communities in Belgium (Dutch-speaking, French-speaking and German-speaking communities). In total, 28 such houses exist, with some having several antennas. The personnel following up on the cases are called justice assistants.

The authorities mandate the justice houses (judges, public prosecutors and others). There are justice houses in each resort of a Court of appeal (6 in total). They supervise compliance with the conditions of electric monitoring, work punishment, conditional releases, autonomous probation and probation (deferral/suspension) measures. They are responsible for arranging the concrete modalities of the probation measures (e.g., finding training institutions, working places for community services etc.) and the follow-up of the execution. Therefore, each justice house works with its own (local) providers. They inform the competent authorities if the offender does not comply with the conditions so that appropriate action can be taken.

## Available, relevant figures (latest)

Total number of persons (French, Flemish and German-speaking community) under supervision of probation services: 48413

From which:

- 4.988 suspensions of the imposition of the sentence;
- 7.939 conditional suspensions of the execution of the sentence;
- 12.896 community services;
- 5.956 measures of electronic surveillance;
- 891 conditional releases.

**Total 32.670**

Other supervision tasks from the probation services do not fall in the scope of FD 2008/947.

## **Part 2: National Implementation of Framework Decision 2008/947**

### **Legal basis/incorporation into Belgium law**

Law of 21 of May 2013 concerning 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 imposed in an EU MS:

- [Dutch version](#)
- [French version](#)

### **Implementation as issuing State – Competencies and procedures**

#### **National competent authorities**

- The public prosecutor of the district of the legal and habitual residence of the sentenced person or the district where the judgment was rendered.

#### **Conditions to forward a judgment**

- The public prosecutor must be convinced that the execution of the sentence in that State contributes to the social reintegration of the sentenced person.

#### **Steps to be taken to forward a judgment**

- If the prior consent of the ES is required (more specifically when the sentenced person does not want to return to the State of legal and habitual / permanent residence but wants to reside in another EU MS), the public prosecutor will ask for the prior consent of the ES to send the certificate;
- After the prior consent, when applicable, the public prosecutor will send the certificate to the competent authority in the ES;
- The certificate can only be sent to one State at a time;
- If need be, prior consultation, e.g., via the EJN, can take place in order to identify the competent authority;
- A certificate translation will be added if required by the other State.

#### **Procedures to inform a sentenced person**

- There are no procedures to inform the sentenced person in the law, but in practice, the public prosecutor will often be in contact with the sentenced person or his/her attorney.

### **Mandatory deadlines**

- There are no mandatory deadlines, apart from the general rules regarding the time limitation for the execution of sentences and certain specific provisions related to particular sentences.

### **Accepted means of communication**

- Any means accepted by the ES's authorities can be used.

### **Retransfer of supervision**

- The public prosecutor could resume his/her competence after withdrawing the certificate, insofar as the ES's supervision was not yet effectively in place;
- In case the ES has declared that it will not take up responsibility for subsequent decisions in case of non-compliance or new offences, Belgian law will again apply;
- The Belgian Public Prosecutor would furthermore resume his/her competence when a new prosecution would be initiated in Belgium, or upon establishing that the person concerned has eluded the supervision or did not respect the conditions in the ES or is no longer residing there. Any foreign decisions taken in this regard, such as the repeal of the conditional suspension of the execution or conditional release, would be taken into account, as well as any part of the sentence that has already been executed.

### **Information obligations towards the ES**

- The public prosecutor informs the ES of:
  - The repeal of the suspension of the execution of the sentence or the conditional release;
  - The execution of a custodial sentence when that sentence is not part of the probation judgment or decision;
  - The imposition of a custodial sentence when that sentence is not part of the probation judgment or decision;
  - The end of a non-custodial sentence or measure.

### **National contact point of EJN**

- M. Kris Van Opdenbosch – Federal public service Justice – central authority for cooperation in criminal matters.
- **Email:** [kris.vanopdenbosch@just.fgov.be](mailto:kris.vanopdenbosch@just.fgov.be)

## **Implementation as executing State – Competencies and procedures**

### **Authority responsible for recognition/execution**

- The district's public prosecutor of the legal and permanent/habitual residence of the sentenced person;
- The “legal” and “permanent/habitual” components are cumulative conditions. Therefore, it is not sufficient that a person is registered in the national population register, but he/she must also live at that address;



- If there is no such address and the sentenced person wants to come to reside in Belgium, the Minister of Justice must give his/her consent prior to the sending of the certificate;
- The Minister will check:
  - That the person concerned does not present a danger to the public order;
  - That he/she meets the requirements for residing in Belgium;
  - If there are any clear elements opposing the execution of the sentence in Belgium;
  - If the execution in Belgium contributes to the social reintegration of the person concerned.
- Once the authorisation has been given, the public prosecutor of the district where the person concerned intends to reside will decide on the recognition;
- [Link to EJN Judicial Atlas to search competent authorities in Belgium.](#)

### **Prerequisites regarding the offender**

- The offender must have his/her “legal” and “permanent/habitual” residence in Belgium;
- The nationality of the offender is irrelevant;
- The FD and the national law transposing it are only applicable insofar the offender can be held criminally liable under Belgian law. As explained above, minors up to the age of 18 years normally fall under the juvenile legislation;
- Under certain conditions, minors between 16 and 18 can be referred to the regular criminal justice system. By analogy to the European Arrest Warrant (EAW) procedure, a certificate regarding a minor of 16 - 18 years could be recognised at the time of the offence. However, the practical implementation will be complex under current legislation.

### **Procedure of accepting an execution**

- The public prosecutor will:
  - Verify that the certificate is complete, that he/she has all required information and whether a mandatory or optional ground for refusal must be applied;
  - Inform the IS of the impossibility of any recognition and supervision in case the person concerned cannot be found in Belgium;
  - Decide within 60 days of receiving the certificate unless there is a suspension of the time period (there is, however, no sanction on surpassing this time period);
  - inform the IS as soon as the decision is final after notification and possibly legal remedies, and this is within 60 days of receiving the certificate (there is, however, no sanction on surpassing this period);
  - inform the IS of any adaptation;
  - take all necessary measures to organise the supervision of the measures.
- The recognition decision renders the foreign judgment immediately enforceable in Belgium;
- In principle, Belgian law is applicable after recognition, including all decisions to be taken in case of non-compliance or committal of new offences;
- The public prosecutor will end the procedure:
  - When the IS repeals the certificate before the supervision is put in place;



- Upon being informed by the IS that the judgment that is the object of the procedure can no longer be executed.
- If the person concerned eludes the supervision or no longer has a legal and permanent / habitual residence in Belgium, the public prosecutor can hand the supervision competence back to the IS;
- If the IS so requests, when new criminal proceedings are initiated, the public prosecutor can return the case to that State;
- The public prosecutor will also inform the IS of:
  - Any decision to repeal the conditional suspension of the execution of the sentence or of the conditional release;
  - The execution of a custodial sentence following non-compliance with the conditions;
  - The end of the non-custodial measures;
  - Any circumstances that could give rise to one of the abovementioned decisions.

#### **Probation and alternative measures Belgium is ready to execute**

- The Belgian Law of 21 May 2012 is applicable when one of the following conditions has been imposed:
  - 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 IS or ES;
  - An obligation containing limitations on leaving the territory of the ES;
  - 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 specific measures can be accepted as well, although an optional ground for refusal can be applied, as explained hereunder;
- The concrete description and content of the foreign measures will determine whether or not they can actually be implemented in Belgium;
- Certain provisions exist, like the prohibition to exercise activities with minors and the prohibition to own arms subject to authorisation;
- There is the possibility of accepting measures that are not known as such under Belgian law if they would not be contrary to fundamental principles and could fit in our system;
- An example of this is community service, which, as indicated above, can, in Belgian law, not be combined with probationary measures. In other countries,

on the contrary, this is possible. As both the community service and the probation are known in Belgium, we could recognise a foreign decision combining them. This does not seem contrary to the Belgian public order and fundamental principles of criminal law.

### **Circumstances under which the execution can be denied**

- The recognition will be refused when the offences that are the object of the probation judgment or decision are not punishable under Belgian law. This does not apply, however, to the list of generic offences determined in Article 10 of the FD, as copied into Belgian law. Specific provisions apply to fiscal offences and euthanasia;
- The Belgian law provides, moreover, for 2 categories of grounds for refusal:
  - The first category contains mandatory grounds for refusal. The recognition must therefore be refused if one or more of the following situations occur:
    - 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*;
    - There is immunity under Belgian law, making it impossible to supervise probation measures or alternative sanctions;
    - The sentenced person cannot, owing to his/her age, be held criminally liable for the acts in respect of which the judgment was issued;
    - The enforcement of the sentence is no longer possible due to time limitations according to Belgian law;
    - The judgment or probation decision provides for medical/therapeutic treatment, which we cannot supervise in view of our legal or health-care system;
    - Serious reasons exist to assume the supervision would infringe fundamental rights as defined in Article 6 of the Treaty on the EU;
    - The conditions regarding legal and permanent residence have not been met;
    - The requirements regarding the prior consent of the Minister of Justice have not been respected.
  - The second category contains optional grounds for refusal. The recognition can therefore be refused if one or more of the following situations occur:
    - The offences have been committed fully or for a large or important part on Belgian territory or in a place considered equivalent to its territory;
    - The probation measure or alternative sanction is less than 6 months;
    - The conditions imposed are not mentioned in the list as mentioned in Article 4 of the FD, which has been copied into Belgian law;
    - The person concerned did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the IS:
      - (i) In due time: either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he/she was aware of the scheduled trial, and was informed that a

decision may be handed down if he/she does not appear for the trial; or

- (ii) Being aware of the scheduled trial had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State to defend him/her at the trial and was indeed defended by that counsellor at the trial; or
  - (iii) After being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined and which may lead to the original decision being reversed, expressly stated that he/she does not contest the decision, or did not request a retrial or appeal within the applicable time frame.
- When the prosecutor is of the opinion he/she has to apply one of the optional grounds of refusal, he/she can still accept the execution and supervision. Still, in that case, Belgium will not be responsible for subsequent decisions in case of non-compliance or of the committal of a new offence. The public prosecutor will also inform the IS of any non-compliance;
  - If the prosecutor determines that the certificate is incomplete or inconsistent with the judgment or decision, he/she still can recognise if he/she considers the information sufficient. If not, he/she can suspend the decision and determine an additional time period to complete the certificate. If the requested information has not been transmitted, he/she can refuse the recognition.

#### **Availability of legal remedies**

- If the person concerned is already in Belgium at the time of the recognition decision, the public prosecutor will notify him, as well as the decision to adapt the penalty if applicable. The person concerned then has 24 hours to contest this decision by filing a request to the chamber of the council (a special chamber of the Court of first instance). The competence of the Court is limited to verifying whether the facts are punishable under Belgian law or fall under the list of generic offences and whether any grounds for refusal exist and should be applied. The Court must decide within 15 days; only a cassation appeal is possible.

#### **National adaptation process**

- If the probation penalty or measure is incompatible in duration with Belgian law, the public prosecutor can (but is not obligated to) adapt it when the foreign penalty is longer than the time period provided under Belgian law. The penalty can only be reduced to the maximum as stipulated under Belgian law;
- When the penalty is incompatible as to its nature, the prosecutor can (but is not obligated to) adapt to a penalty or measure known in Belgian law for similar offences;
- That converted penalty must match the foreign one as much as possible;
- The foreign measure can in no case not be rendered more severe in duration or nature.

### Subsequent decisions the State has denied to carry out

- The possibility of denying the responsibility for any subsequent decisions in case of an optional ground for refusal has already been mentioned;
- Belgium has not made any declarations pursuant to Article 14, 3, a) of the FD and although our national law does not make an exception, it seems, in practice, unlikely that we would or, in most cases, even could impose a custodial sentence to be enforced in case of non-compliance if this has not already been provided for in the foreign judgment (like in the case of alternative sanctions). The execution of a foreign probation decision (community service penalty) was recently refused as no sentence was indicated in case of non-compliance. To our knowledge, no case has yet been submitted to a trial Court in order to obtain a custodial sentence;
- The same issue arises regarding the conditional imposition of sentence. Although Article 14, 1, c) of the FD provides for jurisdiction, no declaration has been made pursuant to Article 14, 3, b). As Belgian law does not make any specific exception for this type of probationary measure, it seems, while theoretically possible in some cases, unlikely that we would or could bring the case before a trial Court for imposition of a sentence;
- In both aforementioned procedures, the law does not allow handing over the case again to the IS either. So, although theoretically, albeit partially, covered by the dispositions, there seems to be a lack of applicable procedures.

### Means of communication

- No specific means of communication are specified, so any means that will produce written proof can, in principle, be accepted.

## Available information on the status quo of the implementation

8 TRANSFERS IN 2021							
	<i>Outgoing</i>			<i>Incoming</i>			
	Community service	Supervision	Tot.	Community service	Supervision	Not known	
Cases	2	0	2	1	3	2	6

*Table 2 - Number of cases involving transfer procedures (incoming and outgoing) in 2021.*

Out of the 6 incoming cases in 2021, the request related to France, Romania, the Netherlands and Italy.

# France

## National Report on Probation and Alternative Measures

Emmanuelle Laudic-Baron & Guillaume Delahaye

École Nationale de la Magistrature (ENM)

# Part 1: French Probation System

## Legal basis

### **Criminal Code (CC)**

- The imprisonment may be suspended, suspended on probation, Article 132-40 to 132-53;
- Home detention under electronic surveillance, Article 131-4;
- Community service, Article 131-8;
- Probationary sentences, Article 131-5-1.

### **Code of Criminal Procedure (CCP)**

- Conditional release, Articles 729 to 733;
- Community service, Articles 733-1 to 733-2;
- The probation supervision, Articles 739 to 747;
- The judicial restraint, Article 749s to 762;
- The socio-judicial follow-up, Articles 763-1 to 763-9.

### **Programming Act 2018-2022 and Reform for Justice of 23 March 2019 (*Loi de programmation de la justice*) LPJ.**

**Decree No. 2020-81 of 3 February 2020**, on electronically supervised home detention, probation, sentence conversions and deferred committal orders, issued pursuant to the Programming and Reform for Justice Act 2018-2022 of 23 March 2019 (LPJ);

**Law relating to the individualisation of sentences and reinforcing the effectiveness of criminal sanctions No. 2014-896 of 15 August 2014;**

**Decree No. 2014-1582 of 23 December 2014 relating to the execution of sentences;**

**Juvenile Criminal Trial Code (JCTC) came into force on 30 September 2021;**

**Ordinance No. 45-174 of 2 February 1945 on delinquent children.**

## Detailed overview on available probation and alternative measures in France

The French Criminal Code (CC) lists all the penalties that can be imposed upon conviction for the commission of an offence: imprisonment, fines, etc. This 'scale of penalties' existed before the Programming and Reform Law for Justice, but this text has radically changed it.

Firstly, if not suspended, the prison sentence must be subject, as a matter of principle, to a possible sentence adjustment such as semi-liberty or home detention under electronic surveillance. Secondly, the reform has simplified the probation sentence. The probationary sentence replaces the well-known suspended sentence with probation. Within the framework of this probationary suspension, the judge may impose specific obligations, the list of which has been extended, such as, for example, a care order or the obligation to pay taxes, but he

or she may also oblige the accused person to perform community service. The judge may also decide, when he or she deems it necessary, in view of the convicted person's personality, that the latter should be subject to reinforced monitoring.

In addition, the legislator has developed alternatives to imprisonment. It has thus created a new penalty: house arrest under electronic surveillance. It can be imposed, instead of imprisonment, for 15 days and 6 months. During this period, the convicted person will be obliged to remain at home and wear a device incorporating a transmitter commonly known as an "electronic bracelet". He/she will only be allowed to leave his/her home for periods determined by the judge, for example, for the time necessary to carry out a professional activity.

In addition, the community service sentence is simplified as it can now be imposed without the defendant being present at the hearing.

Finally, the many types of training courses that previously existed, such as the road safety awareness course or the citizenship course, are grouped together into a single training course sentence, the content of which the judge will determine.

Prison sentences and fines, which are the most frequently imposed sentences, are not always the most appropriate for the situation of the convicted person.

By overhauling the scale of sentences and diversifying them, the reform should make it possible to avoid short prison sentences, increase the use of alternatives to imprisonment, and allow for a better individualisation of the sanction. The Courts must be able to impose the sentence most appropriate to the situation of the convicted person.

Concerning probationary measures pronounced against minors, the Juvenile Criminal Trial Code came into force on 30 September 2021. This code takes up the main principles of the 1945 ordinance (mitigation of the criminal responsibility of minors according to their age, or excuse for minority, primacy of education over repression, specialisation of jurisdictions and procedures) and promotes the effectiveness of care through an overhaul of the criminal procedure. All the provisions specific to minors are therefore now grouped together in a single legal framework

## 1. Probationary sentence

### Short definition

- The newly introduced probationary sentence promotes a better understanding of sentences by merging the probationary sentence, the suspended sentence with community service and the penal constraint into a single probationary sentence;
- The probationary sentence is a suspended prison sentence on the condition that the convicted person complies with the obligations and prohibitions set by the trial Court or the enforcement Court for a period of time determined when the sentence is handed down. It can be pronounced in 2 forms:
  - A simple suspended sentence with probation combined with general measures (Article 132-44 of the CC) and specific measures (Article 132-45 of the CC), including the obligation to perform community service in accordance with the procedures set out in Article 131-8 of the CC;
  - a suspended sentence with reinforced probation if the offender's personality and material, family and social situation, as well as the facts, justify



individualised and sustained socio-educational support. The monitoring is reinforced, multidisciplinary and evolves according to the regular assessments of the prison integration and probation service (SPIP) to prevent recidivism by promoting the integration or reintegration of the convicted person (Article 132-41-1 of the CC).

### Conditions

- The person sentenced in his presence to a probationary suspension must also be given, at the end of the hearing, a summons to appear before the SPIP within a maximum of 45 days. This summons is given to him, either by the office for the execution of sentences or, failing that, directly by the clerk's office of the trial Court. Finally, the person sentenced in his presence to a reinforced probationary suspension must be given a summons at the end of the hearing to report to the SPIP within a period of no more than 8 days if the Court has ordered provisional execution or between 10 and 15 days otherwise (Article D.546-2 of the CPP).
- The presiding judge must notify the convicted person present at the hearing of:
  - The obligations and prohibitions to be respected;
  - The possible consequences of failure to comply with them (extension of the time limit or revocation of the measure);
  - The possibility of benefiting from the sentence's non-adoption before the time limit set expires.

## 2. The sentence of home detention under electronic surveillance (DDSE) (Article 131-4-1 CC)

### Short definition

- The sentence of home detention under electronic surveillance entails the obligation for the convicted person, using an electronic surveillance device, to remain for determined periods in his home or any other place designated by the sentencing Court or the judge of the application of sentences;
- The convicted person may benefit from assistance measures designed to promote his social rehabilitation. He may also be subject to one or more of the obligations or prohibitions provided for in Articles 132-44 and 132-45 of the penal code.

### Conditions

- The DDSE can be pronounced for offences punishable by imprisonment.
- The DDSE may be pronounced for a period of between 15 days and 6 months, without exceeding the duration of the imprisonment incurred, and may be accompanied by provisional execution (Article 471 al. 4 of the CCP);
- This sentence is not subject to any restriction related to the criminal past of the accused and applies to minors over the age of 13;
- It must be justified in terms of the provisions of Articles 132-1 and 132-20 of the penal code in applying Article 485-1 of the penal procedure code;
- The place and periods of the assignment are determined by the trial Court or, failing that, by the judge responsible for the enforcement of sentences;
- To determine these arrangements at the hearing, the Court must ensure:
  - The stability of the domicile: the fixing of the DDSE in a place that is not his domicile can only take place with the written agreement of the landlord or



the holder of the rental contract; if the defendant is a co-tenant/co-owner, the written agreement of the other holders is necessary;

- The compatibility of the hours with the exercise of professional activity, the following of an education, an internship;
- Education, training, medical treatment, job search, participation in family life or any integration or reintegration project;
- The accommodation must be connected to electricity and covered by the global system for a mobile network.

### **Penalties for improper execution**

- In the event of non-compliance with the prohibitions or obligations imposed on him/her, notorious misconduct, a new conviction or refusal by the convicted person to accept a necessary change in the conditions of enforcement, the sentence enforcement judge may either limit the leave of absence or order the person to be imprisoned for the duration of the sentence still to be served;
- Pending the adversarial debate, the enforcement judge may also order the provisional incarceration of the convicted person.

### **3. The conditional release (Articles 729 to 733 CC)**

#### **Short definition**

- Conditional release is a sentence adjustment that "aims to reintegrate convicts and prevent recidivism". It is provided in Articles 729 to 733 and D.522 and follows the CPP. The remainder of a sentence served is suspended conditionally if certain requirements are fulfilled.

