

# The Netherlands

## 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.

<b>Community service penalty</b>	
<b>Name of the judgement or the probation decision</b>	Community service penalty Taakstraf
<b>Classification of this judgement or the probation decision</b>	Alternative sanction.
<b>Legal basis of this judgement or the probation decision</b>	Art. 9.1.a.3° jo. art. 22b-22d of the Criminal Code.
<b>Definition of this judgement or the probation decision</b>	A community service penalty consists of the obligation to perform unpaid work.
<b>Legal Conditions of this judgement or the probation decision</b>	<p>- Unless a labour penalty is imposed in combination with a prison sentence, labour penalty (i.e. as a main sanction) cannot be imposed for:</p> <ul style="list-style-type: none"> <li>• for crimes sanctioned with 6 years of imprisonment or more according to the CC</li> <li>• crimes resulting in severe bodily harm</li> <li>• sex offences in which minors are involved</li> <li>• when the convict has breached a labour penalty in the past five years imposed for a similar crime</li> </ul> <p>- The duration of the community service penalty may not exceed 240 hours.</p> <p>- The community service penalty must be completed within eighteen months. In case of minors (16 till 18 years old) the community service must be completed within nine months when the community service has a maximum of 100 hours. When the duration of the community service is more than 100 hours, the community service must be completed within eighteen months, as in the case of community services imposed on adults.</p>

	<p>- Consent of the sentenced person is not required by law for the imposition of the community service penalty. In practice the community service penalty is generally not imposed without consent. The Dutch Probation Service assess if the suspected person is able to do community service.</p> <p>- In the sentence it is indicated which term of detention will be executed in case the community service penalty is not complied with. Every 2 hours of the community service penalty count for 1 day of detention (thus, the maximum duration of default detention is 120 days).</p> <p>- The community service penalty must benefit the community. Work is carried out with public bodies like municipalities or private organizations involved in health care, the environment and the protection of nature, and social and cultural work.</p>
<b>Type of probation measures</b>	N/A.
<b>Combination of sanctions or measures</b>	The community service penalty may be combined with a custodial sentence (of no more than 6 months duration), a suspended custodial sentence or a fine.
<b>Authority responsible for taking such a decision</b>	The criminal courts.
<b>Authority responsible for supervising</b>	<p>- The public prosecution service is generally responsible for supervising the execution of the community service penalty. The Dutch Probation Service informs the Public Prosecutor concerning the progress of the execution of the conditional sentence. The Central Judicial Collection Agency is responsible for realizing the execution; they make sure that all parties get the information they need to achieve execution of the sentence.</p> <p>- The probation service is responsible for administering and actually executing community service penalties. The assignment of workplaces where the penalty can be carried out is coordinated regionally by the probation service (which has currently 5 regions covering the whole country).</p>
<b>Authority responsible in case of infringement</b>	- The public prosecution service may order implementation of the default detention indicated in the sentence, if the person concerned has not (fully) complied with the obligations resulting from the imposed community service penalty. The prosecution service should take into account the part of the community service penalty that has been carried out properly. The probation service informs the public prosecution service about cases of failure to carry out the community service penalty.

