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from:	Incoming Belgian Presidency
to:	Delegations
Subject :	Questionnaire on the practical implementation of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

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Delegations will find in the Annex a Questionnaire on the practical implementation of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions in view of the organisation of a seminar during the next semester.

Member States are kindly requested to respond to this questionnaire by the **28<sup>th</sup> May 2010**.

## QUESTIONNAIRE

### INTRODUCTORY NOTE AND GUIDELINES

The Council Framework Decision 2008/947/JHA (hereafter referred to as the Framework Decision) is concerned with 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. Member States will need to take necessary measures to comply with the provisions of this Framework Decision by the 6<sup>th</sup> December 2011.

It is the belief that successful implementation relies on a clear understanding of the discrepancies between national systems, meaning that it is essential to improve knowledge of probation systems and measures within each Member State. This belief is shared by other Member States and in particular by our partners in this project: Luxemburg, Hungary, Spain, Slovakia, United Kingdom, France, Germany and CEP - The European Organisation for Probation.

This questionnaire will serve as a basis for a seminar on the 8<sup>th</sup> and 9<sup>th</sup> July 2010, which will be held under the incoming Belgian Presidency. The objective of the seminar is to ensure that the implementation of this Framework Decision remains a political priority in Member States. The seminar will also improve mutual knowledge of probation measures within national systems as well as identifying legal and practical difficulties linked with implementation. These objectives are directly link to the priorities set out in both the Stockholm Programme and under the current Trio Presidency Programme.

This questionnaire is divided in two parts.

The first part will enable an analysis of probation measures provided at a national level. It aims to provide an overview of the current legal situation within each Member State. The results of this part of the questionnaire will be published in a Manual.

The second part of the questionnaire focuses on the implementation of this Framework Decision in the domestic law of each Member State. We expected that most Member States will not be in a position to be able to reply to all these questions. Please note that this part of the questionnaire is not intended to gather precise replies, but to collect preliminary information on the current situation within Member States while recognising that this position will evolve as the implementation process advances. Therefore, this part of the questionnaire will not be published in the Manual. Bearing this in mind, we kindly ask you to answer as much as possible to the questions even if it is the case that your Member State has not made a final decision in this regard.

In order to assist you in filling out the questionnaire we would like to highlight the existence of a previous questionnaire on this topic, sent out by the General Secretariat of the Council (see document 5968/07 COPEN 16), which may help you to answer our questions.

Member States are kindly requested to respond to this questionnaire by the **28<sup>th</sup> May 2010**. We understand that it will not be possible to reply thoroughly to the first part of the questionnaire by **the 28<sup>th</sup> May 2010**. Therefore, we will offer you a later opportunity, if necessary, to review your reply before publication of the Manual.

Please send your answers to the incoming belgian Presidency: [amandine.honhon@just.fgov.be](mailto:amandine.honhon@just.fgov.be) and [aude.vangrootenbruel@just.fgov.be](mailto:aude.vangrootenbruel@just.fgov.be), with copy to the General Secretariat of the Council: [secretariat.criminal-law@consilium.europa.eu](mailto:secretariat.criminal-law@consilium.europa.eu).

We thank you in advance for your cooperation and should you require further clarification please do not hesitate to contact Amandine Honhon by email ([amandine.honhon@just.fgov.be](mailto:amandine.honhon@just.fgov.be)) or by phone: +32 2 542 67 38.

## FIRST PART - Overview of the legal situation in the Member States

The first part will enable an analysis of probation measures provided at a national level. It aims to provide an overview of the current legal situation within each Member State.

### 1) Judgements and, where applicable, probation decisions entering into the scope of this Framework Decision (Article 2)

- a) Member States are asked to describe the judgments and, where applicable, probation decisions, as defined in Article 2, which have to be recognised by a Member State.

In this regard, Member States are asked to make a separated table for **each** judgement and **each** probation decision, entering into the scope of the Framework Decision and indicate for each one the following information.

Please find some examples enclosed in Annex I to assist you.