#### **Conditions**

- Time limit conditions:
  - The length of the sentence served by the convicted person must be at least equal to the length of the sentence still to be served, with a maximum period of 15 years (mid-sentence rule) or 20 years in case of legal recidivism. If the offender is sentenced to life imprisonment, the trial period is 18 years and 22 years in case of legal recidivism;
  - Pursuant to Articles 723-1 and 723-7 of the CPP, the sentence enforcement judge may also make the conditional release of the convicted person conditional on the execution, as a probationary measure, of a home detention measure under electronic surveillance, semi-liberty or external placement for a period not exceeding 1 year. This measure may be executed 1 year before the end of the probationary period provided for in Article 729 of the CPP or 1 year before the date on which conditional release provided for in Article 729-3 of the CPP is possible. A security period must not be in progress.
- Substantive conditions:
  - The convicted person must show serious efforts to reintegrate and justify:
    - Either the exercise of professional activity, an internship or a temporary job or his/her attendance at an education or vocational training;
    - Or of his/her essential participation in his/her family life;
    - The need to undergo medical treatment; or

- His/her efforts to compensate civil parties; or
- Or of his/her involvement in any other serious project of insertion or reintegration;
- And of the need for medical treatment if he/she has been convicted of a crime or misdemeanour for which socio-judicial follow-up is incurred and that treatment is possible and proposed by the sentence enforcement judge (JAP) pursuant to Articles 717-1 and 763-7 of the CPP;
- For the derogatory procedure in terrorist matters, the Court may oppose it if his/her release is likely to cause a serious disturbance to public order.

### Conditions for revocation or withdrawal

- Causes for withdrawal before execution of the conditional release (Article 733 and D.531 of the CPP):
  - Refusal of the measure by the convicted person;
  - The convicted person no longer meets the legal conditions to benefit from the measure (in particular if the time limit is exceeded following the execution of a new sentence, if one of the elements of the project is called into question (problem of accommodation, work, etc.), or if serious efforts at reintegration are called into question in view of the convicted person's behaviour, for example in the event of a new incident).
- Causes for revocation of conditional release (Article 733 of the CPP):
  - New conviction;
  - Notorious misconduct;
  - Failure to comply with the measures set out in the parole decision;
  - Refusal to start or continue the treatment proposed by the treating physician in the context of a care order.

## 4. The socio-judicial probation (Article 131-36-1 CC)

### Short definition

- Socio-judicial probation, introduced by the Law of June 17, 1998, can only be imposed in the cases provided for by law (Articles 221-9-1, 221-15, 222-48-1, 222-65, 224-10, 227-31, 322-18, 421-8 of the CC), for the punishment of certain offences;
- While it was initially provided for in the Law of June 17, 1998, for a limited list of offences (sexual offences, murder, or assassination preceded or accompanied by rape, torture or acts of barbarism), its scope of application has been broadened over time (see list of offences in the appendix);
- It can be imposed on minors or adults;
- Socio-judicial probation can only be imposed if it was incurred at the date of commission of the acts for which the person is being prosecuted.

### Conditions

- Socio-judicial probation may be ordered by the trial Court, in the cases provided for by law, against an adult or minor, as an additional penalty (in criminal or misdemeanour cases) or as a principal penalty (only in correctional cases, Article 131-36-7 of the CP);

- It cannot be ordered at the same time as a sentence of imprisonment with all or part of a probationary suspension (Article 131-36-6 of the CC);
- Since the Law of 5 March 2007 (Article 222-48-1 al.3 of the CC), for the offences provided for in Articles 222-8, 222-10, 222-12, 222-13, 222-14 and 222-18-3 of the CC, when it is a matter of habitual violence committed against a minor of 15 years of age by a legitimate, natural or adoptive ascendant, or by any other person having authority over the victim:
  - In criminal matters, Socio-judicial probation is mandatory except in the case of a suspended sentence or an especially motivated decision by the Court;
  - In criminal cases, the Assize Court deliberates specifically on the pronouncement of Socio-judicial probation.

### Effects of its pronouncement

- Socio-judicial probation requires the convicted person to submit, under the supervision of the sentence enforcement judge (JAP), in addition to the specific obligations that have been set, to supervision measures (those of Article 132-44 of the CC to which Article 131-36-2 refers) and assistance (Articles 131-36-1 and 131-36-3 of the CC) intended to prevent recidivism, possibly at the end of the sentence of imprisonment or criminal imprisonment pronounced as the main sentence;
- When a treatment order has been issued, a doctor (or psychologist) designated by the convicted person follows him or her under the supervision of a coordinating doctor, a psychiatrist, who is responsible for acting as an interface between the JAP and the doctor/psychologist;
- When incarcerated, persons sentenced to Socio-judicial probation serve their sentence in a penitentiary establishment that provides appropriate medical and psychological follow-up (Article R322-31 of the Penitentiary Code);
- With some exceptions (Articles D.49-23 and D.147-15 of the CPP), persons sentenced to Socio-judicial probation must undergo a medical examination before being granted the measures provided for in Articles 712-5, 712-6 and 712-7 of the CPP, except for reductions in a sentence that do not lead to immediate release and escorted release authorisations (Article 712-21 of the CPP);
- This expertise must be carried out by 2 experts when the sentence was pronounced for the murder, the assassination or the rape of a minor of 15 years;
- It must give a unique opinion on the risk of recidivism of the convicted person when the conviction was for one of the violent or sexual offences mentioned in Articles 706-47 of the CCP;
- If the person sentenced to Socio-judicial probation has not been subject to a treatment order, the JAP must order a medical examination with a view to his or her release to be informed about the possibility of the person undergoing treatment and to order a treatment order, if necessary, unless there is a reasoned decision to the contrary (Articles 763-3 and R. 61-4-1 of the CPP).

### Violation of obligations

- In the event of non-compliance with the obligations or the treatment injunction, the JAP may issue a warrant to bring in or arrest the convicted person pursuant to Article 712-17 of the CCP (Article 763-5 of the CPP) and order after consultation with the public prosecutor, the provisional incarceration of the convicted person, pending the holding of an adversarial debate (Article 712-19 of the CPP);

- On its own initiative or at the request of the public prosecutor, it may order the partial or total enforcement of the imprisonment imposed by the trial Court (Article 763-5 of the CPC). The decision rendered is provisionally enforceable (Article 712-14 of the CPP).

## 5. The community service (Article 131-8 CC)

### Short definition

- This sentence consists of performing unpaid work for a public law entity, a private law entity with a public service mission or an authorised association;
- On an experimental basis in certain regions, for a period of 3 years from the publication of Decree No. 2019-1462 of 26 December 2019, the TIG<sup>10</sup> may also be carried out for the benefit of a legal entity under private law in the social and solidarity economy and pursuing a socially useful goal, as well as for the benefit of a company whose Articles of association define a mission that assigns to it the pursuit of social and environmental objectives.

### Conditions

- Community service can be ordered:
  - For offences punishable by imprisonment, as a principal alternative to imprisonment;
  - For offences not punishable by imprisonment and for fifth-class offences, where the text of the law expressly provides for this, as an additional penalty;
  - Against adults;
  - Against minors aged at least 16 years at the time of the judgment, provided they were at least 13 years old on the day the offence was committed;
  - Regardless of the defendant's criminal record.

### Modalities of its pronouncement

- Community service may be ordered for a period of:
  - 20 to 400 hours for an offence within a maximum period of 18 months;
  - 20 to 120 hours for a misdemeanour within a maximum period of 18 months.
- Good practice: setting a maximum execution period allows the penitentiary integration and probation service (SPIP) to have sufficient time to execute the measure, which varies from one jurisdiction to another depending on the time required to transmit the execution documents, the capacity to take charge and the number of places available;
- Pursuant to Article 131-22, paragraph 1 of the CC, the Court decides on:
  - the quantum of hours;
  - the time limit for enforcement.

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<sup>10</sup> TIG stands for "Travaux d'Intérêt Général", meaning "community service as an alternative penalty to imprisonment."

## French provider(s) of services in the context of probation and alternative sanctions

The primary mission of SPIP is to prevent re-offending. To this end, it is responsible for assessing the person and providing appropriate support to find solutions to the problems identified regarding the person being monitored. It also monitors and ensures compliance with the obligations imposed by the judicial authority and assists the judicial decision by sending regular reports to the magistrates.

The SPIP works in prisons - known as the closed environment - but also with people being monitored in the open environment. In both cases, the SPIP provides follow-up before the final sentence is handed down (pre-sentence) or after it (post-sentence).

The SPIP has a multi-disciplinary team with various skills, which are essential for assessing and managing the public sentenced. Under the authority of the functional director of the SPIP, it comprises penitentiary integration and probation directors, penitentiary integration and probation advisor), penitentiary supervisors, psychologists, social service assistants, cultural coordinators, educators and administrative staff.

As a departmental service, it works in close collaboration with the judicial authorities and the main institutional players (local authorities, associations, etc).

The main task of the SPIP is to favour the recovery and reintegration path of the subject into society, helping them overcome the difficulties of adaptation and especially:

- Carrying out socio-family investigations for the application of alternative measures to the detention of the convicted;
- Proposing to the judicial authorities the treatment programme be applied to convicts who ask to be admitted to probation and home detention;
- Monitoring the execution of the programmes by those admitted to alternative measures, reporting them to the judicial authority, and proposing any modification or revocation interventions.

## Available, relevant figures (latest)

In June 2022:

- 241.361 people in the care of the penitentiary administration;
- 71.678 people in prison and 169.683 people in the open;
- 187 prisons;
- 103 prison integration and probation services (SPIP);
- More than 43.000 staff, including nearly 30.500 supervisory staff and 5,000 staff of the SPIP.

Link to the French national statistics (only available in French):

[http://www.justice.gouv.fr/art\\_pix/STAT\\_SAMO\\_2021.pdf](http://www.justice.gouv.fr/art_pix/STAT_SAMO_2021.pdf)

## **Part 2: National Implementation of Framework Decision 2008/947**

### **Legal basis/incorporation into French law**

- Law n°2015-996 of 17 august 2015 adapting the criminal procedure to EU law, amending the CCP and creating Articles 764-1 to 764-43 of the CCP;
- Implementing circular CRIM/2016 – 15/H 10-08-2016.

### **Implementation as issuing State – Competencies and procedures**

#### **Competent Authority and beginning of the procedure**

- The public prosecutor of the place of sentencing or the public prosecutor of the Court that issued a probation order, acting ex officio or at the request of the ES.

#### **Types of measures for which the certificate can be issued under French law**

- Conditional sentence (deferral of sentence), simple probation, probation with or without an obligation to perform community service, Socio-judicial probation, conditional release, post-release supervision, judicial supervision and security supervision, electronic surveillance, community service, prohibition measures.

#### **Conditions for transmission of applications for recognition**

- The sentenced person is habitually and lawfully resident in the territory of another MS and has returned or wishes to return there;
- The sentenced person does not reside habitually or lawfully in the territory of another MS, but requests to serve his sentence or probation measure there, provided that this State agrees to the transmission of the application for recognition.

#### **Transmission of the certificate**

- Possibility for the public prosecutor's office to consult the ES before transmitting the certificate, consultation being obligatory where the sentenced person does not habitually reside in the territory of the MS but requests to execute the sentence or probation measure there;
- Transmission of a certified copy of the sentencing or probation decision accompanied by a certificate translated into the language accepted by the ES. The transmission from State to State must be done by any means but leaving a written record.

#### **Cases of withdrawal of the certificate**

- The certificate may be withdrawn for reasons related to its drafting;



- Pursuant to Article 764-12 of the CCP, "The public prosecutor may decide to withdraw the certificate, provided that monitoring has not begun in the ES, in the following cases":
  - Where recognition of the conviction or probation decision entails an adaptation of the penalties or measures or a reduction in their duration, which it considers appropriate;
  - Withdrawal is possible as long as the monitoring of the sentence has not started in the ES and, at the latest, within 10 days of receiving the information justifying the decision to withdraw.
- The French judicial authorities, in this case, remain competent for the enforcement and monitoring of the sentence.

### **Transfer of competence from the IS to the ES**

- In principle, there is a transfer of jurisdiction when the ES recognises the sentence or probation order. It then becomes solely responsible for the enforcement and monitoring of the sentence;
- Exceptions through which the French judicial authorities regain jurisdiction:
  - When the ES has declared to the Secretary General of the Council of the EU that it refuses to exercise this competence;
  - To monitor alternative sanctions or probation measures where the sentenced person has absconded or no longer habitually resides in the ES;
  - To monitor sentences and measures when a new criminal procedure is initiated, with the agreement of the ES.

## **Implementation as executing State – Competencies and procedures**

### **Competent authority**

- The Public Prosecutor competent to receive requests for recognition and monitoring of convictions is the one in whose jurisdiction the convicted person's lawful habitual residence is located, or failing that, the Public Prosecutor at the Paris Judicial Court;
- [Link to EJN Judicial Atlas to search competent authorities in France.](#)

### **Types of measures for which the certificate can be issued under French law**

- Conditional sentence (deferral of sentence), simple probation, probation with or without an obligation to perform community service, socio-judicial probation, conditional release, post-release supervision, judicial supervision and security supervision, electronic surveillance, community service.

### **Conditions for the transmission of the application for recognition**

- The convicted person habitually and regularly resides in the French territory and has returned or wishes to return there. Therefore, the concept of "habitual residence" is distinct from that of domicile and is no longer restricted to the simple communication of an address. The case law of the Court of Justice of the EU relating to this concept thus proceeds to an analysis *in concreto* of the person's connecting links to the MS, following the example of the judgment

delivered on 28 June 2018 (aff. C-512/17) according to which 'the habitual residence of the child, within the meaning of Regulation No 2201/2003, corresponds to the place where the centre of his or her life is situated in fact', the Court then making an overall assessment of several of the objective elements characterising the child's residence in order to determine its habitual nature, examining, in particular, the duration and regularity of stays in the State concerned, the conditions and reasons for those stays and the existence of a stable social and family environment;

- The convicted person does not reside habitually or regularly on French territory. Still, requests to serve his sentence or probation measure there, provided that the public prosecutor agrees to the transmission of the request for recognition. 2 situations should be distinguished. If the convicted person is of French nationality, the public prosecutor must consent to transmit the request for recognition. If the convicted person is not of French nationality, the Public Prosecutor must refer the matter to the Minister of Justice, who may consent to the request for recognition, taking into account the interest of the decision for the proper administration of justice, the existence of personal and family ties in France and the absence of a threat to public order. In concrete terms, this decision is delegated to the Bureau for International Mutual Assistance in Criminal Matters (BEPI), which will be responsible for giving this opinion. It may, if necessary, question the competent French enforcement authority to assess, in particular, the proper administration of justice, the risk of disturbing public order and the links between the sentenced person and France (Article 764-20).

### **Recognition of convictions and probation decisions**

- The Public Prosecutor receives the requests for recognition and can have any additional information he or she considers valuable. Within 7 days of receiving the certificate, the Public Prosecutor shall refer the request for recognition, together with his/her requests, to the competent Judge for the Application of Sentences (JAP);
- The JAP has 10 days from the date of the prosecutor's request to rule on the request for recognition, which it notifies the convicted person without delay. The order issued by the JAP may be appealed to the President of the Chamber of Enforcement within 24 hours, whose decision may be appealed to the Supreme Court within 3 days;
- Following the provisions of Article 764-34 of the CPP, once the decision to recognise the conviction or the probation decision as enforceable in France has become final, alternative sentences or probation measures may be enforced under the conditions laid down in the recognition decision. However, this Article refers that where the recognition of the conviction or the probation decision includes an adaptation of the nature; duration of the probation measure; or alternative sanction, the alternative sanctions or measures and obligations may be enforced only after the expiry of an additional period of 10 days from the finality of the recognition decision;
- It follows that the time limit for the execution of the probationary measure adapted to national law starts to run when the decision recognising the measure has become final;
- Certain information must be transmitted to the competent authority of the IS without delay;
- Thus, the last paragraph of the CCP's Article 764-28 refers that the competent authority of the IS must be informed of the decision to adapt the sentence or the probation measure by the JAP;



- In addition, CCP's Article 764-33 refers provides that the public prosecutor shall inform the competent authority of the IS of the final decision taken on the recognition of the sentence or the probation decision and the reasons for the decision;
- Finally, during enforcement, any decision taken by the JAP under Articles 764-38 and 764-39 must be communicated (without delay) to the competent authorities of the IS (Articles 764-40 and 764-41 CPC). The same applies in the event of the fugitive's flight (Articles 764-37 CPC);
- The prosecutor must inform the IS without delay of the final decision on recognising convictions or probation decisions;

### **Refusal of recognition of convictions and probation decisions**

- **Mandatory grounds for refusal:**
  - The certificate is not produced, is incomplete or does not correspond to the sentence or decision and has not been completed or corrected within the time limit set;
  - The conditions set out in Articles 764-2 to 764-5 are not met, in particular, where, pursuant to Article 764-5(2), recognition of the conviction or the probation decision is subject to the consent of France, and consent has not been sought or has been refused;
  - The conviction relates to offences for which the convicted has already been judged by the French Courts or the Courts of a State of the EU (other than the convicting State). In addition, it provided that the sentence has been enforced, is in the process of being enforced or can no longer be enforced under the law of the convicting State;
  - The conviction is based on acts that do not constitute offences under French law;
  - The French Courts could judge the acts, and the statute of limitations on the sentence has expired under French law on the date of receipt of the certificate;
  - The convicted person enjoys immunity in France, which prevents the conviction or decision from being enforced;
  - The conviction or decision was pronounced against a minor who was 13 years old at the time of the offence;
  - The convicted person did not appear in person at the trial that led to the decision, except in the cases mentioned in 1° to 3° of Article 695-22-1;
  - The sentence pronounced includes a measure of psychiatric or medical care or another measure that cannot be executed under the rules of the French legal or health system.
- **Optional grounds for refusal:**
  - The duration of the alternative sanction or probation measure is less than 6 months at the date of receipt of the certificate;
  - The conviction or decision is based on offences committed wholly, mainly or for the most part within the Republic or in a similar territory;
  - The conviction relates to offences for which the convicted person has already been finally judged by the Court of a State which is not an EU member, provided that the sentence has been enforced, is being enforced or can no longer be enforced under the legislation of that State.

### **Monitoring of probation measures and alternative sanctions**

- The JAP is competent to:
  - Ensure the monitoring of probation measures and alternative sanctions by himself or any other designated qualified person once the recognition is final;
  - Take any subsequent measure modifying the obligations or the duration of the probationary period and inform the IS thereof.

### **National adaptation process of a probation measure or an alternative sanction**

- The adaptation of the sentence by the enforcement judge is mandatory in 2 cases (Article 764-26 CCP):
  - The nature of the probation measure or alternative sanction does not exist in French law: it is then replaced by the closest measure under French law;
  - The duration of the probation measure is longer than that which a French criminal Court could have imposed for the same or a corresponding offence: it is then reduced to the French legal maximum.
- The probation measure or alternative sanction thus adapted shall not be more severe or prolonged than that initially imposed;
- If an adaptation is considered to impose a measure that is less favourable to the sentenced person, as it is more severe than the initial measure, the sentenced person may have recourse to an appeal under the rules in Article 764-29 of the CPP;
- Finally, pursuant to the provisions of Article 764-38 of the CCP, the French judge responsible for the enforcement of sentences is competent to take any measure aimed at modifying the obligations or the duration of the probationary period under the conditions laid down in the French CCP. Therefore, all the obligations of Articles 132-44 and 132-45 of the CP can be added to the measure;
- The French judge can revoke the conditional release or the suspension of the sentence;
- The French judge can impose the custodial sentence or measure of deprivation of liberty provided for in the conviction or probation decision and inform the IS.

### **End of the execution of probation measures and alternative sanctions on French territory**

- Where the convicted person is a fugitive or is no longer ordinarily resident in France, the JAP may relinquish the monitoring of the probation measure or alternative sanction to the IS;
- Amnesty, pardon, or annulment of the sentence following a review procedure puts an end to the execution of the measures in France;
- When the IS requests that the monitoring of the measures be entrusted to it again following a new criminal procedure initiated against the convicted person, the JAP relinquishes jurisdiction.

## **Available information on the status quo of the implementation**

- France being the ES: 28 cases in 2018 and 65 in 2019;

- France being the IS: 4 cases in 2018 and 9 in 2019.

[Source](#)

# Italy

## National Report on Probation and Alternative Measures

Iacopino Francesco, Viviana Gullo & Nicoletta Gallori

Fondazione Agenfor International

# Part 1: Italian Probation System

## Legal basis

### **Constitution of the Italian Republic (Const.) / *Costituzione della Repubblica Italiana***

- The penalties must aim at the re-education of the offender, Article 27;

### **Criminal Code (CC) / *Codice Penale***

- Judicial probation: ordinance of suspension of the trial with accused's probation, Article 168 *bis*;
- The effects of the suspension of the trial with the accused's probation, Article 168 *ter*;
- The conditional release, Article 176;
- The revocation of the conditional release, Article 177.

