

LUXEMBOURG

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.

PROBATIONARY SUSPENDED SENTENCE	
Name of the judgement or the probation decision	Le sursis probatoire (probationary suspended sentence)
Classification of this judgement or the probation decision	Suspended sentence
Legal basis of this judgement or the probation decision	The Act of 26 July 1986 on the suspension of the pronouncement of conviction, the suspension of enforcement, probation and rehabilitation, partially amending the Code of Criminal Procedure The Act of 6 March 2006 on simplified instruction and judicial control The Act of 3 rd March 2010 on corporate criminal liability
Definition of this judgement or the probation decision	The "sursis probatoire" means that the judge pronounces a sentence (penalty of imprisonment and/or fines) but that the execution of the whole or a part of this sentence, is suspended for a certain period of time, during which the person concerned must fulfil certain conditions. The duration of the probationary period is decided by the judge and may run from 3 till 5 years from the date of the judicial decision. Within this period, if the sentenced person commits new offences or violates the probation conditions, the sentence may be executed. At the end of a successful probationary period, the execution of the sentence can no longer be enforced.
Legal Conditions of this judgement or the	- The person concerned has not been sentenced to a prison sentence before or has been sentenced to a prison sentence for 12 months or less with suspension of enforcement. - The duration of the probationary time is decided by the judge and may run from 3 till 5 years.

<p>probation decision</p>	<p>The sentenced person must be informed by the judge about the consequences if the measures are not respected.</p>
<p>Type of probation measures</p>	<p>The defendants who are sentenced to a suspension of enforcement combined with a probation order, are subject to control and assistance measures in order to monitor their behaviour and their social rehabilitation. In addition to these measures, further conditions can be imposed. The Law, which provides these measures, states that those subject to the measures and conditions cited below must not have their freedom of thought, religious or political conditions contravened. The control measures are as follows:</p> <ul style="list-style-type: none"> - to reply to the Attorney General's or the probation officer's instructions; - to receive probation officers' visits, provide all necessary information and relevant documentation to enable the authorities to monitor their lifestyle; - to justify the reasons for any change of job or residence; - to inform the "Service Central d'Assistance Sociale" of any change in residence. <p>Further obligations that may be imposed on defendants and offenders are as follows:</p> <ul style="list-style-type: none"> - to carry out professional activities, to study or to attend professional training; - to establish residence in a specific place; - to be subject to monitoring and control measures and specific hospital care in the case of detoxification; - to contribute to family expenses or to pay alimony on a regular basis; - to pay damage claims incurred by the offence; - to carry out community service in accordance with the Attorney General's provisions. <p>Other measures may be taken by the judge even if they are not stated in the Law, based upon the facts of the case submitted.</p> <p>In this context, the 1986 Act considers community service as an auxiliary penalty: it is one of the special conditions of a probation order.</p>
<p>Combination of sanctions or measures</p>	<p>The law does not provide for any possibility of combination with other judgements or decisions.</p>
<p>Authority responsible for taking such a decision</p>	<p>All judgement jurisdictions.</p>
<p>Authority responsible for supervising</p>	<p>The head of the prosecution service is the Attorney General under the authority of the Minister of Justice. The Attorney General has appointed a member of the prosecution service, the Attorney General's delegate, to be responsible for the country's penal establishments and for decisions regarding probation matters (especially in the implementation of prison sentences). Another member of the prosecution service has been appointed by the Attorney General to be responsible for the SCAS, "Service Central d'Assistance Sociale", Central Service of Social Assistance, the Luxembourg Probation Service.</p> <p>In the main, the Attorney General or his delegate determines penal and probation policy, with the final approval of the Minister of Justice. A number of decision-makers and committees are consulted and involved in the decision-making process. These are the Grand Duke, the Attorney General or his delegate, and a committee currently referred to as the "Penitentiary</p>