<b>(Please do not exceed 4 pages per table)</b>	
<b>Name of the judgement or the probation decision</b>	<i>Please state the name of judgement or the probation measure in English and in the original language.</i>
<b>Classification of this judgement or the probation decision</b>	<i>Please classify the above mentioned judgement or the probation decision into one of the categories set out in Article 2 of this Framework Decision:</i> <ul style="list-style-type: none"><li>• <i>suspended sentence;</i><sup>1</sup> <i>or,</i></li><li>• <i>conditional sentence;</i><sup>2</sup> <i>or,</i></li><li>• <i>conditional release;</i><sup>3</sup> <i>or,</i></li><li>• <i>alternative sanction.</i><sup>4</sup></li></ul>

<sup>1</sup> 'Suspended sentence' shall mean a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;

<sup>2</sup> 'Conditional sentence' shall mean a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation measures are imposed instead of a custodial sentence or measure involving deprivation of liberty. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority.

<sup>3</sup> 'Conditional release' shall mean a final decision of a competent authority or stemming from the national law on the early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served by imposing one or more probation measures.

<sup>4</sup> 'Alternative sanction' shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction.

<b>Legal basis of this judgement or the probation decision</b>	<i>Please give the reference to the legislation</i>
<b>Definition of this judgement or the probation decision</b>	<i>Please provide a definition of the judgement or the probation decision.</i>
<b>Legal Conditions of this judgement or the probation decision</b>	<i>Please specify the legal conditions for taking such judgement or probation decision (e.g kind of offences, criminal record, length, consent of the sentenced person...).</i>
<b>Type of probation measures</b>	<i>Please identify these measures (e.g. probation measures set out in Article 4).</i>
<b>Combination of sanctions or measures</b>	<i>Does your law provide the possibility to combine the above mentioned judgement or probation decision with other judgements or decisions (e.g. effective prison sentence combined with probation measures)? If so, please indicate these combinations.</i>
<b>Authority responsible for taking such a decision</b>	<i>Please give the name and composition of this authority</i>
<b>Authority responsible for supervising</b>	<i>Please give the name and composition of this authority. Also indicate the criteria on the basis of which the authority is designated (e.g. the residence of the supervised person is the determining factor). If possible, describe the tasks and responsibilities of this authority.</i>
<b>Authority responsible in case of infringement</b>	<i>Please give the name and composition of this authority. If possible, describe the tasks and responsibilities of this authority.</i>

**2) Probation measures and alternative sanctions (Article 4)**

In Article 4 of the Framework Decision types of probation measures and alternative sanctions are stated. Member States are asked to describe the probation measures and alternative sanctions attached to those judgements and probation decisions:

- a) In the table below please describe how probation measures and alternative sanctions set out in Article 4.1 are reflected in your domestic law and please give a description of each of them.

Please find some examples enclosed in Annex II to assist you.

<b>(Please do not exceed 1 page per measure or alternative sanction)</b>	
<b>Probation measures / alternative sanctions</b>	<b>Explanation</b>
<b>Obligation for the sentenced person to inform a specific authority of any change of residence or working place</b>	<i>Please give more information on this measure/sanction (e.g. limited to certain type of offences, special conditions...)</i>
<b>Obligation not to enter certain localities, places or defined areas in the issuing or executing State</b>	<i>Please give more information on this measure/sanction (e.g. limited to certain type of offences, special conditions...)</i>
<b>Obligation containing limitations on leaving the territory of the executing State</b>	<i>Please give more information on this measure/sanction (e.g. limited to certain type of offences, special conditions...)</i>

<b>Instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity</b>	<i>Please give more information on this measure/sanction (e.g. limited to certain type of offences, special conditions...)</i>
<b>Obligation to report at specified times to a specific authority</b>	<i>Please give more information on this measure/sanction (e.g. limited to certain type of offences, special conditions...)</i>
<b>Obligation to avoid contact with specific persons</b>	<i>Please give more information on this measure/sanction (e.g. limited to certain type of offences, special conditions...)</i>
<b>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</b>	<i>Please give more information on this measure/sanction (e.g. limited to certain type of offences, special conditions...)</i>
<b>Obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation</b>	<i>Please give more information on this measure/sanction (e.g. limited to certain type of offences, special conditions...)</i>
<b>Obligation to carry out community service</b>	<i>Please give more information on this measure/sanction (e.g. limited to certain type of offences, special conditions...)</i>

<b>Obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons</b>	<i>Please give more information on this measure/sanction (e.g. limited to certain type of offences, special conditions...)</i>
<b>Obligation to undergo therapeutic treatment or treatment for addiction</b>	<i>Please give more information on this measure/sanction (e.g. limited to certain type of offences, special conditions...)</i>

b) In your domestic law are there any probation measures and alternative sanctions which are not covered by Article 4.1?