### **Code of Criminal Procedure (CCP) / *Codice di procedura penale***

- The suspension of the trial with the accused's probation, Article 464 *bis*;
- The application of the suspension of the trial with the accused's probation during the preliminary investigation, Article 464 *ter*;
- Judge's measure and its effects, Article 464 *quarter*;
- The execution of the Judge's measure, Article 464 *quinquies*;
- The acquisition of evidence during the suspension of the trial with the accused's probation, Article 464 *sexies*;
- The results of the judicial probation, Article 464 *septies*;
- The revocation of the ordinance of suspension, Article 464 *octies*;
- Prohibition of re-proposing the application for probation, Article 464 *nonies*;
- The execution of the custodial sentences, Article 656;
- The supervisory proceeding and the alternatives measures, Article 678 et seq.;
- The execution proceeding, Article 666.

### **Penitentiary System Law (PSL) / *Legge sull'Ordinamento Penitenziario***

#### **L. No. 354/1975. The fundamental law on the Penitentiary System and about the execution of the deprivation and limitation measures of liberty**

- Probation (*affidamento in prova*) with the Social Service, Article 47;
- Home detention, Article 47 *ter*;
- Semi-liberty, Articles 48, 50 and 51.

### **Consolidated Text of Law on Narcotics (CTLN) / *Testo Unico sugli stupefacenti***

#### **D.P.R. (Decree of the President of the Republic) No. 309/90 is a Consolidated text of the laws on the discipline of narcotic drugs and psychotropic substances, prevention, treatment and rehabilitation of the related drug addiction states**

- Suspension of the execution of the custodial sentence and probation in special cases: alternative measures reserved for alcohol and drug addicts, Article 90;
- Probation (*affidamento in prova*) in special cases, Article 94.

## Juvenile Criminal Trial Code (JCTC) / *Codice del processo penale minorile*

### D.P.R. (Decree of the President of Republic) 448/1998

- The judicial probation (*messa alla prova*) for juveniles, Article 28.

## Detailed overview on available probation and alternative measures in Italy

Alternative measures to detention are those that allow for the enforcement of sentences outside the penitentiary institution. When a Judge pronounces a sentence of imprisonment or arrest for a period not exceeding 2 years (or a pecuniary penalty which, alone or combined with the custodial sentence and detailed under Article 135, is equivalent to a sentence of deprivation of liberty for a period not exceeding a total of 2 years), they can order that the execution of the sentence be suspended for a term of 5 years if the sentence is for a crime and 2 years if the sentence is for contravention. Conditional suspension of the sentence (Articles 163-168, CC) and non-mention of the sentence (Article 175, CC) are benefits that can be granted to a sentenced person if the Judge considers that the same will not commit other crimes. However, these are not considered alternative measures.

The Italian penal code qualifies the institute as a house extinguishing the crime. It is also known as a "conditional sentence". It suspends the execution of the sentence for a certain time, after which, without the subject having committed another crime, the crime itself is extinguished and, therefore, the conviction. If, within this period, the offender commits another offence, the suspension is lifted, and they will have to submit not only to the new sentence but also to the suspended one.

The rationale is to avoid imprisonment for those sentenced to short sentences, and the pending threat of a future execution of the sentence can be considered a good deterrent. The institute should fall within the scope of FD 947/2008 as transposed by the Italian legal system with Legislative Decree 38/2016, which does not describe in detail the measures already existing in the Italian legal system subject to recognition proposes the definitions contained in the FD.

Article 2 of the latter also specifies its scope to suspend sentence decisions. In particular, it defines the suspended sentence as a custodial sentence, "the execution of which is conditionally suspended, in whole or in part, at the time of conviction through the imposition of 1 or more probation measures. Such probation measures may be included in the judgment or determined in a separate probation decision taken by a competent authority."

Finally, the only condition for probation is that the offender does not commit a new crime in the following 5 years and 2 years in the case of contraventions.

In Italy, the suspended sentence applies to almost all convictions if the conditions for granting it are met: 1) a sentence not exceeding 2 years; (2) that the offender has not been convicted; (3) the suspension has not already been granted for another reason.

Finally, it shall be mentioned the "Cartabia Reform", the on-going Italian judiciary reform text that provides a range of alternative measures to detention, such as home detention, semi-release, and probationary assignments to reduce the problem of prison overcrowding. The Cartabia Reform is the focus of the new Italian Judiciary reform based on alternative measures, aiming to reduce the issue of prison overcrowding and to better focus on the re-

socialization and reintegration process of the convicted people within the society. The Reform, more precisely its article 20 bis, could be the most appropriate norm to implement the FD 947 in the Italian system, by referring to the application of the principle of mutual recognition of convictions with conditional substitution of sentences.

## 1. Probation (*affidamento in prova*) with the Social Service (Article 47 PSL)

### Short definition

- The offender convicted to serve a prison sentence can serve a sentence outside the penitentiary institution at the Social Service. The probationary assignment to the Social Service allows the convicted person to atone for the imprisonment imposed or, in any case, the residual one in a regime of assisted and controlled freedom;
- The offender must follow the treatment programme, which includes the activities to be carried out, the obligations and commitments to which they must comply and the checks to which they will be subjected. The sentences are considered served.

### Who initiates

- The defence (the offender, personally, or the defending lawyer) may file a motion to request probation with the social service;
- If the offender is in a state of freedom, they can apply to the Prosecutor;
- If the offender is in detention, they can apply to the Supervisory Court through the prison director.

### Who decides

- The Supervisory Courts (*Tribunale di Sorveglianza*) have the jurisdiction to issue;
- If the detention is detrimental (when there is a serious damage to people's health and life or serious illness) for the offender, they (or their defending lawyer) can apply to the Supervisory Magistrate (*Magistrato di Sorveglianza*). The ordinance of the Supervisory Magistrate is a temporary provision (only 60 days): the magistrate immediately transmits the documents to the Supervisory Court that decides within 60 days. Therefore, the jurisdiction belongs to the Supervisory Court.

### Prerequisites

- The offender can be admitted to probation with the social service for a period equal to the custodial sentence when:
  - The judgment does not exceed 3 years;
  - Or for the last 3 years;
  - Or the last 4 years of punishment to be served when the offender had a behaviour that allows a prognostic judgment of the effectiveness of the alternative measure concerning rehabilitation.
- If the judgment concerns organised crime offences, the offender must collaborate with justice and not have a connection with organised crime.



### Probation period

- It equals the sentence to be served (no more than 3 years).

### What can be ordered in connection with the judgement

- The Supervisory Court may impose orders with the decision granting alternative measures: e.g., about the residence, freedom of movement, relations with the social service, work, attendance of particular premises, prohibition or obligation to stay, prohibition to carry out certain activities, prohibition of having personal relationships with people that could lead to the execution of other crimes. Moreover, it is possible for the offender, when they express a willingness, to do community service with an association or organisation (compatible with their work and for the time set by the judge).

### Probation Failure

- The Supervisory Magistrate can modify the prescriptions and revoke probation when the offender's conduct, contrary to the law or the prescriptions, becomes incompatible with the continuation of the probation;
- In these cases, the Supervisory Court declares the negative outcome and determines the quantum to be expiated (e.g. the time to be served after return to prison).

### Successful completion of the probation

- The positive outcome of the probation will lead to the extinction of the custodial sentence and any other criminal effects ordered with the initial judgement.

## 2. Alternative measures reserved for alcohol and drug addicts: suspension of the execution of the custodial sentence (Articles 90 and 91 CTLN)

### Short definition

- The institution avoids detention for drug addicts who undergo and pass a therapeutic and socio-rehabilitation programme.

### Who initiates

- The defence (the offender, personally, or the defending lawyer) may file a motion to request suspension of the execution of the custodial sentence. They must attach a certificate issued by a public drug addiction service or a private accredited facility for the diagnostic activity. This certificate certifies the procedure by which the habitual use of narcotic or psychotropic substances was ascertained, the therapeutic and socio-rehabilitative programme chosen, the indication of the structure where the programme was carried out, the methods of implementation and the results achieved as a result of the programme itself.

### Who decides

- The Supervisory Courts (*Tribunale di Sorveglianza*) have the jurisdiction to issue.

### Prerequisites

- It is reserved for a drug addict sentenced to imprisonment for no more than 6 years;
- The provision indicates that the sentence in execution must have been imposed for crimes related to the state of drug addiction;
- The offender must additionally fulfil civil obligations listed in Article 185 CC (compensation for the damage) or prove the impossibility of fulfilling them;
- The request for suspension of the execution cannot be granted more than once, and it is inadmissible if the offender commits a new crime.

### Probation period

- The Supervisory Court suspends the execution of the prison sentence for 5 years.

### Probation Failure

- When the person released commits a new crime in the next 5 years, starting from the date of submission of the application, the Supervisory Court can revoke the suspensions. The 5-year term starts from the date of submission of the application.

### Successful completion of the probation

- The positive outcome of the programme will lead to the extinction of the custodial sentence and any other criminal effects ordered with the initial judgement;
- Article 123 indicates that a report is transmitted by the competent local health unit company or by the private structure authorised under Article 116, at the request of the judicial authority, a report according to procedures defined by the decree of the Minister of Health, in agreement with the Minister of Justice, in relation to the procedure with which the habitual use of narcotic or psychotropic substances was ascertained, the progress of the programme, the behaviour of the subject and the results achieved after the programme and its possible completion, in terms of termination of intake of the substances and medicines referred to in Table I and the table of medicines referred to in Article 14.

## 3. Conditional suspension of the sentence (Articles 163, 164, 165, 166, 167 and 168 CC)

### Short definition

- Once a judgement is pronounced for no more than 2 years (or a pecuniary penalty that has been reported – pursuant to Article 135 CP – is not more than 2 years), the Judge can order that the sentence be suspended for the term of 5 years, in the case of a crime, or 2 years, in the case of a contravention;
- If the offender compensates for damage and the judgement pronounced is of no more than 1 year of imprisonment, the Judge can order that the sentence be suspended for 1 year;
- It is emphasised that in Italy, it is a benefit and not an alternative measure, but it can fall within the scope of FD 2008/947.

### **Who initiates**

- The parties (the defending lawyer or prosecutor) may ask for a conditional suspension, but it could be granted by the initiative of the Judge.

### **Who decides**

- A conditional suspension has to be included in the judgement of the Judge.

### **Prerequisites**

- A judgement of no more than 2 years of imprisonment or a pecuniary penalty that has been reported - pursuant to Article 135 CP - is not more than 2 years. The limit is 3 years for juveniles under 18 years old. The limit is 2 years and 6 months for adults over 18, under 21 or over 70;
- A judgement of no more than 1 year of imprisonment, if the offender compensates for damage, the Judge can order that the sentence be suspended for the term of 1 year;
- Prognosis of non-dangerousness of the condemned: the Judge must assess that the offender will refrain from committing new crimes.

### **Limits**

- The suspension cannot be granted to those who have received a previous prison sentence for a crime or to a habitual or professional offender. If the offender is dangerous, a safety measure must be applied.

### **Probation period**

- No less than 1, and no more than 5 years.

### **What can be ordered in connection with the judgement**

- The conditional suspension of the sentence can be subject to:
  - the fulfilment of the obligation of refunds, the payment of the sum liquidated by way of compensation for damage or provisionally assigned on the amount thereof and the publication of the sentence by way of reparation for the damage;
  - the elimination of the harmful or dangerous consequences of the crime: and/or;
  - if the condemned person does not oppose the performance of unpaid activities in favour of the community for a fixed time, in any case not exceeding the duration of the suspended sentence, according to the procedures indicated by the Judge in the sentence.

### **Successful completion of the probation**

- If the offender does not commit a crime or a contravention of the same nature during the established period and fulfils the obligations imposed on him, the offence is extinguished.

### Probation Failure

- When the offender commits a crime or a violation of the same nature, for which a prison sentence is imposed or fails to fulfil the obligations imposed on them;
- If the offender reports another conviction for a crime previously committed under the penalty which, combined with the 1 previously suspended, exceeds the limits established by Article 163;
- The conditional suspension is revoked.

## 4. The conditional release (Articles 176 and 177 C.C)

### Short definition

- Conditional release is provided for in Articles 176 and 177 of the CC and may be granted by the Surveillance Court if the offender, during the period spent in prison, has behaved in such a way that his repentance is certain;
- This measure entails suspending enforcement of the sentence for a certain time, after which, without the convicted person having committed another offence, the sentence is extinguished. The main purpose of the institution is to prevent a relapse into crime, by encouraging the emendation of offenders, but it is also a tool used to achieve better discipline in prisons.

### Who initiates

- The defence (the offender, personally, or the defending lawyer) may file a motion to request the measure.

### Who decides

- The Supervisory Court is competent and has the obligation to grant conditional release when the requirements are met.

### Prerequisites

- The offender subjected to a custodial sentence has behaved in such a way that their repentance can be considered certain. The prior admission of the offender to other measures for the graduation of the sentence (parole and semi-release) may be an essential tool for verifying the existence of repentance;
- The prescribed period of expiation has elapsed. Article 176(3) provides that a person sentenced to life imprisonment may be eligible for conditional release when he/she has served at least 26 years;
- The compensation for damages is made. The granting of conditional release is subject to the fulfilment of civil obligations arising from the offence unless the convicted person proves that he/she is unable to fulfil them.

### Probation period

- The offender must have served at least 30 months in prison and, if the sentence remaining to be served is less than 5 years, at least half of the sentence. For repeat offenders, the sentence already served must be 4 years, and not less than 3/4 of the total. Person sentenced to life in prison must have spent 26 years in prison.

### Probation failure

- Revocation of conditional release can be adopted in 2 cases (Article 177(1) of the Penal Code):
  - If the released person commits a crime or contravention of the same nature as the offence for which he was convicted. The Supervision Court, in this hypothesis, is required to assess whether the subject's conduct, regarding the conviction incurred, appears incompatible with maintaining the benefit (4);
  - If the released person transgresses the obligations of probation. In the case of revocation - following the declared unconstitutional illegitimacy of paragraph 1 of Article 177 of the Penal Code, which establishes the *ex tunc* effect of the measure (5) - the Supervisory Court must determine the prison sentence still to be served to take into account the time spent on probation, the restrictions of liberty suffered by the convicted person and the behaviour of the latter. In this case, the supervision procedure applies.

### Successful completion of the probation

- If the offender does not commit a crime - or a contravention of the same nature - during the remaining period and fulfils the obligations imposed, the offence is extinguished.

## 5. Juvenile Criminal Trial Code (JCTC) / *Codice del processo penale minorile D.P.R. (Decree of the President of Republic) 448/1998*

### Short definition

- The juvenile criminal trial provides for the suspension of the trial with probation, which is aimed at the recovery of the deviant child to facilitate a rapid exit from the criminal trial or at least reduce the offensiveness inherent in the criminal trial of minors.

### Who initiates

- A stay of proceedings may be requested by the parties at any stage and level of the trial, i.e. both at the preliminary hearing and at the trial stage;
- The request for a stay presupposes the consent of the child;
- The taking into custody by the social services makes it possible to assess the juvenile's personality and experience, so that he/she may become fully aware of his/her responsibility and the motivations that led him/her to commit delinquency.

### Who decides

- The Juvenile Court entrusts the child to the juvenile services of the administration of justice for the implementation of the trial, also in cooperation with the local services.

### Prerequisites

- Article 28 of D.P.R. 448/1988 provides that the judge, having heard the parties, may order the suspension of the trial when he deems it necessary to assess the juvenile's personality at the outcome of the trial ordered under paragraph 2. The trial shall be suspended for a period not exceeding 3 years when prosecuting

offences for which the penalty is life imprisonment or imprisonment of not less than a maximum of twelve years; in other cases, for a period not exceeding 1 year. During this period, the course of the prescription is suspended.

### **Probation period**

- The probation may not last more than 3 years and if for that offence the penalty is life imprisonment or imprisonment of no less than a maximum of 12 years; for all other offences, the probation may not last more than 1 year.

### **Probation Failure**

- The juvenile services may request revocation of the probation if the juvenile has committed repeated and serious transgressions of the programme, leading, if accepted, to the early termination of the probation and the 'unfreezing' of the trial;
- Thus, two requirements are cumulatively required: repetition and seriousness of the transgression; transgressions will be considered repeated if they occurred over a "consistent and significant lapse of time" and serious if they demonstrate an aversion of the juvenile towards the commitments to change that he/she had undertaken;
- If, on the other hand, it considers the outcome to be negative, the judge will proceed in the course of the preliminary or oral hearing.

### **Successful completion of the probation**

- Outside the hypothesis in which the revocation of the measure takes place, the judge, once the suspension period has expired, will fix a new hearing at which he will declare the offence extinct if, taking into account the behaviour of the juvenile and the evolution of his personality, he considers that the trial has had a positive outcome, pronouncing a judgement of no need to proceed if it takes place during the preliminary hearing or a judgement of no need to proceed if the judgement takes place during the trial.

## **Italian provider(s) of services in the context of probation and alternative sanctions**

The U.E.P.E. (*Ufficio di Esecuzione Penale Esterna*) is the only public institution executing and overseeing probation and alternative measures. The U.E.P.E. are peripheral organs of the Ministry of Justice. The Penitentiary System provides for a U.E.P.E. for each Supervisory Court. The U.E.P.E. identifies the best body among affiliated organisations to perform the probation. It operates according to a logic of proximity intervention e of presence in the territory, in support of local communities and close synergy with Local Authorities, the voluntary associations, social cooperatives and other public and private social agencies present in the territory

The main task of the U.E.P.E. is to favour the recovery and reintegration path of the subject into society, helping them overcome the difficulties of adaptation and especially:

- Carrying out socio-family investigations for the application of alternative measures to the detention of the convicted;

- Proposing to the judicial authorities the treatment programme to be applied to convicts who ask to be admitted to probation and home detention;
- Monitoring the execution of the programmes by those admitted to alternative measures, reporting them to the judicial authority, and proposing any modification or revocation interventions.

[This is the link.](#)

## Available, relevant figures (latest)

In 2021, the number of alternative measures increased after a slight decline in 2020, likely due to the pandemic.

In March 2022, Probation (*affidamento in prova*) with Social Service represented 69.8% of the active alternative measures. Among those in probationary custody (20.347), 64.7% come from freedom (13.172), 30.3% from detention (6.167) and 4.9% from home detention or house arrest (1.008).

People in charge of U.E.P.E. (probation, other alternative measures to detention, family investigations and counselling are also included in this calculation) were 116.300, of which 102.658 were men (88.2%) and 13.642 women (11.7%).

This is the link for the above-mentioned research:

<https://www.rapportoantigone.it/diciottesimo-rapporto-sulle-condizioni-di-detenzione/misure-alternative-andamento/>

[https://www.giustizia.it/giustizia/it/mg\\_14\\_3\\_1.page?contentId=GLO938351&previousPage=mg\\_2\\_3](https://www.giustizia.it/giustizia/it/mg_14_3_1.page?contentId=GLO938351&previousPage=mg_2_3)

By clicking on the following [link](#), you can identify each territorial UEPE.

## **Part 2: National Implementation of Framework Decision 2008/947**

### Legal basis/incorporation into Italian law

The legislative Decree of 15 February 2016, No. 38 (*Disposizioni per conformare il diritto interno alla decisione quadro 2008/947/GAI relativa all'applicazione del principio del reciproco riconoscimento alle sentenze e alle decisioni di sospensione condizionale in vista della sorveglianza delle misure di sospensione condizionale e delle sanzioni sostitutive*) was adopted in the implementation of the European delegation Law for 2014. The provision consists of 4 Heads, 18 Articles and 2 attachments. Chapter I (Articles 1 to 4) concerns general provisions; Chapter II (Articles 5 to 8) concerns transmission abroad; Chapter III (Articles 9 to 16) concerns transmission abroad, providing, inter alia, that it may be possible for certain crimes (listed in Article 11) to give rise to recognition even in the absence of double criminality; and Chapter IV (Articles 17 and 18) concerns the transitional and final provisions.



Initially, the Supreme Court had a restrictive approach based on the letter of the law, which, not expressly provided for them, would not allow the inclusion of alternative measures to prison among those "substitute sanctions" referred to in Legislative Decree Lgs. 38/2016. The Court has recently adopted an inclusive/extensive interpretation, stating that the ratio of the alternative sanctions is perfectly compatible with the requirements provided for in most alternative measures.

## Implementation as issuing State – Competencies and procedures

Probation (*affidamento in prova*) with the Social Service, for the moment, is the only "substitute sanction" that has found a place in the space granted by Decree 38 of 2016.

### Competent Authority and beginning of the procedure

- The prosecutor that the Judge indicated in CCP's Article 665 (Judge of execution, so the Judge who issued the order) provides for the transmission of the sentence.