	<p>Committee".</p> <p>A psychologist under the supervision of the Attorney General or his delegate runs the SCAS. Probation staff is part of the judicial administration and part of the Prosecution Service and therefore ultimately answerable to the Ministry of Justice.</p> <p>The Probation Service provides counselling, support and assistance and controls people under supervision and monitor conditions, provides reports to the different judicial authorities about the accused and convicted person's situations.</p>
Authority responsible in case of infringement	<ul style="list-style-type: none"> - The Probation Service - Public Prosecutor - the criminal jurisdiction which sentenced the person <p>These authorities can legally revoke the "sursis probatoire" when the person violates the probation terms during the probationary period. If there is no revocation, the jurisdiction could also impose new measures.</p>

COMMUNITY SERVICE	
Name of the judgement or the probation decision	Travail dans l'intérêt général / Community Service
Classification of this judgement or the probation decision	Alternative Sanction
Legal basis of this judgement or the probation decision	Act of 13 June 1994 on the penalty regime, amending articles 1-99 of Book 1 of the Penal Code
Definition of this judgement or the probation decision	<p>The community service is used as a principal sentence if the judge considers that the offence will not lead to a prison sentence of more than six months. The offender must complete unpaid community service of between 40 and 240 hours with a public or philanthropic organization or society, community, association or hospital.</p>
Legal Conditions of this judgement or the probation decision	<p>The offender's consent and presence at court is required; he or she may refuse to do community service. If he or she accepts, it has to be completed within 18 months from the sentence becoming irrevocable.</p> <p>If the offender has a paid job, community service can be completed outside his or her working hours. Statutory instructions and regulations that relate to night shifts, hygiene, security, the employment of women and juveniles, are also applicable.</p>

	Community service has to be manual or intellectual and has to be adapted to the offender's natural abilities and aptitudes. The social usefulness of the community service order and the perspectives of social and professional reintegration it offers to the offender have to be taken in to account.
Type of probation measures	Not applicable.
Combination of sanctions or measures	Community service is one of the options in cases where suspension of the pronouncement of conviction is combined with a probation order, and in cases where the suspension of enforcement of a penalty is combined with a probation order.
Authority responsible for taking such a decision	The Attorney General, who may temporarily suspend participation on serious medical, family, professional or social grounds, decides community service enforcement.
Authority responsible for supervising	The Attorney General in co-ordination with the SCAS determines in each individual case the nature of the community service (Decree of 20 September 1994).
Authority responsible in case of infringement	Where the agreed terms and conditions of community service are breached, a prison sentence of between two months and two years may be substituted. It is mainly the Probation Officer who is responsible in case of infringement. Based upon his report, the Public Prosecutor might take the decision to revoke the measure.

PROBATIONARY CONDITIONAL SENTENCE	
Name of the judgement or the probation decision	La suspension probatoire (probationary conditional sentence)
Classification of this judgement or the probation decision	Conditional sentence
Legal basis of this judgement or the probation	The Act of 26 July 1986 on the suspension of the pronouncement of conviction, the suspension of enforcement, probation and rehabilitation, partially amending the Code of Criminal Procedure The Act of 3 rd March 2010 on corporate criminal liability

decision	
Definition of this judgement or the probation decision	<p>The "suspension probatoire" means a judicial decision according to which the imposition of the sentence is suspended with the condition that the person complies with probation measures. The decision stops further proceedings unless it is revoked.</p> <p>The duration of the probationary period is decided by the judge and may run from 1 to 5 years from the date of the judicial decision.</p>
Legal Conditions of this judgement or the probation decision	<ul style="list-style-type: none"> - The consent of the person is required. - The offence is not likely to lead to a prison sentence superior to 2 years and it has been established. - The person concerned has not been sentenced to a prison sentence without probation or a worse sentence before. - The legal person has not been sentenced to a fine without probation or a worse sentence before. <p>The sentenced person must be informed by the judge about the consequences if the measures are not respected.</p>
Type of probation measures	<p>The defendants are subject to control and assistance measures in order to monitor their behaviour and their social rehabilitation. In addition to these measures, further conditions can be imposed. The Law, which provides these measures, states that those subject to the measures and conditions cited below must not have their freedom of thought, religious or political conditions contravened.</p> <p>The control measures are as follows:</p> <ul style="list-style-type: none"> - to reply to the Attorney General's or the probation officer's instructions; - to receive probation officer's visits, provide all necessary information and relevant documentation to enable the authorities to monitor their lifestyle; - to justify the reasons for any change of job or residence; - to inform the SCAS of any change in residence. <p>Further obligations that may be imposed on defendants and offenders are as follows:</p> <ul style="list-style-type: none"> - to carry out professional activities, to study or to attend professional training; - to establish residence in a specific place; - to be subject to monitoring and control measures and specific hospital care in the case of detoxification; - to contribute to family expenses or to pay alimony on a regular basis; - to pay damage claims incurred by the offence; - to carry out community service in accordance with the Attorney General's provisions. <p>Other measures can be taken by the judge even if they are not stated in the Law, based upon the facts of the case submitted.</p> <p>In this context, the 1986 Act considers community service as an auxiliary penalty: it is one of the special conditions of a probation order.</p>
Combination of sanctions or measures	<p>The law does not provide for any possibility of combination with other judgements or decisions.</p>
Authority responsible for taking	<p>All judgement jurisdictions.</p>