- If yes, please define them and provide a description for each of them.

<b>Other probation measures/alternative sanctions existing in your domestic law</b>	<b>Explanation</b>
<i>Please indicate the additional probation measures and alternative sanctions provided for in your domestic law</i>	<i>Please give more information on this measure/sanction (e.g. limited to certain type of offences, special conditions...)</i>

c) Does your domestic law provide for a specific treatment regarding any category of offences (e.g. sexual offences, domestic violence)?

### 3) **Electronic monitoring**

Does your national law provide for the possibility to use Electronic Monitoring?

- If no, do you intend to provide Electronic Monitoring in the future?
- If yes:
  - Is Electronic Monitoring part of the classification provided for in Article 2 of this Framework Decision (suspended sentence, conditional sentence, conditional release or alternative sanction)?
  - Is Electronic Monitoring considered as an execution modality of imprisonment, if other than conditional release?
  - Is Electronic Monitoring considered a way of applying a probation measure or as a probation measure in itself?
  - What are the technical means provided for in your Member State that enables the use of the Electronic Monitoring (e.g. GPS)?
  - Is Electronic Monitoring dependant on particular conditions?

### 4) **Formalities**

Member States are invited to sum up the documents that the national competent authorities need in order to take at national level a judgement and, where applicable, a probation decision (e.g. criminal record, social inquiries, medical expertise).

## SECOND PART - Implementation of Framework Decision 2008/947/JHA

The second part of the questionnaire focuses on the implementation of this Framework Decision in the domestic law of each Member State.

As discussed in the introductory note, we kindly ask you to respond as much as possible to the questions, even if it is the case that your Member State has not yet made a final decision in this regard.

### 1) **Competent authorities for recognition, adaptation and supervision (Article 3)**

#### a) **Member State acting as the issuing State**

- Please indicate which judicial authority would be competent under your domestic law for forwarding a judgment and, where applicable, a probation decision to the competent authorities of the executing State.
- Please indicate the number and/or the type of authorities.
- Please explain the reasons for designating the above mentioned authority.

#### b) **Member State acting as the executing State**

- Please indicate which authority(-ies) would be responsible for acting in each following situations: recognition, adaptation and supervision of the judgments, probation decisions and probation measures.
- Please indicate the number and/or the type of authorities.
- Please explain the reasons for designating the above mentioned authority.

### 2) **Criteria (Article 5)**

Under which conditions would your competent authorities agree, at the request of the sentenced person, to forward a judgment and, where applicable, a probation decision for other reasons than the lawful and ordinary residence?

### 3) **Subsequent decisions**

- a) As an executing State, do you believe it will be necessary to use the possibility provided for in Article 14.3 and 14.5?
- If yes, in which particular cases would it be applied?
  - If no, which authority in your Member State would have jurisdiction to take all subsequent decisions, in particular when the sentenced person does not comply with a probation measure or an alternative sanction or commits a new criminal offence?
- b) In accordance with Article 17, which authority in your Member State (when acting as an issuing State) would have jurisdiction to take all subsequent decisions?

### 4) **Probation Measures**

Referring to your answer in Question 2b in the first part of the questionnaire (“*Other probation measures/alternative sanctions existing in your domestic law*”) which probation measures and alternative sanctions identified here would you agree to supervise, in accordance with Article 4.2?

### 5) **Formalities**

In reference to Article 15 of the Framework Decision, in order to facilitate its smooth and efficient application, which additional information would you deem useful (e.g. social inquiries, medical expertise)?

### 6) **Legal remedies/Appeals**

- a) What legal remedies/appeals are provided for in your domestic law regarding the use of this Framework Decision, as issuing as well as executing State?
- b) *If a decision according to Article 14.1(b) or (c) is taken by a competent authority other than a judicial authority, this Framework Decision requires a review of the decision by a judicial authority (Article 3.3). In that case, which legal remedies do you intend to provide for?*

**7) Electronic monitoring**

- a) According to your domestic law, does the Electronic Monitoring enter into the scope of this Framework Decision?
- b) In either case, would you include Electronic Monitoring in the implementation of the legislation for Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union?

**8) Statistics**

Do you have any impact analysis instrument that would enable an estimation of the number of cases to which this Framework Decision on Probation would apply?