### Conditions to forward a judgement or probation decision

- The prosecutor orders the transmission of the sentence or the decision of conditional release, accompanied by a signed certificate (Published in Annex I to decree No. 38/2016), to the competent authority of the ES.

### Steps to be taken by the competent authority/institution to forward a judgement or probation decision

- The public prosecutor transmits to the Ministry of Justice the certificate referred to in Annex I, subject to translation of the text into the language of the ES;
- The Ministry of Justice provides for forwarding to the competent State for execution.

### Withdrawal of the certificate

- When the competent authority for the ES communicates that the law of that State provides for a measure restricting liberty, the prosecutor withdraws the certificate;
- Motivated communication of the withdrawal is given to the interested party, the Ministry of Justice, and the competent authority of the ES within 10 days of the decision.

### Effects of recognition

- After recognition, the Italian judicial authority is no longer required to adopt the measures necessary for surveillance of the obligations and prescriptions given;
- The Italian authority summarises the exercise of supervisory power when the offender escapes execution or no longer resides in the ES.

## Implementation as executing State – Competencies and procedures

### Authority/institution responsible to accept or deny an execution

- The Court of Appeal in whose district the offender resides;
- [Link to EJN Judicial Atlas to search competent authorities in Italy.](#)

### Conditions for recognition

- The offender resides in the State's territory or has expressed the will to go to the Italian State to establish his residence;
- The fact that the person was convicted is also a criminal offence under national law;
- The duration and nature of the obligations are compatible with Italian law;
- The Court of Appeal proceeds with the adjustment if they are incompatible. The adjustment cannot lead to aggravation.

### Exemptions from double criminality

- Recognition occurs, regardless of the double indictment, if the offence for which the transmission is requested is punished in the IS with a custodial sentence or one privative measure of personal liberty of the maximum duration not less than 3 years and refers to the crimes indicated by Article 11.

### Procedure of accepting an execution

- The proceeding takes place in a council chamber (Article 127 CCP);
- The decision is issued within thirty days. The deadline can be extended by 20 days.

### Circumstances under which an execution can be denied

- If the facts object of the foreign sentence or decision is not envisaged as a crime also by the Italian legislation;
- If the certificate is incomplete;
- In the case of *ne bis in idem*;
- In the case of a prescription under Italian law;
- If the person was not imputable under Italian law;
- If the interested party has not appeared in person, except for specific cases indicated in Article 13 of the decree No. 38/2016;
- If the measure provides for medical treatment incompatible with the Italian penitentiary system.

### Procedure of denial

- Before refusing recognition, the Court of Appeal consults the competent Authority in the IS (through the Ministry of Justice).

### **National adaptation process of a probation measure or an alternative sanction**

- When the Court of Appeal pronounces a recognition sentence, surveillance is applied according to Italian law;
- The General prosecutor at the Court of Appeal who pronounced the sentence provides for surveillance.

### **Available information on the status quo of the implementation**

- Italy being the ES: No data is available;
- Italy being the IS: Reports indicate that there are single cases only for Probation (*affidamento in prova*) with the Social Service.

## References

- Antigone, *Alternative Measures*: <https://www.rapportoantigone.it/diciottesimo-rapporto-sulle-condizioni-di-detenzione/misure-alternative-andamento/>
- European Judicial Network, EJN Judicial Atlas to search competent authorities in Italy: <https://www.ejn-crimjust.europa.eu/ejn2021/AtlasChooseMeasure/EN/0/295>
- Italian Ministry of Justice, official page of the Interdistrict Offices for External Criminal Execution: [https://www.giustizia.it/giustizia/it/mg\\_12\\_4\\_9.page](https://www.giustizia.it/giustizia/it/mg_12_4_9.page)
- Italian Ministry of Justice, official page of the External Criminal Enforcement Offices' legal framework references: [https://www.giustizia.it/giustizia/it/mg\\_14\\_3\\_1.page?contentId=GLO938351&previousPage=mg\\_2\\_3](https://www.giustizia.it/giustizia/it/mg_14_3_1.page?contentId=GLO938351&previousPage=mg_2_3)
- Italian Ministry of Justice, list of External Criminal Enforcement Offices in the national territory: [https://www.giustizia.it/giustizia/it/mg\\_form\\_submit.wp?uid=G\\_MAP&pagina\\_=2&tipo\\_ufficio=Ufficio%20di%20esecuzione%20penale%20esterna&xml=html&Submit=cerca](https://www.giustizia.it/giustizia/it/mg_form_submit.wp?uid=G_MAP&pagina_=2&tipo_ufficio=Ufficio%20di%20esecuzione%20penale%20esterna&xml=html&Submit=cerca)
- Journal of the Italian Republic (Gazzetta Ufficiale), Legislative Decree implementing the FD 947 (Decreto Legislativo 15 febbraio 2016, n. 38): <https://www.gazzettaufficiale.it/eli/id/2016/03/14/16G00046/sg%20>

# The Netherlands

## National Report on Probation and Alternative Measures

Koen Goei

Netherlands Helsinki Committee (NHC)

# Part 1: Dutch Probation System

## Legal basis

The current legislative basis for the probation sanctions is laid down in the 1995 Probation and After Care Regulation (*Reclasseringsregeling*), as well as in a number of articles in the Criminal Code (CC) (Articles 9, 14c, 21, 22b-d) and CCP (Articles 77, 6:1:25, 6:2:11, 6:3:12, 6:3:14, 6:6:19), that deal with specific sanctions and measures involving the Probation Service, such as community service, suspended sentences and conditional release (specified hereunder).

## Detailed overview on available probation and alternative measures in the Netherlands

### General Criminal Law for adults

According to the Dutch CC, there are 4 main punishments: imprisonment, deprivation of liberty custody (used for misdemeanours and can be imposed from 1 day up to 16 months), community service and fines. Community service means someone performs unpaid work for municipalities, hospitals, the Forestry Commission or other non-commercial institutions. In addition to the main sentences, the Court can also impose additional or suspended sentences. An additional penalty is, for example, the revocation of a driver's license. A suspended sentence is a part of the sentence that is not imposed and usually includes a probationary period.

In addition to main punishments, a public prosecutor can ask the judge to impose a measure. A measure is aimed at reparation (eg by paying compensation) or at making society safer (e.g., placement in a forensic mental hospital). Measures include:

- Confiscation of goods, such as narcotics, weapons or fake medicines;
- Confiscation of profits a suspect has made from his/her crimes, such as theft, fraud or drug trafficking;
- Paying compensation to the victim;
- Detention order for suspects with a psychological disorder (TBS);
- Placing an offender in an institution for repeat offenders (ISD).

General conditions always apply to community service, e.g., refraining from committing crimes. On top of that, special conditions can be imposed. If so, the probation service focuses on compliance with these special conditions. There are two types of particular conditions: conditions restricting freedom and conditions influencing behaviour. Almost all conditions can be imposed in the pre-trial, trial and enforcement stages.

The conditions can be imposed separately or in combination. In case the judge imposes probation supervision, the Probation Service has the task of supporting the offender in complying with these conditions and monitoring whether the conditions are indeed complied with. In probation, supervision support and control always go hand in hand. As soon as the Court imposes one of the freedom-restricting or behaviour-influencing conditions, the general condition 'probation supervision' also applies. This entails that the offender must cooperate with the supervision, including home visits.

Electronic monitoring does not exist in the Netherlands as an independent sanction. It can be used to monitor compliance with special conditions (location ban or location order).

## 1. Suspended sentence (Article 14 CC)

### Short definition

- A sentence of imprisonment is not executed on the condition that certain requirements are fulfilled during a probationary period (Article 14a-c CC).

### Who decides

- A conditional sanction can be decided by a judge.

### Prerequisites

- If the sentence concerns deprivation of liberty for a maximum of 2 years, it can be imposed conditionally for the full length of the sentence or a part of it.

### Probation period

- Generally, not more than 3 years. However, exceptions up to 10 years are possible.

### What can be ordered in connection with the judgement

- The person should comply with the following measures:
  - Follow-up instructions of the Probation Service in the framework of the supervision;
  - Receive visits from the probation counsellor assigned to supervise them;
  - Give notice of changes that are of direct influence of the supervision (e.g. change of residence, change of job or job situation);
  - Provide information and documents that will allow a check into their means of support.
- Additionally, the Court may order a defendant to comply with one or several of the following obligations:
  - Location order or ban;
  - Contact ban (obligation to avoid contact with specific persons);
  - Duty to report;
  - Drugs and/or alcohol ban;
  - Admitting the convicted person to a care institution;
  - An obligation to place him/herself under treatment by an expert or care institution;
  - Staying in an assisted living institution or emergency accommodation;
  - Participation in a behavioural intervention;
  - Other conditions relating to the convicted person's behaviour, for example:
    - Undertaking education;
    - Participation in debt counselling;
    - Prohibition of certain work;
    - Prohibition on keeping animals;
    - No other housing without permission;
    - Participation in substance check.



- These conditions are the same for probation and alternative measures mentioned in this report.

### **Consequences of failures to comply**

- The prosecution service will bring the case to trial.

## **2. Labour penalty (Article 22b-d CC)**

### **Short definition**

- A labour penalty is one of the 4 main punishments mentioned in the CC (Article 9). A labour penalty can be imposed as an alternative for crimes and misdemeanours that can be sanctioned with imprisonment and crimes that can be sanctioned with a fine. A labour penalty can also be combined with a prison sentence (maximum of 6 months) or a fine.

### **Who decides**

- The judge.

### **Prerequisites**

- Unless a labour penalty is imposed in combination with a prison sentence, a labour penalty (i.e., as a main sanction) cannot be imposed for:
  - Crimes sanctioned with 6 years of imprisonment or more, according to the CC;
  - Crimes resulting in severe bodily harm;
  - Sex offences in which minors are involved;
  - When the convict has breached a labour penalty imposed for a similar crime in the past 5 years.
- A labour penalty imposed by a judge can be 240 hours at maximum and has to be performed within the time frame of 18 months.

### **What can be ordered in connection with the judgement**

- The same as mentioned under 1. Suspended sentence above.

### **Consequences of failure to comply**

- In case of a breach, a labour penalty will be replaced by imprisonment. The term of detention is specified in the sentence. 2 hours of labour penalty equals 1 day of detention. The maximum detention after a breach of a labour penalty amounts to 120 days. Breaches are reported to the Public Prosecutor. Work already done must be taken into account.

## **3. Hospital order (TBS) (Article 37a CC)**

### **Short definition**

- *Terbeschikkingstelling* (TBS) is a measure that allows for a treatment period following a prison sentence for mentally disordered offenders. This measure is combined with a prison sentence when the offender is sane or partially insane.

When the offender is declared insane, TBS is imposed without a prison sentence. TBS can either occur in a closed institution (*TBS met dwangverpleging/forced treatment*) or in outpatient treatment (*TBS met voorwaarden*);

- Within the Netherlands, TBS is regarded as a probation measure and thus within the scope of FD 2002/947. However, multiple EU MS consider forced treatment TBS as detention and thus applicable for transfers related to FD 2008/909. This also includes probation supervision after the forced treatment TBS has been executed.

#### **Who decides**

- The judge.

#### **Prerequisites**

- The offender suffered from a mental disorder or poor development of mental sanity at the time the crime was committed;
- The crime committed is punishable by a prison sentence of 4 years or more or a crime with grave consequences for public security (e.g., recklessness in traffic, sedition, serious threatening);
- The offender poses a threat to the safety of other persons, the public safety or the safety of goods.

#### **Probation period**

- After successfully completing a probationary leave of at least 12 months without an extension of the period, the judge may decide to end the treatment. Whether to extend the treatment period or not is dealt with by the judge every 2 years (extension session). In the conditional release phase, the TBS can be prolonged with periods of 1 or 2 years for an indefinite number of times.

#### **What can be ordered in connection with the judgement**

- The same as mentioned under 1. Suspended sentence above.

#### **Consequences of failure to comply**

- If personal safety, public safety or safety of goods is threatened due to violating the conditions attached to a suspended placement order, the perpetrator is immediately placed in a close institution for 7 weeks at maximum, which can be prolonged with another 7 weeks.

### **4. Placement order for repeat offender measure (ISD) (Article 38p CC)**

#### **Short definition**

- In the Netherlands, a special measure for repeat offenders is the ISD measure (Article 38m-p CC). This measure targets repeat offenders (smaller crimes) and allows for a combination of an intramural phase (imprisonment) and an extramural phase (behavioural intervention/treatment). An ISD measure cannot be combined with a prison sentence.

### Who decides

- The judge.

### Prerequisites

- The offence committed has to be a crime for which pre-trial detention is permitted;
- The suspect has been irrevocably sentenced to a custodial sentence or measure, a freedom-restricting measure or community service at least 3 times in the 5 years prior to the offence committed by him/her, or community service has been imposed by irrevocable punishment order;
- The offence was committed after the execution of these penalties or measures;
- Serious consideration must be given to the fact that the suspect will commit another crime;
- The safety of persons or property requires the imposition of the measure;
- Because the ISD measure is an alternative to imprisonment, the ISD measure cannot be imposed on an insane person;
- An ISD measure should last at least 1 year and can be imposed for a maximum of 2 years.

### Probation period

- A maximum of 3 years.

### What can be ordered in connection with the judgement

- The same as mentioned under 1. Suspended sentence above.

### Consequences of failure to comply

- Execution of the ISD measure.

## 5. Conditional release from imprisonment (Article II PPA)

### Short definition

- Conditional release means a convicted person can be released under certain conditions after serving part of the prison sentence. This Article also applies to juvenile offenders convicted of a fully unconditional prison sentence of more than 1 year (Indication Conditional Release Article 1.2).

### Who decides

- The prosecution service has a special team that decides on conditional release cases for the country (*Centrale Voorziening voorwaardelijke invrijheidstelling* (CVv.i.). It is located in Arnhem. It decides on whether or not to grant conditional release, or on the postponement on conditional release. In its decision it takes into consideration behaviour of the offender during detention, the risks involved in his/her conditional release and interest of the victim.

### Prerequisites

- When the prison sentence is between 1 and 2 years, conditional release can be applied after 1 year, and 1/3 of the remaining prison sentence has been served;
- For prison sentences of more than 2 years, the convicted person is eligible for conditional release after 2/3 of the prison sentence. Still, the conditional release cannot exceed 2 years;
- The conditional release can be postponed for a maximum of 6 months;
- The Probation Service supervises all cases with conditions attached; this is almost all cases. Electronic monitoring may be included to support monitoring. Community Service cannot be a condition.

### Probation period

- The Public Prosecutor determines the probation period (usually 2 years; average 22 months) but cannot usually exceed the length of the original sentence. Since 2018, more extended periods of supervision have been possible in exceptional cases (e.g., of severe offenders). A Hospital Order (see Part 1, 3.) will almost always be accompanied by a period of probation supervision, with conditions, after discharge, such as a Location Order or ban.

### What can be ordered in connection with the judgement

- The same as mentioned under 1. Suspended sentence above.

### Consequences of failure to comply

- If the convicted person commits a new criminal offence, the CVv.i. decides that the convicted person must still serve the remainder of the prison sentence or part of it (revoked). This decision is in addition to the penalty imposed for the new offence. The convicted person can appeal to the Court against this decision to revoke the CVv.i..
- In the event of a violation of the special conditions, the CVv.i. has 3 options which it can apply depending on the seriousness of the offence and the behaviour of the offender:
  - to give a warning;
  - to change or to tighten the conditions;
  - to revoke the conditional release fully or partially.

## Juvenile Justice

In the Dutch CC, Article 77a-hh stipulates special provisions for juveniles and young adults. These Articles apply to juveniles between 12 and 18 years old. However, adult criminal law applies in principle if the offence is committed after the 18th birthday. Juvenile criminal law can, however, be applied up to the age of 23 if the level of development of the offender gives cause for this. This application is made based on adolescent criminal law (ASR). Vice versa, minors of 16 and up can be convicted under (adult) criminal law via the ASR.

The main punishments in juvenile criminal law are youth detention (for crimes), community service and fines (both for crimes and for misdemeanours). Next to the main punishments, additional punishments and measures can be ordered. Like in adult law, electronic monitoring can be ordered.

## 6. Community Service (Article 77m CC)

### Short definition

- Community service can either be a labour penalty (with the aim of reparation or work for the public interest), an educational penalty, or a combination of both. With an educational penalty, the convicted youth is ordered to follow aggression regulation training or pro-social modelling training. A labour or educational penalty cannot be more than 200 hours. When both penalties are combined, the total sentence cannot exceed 240 hours.

### Who decides

- A community sanction can be decided by a juvenile judge.

### Prerequisites

- Unless community service is imposed in combination with a prison sentence or a youth clinic placement order, community service cannot be imposed for:
  - for crimes sanctioned with 6 years of imprisonment or more, according to the CC;
  - crimes resulting in severe bodily harm;
  - sex offences in which minors are victims.

### What can be ordered in connection with the judgement

- Next to community service, one or more freedom-restricting measures can be imposed, such as, *inter alia*:
  - a location ban;
  - a contact ban;
  - a location order;
  - a duty to report;
  - ...

### Consequences of failures to comply

- In case of a breach, community service can be replaced by youth imprisonment. The term of detention is specified in the sentence. 2 hours of labour penalty equals 1 day of detention. The minimum youth imprisonment in case of breach is 1 day, and the maximum of 4 months. Breaches are reported to the Public Prosecutor. Work already done must be taken into account;
- A juvenile judge can decide to impose juvenile probation. This can be a labour penalty (as reparation or as work for the public benefit) and/or an educational penalty. A labour or educational penalty can amount to 200 hours at most. The maximum combined penalty is 240 hours. The guidance can continue until after the 18<sup>th</sup> birthday. Juvenile probation is not possible when the crime committed is sanctioned with 6 years of imprisonment or more, according to the CC, or has resulted in severe bodily harm or in case of sex offences in which the victims were juveniles. An exception is when the juvenile has been convicted to placement in an institution; then juvenile probation can be added to the punishment;
- If the imposed measures prove ineffective and the minor's behaviour are shown to be negative, the Court will replace the more severe non-custodial measure

with the least severe custodial, educational measure (admission to an educational centre). In case of a labour penalty breach, imprisonment can be imposed; 2 hours of labour penalty equals 1 day of detention.

## 7. Placement order (PIJ) (Article 77s CC)

### Short definition

- A placement order can be regarded as the pendant of TBS in juvenile justice. A juvenile judge can place the offender in a closed institution for juveniles (PIJ *maatregel*). A placement order lasts 3 years, which can be prolonged up to 7 years;
- A suspended placement order can also be imposed. This means that the sentence or measure only takes effect if the convicted person does not comply with certain conditions, such as going to school or not committing any criminal offences;
- Within the Netherlands, a placement order is regarded as a probation measure, thus within the scope of FD 2008/947. However, multiple EU MSs consider PIJ as detention and thus applicable for transfers related to FD 2008/909. This also includes probation supervision in the conditional phase of the placement order.

### Who decides

- The judge.

### Prerequisites

- The crime committed is punishable by a prison sentence of 4 years or more or a crime with grave consequences for public security (e.g., recklessness in traffic, sedition, serious threats);
- The offender poses a threat to the safety of other persons, the public safety or the safety of goods;
- The measure is in the best interest of the further development of the juvenile offender.

### Probation period

- The last year of the placement order (including possible prolongation) is always conditional;
- A suspended placement order lasts at least 6 months and a maximum of 1 year.

### What can be ordered in connection with the judgement

- The same as mentioned under 1. Suspended sentence above.

### Consequences of failure to comply

- The prosecutor will bring the case to the judge.

## 8. Behavioural measure (Article 77w CC)

### Short definition

- A behavioural measure (*Gedragsbeïnvloedende maatregel / GBM*) is a very strict measure for habitual juvenile offenders aged 12 and 21 with behavioural problems. Young people with behavioural problems who commit a serious offence for the first time are also eligible for the measure. This measure is intended for young people for whom a suspended sentence or community service order is too light and placement in an institution too severe. The measure lasts at least 6 months at 1 year at maximum and can be extended. It can be ordered as the sole punishment or in combination with youth detention. The youth probation service supervises the implementation of the measure.

### Who decides

- A juvenile judge can decide on a behavioural measure (and its extension).

### Prerequisites

- The measure has to be in the interest of the most favourable possible further development of the youth offender.

### What can be ordered as a behavioural measure

- A behavioural measure usually consists of several parts. Listed below are some examples for illustration. Examples of the parts of a behavioural measure:
  - Training and/or treatment in social skills (learning how to deal with others);
  - Training and/or treatment in dealing with anger and aggression;
  - Meetings with a family coach to work on the behaviour of the offender and the relationships in the family;
  - Temporary placement in a foster family;
  - Help in finding meaningful daytime activities;
  - Drugs or alcohol training.
- For its implementation, the youth offender should comply with the regular measures a-d as mentioned under 1. Suspended sentence above.