such a decision	
<p>Authority responsible for supervising</p> <p>Authority responsible in case of infringement</p>	<p>The head of the prosecution service is the Attorney General under the authority of the Minister of Justice. The Attorney General has appointed a member of the prosecution service, the Attorney General's delegate, to be responsible for the country's penal establishments and for decisions regarding probation matters (especially in the implementation of prison sentences). Another member of the prosecution service has been appointed by the Attorney General to be responsible for the SCAS, "Service Central d'Assistance Sociale", Central Service of Social Assistance, the Luxembourg Probation Service.</p> <p>In the main, the Attorney General or his delegate determines penal and probation policy, with the final approval of the Minister of Justice. A number of decision-makers and committees are consulted and involved in the decision-making process. These are the Grand Duke, the Attorney General or his delegate, and a committee currently referred to as the "Penitentiary Committee".</p> <p>A psychologist under the supervision of the Attorney General or his delegate runs the SCAS. Probation staff is part of the judicial administration and part of the Prosecution Service and therefore ultimately answerable to the Ministry of Justice.</p> <p>The Probation Service provides counselling, support and assistance and controls people under supervision and monitor conditions, provides reports to the different judicial authorities about the accused and convicted person's situations.</p> <ul style="list-style-type: none"> - The Probation Service - Public Prosecutor - the criminal jurisdiction which sentenced the person <p>These authorities can legally revoke the "sursis probatoire" when the person violates the probation terms during the probationary period. If there is no revocation, the jurisdiction could also impose new measures.</p>

CONDITIONAL RELEASE	
Name of the judgement or the probation decision	Libération conditionnelle (conditional release)
Classification of this judgement or the probation decision	Conditional release
Legal basis of this judgement or the probation	Article 100 of the Penal Code defining Parole ("Libération conditionnelle")

decision	
Definition of this judgement or the probation decision	Conditional release is considered as a way of enforcing a custodial sentence which enables the sentenced person to serve its sentence outside the prison, depending on the respect of the probation measures.
Legal Conditions of this judgement or the probation decision	<p>To be granted parole offenders must present "sufficient evidence of good conduct and serious grounds for believing them capable of social resettlement". All offenders may be granted parole. First offenders must have served at least half of their sentence. If the total sentence is less than six months parole can be granted after three months. Recidivists can be paroled if they have served at least two-thirds of their sentence. If the total sentence is less than nine months parole can be granted after 6 months. Offenders subject to a life sentence can be granted parole if they have served at least 15 years.</p> <p>In the case of a penalty of between a minimum of eight days and a maximum of five years, the probationary period must cover at least the remainder of the sentence to be served, or at most extend 12 months after the end of the sentence.</p> <p>In case of a penalty with a minimum of five years and maximum of life sentence, the probationary period is between 5 and 10 years.</p>
Type of probation measures	Parole can be run in conjunction with certain support and control measures, intended to assist and supervise the rehabilitation of the discharged prisoner.
Combination of sanctions or measures	The law does not provide for any possibility of combination with other judgements or decisions.
Authority responsible for taking such a decision	All judgement jurisdictions.
Authority responsible for supervising	<p>The head of the prosecution service is the Attorney General under the authority of the Minister of Justice. The Attorney General has appointed a member of the prosecution service, the Attorney General's delegate, to be responsible for the country's penal establishments and for decisions regarding probation matters (especially in the implementation of prison sentences). Another member of the prosecution service has been appointed by the Attorney General to be responsible for the SCAS, "Service Central d'Assistance Sociale", Central Service of Social Assistance, the Luxembourg Probation Service.</p> <p>In the main, the Attorney General or his delegate determines penal and probation policy, with the final approval of the Minister of Justice. A number of decision-makers and committees are consulted and involved in the decision-making process. These are the Grand Duke, the Attorney General or his delegate, and a committee currently referred to as the "Penitentiary Committee".</p> <p>A psychologist under the supervision of the Attorney General or his delegate</p>