If yes,

- o Please explain the principles and the methodology of your impact analysis instrument.
- o Please provide the conclusions of your impact analysis.

Even if you have not carried out an impact analysis, can you provide an estimation of the number of persons concerned (e.g. according to the number of the non-resident prisoners or the number of probation decisions).

**9) Languages (Article 21)**

In regard to Article 21 of this Framework Decision, do you intend to accept a translation in one or more other official languages of the institutions of the European Union?

### THIRD PART - Contact details

Please provide the contact details of person(s) in charge of the legal and practical implementation of Framework Decision 2008/947/JHA:

Name:

Organisation:

Function:

Phone number:

Email address:

Postal address:

Please provide the contact details of the person(s) who coordinated the response to this questionnaire:

Name:

Organisation:

Function:

Phone number:

Email address:

Postal address:

<b>(Please do not exceed 4 pages per table)</b>	
<b>Name of the judgement or the probation decision</b>	<p><i>Please state the name of judgement or the probation measure in English and in the original language.</i></p> <p>Le sursis probatoire (probationary suspended sentence)</p>
<b>Classification of this judgement or probation decision</b>	<p><i>Please classify the above mentioned judgement or the probation decision into one of the categories set out in Article 2 of this Framework Decision:</i></p> <ul style="list-style-type: none"> <li>• <i>suspended sentence;<sup>1</sup> or,</i></li> <li>• <i>conditional sentence;<sup>2</sup> or,</i></li> <li>• <i>conditional release;<sup>3</sup> or,</i></li> <li>• <i>alternative sanction.<sup>4</sup></i></li> </ul> <p>Suspended sentence</p>
<b>Legal basis of this judgement or probation decision</b>	<p><i>Please give the reference to the legislation:</i></p> <p>Law of 29 June 1964 concerning the conditional sentence, suspended sentence and probation</p>
<b>Definition of this judgement or probation decision</b>	<p><i>Please provide a definition of the judgement or the probation decision:</i></p> <p>The ‘sursis probatoire’ means that the judge pronounces a sentence (penalty of imprisonment of maximum 5 years or working penalty, and/or fines) but that the execution of all of these sentences or a part of them, is suspended for a certain period, during which the person concerned must fulfil certain conditions.</p> <p>The duration of the probationary time is decided by the judge and can run from 1 till 5 years from the date of the conviction or arrest.</p> <p>Within this period, if the sentenced person commits new offences or violates the probation conditions, the sentence may still be executed. At the end of a successful probationary period, the execution of the sentence can no longer be enforced.</p>

<sup>1</sup> ‘Suspended sentence’ shall mean a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;

<sup>2</sup> ‘Conditional sentence’ shall mean a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation measures are imposed instead of a custodial sentence or measure involving deprivation of liberty. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority.

<sup>3</sup> ‘Conditional release’ shall mean a final decision of a competent authority or stemming from the national law on the early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served by imposing one or more probation measures.

<sup>4</sup> ‘Alternative sanction’ shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction.

<b>Legal Conditions of this judgement or probation decision</b>	<p><i>Please specify the legal conditions for taking such judgement or probation decision (e.g kind of offences, criminal record, length, consent of the sentenced person).</i></p> <ul style="list-style-type: none"> <li>- The person concerned has not been earlier convicted to a criminal sentence or a prison sentence of more than 12 months.</li> <li>- The sentence pronounced by the judge is a working penalty or a prison sentence which does not exceed 5 years.</li> <li>- The duration of the probationary time is decided by the judge and can run from 1 till 5 years from the date of the conviction or arrest, but may not be longer than 3 years for minor offences (fines, working penalties and prison sentences which not exceed 6 months).</li> <li>- The commitment of the sentenced person to honour the probation measures is necessary</li> <li>- The judicial decision imposing the ‘sursis’ must state the reasons on which it is based.</li> </ul>
<b>Type of probation measures</b>	<p><i>Please identify these measures (e.g. probation measures set out in Article 4):</i></p> <p>The Belgian law does not provide for any exhaustive list of probation measures which can be imposed by the judge to the sentenced person. Therefore, it is at the sole discretion of the judge to determine any obligation deemed necessary, depending on the facts of the case submitted.</p> <p>Examples of probation measures are:</p> <ul style="list-style-type: none"> <li>- obligation to co-operate with the justice assistant on compulsory assistance;</li> <li>- obligation to receive budgeting assistance;</li> <li>- instruction to undergo a detoxification program;</li> <li>- instruction to undergo training schemes;</li> <li>- obligation to compensate financially for the prejudice caused by the offence</li> </ul>
<b>Combination of sanctions or measures</b>	<p><i>Does your law provide the possibility to combine the above mentioned judgement or probation decision with other judgements or decisions (e.g. effective prison sentence combined with probation measures)? If so, please indicate these combinations./</i></p>