### Consequences of failures to comply

- In case of none-fulfilment of the ordered treatment, the offender has to spend the remainder of the duration of the measure in youth detention.

## 9. Suspended sentence (Article 77x CC)

### Short definition

- A main sentence or measure is not executed for the entire length or a part of it on the condition that certain requirements are fulfilled during a probationary period.



### Who decides

- A suspended sanction can be decided by a juvenile judge. The judge also decided on the length of the probationary period.

### Prerequisites

- It is, in any case, within the discretion of the juvenile judge to impose a suspended sentence.

### Probation period

- Not more than 2 years.

### What can be ordered in connection with the judgement

- The person should comply with the following measures:
  - Follow-up instructions of the Probation Service in the framework of the supervision;
  - Receive visits from the probation counsellor assigned to supervise them;
  - Give notice of changes that are of direct influence of the supervision (e.g. change of residence, change of job or job situation);
  - Provide information and documents that will allow a check into their means of support.
- Additionally, conditions that a judge can impose in relation to a conditional sentence are, for example:
  - A location ban;
  - A contact ban;
  - A location order;
  - A duty to report;
  - A drugs or alcohol ban with compulsory testing;
  - An education order (of which the length cannot exceed the probationary period);
  - A hospital order;
  - A treatment order.

### Consequences of failures to comply

- The prosecution service will bring the case to trial. In case personal safety, public safety or safety of goods is threatened due the violation of the conditions attached to a suspended placement order, the perpetrator is immediately placed in a close institution for 7 weeks at maximum, which can be prolonged with another 7 weeks.

## 10. Conditional release from imprisonment (Article 6.6.28 CPC)

### Short definition

- Conditional release means a convicted youth can be released under certain conditions after serving part of the prison sentence.

### Who decides

- During the detention, the judge can decide on conditional release at any time.

### Prerequisites

- It is, in any case, within the discretion of the juvenile judge to impose a conditional release from imprisonment.

### Probation period

- A maximum of 2 years.

### What can be ordered in connection with the judgement

- The same as mentioned under 8. Suspended sentence above.

### Consequences of failure to comply

- The conditional release can be revoked.

## Dutch provider(s) of services in the context of probation and alternative sanctions

### General Information

Probation work in the Netherlands originated in the 19<sup>th</sup> century as a private initiative. In the early 20<sup>th</sup> century, the Dutch government recognised it had responsibility in probation, but it preferred to leave the implementation of it to private parties. From this idea, a system grew in which the political responsibility lies with the Ministry of Justice. For the practical implementation, the Ministry of Justice finances private providers of probation services based on the Probation and After-Care Order (*Reclasseringsregeling*). Since 1995, there are 3 recognised probation organisations:

- The Dutch Probation Service (*Reclassering Nederland*);
- The Foundation for the Rehabilitation and Probation of Addicted Offenders (*Stichting Verslavingsreclassering GGZ*);
- The Salvation Army Youth Protection & Probation Service (*Leger des Heils; LdH*).

The 3 probation organisations are almost 100 % funded by the Ministry of Justice and Security. They differ in history, vision, size, structure and, most importantly, specialisation. In practice, they work closely together to contribute to the safety of the society by preventing crime and reducing recidivism. Collectively the organisations are called 3RO.

A client is assigned to the probation service organisation that can offer him or her the most added value. The main problem of the client is central here. Is there problematic behaviour concerning the addiction? And is there a relationship between crime and addiction? Then the client is assigned to the SVG. This applies to approximately 30% of all probation clients. The Salvation Army assists the homeless (approximately 10%).

Tasks of 3RO are:

- Providing diagnosis and advice to the Public Prosecution Service and the Judiciary;
- Supervision of the execution of community service orders;
- Supervision of suspects and/or offenders;
- Providing indications for the level of forensic care;
- Arranges outpatient care or places patients in sheltered housing for forensic care.

### Organisational aspects

In 2019 the total number of fulltime probation officers at the 3 organisations was 2.147.

All probation officers are professionals. They have an education in social case work at a higher educational institute.

### Service providers in juvenile justice

There are 14 organisations that are mandated by the Ministry of Justice to implement juvenile probation sanctions. These 'certified organisations' are private organisations that work either regionally or nationally. They are united under the umbrella organisation *Jeugdzorg Nederland*.

## Available, relevant figures (latest)

At the end of January 2021, there were 36.636 people under the supervision of probation agencies (SPACE II, 2021). The probation services executed 20.993 community service sentences, supervised 13.750 fully suspended custodial sentences with probation and 1.182 probationers on conditional release. The probation population rate per 100.000 inhabitants is 209.6. The European average is 212.0%, and the median is 155.3% (SPACE II, 2021). The rate of exits was 151.8 (European average 190, and median 132.1). Most offenders have been convicted for offences against persons and property offences.

## Part 2: National Implementation of Framework Decision 2008/947

### Legal basis/incorporation into Dutch law

In the Netherlands, the transfer of criminal sanctions between EU MSs (as laid down in the Council's FDs 2008/909, FD 2008/947 and FD 2009/829) have been incorporated in national legislation with the Law on the Mutual Recognition and execution of sanctions regarding deprivation of liberty and conditional sanctions (*Wet wederzijdse erkenning en tenuitvoerlegging vrijheidsbenemende en voorwaardelijke sancties* / WETS). The WETS has been in force since 1 November 2012 (addition made for 2009/829 per 1 November 2013).

## Implementation as issuing State – Competencies and procedures

### Competent authority and beginning of procedure

- The competent authority in the Netherlands for both incoming and outgoing requests is the International Legal Assistance Centre of the Dutch Prosecution Service for region North-Holland (*Internationaal Rechtshulpcentrum / IRC Noord-Holland afd.WETS-ETM*);
- In the Netherlands, cases that qualify for transfer on the basis of the WETS (convicts with a registered address in EU MS other than the Netherlands) are either automatically (in most cases) or manually added to the electronic file system of the IRC.

### Conditions to forward a judgement or probation decision

- The type of sanction has to be transferrable;
- The decision is final and enforceable, with a sanction that ensures rehabilitation;
- The convicted person is not prosecuted or tried for any other crimes;
- The convicted person has no unpaid fines;
- In case of a community service sanction: the sanction should be at least 80 hours;
- In the case of a probationary period: the period should be at least 6 months;
- There are no legal provisions regarding the revocation or cancellation of the sanction;
- The person has a legal and usual residence on the territory of the ES and can demonstrate sufficient ties with his/her country of residence;
- The interests of the victim have to be taken into account.

### Procedure of forwarding a judgement or probation decision & accepted means of communication

- The certificate of Annex I of the FD, Court decision, and, if available, the assessment report drawn up by the probation service shall be transmitted by regular mail, fax or e-mail to the foreign authority competent to receive or execute the documents;
- The documents must be transmitted in one of the official languages of the ES or in another language that the ES has formally declared it would accept.

### Mandatory deadlines and adaptation process

- The authority in the ES decides on the recognition within 60 days of receiving the necessary documents and can adapt the probation measures or the alternative sanction if they are incompatible with the national legislation.

## Implementation procedure as executing State – Competencies and procedures

### Competent authority and beginning of procedure

- The competent authority in the Netherlands for both incoming and outgoing requests is the Centre for International Legal Assistance in Criminal Matters of the Dutch Prosecution Service for the North-Holland region (*IRC Noord-Holland afd. WETS-ETM*). The probation service in the defendant's judicial district is responsible for supervising compliance with the probation measures;
- [Link to EJM-Judicial Atlas regarding the Netherlands;](#)
- [EJM-contact point for matters of transfer of probation decisions and alternative matters in the Netherlands: IRC Noord-Holland afd. WETS-ETM;](#)
- Special information line for the Netherlands as ES: +31.88.0725963.

### Prerequisites of accepting a judgement or probation decision

- For the measures or alternative sanctions to be recognised in the Netherlands, the following conditions are mandatory:
  - The verdict cannot be revoked (the case is closed);
  - They should be one of the following: a suspended sentence on parole, a labour penalty or conditional release with special conditions;
  - The probation measures or alternative sanctions imposed are compatible or have a correspondent in Dutch law;
  - The crime committed is an offence in Dutch law (double criminality);
  - The person has reached the age of criminal responsibility in the Netherlands, which is 12 years;
  - The person is in the IS and wishes to return to the Netherlands or is already located in the Netherlands, and they have a permanent residence in the Netherlands. Either holds Dutch citizenship or does not hold Dutch citizenship but:
    - Has a residence permit;
    - Can demonstrate sufficiently strong ties with the Netherlands.
  - In the case of a community service sanction: the sanction should be at least 80 hours;
  - In the case of a probationary period: the period should be at least 6 months.

### Procedure of accepting a supervision request

- The competent authority of the IS will provide the following documents translated into Dutch or English:
  - The certificate of Annex I of the FD;
  - The Court decision by which the probation measures or alternative sanctions were adopted (or the probation order).

### Mandatory deadlines

- The Dutch Prosecution Service shall decide within 60 days of receiving the judgment;

- The Dutch Prosecution Service must immediately notify the responsible authority of the IS of the decision and its motivation, using any method that leaves a record;
- The Dutch Prosecution Service notifies the convict of the decision and its motivation.

#### **Circumstances under which an execution can be denied and procedure of denial**

- Mandatory grounds for refusal:
  - When the person was convicted in the Netherlands for the same offence and the sentence is final or was convicted in another MS for the same offence and the Netherlands already enforced the judgement;
  - Immunity under Dutch law;
  - When the enforcement of the sentence is statute-barred according to Dutch law;
  - When the convicted person was not informed by the IS of the possibility of appeal and the corresponding period within this should be done;
  - When the convicted person did not appear in person at trial unless it is in accordance with the IS legislation;
  - When the psychiatric or health assistance penalty cannot be executed according to Dutch law or in the framework of the Dutch healthcare system.
- In addition, Dutch legislation allows to deny recognition and the enforcement of a sentence if the crime has been fully or partially committed within the jurisdiction of the Kingdom of the Netherlands and:
  - A crime committed abroad could not be prosecuted according to Dutch law;
  - There are less than 6 months of probation measures or alternative sanctions or less than 80 hours in case of community service.

#### **Probation and alternative measures the Netherlands are ready to execute**

- The Netherlands are prepared to supervise the following probation measures or alternative sanctions:
  - The obligation to inform a certain authority about any change of residence or workplace;
  - The obligation not to enter certain localities, places or areas defined in the IS or the ES;
  - The obligation containing limitations regarding leaving the territory of the ES;
  - Provisions regarding behaviour, residence, education and training, leisure activities or containing limitations regarding the ways of carrying out a professional activity;
  - The obligation to appear on set dates before a certain authority;
  - The obligation to avoid contact with certain people;
  - The obligation to avoid contact with certain objects which have been used or could be used by the convicted person to commit a criminal act;
  - The obligation to financially repair the damage caused by the crime and/or the obligation to provide proof of the fulfilment of this obligation;
  - The obligation to perform activities for the benefit of the community;
  - The obligation to cooperate with a probation counsellor or a representative of a social service that has responsibilities regarding convicted persons;
  - The obligation to undergo therapeutic treatment.

- The Dutch competent authority can change the sanction or the probation decision if the convicted person fails to comply with the supervision measures or the alternative sanction or commits a new offence during the probation period. In the case of alternative sanction and conditional release, this can be done only if the competent authority of the IS indicates it deems this step appropriate (Article 3:15(3) WETS).

#### **National adaptation process of a probation measure or an alternative sanction**

- Adjustment of the sanction is mandatory if the original decision does not comply with Dutch law. In that case, the competent authority adapts the measures in consultation with the IS. There is no formal possibility of a legal appeal against the adjustment.

#### **Accepted means of communication**

- The certificate of Annex I of the FD and all the relevant documents are sent by regular mail, fax or email that can be verified for authenticity;
- The certificate of Annex I of the FD must be transmitted in Dutch or English.

## Available information on the status quo of the implementation

<b>FD 2008/947 TRANSFERS IN 2022</b>						
	<i>Incoming</i>			<i>Outgoing</i>		
	Community service	Supervision	Tot.	Community service	Supervision	Tot.
Cases	5	43	48	66	25	91

Table 3 - Number of requests concerning transfer proceedings in The Netherlands in 2021 (incoming and outgoing).

Out of 139 cases in total in 2022, almost 80% were related to 5 countries, i.e. Belgium (57), Germany (20), Poland (20), France (8) and Spain (6).



# Portugal

## National Report on Probation and Alternative Measures

João Gomes, Luís Matos, Raquel Venâncio & Marie Silva

IPS\_Innovative Prison Systems (IPS)

# Part 1: Portuguese Probation System

## Legal Basis

### General Criminal Law

#### **Criminal Code (CC) / Código Penal**

- Conditional release, Articles 61.<sup>o</sup> -64.<sup>o</sup>;
- House arrest regime, Article 44.<sup>o</sup>;
- Suspension of the execution of the prison sentence, Articles 50.<sup>o</sup> -53.<sup>o</sup>;
- Community Work, Articles 58.<sup>o</sup> and 59.<sup>o</sup>.

#### **Code of Criminal Procedure (CCP) / Código do Processo Penal**

- Procedural steps in the case of suspension of the execution of the prison sentence, Articles 492.<sup>o</sup> -495.<sup>o</sup>;
- Procedural steps in the case of work in favour of the community, Articles 496.<sup>o</sup> and 498.<sup>o</sup>.

#### **Code of Execution of Sentences and Measures of Deprivation of Liberty (Código de Execução de Penas e Medidas de Privação de Liberdade (CESMDL)**

- On the description of conditional release, Article 173.<sup>o</sup>;
- On the extinction of the sentence of conditional release, Article 187.<sup>o</sup>.

### Juvenile Justice

#### **Education Tutelary Law (ETL) / Lei Tutelar Educativa**

- Admonition, Article 9.<sup>o</sup>;
- Carrying out economic services or tasks in favour of the community, Article 12.<sup>o</sup>;
- Imposition of rules of conduct, Article 13.<sup>o</sup>;
- Imposition of obligations, Article 14.<sup>o</sup>;
- Attendance of training programmes, Article 15.<sup>o</sup>;
- Educational monitoring, Article 16.<sup>o</sup>;
- Internment, Articles 17.<sup>o</sup> and 18.<sup>o</sup>;
- Rules concerning the execution of sentences in the Education Tutelary Law, Article 39.<sup>o</sup>.

# Detailed overview on available probation and alternative measures in Portugal

## General Criminal Law

### 1. Conditional release (Articles 61.<sup>o</sup>-64.<sup>o</sup> CC; Article 187.<sup>o</sup> CESMDL)

#### Short definition

- A measure of restricted freedom that anticipates the release of a sentenced individual (Article 61.<sup>o</sup> CC).

#### Who initiates

- The Judge of the Supervisory Court requests a reasoned opinion issued by the administration of the penitentiary establishment, containing a report on the evolution of the behaviour of the sentenced individual, as well as a report by the social reinsertion services on the familial, social and professional reality of the inmate, containing the necessary elements for resocialisation (Article 90.<sup>o</sup> of the CC and Article 173.<sup>o</sup> of the CESMDL).

#### Who decides

- The Judge of the Supervisory Court issues the ruling.

#### Prerequisites

- Conditional release may be granted when it is reasonable to assume that the sentenced individual will not commit any more crimes once set free or if freedom is compatible with the protection of judicial order and social peace (Article 61.<sup>o</sup> CC);
- Conditional release is awarded according to the nature and severity of the crime for which the individual was convicted and only if there are no grounds for general and special prevention;
- A minimum period of incarceration of 6 months and up to 5 years;
- Conditional release may be given depending on the severity of the sentence:
  - It can be granted after half, 2/3 or 5/6 of the prison sentence being served;
  - It can be granted to individuals sentenced to a prison time of more than 6 years after 5/6 of the sentence has been served;
  - Conditional release may be anticipated by up to 1 year. However, this modality (a Portuguese legal figure) entails a period of adaptation to release, where the individual is obligated to, during this period, comply with any imposed obligations under a regime of house arrest, monitored using remote control (i.e., electronic monitoring) (Article 62.<sup>o</sup> CC).
- The consent of the sentenced individual is required.

### **Duration of the sentence**

- The period of conditional release is equal to that of the remaining time not yet served in prison, up to 5 years, after which any remaining time is considered extinct (Article 61.<sup>o</sup> CC).

### **What can be ordered in connection with the judgement**

- The Court may impose the adherence to 'rules of positive conduct', susceptible to be overseen and to promote reintegration into society (Article 52.<sup>o</sup> CC), such as:
  - To reside in a specific place;
  - To attend certain programmes or activities;
  - To fulfil established obligations.
- The Court may impose compliance with other rules of conduct, namely:
  - Not to exercise certain professions or occupations;
  - Not to attend certain environments or locales;
  - Not to reside in certain places or regions;
  - Not to accompany, house or receive certain persons;
  - Not to frequent certain associations or participate in certain gatherings;
  - Not to possess objects that can facilitate criminal practices.
- With the sentenced individual's consent, the Court may determine their medical treatment or healing at an institution fit for the purpose;
- Conditional release is accompanied by a social reinsertion plan, with the objectives for the resocialisation of the sentenced individual, the activities to be developed, its phasing and the measures for support and monitoring by the social reinsertion services. The Court may, in addition to the aforementioned rules of conduct, impose other obligations with respect to the social reinsertion plan and aiming at the improvement of the sentenced individual's perception of social responsibility (Article 54.<sup>o</sup> CC), such as:
  - To respond to calls by the magistrate responsible for the execution of the sentence and the social reinsertion officer;
  - To receive visits by the social reinsertion officer and to communicate or provide the latter with information and documents proving their means of subsistence;
  - To inform the social reinsertion officer about residence changes and any movements longer than 8 days and the date of likely return;
  - To obtain authorisation to travel abroad by the magistrate responsible for the execution of the sentence.

### **Consequences of failure to comply**

- The sentencing regime may be revoked, determining the execution of the prison sentence not yet served in a prison facility. However, a new conditional release measure may be granted (Articles 56.<sup>o</sup> and 64.<sup>o</sup> CC).

### **Consequences of successful completion of the sentence period and of directives**

- The sentence is declared extinct if, when the period of suspension ends, no motives leading to its revocation can be found (Article 57.<sup>o</sup> CC and Article 187.<sup>o</sup> CESMDL).

## 2. House arrest (Articles 43.<sup>o</sup> and 44.<sup>o</sup> CC)

### Short definition

- A distinct probation measure consisting of a specific sanction corresponding to the obligation for the convict to remain in residence with supervision by technical means of remote control (i.e., electronic monitoring) for the duration of the prison sentence.

### Who initiates

- A decision on house arrest is issued alongside sentencing. The judge shall deliberate on the matter whenever the prerequisites are fulfilled. When the Judge fails to do so, the sentenced individual may launch an appeal requesting house arrest (Article 43.<sup>o</sup> of the CC).

### Who decides

- The Judge responsible for the case issues the decision.

### Prerequisites

- The Court must conclude that house arrest can adequately fulfil the objectives of the execution of the prison sentence;
- The consent of the sentenced individual is required;
- A prison sentence of no more than 2 years;
- A prison sentence of no more than 2 years, in the case of reversing a sentence of non-deprivation of freedom or non-payment of a fine.

### Duration of the sentence

- The duration of the initial prison sentence.

### What can be ordered in connection with the judgement

- The Court may impose rules of conduct connected to the house arrest, to be monitored by the social reinsertion services, to promote the reintegration of the sentenced individuals into society, and that entail obligations reasonably capable of being fulfilled, namely:
  - To attend certain programmes or activities;
  - To fulfil specific obligations issued by the Court upon deciding on the sentence;
  - To subject themselves to medical treatment or healing at an adequate institution, with the individual's consent;
  - Not to exercise certain professions/occupations;
  - Not to contact, house or shelter certain people;
  - Not to possess objects fit for criminal practices.

### Consequences of failure to comply

- The Court may revoke house arrest if the sentenced individual (Article 44.<sup>o</sup> CC):
  - Blatantly and repeatedly violates the rules of conduct, the social reinsertion plan or the prison sentence's subsequent duties;

- Commits a crime from which they can be sentenced, and that indicates that the purposes underlying the house arrest could not be met;
  - Is subject to pre-trial incarceration.
- This revocation determines the prison sentence of time not yet served.

### **Consequences of successful completion of the sentence and of directives**

- Extinction of all sanctioning measures due to full compliance and their completion.

### **3. Suspension of the execution of the prison sentence (Articles 50.<sup>o</sup> -57.<sup>o</sup> CC)**

#### **Short definition**

- It consists in the cessation of the prison sentence that would be applied for the crime committed since the Court believes that the mere threat of imprisonment is effective enough to fulfil the purposes of punishment and prevention.

#### **Who initiates**

- If the above prerequisite applies, the Judge opens the procedures *ab initio* related to the suspension of the execution of the prison sentence.

#### **Who decides**

- The Court decides on the sanctioning of the individual.