	<p>runs the SCAS. Probation staff is part of the judicial administration and part of the Prosecution Service and therefore ultimately answerable to the Ministry of Justice.</p> <p>The Probation Service provides counselling, support and assistance and controls people under supervision and monitor conditions, provides reports to the different judicial authorities about the accused and convicted person's situations.</p>
Authority responsible in case of infringement	In case of breach of parole conditions, the Attorney General or his delegate decides whether or not to revoke the measure.

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.

Probation measures / alternative sanctions	Explanation
Obligation for the sentenced person to inform a specific authority of any change of residence or working place	This is a control measure which is an obligation in every judicial decision regarding probation. All those informations have to be reported without any delay to the probation officer in charge of the sentenced person.
Obligation not to enter certain localities, places or defined areas in the issuing or executing State	<p>This is an obligation not stated by the Luxembourg Law yet but imposed by the judge. It is more likely an obligation not to enter certain specific places e.g. places where drug addicts hang around.</p> <p>The Police is responsible for the control and the follow-up of this obligation.</p>
Obligation containing limitations on leaving the territory of the executing State	<p>This is an obligation not stated by the Luxembourg Law yet but imposed by the judge.</p> <p>The Police is responsible for the control and the follow-up of this obligation.</p>
Instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity	<p>Regarding professional activity, the sentenced person is often supposed to find work as soon as possible in order to pay its debts.</p> <p>A ban on practising particular activities is not considered as a measure but may be an auxiliary penalty.</p>

	Other examples are the obligations not to take drugs or alcohol, not to contact the victim (in case of harassment) or to follow a training in violence handling (gender violence).
Obligation to report at specified times to a specific authority	Regular appointments are set by the probation officer.
Obligation to avoid contact with specific persons	This obligation is often imposed in case of harassment.
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	The sentenced person may be obliged to avoid contact with specific objects such as alcohol, drugs or specific medicines.
Obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation	This is one of the most important obligations and together with the Probation Officer, a plan will be fixed in order to pay the civil parties as soon as possible and as much as possible.
Obligation to carry out community service	In this context, the 1986 Act considers community service as an auxiliary penalty: it is one of the special conditions of a probation order. But it can be the principal sentence.
Obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons	This is a control measure imposed by the Law. The Probation Service though offers also guidance and assistance.
Obligation to undergo therapeutic treatment or treatment for addiction	The wording of the obligation is normally quite general and in practice the sentenced person together with the SCAS will need to find the appropriate treatment.

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

Yes. However, some of the measures are not stated in the Law and they depend on each specific case if the judge will pronounce a probation measure that is not provided for in Article 4.1.

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

No

3) Electronic monitoring

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

Yes and No : this measure has been introduced in July 2006 and has been since then subject to an experimental period until now, where an evaluation should be realized in order to determine whether electronic monitoring constitutes an asset in and for Luxembourg's penal arsenal.

A specific legal framework for electronic surveillance does not exist for the moment; the current measure is implemented in the context of the suspension of sentences.

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).

The Prosecution Service, the examining magistrate, the examining authority and the sentencing authority may request the SCAS as a matter of course, or at the defendant's request to carry out a social enquiry on his behaviour, his social circumstances and background.

The 1986 Act states that the offender's personality, his development and any risk of recidivism will be taken into account in the implementation of prison sentences like prison leave, suspended penalty.