<p><b>Authority responsible for taking such a decision</b></p>	<p><i>Please give the name and composition of this authority :</i></p> <p>All judgement jurisdictions.</p>
<p><b>Authority responsible for supervising</b></p>	<p><i>Please give the name and composition of this authority:</i></p> <p>A Probation Committee (administrative authority) follows up the observance of probation measures. This Commission is composed of a magistrate (chairman), a lawyer and a civil servant designated for a mandate of three years.</p> <p><i>Also indicate the criteria on the basis of which the authority is designated (e.g. the residence of the supervised person is the determining factor:</i></p> <p>This authority is designated on the basis of the residence of the supervised person at the time the judicial decision is considered as a final decision.</p> <p>When the convicted person does not have his/her residence in Belgium, the Probation Committee is designated on the basis of the place where the sentence in original jurisdiction has been pronounced.</p> <p><i>If possible, describe the tasks and responsibilities of this authority.</i></p> <p>The probation measures are supervised by a probation officer ‘assistant de justice’ - which is part of the Directorate general Houses of Justice of the Ministry of Justice - under the authority of the Probation Committee.</p> <p>In that regard, the probation officer performs a social guidance before, during and at the end of the observance of the probation measures and submits it to the Probation Committee. This social guidance includes a state of play of the execution of the probation measures and the eventual problems during the execution. It aims at supervising the respect of the conditions that are imposed.</p> <p>The Probation Committee takes its decision on the basis of this social guidance. It can adapt probation measures to new circumstances, but cannot make them more severe. Only the court is entitled to do this.</p>

<p><b>Authority responsible in case of infringement</b></p>	<p><i>Please give the name and composition of this authority.</i></p> <ul style="list-style-type: none"> <li>- The Probation Committees (see the answer above for their composition)</li> <li>- The Public Prosecutor</li> <li>- The criminal jurisdiction of the residence of the sentenced person.</li> </ul> <p><i>If possible, describe the tasks and responsibilities of this authority.</i></p> <p>There will be a legally revocation of the ‘sursis probatoire’ when the person commits, during the probationary period, a new offence for which he is convicted to a criminal penalty or a prison sentence without ‘sursis’ that exceeds 6 months.</p> <p>The ‘suris probatoire’ can also be revoked when:</p> <ul style="list-style-type: none"> <li>- the person violates the probation terms</li> <li>- the person commits, during the probationary period, a new offence for which he is convicted to a prison sentence which does not exceed 6 months.</li> </ul> <p>The Probation Committee reports to the Public Prosecutor on the revocation of the ‘sursis probatoire’. The Public Prosecutor summons the sentenced person before the criminal jurisdiction which can decide :</p> <ul style="list-style-type: none"> <li>- the revocation of the ‘sursis probatoire’ (and the execution of the prison sentence or the working penalty)</li> <li>- the continuation of the ‘sursis’ with the same probation terms</li> <li>- the continuation of the ‘sursis’ with new probation terms</li> </ul>
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<b>(Please do not exceed 4 pages per table)</b>	
<b>Name of the judgement or the probation decision</b>	<p><i>Please state the name of judgement or the probation measure in English and in the original language.</i></p> <p>La peine de travail (working penalty)</p>
<b>Classification of this judgement or the probation decision</b>	<p><i>Please classify the above mentioned judgement or the probation decision into one of the categories set out in Article 2 of this Framework Decision:</i></p> <ul style="list-style-type: none"> <li>• <i>suspended sentence;<sup>1</sup> or,</i></li> <li>• <i>conditional sentence;<sup>2</sup> or,</i></li> <li>• <i>conditional release;<sup>3</sup> or,</i></li> <li>• <i>alternative sanction.<sup>4</sup></i></li> </ul> <p>Alternative sanction</p>
<b>Legal basis of this judgement or the probation decision</b>	<p><i>Please give the reference to the legislation</i></p> <p>Criminal Code (Article 37 ter, quater and quinquies)</p>

<sup>1</sup> ‘Suspended sentence’ shall mean a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;

<sup>2</sup> ‘Conditional sentence’ shall mean a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation measures are imposed instead of a custodial sentence or measure involving deprivation of liberty. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority.