	- The sentenced person can file an appeal against the order to implement the default detention. The appeal is dealt with by the court which imposed the community service penalty.
<b>Suspended sentence</b>	
<b>Name of the judgement or the probation decision</b>	Suspended (custodial) sentence Voorwaardelijke veroordeling
<b>Classification of this judgement or the probation decision</b>	Suspended sentence.
<b>Legal basis of this judgement or the probation decision</b>	Art. 14a-c; 14e of the Criminal Code.
<b>Definition of this judgement or the probation decision</b>	A suspended sentence is a custodial sentence, the execution of which is conditionally suspended, wholly or in part, when judgment is passed. The conditions attached to the suspension are included in the judgment. The conditions have to be complied with during a specified period of time.
<b>Legal Conditions of this judgement or the probation decision</b>	<ul style="list-style-type: none"> <li>- There is no restriction in the Criminal Code as to the kind of offences for which a suspended sentence may be imposed.</li> <li>- The Criminal Code sets out the following general limitations on the imposition of a suspended custodial sentence: <ul style="list-style-type: none"> <li>o a custodial sentence not exceeding 2 years may be suspended wholly or in part;</li> <li>o in case of a custodial sentence exceeding 2 years but not exceeding 4 years, a maximum of 2 years of that sentence may be suspended;</li> <li>o a custodial sentence of more than 4 years cannot be suspended.</li> </ul> </li> <li>- Consent of the sentenced person is not required by law for the imposition of a suspended sentence. In practice conditions (probation measures) are not imposed if the court does not believe that the sentenced person will observe them (in such a case the custodial sentence will not be suspended).</li> <li>- The length of the probation period is determined by the court. In most cases the maximum duration of the probation period is 3 years. In case of serious indications that the convict will again commit a serious crime involving bodily harm, a probation period of up to 10 years may be imposed.</li> </ul>
<b>Type of probation measures</b>	<ul style="list-style-type: none"> <li>- A suspended sentence is always subject to the general condition that the sentenced person shall not commit any criminal offence during the probation period.</li> <li>- It is left to the court's discretion to determine which other conditions should be attached to the suspension of the sentence (within the</li> </ul>

	<p>general limitations set by fundamental human rights and the requirements of proportionality).</p> <p>Many of the conditions mentioned in article 4 of the FD are regularly imposed in the Netherlands.</p> <p>- The obligation to carry out community service cannot be imposed as a condition attached to a suspended sentence, since in the Netherlands a community service penalty is an independent principal penalty.</p>
<b>Combination of sanctions or measures</b>	<p>A (wholly or partially) suspended (custodial) sentence may be combined with a community service penalty or a fine.</p> <p>The conditions mentioned in article 4 of the FD are regularly combined within one suspended sentence.</p>
<b>Authority responsible for taking such a decision</b>	<p>The criminal courts may decide to suspend a sentence and may determine the conditions attached to that suspension.</p>
<b>Authority responsible for supervising</b>	<p>- The public prosecution service is generally responsible for supervising compliance with the conditions attached to the suspended sentence. The Dutch Probation Service informs the Public Prosecutor concerning the progress of the execution of the community service. The Central Judicial Collection Agency is responsible for realizing the execution; they make sure that all parties get the information they need to achieve execution of the sentence.</p> <p>- In the judgement the probation service is ordered to assist the sentenced person with respect to the compliance with the conditions attached to the suspended sentence. Furthermore the probations service supervises this compliance.</p> <p>- The probation service informs the public prosecution service about the compliance through progress reports. Cases of non-compliance must be reported to the public prosecution service immediately.</p>
<b>Authority responsible in case of infringement</b>	<p>- In case of non-compliance with the conditions attached to the suspended sentence the public prosecutor may demand the revocation by the court of the suspended sentence.</p> <p>- The suspended sentence may be revoked wholly or in part. Instead of revocation, the court may extend the probation period, change the conditions attached to the suspended sentence or impose a community service penalty.</p>
<b>Conditional release</b>	
<b>Name of the judgement or the probation decision</b>	<p>Conditional release</p> <p>Voorwaardelijke invrijheidstelling</p>
<b>Classification of this judgement or the probation decision</b>	<p>Conditional release.</p>