#### **Prerequisites**

- This alternative measure may only be applied for crimes with imprisonment not exceeding 5 years (Article 50.<sup>o</sup> of the CC).

#### **Duration of the sentence**

- The period of suspension of sentence is fixated between 1 and 5 years.

#### **What can be ordered in connection with the judgement**

- The suspension of the prison sentence may be attached to the imposition of obligations on the sentenced individual, which are aimed at promoting the reparation of the damages caused by the criminal act, namely (Article 51.<sup>o</sup> CC):
- To provide the injured individual or party with adequate moral compensation.
- The obligations imposed may not, in any case, represent obligations seen to be unreasonably hard or impossible for the sentenced individual to fulfil;
- The obligations imposed may be altered until the end of the suspension period every time subsequent exceptional circumstances occur, of which the Court is aware at a later time;
- The Court may determine that the social reinsertion services support and monitor the sentenced individual while fulfilling the duties imposed;
- The Court may impose the compliance of 'rules of positive conduct', susceptible to be overseen and to promote reintegration into society (Article 52.<sup>o</sup> CC):

- To reside in a specific place;
  - To attend certain programmes or activities;
  - To fulfil specific obligations issued by the Court upon deciding on the sentence.
- The Court may determine the complementary compliance with other rules of conduct, namely:
    - Not to exercise certain professions or occupations;
    - Not to frequent certain environments or locales;
    - Not to reside in certain places or regions;
    - Not to accompany, house or receive certain persons;
    - Not to attend certain associations or gatherings;
    - Not to possess objects that can facilitate criminal practices.
  - With the sentenced individual's consent, the Court may determine their medical treatment or healing at an institution fit for the purpose;
  - A social reinsertion plan accompanies the suspension of the execution of the prison sentence. It contains the objectives of resocialisation of the sentenced individual, the activities to be developed and its phasing, and the measures for support and monitoring by the social reinsertion services. The Court may, in addition to the abovementioned rules of conduct, impose other obligations with respect to the social reinsertion plan and the improvement of the sentenced individual's perception of social responsibility (Article 54.<sup>o</sup> CC), such as:
    - To respond to calls by the magistrate responsible for the execution and the social reinsertion officer;
    - To receive visits by the social reinsertion officer and to communicate or provide the latter with information and documents proving their means of subsistence;
    - To inform the social reinsertion officer about residence changes and any displacements longer than 8 days and the date of likely return;
    - To obtain authorisation from the magistrate responsible for the execution to travel abroad.

### **Consequences of failure to comply**

- If, during the period of suspension of sentence, the sentenced individual stops fulfilling any of the duties or rules of conduct imposed or does not fulfil the social reinsertion plan, the Court may, according to Article 55.<sup>o</sup> CC:
  - Issue a formal legal warning;
  - Demand guarantees of compliance with the obligations connected to the suspension of the sentence;
  - Impose new duties or rules of conduct, or introduce additional demands to the social reinsertion plan;
  - Extend the suspension period by half of the period originally decreed, but not by less than 1 year or exceeding the maximum period of suspension of 5 years (Article 50.<sup>o</sup> CC).
- The suspension of the execution of the prison sentence is revoked if, during its period, the sentenced individual (Article 56.<sup>o</sup> CC):
  - Blatantly and repeatedly violates the duties and rules of conduct imposed or the social reinsertion plan;
  - Commits a crime from which they can be sentenced, and that indicates that the purposes underlying the suspension could not be met.



- The revocation determines the full execution of the prison sentence decreed in the original decision. Herein, the sentenced individual cannot ask for the restitution of any instalments paid.

#### **Consequences of successful completion of the sentence and of directives**

- The sentence is declared extinct if no motives leading to its revocation can be found when the period of suspension ends;
- Suppose (when the period of suspension ends) there are criminal proceedings that can lead to its revocation. In that case, an incident of failure to comply with the rules of conduct or the reinsertion plan is pending, the sentence is declared extinct only when such proceedings or incidents terminate, and there is no revocation or extension of the period of suspension.

#### **4. Work in favour of the community (Articles 58.º and 59.º CC; Articles 496.º and 498.º CCP)**

##### **Short definition**

- Consists of carrying out work, free of charge, to the State or other public or private persons or institutions that the Court understands, have purposes of public interest.

##### **Who initiates**

- Whenever the prerequisites are fulfilled, the Judge addresses the possibility of replacing the prison sentence for work in favour of the community. As such, *lato sensu*, the Judge initiates the procedure.

##### **Who decides**

- The Court decides on the imposition of this measure (Article 58.º).

##### **Prerequisites**

- The application of this sentence requires the sentenced individual's consent;
- It may be applied as a replacement of a prison sentence not exceeding 2 years, where each effective day of imprisonment fixed in the sentence corresponds to 1 hour of work, with the maximum work hours being 480 hours.

##### **Duration of the sentence**

- The execution time of the sentence may not exceed 30 months.

##### **What can be ordered in connection with the judgement**

- The sentence of work in favour of the community may be accompanied by the imposition of duties on the sentenced individual (Article 52.º CC), such as:
  - To reside in a certain place;
  - To attend certain programmes or activities;
  - To fulfil established obligations.
- The Court may impose the compliance of other rules of conduct, namely:
  - Not to exercise certain professions or occupations;

- Not to frequent certain environments or locales;
  - Not to reside in certain places or regions;
  - Not to accompany, house or receive certain persons;
  - Not to attend certain associations or attend certain gatherings;
  - Not to possess objects that can facilitate criminal practices.
- With the sentenced individual's consent, the Court may determine his/her/their medical treatment or healing at an institution fit for the purpose;
  - If the Court decides to impose this sentence, it requests that the social reinsertion services elaborate/create an execution plan.

### **Consequences of failure to comply**

- The Court revokes the sentence and orders the fulfilment of the remaining period of the sentence in prison if the sentenced individual after the sentence (Article 59.<sup>o</sup>):
  - Intentionally creates conditions do not carry out the work;
  - Refuses, unjustifiably, to carry out work or blatantly violates the duties connected to the sentence for which they were convicted;
  - Commits a crime from which they may be sentenced, indicating that the purposes underlying the sentence could not be met.

### **Consequences of successful completion of the sentence and of directives**

- The sentence is declared extinct if, when the period of suspension ends, no motives leading to its revocation can be found;
- If, when the period of suspension ends, there are criminal proceedings that can lead to its revocation or an incident of failure to comply with the rules of conduct or the pending reinsertion plan, the sentence is declared extinct only when such proceedings or incidents terminate. There is no revocation or extension of the period of suspension.

Finally, the Portuguese legislation contains sentences involving the payment of a fine (Articles 45.<sup>o</sup>, 47.<sup>o</sup>, 49.<sup>o</sup> No 3 and 71.<sup>o</sup> CC and Article 489.<sup>o</sup> CCP) in different modalities (e.g., as an individual and separate sentence or included in other sentences, such as conditional release or suspension of the execution of the prison sentence). However, as financial penalties fall outside the scope of FD 2008/947, they have not been detailed in this report.

## **Juvenile Justice**

In Portugal, sanctions related to Juvenile Justice are inscribed in Law No. 166/99, Serie I-A of 1999-09-14 - The Education Tutelary Law (ETL). The ETL covers individuals aged between 12 and 16 who commit an act qualified as a crime. To that extent, the sentences described in this section correspond to the judgment carried out by the Court regarding the committed act, which is qualifiable as a crime. The ETL is written to give the Court the discretionary power to issue sentences consisting of tailored measures, in content and duration, on a case-to-case basis, according to their specific profile and infraction or crime committed. This needs to be done while respecting the ETL and having regard for the minor's interest and future resocialisation. The objective is to ensure the possibility of the individual's successful reintegration into society.

Consequently, this reintegration process is carried out through close cooperation between Courts responsible for issuing a decision and the social reinsertion agencies, charged for

implementing and controlling said decisions (DGRSP, 2022). The responsibilities for the execution of the sentence fall within the Court of first instance in the district where the crime was committed. Among these are (Article 39.º):

- Undertaking any measures deemed necessary to the successful execution of the sentence;
- Initiating proceedings in light of occurrences that can compromise the execution of the sentence;
- Deciding on the revision of the tutelary education sanction;
- Following the evolution of the minor's educational process;
- Visiting educational centres and contacting interned minors.

The sentences described below are determined in the ETL, decreed in conjunction with the Court's judgement.

## **5. Carrying out economic activities in favour of the community (Article 12.º ETL)**

### **Short definition**

- Consists of the minor delivering a certain amount of money or exercising an activity for the benefit of a non-profit entity (public or private), with a maximum duration of 60 hours, not exceeding 3 months, and it can be executed over the course of weekends or holidays.

## **6. Imposition of rules of conduct (Article 13.º ETL)**

### **Short definition**

- The purpose of the sentence is to create or strengthen conditions for the minor's behaviour to conform to the legal norms and values essential to life in society. These rules can not represent abusive or unreasonable constrictions to the autonomy of decision and the regular life of the minor and have a maximum duration of 2 years. The following rules of conduct may be imposed:
  - Not to attend certain environments, places or shows;
  - Not to accompany certain people;
  - Not to consume alcoholic beverages;
  - Not to attend certain groups or associations;
  - Not to own certain objects.

## **7. Imposition of obligations (Article 14.º ETL)**

### **Short definition**

- The purpose of the sentence is to contribute to a better school or professional education and to strengthen the psycho-biological conditions necessary to develop the minor's personality;
- The imposition of obligations may consist, on the part of the minor:
  - To attend a learning institution subject to the monitoring of attendance and performance;
  - To attend a professional training centre or to undergo professional training, albeit not certified;
  - To attend guidance sessions in a psycho-pedagogical institution and to follow the directives bestowed;

- To attend juvenile club or association activities;
  - To submit to medical, medical-psychiatric, medical-psychologic, or similar treatment programmes, with an official entity or institution, in an internment or outpatient regime.
- The submission to treatment programmes seeks the treatment of the following conditions:
- Alcoholic consumption;
  - Drug consumption;
  - Infectious-contagious or sexually transmissible diseases;
  - Psychiatric anomalies.
- The Judge should always seek the minor's adherence to the treatment programme, as necessary, in cases where the minor is older than 16;
- These rules must not represent abusive or unreasonable constrictions to the autonomy of decision and the regular life of the minor and have a maximum duration of 2 years.

## **8. Attendance of training programmes (Article 15.º ETL)**

### **Short definition**

- The sentence of attendance of training programmes consists of the participation in:
- Free-time occupation programmes;
  - Sexual education programmes;
  - Road safety training programmes;
  - Psycho-pedagogical guidance programmes;
  - Screening and professional guidance programmes;
  - Acquisition of personal and social skills programmes;
  - Sports programmes.
- The maximum duration of attendance of training programmes is 6 months unless the programme has a longer duration. In that case, the attendance of training programmes cannot exceed 1 year;
- Exceptionally, and to facilitate the execution of this measure, the Court may rule that the minor resides with a suitable person or in an open house regime institution, non-dependent on the Ministry of Justice, that provides necessary housing for the attendance of the programme.

## **9. Educational monitoring (Article 16.º ETL)**

### **Short definition**

- Consists of carrying out a personal educational project covering the areas of intervention determined by the Court;
- If deemed necessary, the Court may impose obligations or rules of conduct during the educational monitoring;
- The social reinsertion services created the project and is subject to legal enactment;
- The social reinsertion services' role is to monitor, guide and support the minor during the execution of the personal education project;

- The education monitoring has a minimum duration of 3 months and a maximum of 2 years, counted since the date of legal enactment;
- In case the Court imposes the attendance of training programmes, it may rule that the minor resides with a suitable person or in an open house regime institution non-dependent on the Ministry of Justice that provides necessary housing for the attendance of the programme (Article 14.º ETL);
- Suppose the Court imposes medical, medical-psychiatric, medical-psychologic, or similar treatment programmes, with an official entity or institution, in an internment or outpatient regime. It is necessary in cases where the minor is older than 16 (Article 14.º ETL). In that case, the Judge should (at all times) seek the minor's adherence to the treatment programme.

#### **10. Internment in an educational centre in a semi-open and open regime (Articles 17.º and 18.º ETL)**

##### **Short definition**

- Consists of the internment of the minor in an educational centre through educational programmes and methods. The main goal is to instil in them the values of a responsible life in society;
- The internment measure in a semi-open regime is conducted in an educational centre, corresponding with the respective functioning regime and degree of outside exposure;
- The internment measure in a semi-open regime is applicable when:
  - The minor carried out an action classified as a crime against persons, correspondent with a maximum prison sentence of 3 or more years;
  - Or when the minor carried out 2 or more actions classified as crimes, corresponding with a maximum prison sentence exceeding 3 or more years.
- The internment measure in an open and semi-open regime has a minimum duration of 6 months and a maximum of 2 years.

## **Portuguese provider(s) of services in the context of probation and alternative sanctions**

In Portugal, the sole body responsible for matters pertaining to probation measures is the Directorate-General for Reinsertion and Prison Services (DGRSP), under the Ministry of Justice of Portugal, which represents the merger between the Directorate-General for Prison Services (DGSP) and the Directorate-General of Social Reinsertion Services (DGRS), held by the Decree-Law No. 215/2012 of 28 September. In this sense, the competence of DGRSP is not only criminal prevention, probation and social reintegration but also the execution of sentences and management of educational and prison guardianship systems.

Since 1993, before the said merger, the DGRSP has worked within the scope of the execution of sentences, social reintegration, and management of educational and prison systems. The probation services are split into direct (prison establishments, social reintegration and electronic surveillance teams, educational centres) and indirect action (technical support for operational activities, coordination, design, monitoring and evaluation functions).

## Probation services and social work with offenders

### Organisational aspects

Headed by a Director-General, the DGRSP is divided into different services:

- Prison Establishments: guarantee the execution of sentences and measures depriving liberty, contributing to the maintenance of order and social peace and the creation of conditions for the social reintegration of prisoners;
- Regional Delegations and Social Reintegration Teams: there are 3 national delegations (North, Centre, and South – islands), and their mission is to ensure the follow-up, monitoring and control of the operational activity carried out by the social reintegration teams;
- Electronic Surveillance Teams: a total of 12, ensure the execution of sentences and measures with supervision using a remote control (electronic surveillance), technical advice at the pre-sentence stage, and monitoring of sentences and enforcement measures in the community relating to ongoing criminal proceedings;
- Educational Centres: juvenile education for law and insertion into life in the community;
- Central Services, subdivided into:
  - Financial Services Directorate;
  - Human Resources Services Directorate;
  - Public Procurement and Asset Management Services Directorate;
  - Execution of Deprivation of Liberty Services Directorate;
  - Security Services Directorate;
  - Technical Advisory Services and Execution of Sentences in the Community Directorate;
  - Competence Centre for Health Care Management;
  - Competence Centre for Programme and Project Management;
  - Electronic Surveillance Services Department;
  - Juvenile Justice Services Directorate;
  - Competence Centre for the Stimulation of Economic and Labour Activities;
  - Audit and Inspection Service;
  - Centre for Communication and External Relations Competencies;
  - Documentation and Archive Division;
  - Legal and Litigation Office;
  - Infrastructure and Equipment Division;
  - Office of Information and Communication Technologies;
  - Planning and Organisation Division.

### Legal bases underlying the responsibilities of the DGRSP

The organic structure of the DGRSP is established in the Decree-Law No. 215/2012, of 28 September, complemented by Ministerial Order No. 300/2019, of 11 September, which defines the core structure and powers of the respective organisational units.

### Fundamental principles

The DGRSP's main mission is developing policies on crime prevention, the execution of sentences, measures and social reintegration, as well as coordinating and complementing the management of educational and prison guardianship systems, ensuring conditions

compatible with human dignity and contributing to the defence of order and social peace. Therefore, its fundamental principles are as follows:

- Belief in the ability of human beings to change;
- Defence and promotion of human rights;
- Defence of the security of society;
- Valuing social reintegration;
- Prevention of criminal recidivism.

[Link to the DGRSP website](#)

## Available, relevant figures (latest)

The Annual Internal Security Report (AISR) provides the latest yearly data available in Portugal. In general, the data presented in the report show that Portugal, as of December 31, 2021, had a prison population of 11.588 inmates, which represents an increase compared to the previous year (Table 1). Of these, 10.774 were men, and 814 were women. Finally, 1.661 were foreign individuals (comprising 14% of the total prison population), consisting of 1.499 men and 162 women.

	Age of men imprisoned						Age of women imprisoned					
	16-18	19-24	25-39	40-59	60+	Total	16-18	19-24	25-39	40-59	60+	Total
Total of inmates	38	655	4.626	4.567	888	10.774	2	38	315	402	57	814
Portuguese inmates	29	537	3.864	4.031	814	9.275	2	22	229	347	52	652
Foreign inmates	9	118	762	536	74	1.499	0	16	86	55	5	162

Table 4 - Total prison population in Portugal as of 31 December 2021 (translated from Portuguese). (Source: Annual Internal Security Report 2021, p. 113. Link: [ficheiro.aspx \(portugal.gov.pt\)](#))

Table 2 gives an overview of the application of penalties and alternative sanctions for adults during the years 2020 and 2021. Accordingly, a total of 50.660 measures were carried out in 2021, with an increase in the application of the measure of electronic surveillance (5.157 - see table 3). Table 2 shows that the measure of suspension of the execution of the prison sentence was executed 22.867 times in 2021. Although there has been a slight decrease compared to 2020, the conditional release continues to be widely applied in Portugal, executed 4.479 times in 2021. Finally, we can see that alternative measures are still little used in Portugal, being that the one that appears more often is community work (8.166).



	Execution of sentences and sanctions in the community	Year 2020	Year 2021	Difference
Total of sentences and sanctions executed during the year – accumulated data	Provisional suspension of proceedings	12.232	13.351	1.119
	Work in favour of the community	8.026	8.166	140
	Suspension of the execution of the prison sentence	22.258	22.867	609
	Conditional release	4.656	4.479	-177
	Measures relating to non-imputable individuals	684	710	26
	Coercive measures	721	962	241
	Other	820	125	-695
	<b>Total</b>	<b>49.397</b>	<b>50.660</b>	<b>1.263</b>

Table 5 - Overview of the penalties and alternative sanctions during the year 2021 (translated from Portuguese)  
 (Source: Annual Internal Security Report 2021, p. 114. Link: [ficheiro.aspx \(portugal.gov.pt\)](https://www.ficheiro.gov.pt))

Regarding measures of electronic monitoring, table 3 shows an increase in the number of sentences in 2021 (5.157), with a substantial rise in electronic monitoring of individuals sentenced for domestic violence (2.608).

	Sentences and sanctions monitored through electronic monitoring	Year 2020	Year 2021	Difference
Total of sentences and sanctions executed during the year – accumulated data	Coercive measures of obligation of permanence in housing	1.083	1.023	-60
	Prison sentence served in a house arrest regime (house arrest)	1.232	1.290	58
	Adaptation to conditional release	155	164	9
	Electronic monitoring in the context of domestic violence	2.163	2.608	445
	Change of execution of prison sentence	19	29	10
	Electronic monitoring in the context of stalking	19	30	11
	Electronic monitoring for the crime of causing forest fires	9	13	4
	<b>Total</b>	<b>4.680</b>	<b>5.157</b>	<b>477</b>

Table 6 - Overview of the application of electronic monitoring in the year 2021 (translated from Portuguese) (Source Annual Internal Security Report, p. 115. Link: [ficheiro.aspx \(portugal.gov.pt\)](https://www.ficheiro.aspx(portugal.gov.pt)))

Regarding juvenile justice, the relevant data concerns the implementation of measures within the scope of educational guardianship in 2021. As we can see in table 4, the most applied measure was educational monitoring (802), followed by suspension of proceedings (724), imposition of obligations (571) and community work (357). Additionally, there was a decrease in the application of the measure of internment in an educational centre (215). Overall, there was a decrease in measures applied in the juvenile field, with a total of 2.826 in 2020, against 2.728 in 2021.

	Execution of sentences and sanctions related to tutelary education	Year 2020	Year 2021	Difference
Total of sentences and sanctions executed during the year – accumulated data	Suspension of proceedings	763	724	-39
	Reparation to the offended	3	1	-2
	Work in favour of the community	329	357	28
	Performing economic tasks in favour of the community	3	2	-1
	Imposition of rules of conduct	13	14	1
	Imposition of obligations	602	571	-31
	Attendance of training programmes	37	28	-9
	Education monitoring	814	802	-12
	Internment	248	215	-33
	Period of intensive supervision	11	12	1
	Other	3	2	-1
	<b>Total</b>	<b>2.826</b>	<b>2.728</b>	<b>-98</b>

Table 7 - Execution of measures related to education tutelary law (translated from Portuguese). (Source: Annual Internal Security Report 2021, p. 116. Link: [ficheiro.aspx\(portugal.gov.pt\)](https://www.ficheiro.aspx(portugal.gov.pt)))

## **Part 2: National Implementation of Framework Decision 2008/947**

### **Legal basis/incorporation into Portuguese law**

FD 2008/947, 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, was implemented in Portugal through the amendment of its national Law 158/2015 of 17 September, “*Regime Jurídico da Transmissão e Execução de Penas em Matéria Penal*” (Legal regime for transmission and execution of sentences in criminal matters), which transposes into national legislation FD 2008/947 and FD 2008/909, and entered into force on the 18 December 2015;

The legislation is only available in Portuguese [here](#).