<sup>3</sup> ‘Conditional release’ shall mean a final decision of a competent authority or stemming from the national law on the early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served by imposing one or more probation measures.

<sup>4</sup> ‘Alternative sanction’ shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction.

<p><b>Definition of this judgement or the probation decision</b></p>	<p><i>Please provide a definition of the judgement or the probation decision.</i></p> <p>The working penalty is a sentence pronounced by a judge when the offender has committed facts which could lead (in this concrete case) to an imprisonment of maximum 5 years. The working penalty is pronounced as a <u>main penalty</u> instead of a custodial sentence.</p> <p>The judge has to foresee a penalty of imprisonment or a fine which can be applicable in case of non-execution of the working penalty (<u>subsidiary penalty</u>).</p>
<p><b>Legal Conditions of this judgement or the probation decision</b></p>	<p><i>Please specify the legal conditions for taking such judgement or probation decision (e.g kind of offences, criminal record, length, consent of the sentenced person).</i></p> <ul style="list-style-type: none"> <li>- The consent of the sentenced person is required</li> <li>- The working penalty may not be pronounced for certain offences such as hostage taking, rape, certain cases of indecent assault, sexual exploitation, minor prostitution, homicide and murder in order to facilitate a theft (Criminal code, Articles 347 bis, 375 to 377, 379 to 387, 393 to 397 and 475)</li> <li>- The duration of the working penalty may not be less than 20 hours nor exceed 300 hours. As an exception, it can run up to 600 hours in case of recidivism.</li> <li>- The working penalty must be executed in the twelve months following the date to which the judicial decision is considered as a final decision.</li> <li>- The working penalty must be executed without payment during the leisure activities of the sentenced person.</li> <li>- The working penalty may only be executed in public services, cities, provinces, communities and regions or for non-profit organisations.</li> </ul>

<b>Type of probation measures</b>	<p><i>Please identify these measures (e.g. probation measures set out in Article 4):</i></p> <p>Not applicable.</p>
<b>Combination of sanctions or measures</b>	<p><i>Does your law provide the possibility to combine the above mentioned judgement or probation decision with other judgements or decisions (e.g. effective prison sentence combined with probation measures)? If so, please indicate these combinations.</i></p> <p>Yes, the judge can foresee a suspended sentence for the whole or a part of the execution of the working penalty (with or without probation measures).</p>
<b>Authority responsible for taking such a decision</b>	<p><i>Please give the name and composition of this authority</i></p> <p>All judgement jurisdictions.</p> <p>The judge determines the duration of the working penalty and can give some indications concerning the concrete substance of this sentence.</p>
<b>Authority responsible for supervising</b>	<p><i>Please give the name and composition of this authority.</i></p> <p>A Probation Committee (administrative authority) follows up the observance of probation measures. This Commission is composed of a magistrate (chairman), a lawyer and a civil servant designated for a mandate of three years.</p> <p><i>Also indicate the criteria on the basis of which the authority is designated (e.g. the residence of the supervised person is the determining factor).</i></p> <p>This authority is designated on the basis of the residence of the supervised person at the time the judicial decision is considered as a final decision.</p> <p>When the convicted person does not have his/her residence in Belgium, the Probation Committee is designated on the basis of the place where the sentence in original jurisdiction has been pronounced.</p> <p><i>If possible, describe the tasks and responsibilities of this authority.</i></p> <p>After having heard the sentenced person and taken into account its observations, a probation officer ‘assistant de justice’ - which is part of the Directorate general Houses of Justice of the Ministry of Justice -</p>

	<p>determines the concrete substance of the working penalty, under the control of the Probation Committee.</p> <p>In that regard, the probation officer performs a social guidance before, during and at the end of the observance of the working penalty and submits it to the Probation Committee. This social guidance includes a state of play of the execution of the working penalty and the eventual problems during its execution. It aims at supervising the respect of the working penalty</p> <p>The Probation Committee takes its decision on the basis of this social guidance. It can adapt and precise the concrete substance of the working penalty.</p>
<p><b>Authority responsible in case of infringement</b></p>	<p><i>Please give the name and composition of this authority.</i></p> <p>The Probation Committees are also responsible in case of infringement (see the answer above for their composition).</p> <p><i>If possible, describe the tasks and responsibilities of this authority.</i></p> <p>In case of infringement (non or partial execution), the probation officer informs the Probation Committee, which convokes the sentenced person. After this hearing, the Probation Committee writes a report on the possible application of the subsidiary penalty (the fine or the imprisonment set out in the judicial decision).</p> <p>On the basis of this report, the Public Prosecutor can decide to maintain the working penalty or to execute the subsidiary penalty (fine or imprisonment), taking into account the part of the working penalty already carried out by the sentenced person.</p>

(Please do not exceed 1 page per measure or alternative sanction)	
Probation measures / alternative sanctions	<u>Explanation</u>
<b>Obligation not to enter certain localities, places or defined areas in the issuing or executing State</b>	<p><i>Please give more information on this measure/sanction (e.g. limited to certain type of offences, special conditions...)</i></p> <p><i>Preliminary remark for all the probation measures mentioned in Article 4: The Belgian law does not provide for any exhaustive list regarding the different obligations that can be imposed to the sentenced person. Therefore, it is at the sole discretion of the competent authority to determine any obligation deemed necessary, taking into account the need to prevent recidivism, the specific needs of the sentenced person and the interests of the victim.</i></p> <p><i>In that regard, the content of the obligation not to enter certain localities, places or defined areas depends on the circumstances of each specific case, and could be in particular :</i></p> <ul style="list-style-type: none"> <li><i>- obligation not to enter specific districts, cities, regions;</i></li> <li><i>- obligation not to enter specific places where children or minors are present (playgrounds, swimming pools,...)</i></li> <li><i>- obligation not to go to bars, dancings, ...</i></li> </ul> <p><i>The obligation is imposed by the judge but its concrete content is set up by the probation officer (“assistant de justice”). As it regards a negative obligation, the Police is responsible for the control and the follow-up of this obligation.</i></p>

<p><b>Instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity</b></p>	<p><i>Please give more information on this measure/sanction (e.g. limited to certain type of offences, special conditions...)</i></p> <p>The judge can provide for any kind of instructions relating to behaviour, residence, education and training, leisure activities and professional activity.</p> <p>For instance, the obligation not to take drugs or alcohol, not to live in the same neighbourhood as the victim (in case of harassment) or to follow a training in violence handling (gender violence).</p> <p>The usual wording of the obligation related to training, education or professional activity is frequently presented as following:</p> <p>‘Being employed or finishing an education/retraining programme and, when unemployed, actively searching for employment. Presenting proof of this to the assistant of justice.’</p> <p>A more specific interpretation of the condition concerning the nature of the employment and leisure activities is often not included, so the probation officer and the sentenced person can agree upon a relevant interpretation.</p> <p>However, a ban on practising particular activities (e.g. independent profession, employment in the catering industry...) can be imposed.</p>
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**Obligation to undergo therapeutic treatment or treatment for addiction**

*Please give more information on this measure/sanction (e.g. limited to certain type of offences, special conditions...)*

- A condition to get counselling or treatment within the framework of voluntary aid can be imposed. This form of aid depends on the nature of the issue (addiction issues, financial problems, aggression issues).

The usual wording of the obligation is the following :  
 ‘To get treatment for their alcohol problem in an appropriate setting according to the advice of the treating team (ambulatory or residential) and not to terminate this treatment without a positive advice of the institution’.

- In Belgium, the Federal Public Service of Justice has also a number of specific treatment and training projects to which they can refer. The selection of the projects depends on the location. Within the scope of the training project, the framework is defined clearly and a limited number of hours need to be achieved.

A number of specific programmes have been developed for domestic violence, sexual offences and drug related facts.

Below you will find a short overview of these treatment and training projects.

Issue/offer	Name	Max number of hours
Aggression Social skills Social defensibility	Center for lifeforming/ Centre for basic education	30 hours
Drugs issues	Specific centres for drug addiction	Tailored to the needs
Traffic offences	BIVV	20 hours
Sexual offences	Learning project for sexual offenders	30 hours
Lack of victim empathy	Victims in view	30 hours
Mediation of Restitution	Suggnomé Forum for Mediation	Tailored to the needs
Straightening out a tangle of issues/ providing insight into/ motivational/ behavioural alternatives	Offenders In-Sight	30 hours