## Implementation as issuing State – Competences and procedures

### Competent authority and beginning of the procedure

- The Public Prosecutor's Office and the sentencing Court in case of alternative sanctions and the Public Prosecutor's Office with the competent Court of execution of sentences in the case of decisions concerning conditional release.

### Procedure on forwarding a judgement or probation decision

- The competent Portuguese authority may transmit the sentence imposing alternative sanctions or the decision on probation to the competent authority of the MS in whose territory the sentenced person has their legal and usual residence and if the sentenced person has returned or intends to return to that State;
- This transmission must be accompanied by the certificate whose standard form appears in [Annex III](#) of Law 158/2015, of 17 September. (The certificate is only available in Portuguese);
- The certificate must be translated into one of the official languages of the ES or into one of the other official languages of the institutions of the EU accepted by that State using a declaration deposited with the General Secretariat of the Council;
- It should be noted that the case Judge must sign the transmission of this certificate. It is him/her who certifies the accuracy of its content and then transmits it to the competent authority of the ES by any means that makes it possible to keep a written record so that the ES can verify its authenticity.

### Information obligations towards the executing State during execution (without delay)

- The required information is described in the attached Annexe I and III to Law 158/2015 of 17 September.

### Information obligations towards the executing State

- Duty to inform the competent authority of the ES of all decisions relating to:
  - The revocation of the conditionally suspended sentence or conditional release;
  - The execution of the sentence or the preventive measure described in the verdict;
  - The application of a prison sentence or sentence of deprivation of liberty when not provided for in the sentence;
  - Termination of the surveillance measure or alternative sanction.

## Implementation as executing State – Competencies and procedures

### Competent Authority for decisions on the supervision of probation measures and alternative sanctions as well as subsequent decisions

- The Court of Appeal, within the jurisdiction of the sentenced person's place of residence;
- National contact point of the EJM: [Lisbon Court of Appeal](#);
- [Link to EJM Judicial Atlas to search competent authorities in Portugal](#).

### Inadmissibility of supervision

- The competent Portuguese authority refuses the supervision or refuses to recognise the judgment if:
  - The certificate of transfer of competencies is incomplete or does not correspond to the one defined in the sentence;
  - It is contradictory to the *ne bis in idem* principle;
  - The penalty to be executed has been prescribed in terms of Portuguese national legislation;
  - It is provided in the Portuguese national legislation, an immunity that prevents supervision of the measures;
  - The sentenced person is not criminally responsible for the facts due to their age and in accordance with Portuguese national legislation;
  - The surveillance measure or alternative sanction duration is less than 6 months.

### Procedure on a supervision request

- Once the recognition decision has become final, the Court of Appeal orders the case to be immediately transferred to the enforcement Court, which takes the necessary measures to monitor the surveillance measure or alternative sanction without delay.

### Decision on a supervision request

- The competent Portuguese authority recognises the supervision request when the sentenced person has their legal and usual residence in Portugal and if they have returned there or intend to return.

### Probation and alternative measures the State is ready to execute

The execution of the sentence is based on Portuguese legislation. In decisions relating to early or conditional release, the Court may consider the IS's national legislation regarding the early or conditional release. In terms of surveillance measures or alternative sanctions, the national authorities can execute:

- Duty of a sentenced individual to inform the designated authority about any changes of residence or workplace;
- Prohibition of entering certain places or areas defined by the IS or ES;
- Duty to respect certain restrictions related to exiting the territory of the ES;

- Imposition of rules relating to the behaviour, residence, education and training, occupation of free time, or relating to the modalities embedded in the professional activity of the sentenced individual;
- Duty to present before a specific authority at a specific moment;
- Duty to avoid contact with certain people;
- Duty to avoid contact with certain objects that have been used, or may be susceptible to be used, by the sentenced individual to commit a criminal act;
- Duty to financially repair for the damages resulting from the criminal act or to present evidence of such repayment;
- Carrying out work in favour of the community;
- Duty to cooperate with the monitoring agent or representative of the competent social service;
- Submit to treatment or cure of detoxing.

### **National adaptation process of a probation measure or an alternative sanction**

Suppose the nature or duration of the surveillance measure or alternative sanction in question, or the duration of the surveillance period, are incompatible with Portuguese national legislation. In that case, the competent Portuguese authority may adapt them to the nature and duration of the surveillance measure and the alternative sanction or the duration of the surveillance period applicable in national legislation for similar offences. This ensures they correspond as closely .as possible to those applied in the IS. However, the surveillance measure, alternative sanction or surveillance period resulting from the adaptation may not be more severe or longer than the surveillance measure, alternative sanction or surveillance period initially imposed.

## **Available information on the status quo of the implementation**

The latest data on implementation derives from the EJM Report on activities and management 2019-2020, developed by the EJM. The data shows, albeit without the exact numbers, that FD 2008/947 is implemented in Portugal.

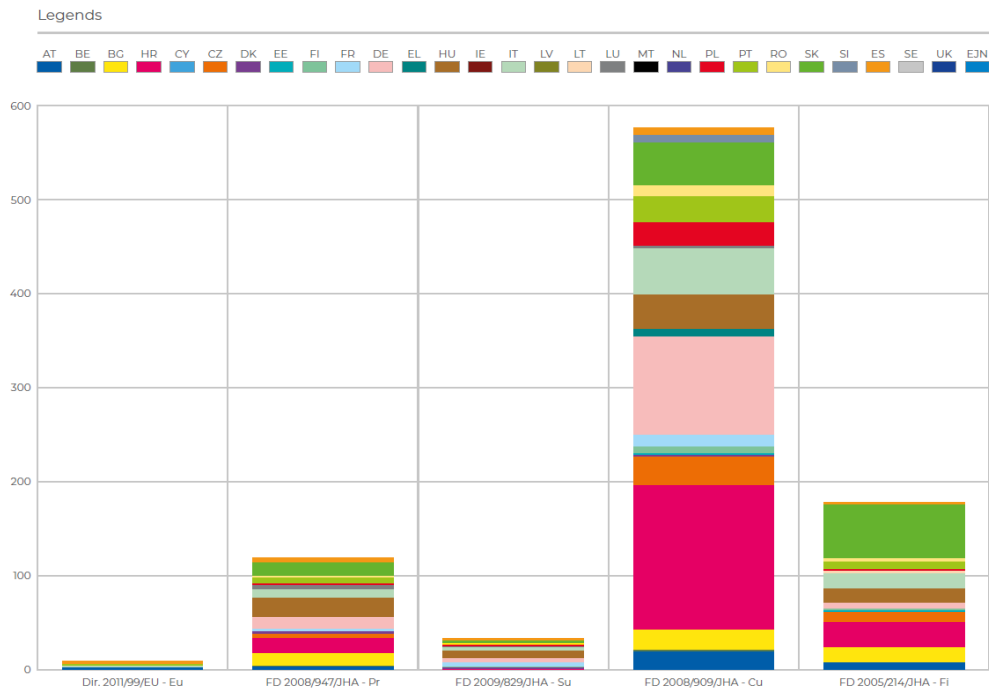


Figure 1 - E-JN cases with mutual recognition instruments, 2019-2020 (Source: E-JN, 2021, p. 25)



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# Romania

## National Report on Probation and Alternative Measures

Ioan Durnescu & Oana Manolache

European Strategies Consulting (ESC)

# Part 1: Romanian Probation System

## Legal basis

The defining moment in the development of the Romanian probation system occurred at the start of 2014 when significant new legislative reforms were enacted.

On February 1st, 2014, Romania implemented:

- A **New Penal Code** (Law No. 286/2009 on the Romanian Penal Code PC));
- A **New Penal Procedural Code** (Law No. 135/2010);
- laws on the organisation and operation of the probation system: **Law No. 252/2013 and Law No. 253/2013**; and
- A new law that governs prison sentences: **Law No. 254/2013**.

## Detailed overview on available probation and alternative measures in Romania

### General Criminal Law for adults

According to the Romanian Penal Code (PC), there are 3 main punishments: life imprisonment, imprisonment and a fine. Imprisonment can be enforced in prison facilities, or it can be individualised in four ways: renouncement of the application of the punishment, postponement of the punishment, suspension of the execution of the prison sentence and conditional release. In this sense, these ways of enforcing the prison sentence could be considered prison modalities.

Probation measures can be imposed when the Court orders postponement of the punishment (Article 83, PC), suspension of the execution of the prison sentence (Article 91, PC) or conditional release (Article 99, PC).

#### 1. Postponement of the punishment (Articles 83-90 of the Penal Code).

##### Short definition

- The prison sentence (no more than 2 years) is postponed if certain conditions are met.

##### Who decides

- The Judge decides postponement of the punishment.

##### Prerequisites

- The sentence (including for multiple offences) is a fine or no more than 2 years of imprisonment;
- The person does not have any previous prison sentences;
- The defendant has agreed to fulfil community service;

- Taking into account the defendant's conduct prior to committing the offence and his/her likelihood of rehabilitation, the Court recognises that an immediate penalty is not required but that his/her conduct must be monitored for a specified period;
- The enforcement of a sentence cannot be postponed if the legal penalty for the offence is greater than 7 years of imprisonment or if the offender attempted to escape criminal investigation or trial.

### **Probation period**

- No more than 2 years.

### **What can be ordered in connection with the judgement**

- Report to the Probation Service on the dates set by the probation counsellor;
- Receive visits from the probation counsellor assigned to supervise them;
- Give notice of changing residence and of any travel longer than 5 days, as well as the date of his/her return;
- Give notice of changing jobs;
- Provide information and documents that will allow a check into their means of support;
- Also, the Court may order a defendant to comply with 1 or several of the following obligations:
  - Attend school or vocational training;
  - Undertake community service for 30 to 60 days (60 to 120 hours) in a place decided by the Court unless their health prevents them from doing so;
  - Attend 1 or more social reintegration programmes developed by the probation Service or in cooperation with community institutions;
  - Comply with medical treatment or care;
  - Not communicate with the victim or the victim's family, with the persons with whom they committed the offence or with other persons as established by the Court, or to not go near such persons;
  - Not be in certain locations or attend certain sporting events, cultural events, or public gatherings;
  - Not drive certain vehicles;
  - Not own, use and carry any weapons;
  - Not leave Romanian territory without securing agreement from the Court;
  - Not take or exercise the position, profession, occupation or activity they used in the commission of the offence.

### **Consequences of failures to comply**

- If, during the probation period, the individual fails in bad faith to comply with the probation measures or responsibilities imposed upon them. The Court will remove the postponement and compel the penalty to be carried out;
- The probationer must pay any Court-ordered civil responsibilities<sup>11</sup> no later than 3 months before the end of the probationary period. If prior to the expiration of the probation period, the individual under supervision fails to pay their civil

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<sup>11</sup> Civil responsibilities are those obligations imposed by the court on the offender to repay the victim for his/her harm or damage.

obligations as ordered by the Court, the Court shall revoke the postponement and rule to enforce the penalty unless the individual can demonstrate they had the financial means to comply;

- If, during the probationary period, the probation counsellor deems it essential to impose new responsibilities and enhance or decrease the probationer's current obligations, the Court shall order a modification of the probationer's obligations to increase his/her chances of rehabilitation.

## 2. Suspension of the execution of prison sentence (Article 91-98 of the Criminal Code)

### Short definition

- The prison sentence (no more than 3 years) is suspended if certain conditions are met.

### Who decides

- The Judge decides on suspension of the execution of a prison sentence.

### Prerequisites

- The Court may conditionally suspend a prison sentence if:
  - The sentence, including for multiple offences, is no more than 3 years of imprisonment;
  - The person has never been sentenced previously to more than 1 year in prison;
  - The defendant has agreed to fulfil community service;
  - Considering the defendant's conduct prior to committing the offence and his/her likelihood of rehabilitation, the Court determines that the punishment is sufficient without imprisonment. Still, it is necessary to monitor his/her behaviour for a period of time.
- The Court is required to explain the reasons behind the sentencing and those that led to the suspension of the execution of the prison sentence. In addition, the Court will caution the person about his/her future conduct and the potential consequences he/she faces if he/she continues to commit offences, fails to comply with supervision measures, or fails to fulfil his/her obligation during the probation period.

### Probation period

- Even though **the Court** determines and imposes the punishment, its execution is deferred for a variable period, **between 2 and 4 years**. Still, it may not be shorter than the term of the sentence enforced, during which the convicted person must comply with probation measures.

### What can be ordered in connection with the judgement

- During the time of supervision, the person must comply with the following conditions:
  - Report to the Probation Service on the dates set by the probation counsellor;
  - Receive visits from the probation counsellor assigned to supervise them;

- Give notice of changing residence and of any travel longer than 5 days, as well as the date of return;
  - Give notice of changing jobs;
  - Provide information and documents that will allow a check into his/her means of support.
- Also, the Court may order a defendant to comply with 1 or several of the following obligations:
- Attend school or vocational training;
  - Undertake community service for 60 to 120 days (120 to 240 hours) under Court-ordered conditions unless his/her health prevents him/her from doing so;
  - Attend 1 or more social reintegration programmes developed by the Probation Service or in cooperation with community institutions;
  - Comply with medical treatment or care;
  - Not communicate with the victim or the victim's family, with the persons with whom they committed the offence or with other persons as established by the Court, or to not go near such persons;
  - Not be in certain locations or attend certain sporting events, cultural events, or public gatherings;
  - Not drive certain vehicles;
  - Not own, use and carry any weapons;
  - Not leave Romanian territory without securing agreement from the Court;
  - Not take or exercise the position, profession, occupation or activity they used in the commission of the offence.
- Additionally, the regulations from deferred sentences regarding the payment of civil obligations, the modification of the framework of Court-imposed obligations to increase the likelihood of the offender's rehabilitation, and the revocation of the sentence if the offender fails to comply with measures or obligations also apply.

### **Consequences of failure to comply**

- The suspended sentence is revoked.

### **Consequences of successful completion of probation period**

- If the convicted individual did not commit a new offence discovered before the end of the supervision term, the revocation of suspension of the execution of penalties was not ordered, and no reason for rescinding the sentence appeared. The sentence is deemed to have been served.

## **3. Conditional release (Article 99-106 of the Penal Code)**

### **Short definition**

- If certain requirements are fulfilled, a part of the prison sentence is suspended conditionally.

### **Who decides**

- The Judge, if it is considered that the rehabilitation took place.

## Prerequisites

- In case of life imprisonment, if the person:
  - Has served 20 years of imprisonment;
  - Maintained good behaviour throughout the sentence;
  - Has fully complied with the civil obligations;
  - The Court is satisfied that the sentenced person can reintegrate into society.
  
- In case of imprisonment:
  - The person has served at least 2/3 of the sentence in the case of imprisonment not exceeding 10 years or at least 3/4 of the sentence but not more than 20 years in the case of imprisonment exceeding 10 years;
  - The sentenced person is serving his/her sentence in a semi-open or open regime;
  - The sentenced person has fully complied with the civil obligations;
  - The Court is satisfied that the sentenced person can reintegrate into society.

## Probation period

- Conditional release in case of life imprisonment: 10 years;
- Conditional release in case of imprisonment: the interval between the date of conditional release and the date of completion of the sentence constitutes the term of supervision.

## What can be ordered in connection with the judgement

- The person should comply with the following measures:
  - Report to the Probation Service on the dates set by the probation counsellor;
  - Receive visits from the probation counsellor assigned to supervise them;
  - Give notice of changing residence and of any travel longer than 5 days, as well as the date of their return;
  - Give notice of changing jobs;
  - Provide information and documents that will allow a check into their means of support.
  
- Also, the Court may order a defendant to comply with 1 or several of the following obligations:
  - Attend school or vocational training;
  - Attend 1 or more social reintegration programmes developed by the Probation Service or in cooperation with community institutions;
  - Not communicate with the victim or the victim's family, with the persons with whom they committed the offence or with other persons as established by the Court, or to not go near such persons;
  - Not be in certain locations or attend certain sporting events, cultural events, or public gatherings;
  - Not drive certain vehicles;
  - Not own, use and carry any weapons;
  - Not leave Romanian territory.
  
- The supervision measures and obligations specified in subparagraphs a) and b) must be carried out from the date of release for a period equal to 1/3 of the supervision term but no longer than 2 years, while the obligations specified in

subparagraphs c) through g) must be carried out throughout the entire supervision term.

### Consequences of failure to comply

- The sentence is revoked if the offender fails to comply with measures or obligations.

## Juvenile Justice

### Short definition

- If a minor (age between 14 and 18) commits a crime for the first time and the punishment for the crime is either a fine and/or imprisonment of up to 7 years, the Court is required by law to impose a non-custodial educational measure. When the Court may apply a custodial measure taking into account the perilousness of the offender and the seriousness of the offence, exceptions are found in paragraph 2 of the same Article (Article 74, PC) in the following 2 situations: if the minor has a history of anti-social acts for which an educational measure has been applied; if the sentence is 7 years (or more) or life in prison.

### Who decides

- According to the CC, the Court decides which non-custodial educational measure should be enforced. The measure will be determined by taking into account the minor's age, personality, health, family, and social situation. Under the supervision of the probation service, non-custodial educational measures are administered in the community to develop responsibility and instil respect for the rights and liberties of others while ensuring the child's ties with his/her family and participation in various programmes. The non-custodial educational measures for juveniles are civic education, supervision, weekend consignment and daily assistance.

### 4. Civic education (Article 117 CC)

- It is the least severe non-custodial educational measure and consists of the juvenile's participation in a programme established by the Court for a **maximum of 4 months**. This programme is aimed to help the minor understand the legal and social repercussions of the offence. A monthly amount of 8 hours of civic education will be considered during Court-ordered training without impacting the child's school or professional programme. The organisation and supervision of the minor's involvement and participation in civic education fall under the supervision of the **probation service**. Based on an initial evaluation, the probation counsellor establishes the type of civic programme and in which institution from the community the minor will be attending (school, NGO). The probation counsellor also approves the civic programme's plan proposed by the institution and collaborates with the minor's parent/the person who has legal custody of the minor.

### 5. Supervision (Article 118 CC)

- It is a non-custodial educational measure that consists of supervising the minor's daily activities for a period between **2 and 6 months** under the supervision of



the probation service. The aim is to ensure attendance at school or training courses. Parents, adoptive parents, and guardians may conduct surveillance under the supervision of the probation counsellor. This surveillance is exercised in a similar mode as for any parent, but it has to consider the suggestions from the probation officer. If the minors cannot be overseen, the Court will place them in the custody of a reliable individual, ideally a close relative.

## 6. The weekend consignment (Article 119 CC)

- Consists of the minor's requirement to remain at home on Saturdays and Sundays for **4 to 12 weeks** unless he/she is required to participate in Court activities. As with the other non-custodial educational measures, the probation service supervises the weekend consignment. The involvement of the probation counsellor and the community increases: the probation counsellor writes the plan of consignment after consulting the person who exercises the minor's surveillance and the minor; he supervises the surveillance process and collaborates with the community to implement the plan. The community is an abstract concept rather than a practical resource.

## 7. Daily assistance (Article 120 CC)

- The most severe non-custodial measure consists of the minor's obligation to attend for **3 to 6 months**. The probation counsellor creates a daily assistance plan with a timetable, the terms of activities, and the minor's prohibitions in consultation with the minor's parents, tutors, or caretaker.

### Consequences of failure to comply

- In the event of failure to comply in good faith with the conditions imposed by the initial non-custodial measure, the Court may extend the supervision up to its entire duration or replace it with a more severe non-custodial. Suppose the suspected measures prove ineffective and the minor's beliefs are shown to be negative. In that case, the Court will replace the more severe non-custodial measure with the least severe custodial, educational measure (admission to an educational centre).

# Romanian provider(s) of services in the context of probation and alternative sanctions

## General Information

### The Organisation

- The national probation system is a public organisation with an independent budget under the authority of the Ministry of Justice. The National Directorate of Probation coordinates the system and comprises 42 local units organised at the

county level. At the end of 2020, there were 444 probation counsellors managing 103.000 cases.<sup>12</sup>

### Probation activities

- The main activities of probation counsellors are: providing psycho-social evaluations to prosecutors and judges to make the most appropriate judicial decisions (preparation of reports and evaluation reports) and providing control and support to criminally sanctioned persons in the community (adults for whom the Judge postponed the application of the sentence, suspended the execution of the sentence under supervision or replaced the criminal fine with unpaid work for the benefit of the community, and part of the parolees, respectively the sanctioned minors with non-custodial, educational measures and minors released from educational or detention centres). Those conditionally released (parolees) come automatically under probation supervision if the rest of the prison sentence (the unexecuted prison sentence) is longer than 2 years;
- There are currently thirteen programmes and interventions offered within the probation system.<sup>13</sup> 12 of them have been funded by the EU and the Dutch or Norwegian governments. Only 1 programme was developed with the resources of the probation service in collaboration with the police – a programme aimed at preventing traffic violations. According to the description, the programmes are grounded in cognitive behavioural theory, social learning theory, and desistance. Based on the Risk-Needs-Responsivity paradigm, these interventions are primarily designed for group work and address various risks and needs.

### Fundamental principles

- The probation system structure is established in Law No. 252/2013 and Government Decision No. 1079/2013. The fundamental principles are:
  - Defence of human rights;
  - No discrimination based on gender, race, ethnicity etc.;
  - Positive work alliance to encourage rehabilitation.

## Available, relevant figures (latest)

At the end of January 2021, there were 67.450 people under the supervision of probation agencies (SPACE II, 2021), out of which 567 were on conditional release. The bulk of probationers was serving fully suspended custodial sentences with probation. The probation population rate per 100.000 inhabitants is 351.6. The European average is 212, and the median is 155 (SPACE II, 2021). The rate of exits was 172.7 (European average 190, and median 132.1), and more than half of probationers were convicted for road traffic offences (SPACE II, 2020). The main problem of the probation system is related to the ratio of probationers per staff member, which is a little higher than 120.

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<sup>12</sup> <http://probatiune.iust.ro>.

<sup>13</sup> *Ibidem* 10.

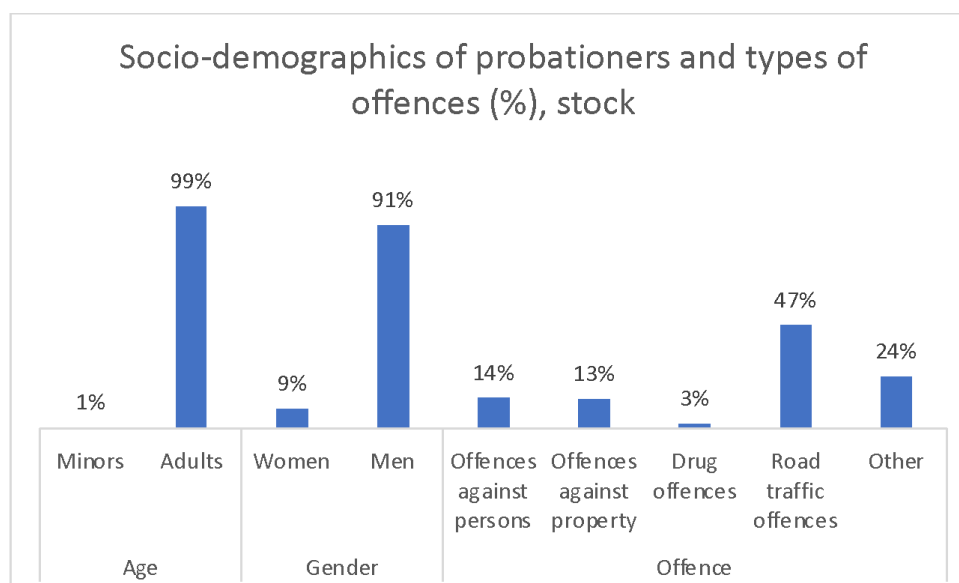


Figure 2 - Socio-demographics of probationers and types of offences in Romania, as of the 20th of January 2020 (Note: The Romanian National Directorate of Probation does not issue public statistics). Source: SPACE II report 2020.

## **Part 2: National Implementation of Framework Decision 2008/947**

### **Legal basis/incorporation into Romanian law**

In Romania, FD 2008/947 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, was implemented into national legislation by Law No. 302/2004 (amended in 2013 – Law 300/2013) on judicial cooperation in criminal matters (the provisions applied from December 2013), supplemented by the provisions of the Romanian Penal Procedure Code. In Romania, the FD became applicable and binding in its entirety on 26 December 2013.

Under Article 3 of the FD, Romania designates:

- The county Courts where the person resides, as ES; and
- The Court that delivered the first instance judgement was the IS.

When the judgement was delivered by the High Court of Cassation and Justice, the competence lies with Bucharest District Court.

According to Article 5(4) of the FD, Romanian authorities notified the General Secretariat of the Council that Romania could recognise judgments and probation decisions not only when the convicted person is a Romanian national. He/she lives/ is going to live in Romania, but also in cases when the convicted person is not a Romanian national. Still, he/she either is a resident of Romania or 1 of his/her family members is a Romanian national or resident, or

he/she proves that he/she will engage in professional activity, studying or training in Romania.

By the Romanian implementation law, the recognition of the judgment or probation decision shall be subject to a double criminality check (Article 10 FD 2008/947).

The notification, in line with Article 21 of the FD, mentions that Romanian is the only language accepted by the competent Romanian authorities for the certificate of Annex I of the FD.

## Implementation as issuing State – Competencies and procedures

### Competent authority and the beginning of the procedure

- In the case of Romania (the IS), the Judge appointed with the execution of the sentence, forwards the certificate of Annex I of the FD together with the judgment and, where applicable, probation decision to another MS.
- When a decision is made by the High Court of Cassation and Justice, the competence lies with Bucharest District Court.

### Conditions to forward a judgement or probation decision

- Only apply to the following sanctions: postponement of the punishment (Article 91 PC) in the case of adults; civic education supervision, weekend consignment and daily assistance in the case of minors (Article 115 PC);
- The decision is final and enforceable, with a sanction that ensures rehabilitation;
- The statement of the convicted person located in Romania or that will leave the territory of Romania no later than 30 days after the date of the declaration made in this regard. To verify that the present condition is met, the Judge delegated with the execution or the probation service may request that the convicted person submit supporting documentation;
- The convicted person has not been prosecuted or tried for any other crimes;
- The remaining time until the end of the Court-ordered surveillance period is greater than 6 months;
- There are no legal provisions regarding the revocation or cancellation of the sanction;
- The person demonstrates that he has a legal and usual residence on the territory of the ES (Article 218 Law 302/2004).

### Procedure of forwarding a judgement or probation decision

- The certificate of Annex I of the FD, Court decision, and, if available, the assessment report drawn up by the probation service shall be transmitted by fax/e-mail to the foreign authority competent to receive or execute the documents;
- The documents must be transmitted in 1 of the official languages of the ES or in another language that the ES has formally declared it would accept;
- In practice, the Court or the probation service informs the sentenced person of the possibility of transfer.

### **Mandatory deadlines**

- The authority in the ES decides on the recognition within 60 days of receiving the necessary documents and can adapt the probation measures or the alternative sanction if they are incompatible with the national legislation.

### **Accepted means of communication**

- The certificate Annex I of the FD and all the relevant documents are sent by fax, email or any secure mean of communication that can be verified for its authenticity;
- The documents are translated into the official language of the ES.

## **Implementation procedure as executing State – Competencies and procedures**

### **Competent authority and beginning of procedure**

- The district Court where the person resides is responsible for recognising judicial decisions and foreign probation orders;
- The probation service in the judicial district the defendant resides is responsible for supervising compliance with the probation measures (Article 201 Law 302/2004);
- [Link to EJM-Judicial Atlas regarding Romania](#) - EJM contact point for Romania.

### **Prerequisites of accepting a judgement or probation decision**

- For the measures or alternative sanctions to be recognised in Romania, the following conditions should be met (Article 202 Law 302/2004):
  - They should be 1 of the following: suspended sentence under supervision, postponement of the punishment, conditional release, or an alternative sanction;
  - The probation measures or alternative sanctions imposed are compatible or have a correspondent in Romanian law;
  - The crime committed is an offence in Romanian law;
  - The person has reached the age of criminal responsibility in Romania, which is 14 years;
  - The person is in the IS and wishes to return or to establish in Romania or is already located in Romania and: they hold Romanian citizenship and reside or will reside in Romania, or do not hold Romanian citizenship but:
    - Have residence right or the right to stay on Romanian territory in accordance with the law;
    - 1 of the members of the family has the residence right or the right to stay in Romanian territory;
    - Prove they will attend school, have professional training, or conduct a business in Romania.

### **Procedure of accepting a supervision request**

- The competent authority of the IS will provide the following documents, translated into Romanian, to the Court that has jurisdiction:
  - The certificate of Annex I of the FD;

- The Court decision by which the probation measures or alternative sanctions were adopted (or the probation order);
- The person's declaration regarding his/her intention to return or settle in Romania within the next 30 days from the date of the declaration (if the person is in the IS) or any other documents submitted by the person to the authorities of the IS.

### **Mandatory deadlines**

- Romanian authorities shall decide within 60 days of receiving the judgment;
- Romanian national authorities must immediately notify the responsible authority of the IS of the decision, using any method that leaves a record;
- In exceptional circumstances, if the authorities are unable to comply with the time limit, they must immediately notify the competent authority of the IS by any means, providing the reasons for the delay and estimating the amount of time needed to make the final decision.

### **Circumstances under which an execution can be denied and procedure of denial**

There are some circumstances under which recognition and enforcement will be denied (Article 204 Law 302/2004):

- When the person was convicted in Romania for the same offence and the sentence is final or was convicted in another MS for the same offence and Romania already enforced the judgement;
- Immunity or not criminally liable (age) under Romanian law;
- When the psychiatric or health assistance penalty cannot be supervised in Romania;
- When, according to Romanian criminal law, the execution of the sentence is barred by the statute of limitations;
- When the convicted person did not appear in person at trial unless it is in accordance with the IS legislation;
- Less than 6 months of probation measures or alternative sanctions or less than 60 hours in case of community service;
- By Romanian legislation, the grounds for refusal are not optional but mandatory for the competent authority. To recognise the judgement or probation decision, the competent Romanian authorities will also check for double criminality.

### **Probation and alternative measures Romania is ready to execute**

- Romania is prepared to supervise the following probation measures or alternative sanctions:
  - The obligation to inform a certain authority about any change of residence or workplace;
  - The obligation not to enter certain localities, places or areas defined in the IS or the ES;
  - The obligation containing limitations regarding leaving the territory of the ES;
  - Provisions regarding behaviour, residence, education and training, leisure activities or containing limitations regarding the ways of carrying out a professional activity;
  - The obligation to appear on set dates before a certain authority;
  - The obligation to avoid contact with certain people;

- The obligation to avoid contact with certain objects which have been used or could be used by the convicted person to commit a criminal act;
  - The obligation to financially repair the damage caused by the crime and/or the obligation to provide proof of the fulfilment of this obligation;
  - The obligation to perform activities for the benefit of the community;
  - The obligation to cooperate with a probation counsellor or a representative of a social service that has responsibilities regarding convicted persons;
  - The obligation to undergo therapeutic treatment (Article 203 Law 302/2004).
- The competent Romanian authorities can revoke the sanction or the probation decision if the convicted person fails to comply with the supervision measures or the alternative sanction or commits a new offence during the probation period. In the case of alternative sanction and conditional release, this can be done if the initial judgment or probation decision explicitly mentions the custodial sentence to be imposed in case of revocation.

#### **National adaptation process of a probation measure or an alternative sanction**

- Regarding the national adaptation of the probation measures or alternative sanctions, some guidelines should be followed:
- In case of incompatibility in terms of the nature or time of the probation measures or alternative sanctions, *the Courts* may adapt them in line with Romanian law for the equivalent offences and shall correspond as far as possible to the one established by the IS;
  - The duration of the adapted probation measure, alternative sanction or probation period shall not be below the maximum duration provided for equivalent offences under Romanian law and not be more severe or longer than the probation measure, alternative sanction or probation period which was initially set (Article 211 Law 302/2004).

#### **Accepted means of communication**

- The certificate of Annex I of the FD and all the relevant documents are sent by fax, email or any secure mean of communication that can be verified for its authenticity;
- The certificate of Annex I of the FD must be transmitted in the Romanian language.

## **Available information on the status quo of the implementation**

According to data offered by the Ministry of Justice, between 2018 to 2020, Romania recorded the following number of cases:<sup>14</sup>

- As IS: 58 (Italy, Sweden, Germany, Hungary);
- As ES: 4.

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<sup>14</sup> Ministry of Justice, personal communication

It should be noted that there is no reliable data on this matter as the Ministry of Justice has no legal competence to collect or process this data. Therefore, this data should be taken with caution.



## References

- Aebi, M. F., & Hashimoto, Y. Z. (2022). *SPACE II – 2021 – Council of Europe Annual Penal Statistics: Persons under the supervision of probation agencies*. Strasbourg: Council of Europe;
- Aebi, M. F., & Hashimoto, Y. Z. (2021). *SPACE II – 2020 – Council of Europe Annual Penal Statistics: Persons under the supervision of probation agencies*. Strasbourg: Council of Europe;

## Closing Remarks

Different legal systems with different jurisprudence and, most of the time, different languages to communicate in, combined with little knowledge of and about FD 2008/947, complicates its adequate application and, thus, the reintegration and resocialisation of sentenced persons in cross-border cases. This deliverable addresses the need to provide practitioners with information to assist them in applying FD 2008/947. Practitioners shall be given the opportunity to easily inform themselves about relevant national judicial conditions and, if necessary, to be able to contact the competent authorities in other EU MSs. This is to support the correct and swift application of FD 2008/947 and to support the quick transfer of the sentenced person.

This deliverable contains 7 national reports that are each divided into 2 parts. Part 1 presents key information on the legal basis of the probation systems in the countries represented in this project, including a detailed overview of nationally available probation and alternative measures and on the main national providers who support a sentenced person to comply with the measure received. Part 2 focuses on the national implementation and application of FD 2008/947. In addition, the deliverable also includes a glossary, which presents some of the key points of the national reports in a clear and comparative way, allowing for a quick grasp of most central information.

Each national report provides an overview of national jurisprudence and the available probation measures and alternative sanctions that fall within the scope of FD 2008/947. The reported decisions for which supervision can be requested can – in the case of general criminal law – roughly be grouped under 1) conditional suspension of a sentence, 2) suspended sentence, 3) community service, 4) conditional release from imprisonment, or 5) from preventive detention, 6) suspension of the execution of a custodial measure reserved for alcohol and drug addicts, and 7) others.<sup>15</sup> The groupings are presented in the glossary and are supplemented by short explanatory definitions of the individual decisions and links to the respective national reports. In this way, practitioners should be equipped better to assess a potential application for supervision in the MS represented in this project. Moreover, this model could be integrated into existing known and valuable international platforms, such as the EJN and the Confederation of European Probation and be a template for other EU MS.

Though sentences grouped under the same category share fundamental similarities, they may also differ. For example, sentences under the category “conditional suspension of a sentence” share that a sentence of imprisonment is not executed/postponed under the condition that certain requirements are met. The length and extent of the initial judgement, the ordered measure(s), or the conditions of a probationary period and the consequences of non-compliance may, however, vary nationally, thus complicating possible supervision requests. The differences indicate that often there will be a need for exchange and communication between the involved authorities about what adaptations of measures available in a (potentially) ES are possible and acceptable considering both the relevant legal framework of the IS and the ES.

In order to provide the best possible supervision for a convicted person in another Member State, practitioners should be able to obtain information about that respective State's

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<sup>15</sup> More detailed information about the categories and their national characteristics are described in the glossary at the beginning of this report.

probation system. Therefore, the national reports include a chapter on each national probation system. The organisation of the national probation system can roughly be divided into 1) probation services and 2) providers for the execution and supervision of directives and alternative measures. Some countries have one main provider for probation services: private organisations (e.g., AT, FR) or public providers (e.g., BE, IT, PT, RO). Though the private providers are officially independent, they are, nevertheless, predominantly funded by their respective Ministry of Justice. The public providers, on the other hand, are under the immediate authority of the MoJ and therefore financed by them as well. Some leading providers are in direct contact with their clients (e.g., AT), whereas others mainly delegate tasks to other organisations (e.g., IT). Yet not all countries have one main provider. In the case of the Netherlands, for instance, 3 recognised probation organisations exist, covering different groups of offenders (e.g., services for adults and/or for addicted offenders). The execution and supervision of directives and alternative measures are organised slightly differently. As they might come in the form of specific treatments, specific professional providers are required. If an ordered measure, e.g., requires anti-violence training, organisations might be chosen due to their geographical proximity (e.g., BE) and/or because they have officially been vetted by the Ministry of Justice (e.g., AT).

The second part of the national report addresses the national implementation of FD 2008/947. All countries represented in the project have transposed FD 2008/947 into national law. Each of the 7 MSs reported that FD 2008/947 has been and is being applied in their country. However, a precise assessment of the number of applications and the countries involved has proven difficult. Austria, Italy and Portugal could neither provide concrete figures nor other detailed information on the practical application of FD 2008/947 by their authorities as IS or ES. Yet, there are indications that the numbers are very small. In Belgium, the number of applications in 2021, with 2 outgoing and 6 incoming cases, was also low. Applications to Belgium came from France, Italy, the Netherlands and Romania. France dealt with a total of 106 cases in 2018 and 2019, of which the majority of 93 cases, were incoming requests. Compared to the other 6 MSs, the Netherlands recorded the highest number of annual cases, with 139 cases in 2022. Of these, 48 were incoming and 91 outgoing requests, cooperating with Belgium, Germany, France, Poland and Spain. Romania acted as IS in 58 cases and as ES in 4 cases from 2018 to 2020. However, the Romanian report points out that the figures should be taken with caution, as the Romanian Ministry of Justice, which provided them with the figures for the report, is not legally authorised to collect or process this data. This situation is similar to other countries (e.g., AT, IT, PT), where there is also no central body that systematically collects this data.

More detailed information is available on the competent national authorities. The national authorities for the implementation of FD 2008/947 are either situated at the Courts or the public prosecutors' offices. Outgoing requests are forwarded by the Courts pronouncing the sentence (AT, BE, RO), the prosecutor's office of the sentencing Court (FR, IT, PT) or by the public prosecutor of the district of the legal and permanent/habitual residence of the sentenced person or of the district where the judgement was rendered (BE). Receiving requests are almost exclusively connected to the offender's residence in the ES and are being processed by the local prosecutors (BE, FR, NL), the Regional Courts (AT, RO) or the Courts of Appeal (IT, PT). The Netherlands is the only country represented in the project with one central national competent authority for incoming and outgoing requests. Also, because of the remarkable number of well-documented cases of FD 2008/947 described in the previous paragraph, the question arises to what extent other EU countries can learn from the experience of the Netherlands concerning its central organisation of cross-border cooperation. The workshops planned as part of the J-CAP project will provide an opportunity to investigate this model in more detail and to discuss its applicability to other jurisdictions.

In addition to the competent national authorities, applying for supervision is also outlined. For IS, information on the application process is provided. These may include, among other things, the availability of procedures to inform a sentenced person about the possibility of a transfer; mandatory deadlines; accepted means of communication; retransfer of supervision and/or obligations towards the ES. For ESs, information is made available for, e.g., prerequisites concerning the offender, probation and alternative measures the State is ready to execute, and/or the national adaptation process. Especially with regard to the procedural aspects of a supervision request, e.g., concerning the adaptation of a measure, direct exchange and communication between an executing and IS most often will be inevitable. Therefore, this deliverable should also be seen as a supplementary source of information to other material generated in the course of this project and also to the upcoming networking events for practitioners. It comes with the overview character of this report that some questions about details relevant to the transfer of cases between MSs will remain unsolved. The information available, however, will allow for more precise questions to explore similarities and differences between jurisdictions. In this sense, the J-CAP Consortium believes this report will contribute to mutual learning by stimulating exchange and discussions.

To sum it up, despite the lack of data, the low application of FD 2008/947 in the EU MSs has once again become apparent. This situation puts those citizens convicted in an EU MS other than where they reside at a disadvantage. There may be many EU citizens who are stuck in a criminal justice system that is foreign to them and who would benefit from a more comprehensive application of FD 2008/947. For them, it might be less likely to benefit from alternatives to imprisonment, such as early release or conditional sentencing, or to receive adequate post-release follow-up. Therefore, to guarantee these people's rights to fair and equal treatment, it is essential to find ways and means to make alternative measures more easily accessible to foreign EU citizens. FD 2008/947 is such a means, and this deliverable tries to help to facilitate its smoother and, consequently, more frequent application. One way to support this is to ensure that ISs can easily retrieve essential information on possible ESs. This information is necessary as the deliverable clearly shows that, despite some similarities, there are differences in the legal and probation systems among EU countries that challenge the application of FD 2008/947. Even if some differences seem small, it is crucial for MSs to communicate and cooperate, exchange information and share practical experience to facilitate offenders' social rehabilitation and strengthen the principle of mutual recognition of judicial decisions throughout the EU.

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Judicial cooperation for the enhancement of mutual recognition regarding probation measures and alternative sanctions

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