<b>Legal basis of this judgement or the probation decision</b>	Art. 15a-i of the Criminal Code.
<b>Definition of this judgement or the probation decision</b>	Conditional release means that a person sentenced to a custodial sentence is conditionally released after part of that sentence has been served. The conditions have to be complied with during a specified period of time.
<b>Legal Conditions of this judgement or the probation decision</b>	<p>- A prisoner is eligible for conditional release provided he or she is sentenced to a term of imprisonment of more than 1 year.</p> <p>When the prison sentence is between one and two years, conditional release can be applied after one year and one third of the remaining part of the prison sentence has been served.</p> <p>For prison sentences of more than two years, the convicted person is eligible for conditional release after two thirds of the prison sentence, but conditional release cannot exceed a period of two years.</p> <p>Conditional release can be postponed for a maximum of 6 months</p> <p>- Crucial factors in a decision on conditional release are the behavior of the offender during the imprisonment, the risks involved in the release, and interests of the victims, relatives of the victims and relevant others.</p> <p>- Conditional release cannot be granted in case of a partly suspended prison sentence.</p> <p>- The length of the probation period is determined by the public prosecution service, but it cannot be longer than the remainder of the sentence. E.g. in case of a prison sentence of 9 years, the sentenced person is conditionally released after 7 years; the maximum probation period is 2 years.</p> <p>- Conditional release may be combined with electronic monitoring in order to control and monitor the compliance with the conditions.</p> <p>- Failure to comply with the conditions may lead to a full or partial revocation of the conditional release by the court.</p> <p>- Conditional release can take place at an earlier time, if the convicted person would have been released on parole at that earlier time, if enforcement had not been transferred to the Netherlands;</p> <p>- Conditional release can take place at a later time, if the possibility of conditional release at that later time has promoted the consent of the foreign authority to the transfer of the convicted person to the Netherlands.</p>

<b>Type of probation measures</b>	<ul style="list-style-type: none"> <li>- Conditional release is always subject to the general condition that the sentenced person shall not commit any criminal offence during the probation period.</li> <li>- It is left to the public prosecution service's discretion to determine which other conditions should be attached to conditional release (within the general limitations set by fundamental human rights and the requirements of proportionality). Several of the conditions mentioned in article 4 of the FD are regularly attached to conditional release in the Netherlands.</li> <li>- The obligation to carry out community service cannot be imposed as a condition attached to conditional release, since in the Netherlands a community service penalty is an independent principal penalty.</li> </ul>
<b>Combination of sanctions or measures</b>	<p>N/A.</p> <p>Combinations of conditions which could be imposed in the framework of conditional release are possible.</p>
<b>Authority responsible for taking such a decision</b>	<p>The public prosecution service is responsible to decide whether conditions should be attached to conditional release and if so, which conditions. The public prosecution takes this decision on the basis of advice by the Custodial Institutions Agency and the probation service.</p>
<b>Authority responsible for supervising</b>	<ul style="list-style-type: none"> <li>- The public prosecution service is generally responsible for supervising compliance with the conditions attached to conditional release.</li> <li>- The public prosecution service will order the probation service to assist the person concerned with respect to the compliance with the conditions attached to the conditional release. Subsequently, the probation service will supervise this compliance.</li> <li>- The probation service informs the public prosecution service about the compliance through progress reports. Cases of non-compliance must be reported to the public prosecution service immediately.</li> </ul>
<b>Authority responsible in case of infringement</b>	<ul style="list-style-type: none"> <li>- In case of non-compliance with the conditions attached to conditional release the public prosecutor may demand the revocation by the court of the conditional release.</li> <li>- The court may revoke conditional release wholly or in part.</li> <li>- If conditional release is revoked, the sentenced person is locked up to serve the remainder of the sentence (or a part of it determined by the court).</li> </ul>

## 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:

## PRELIMINARY REMARKS:

1. The probation measures as mentioned in Sec. 4 of the Framework Decision (FD) on Probation and Alternative Sanctions could in the Netherlands be used:

- a. as conditions attached to the suspension of a suspended custodial sentence;
- b. as conditions to the conditional release.

2. The obligation in the FD on Probation and Alternative Sanctions to **comply with community service** is according to the Dutch Criminal Code a principal sanction and cannot be imposed as a special condition. In the wording of the FD, community service/community service penalty can be classified as an 'alternative sanction'.

3. A suspended sentence and conditional release are always subject to the **general condition** that the sentenced person shall not commit any criminal offence during the probation period.

4. The list of conditions in Dutch law is not exhaustive and conditions may be **combined**. Some conditions may be controlled by **electronic monitoring**. Electronic monitoring must be imposed explicitly by the judge in the issuing state.

5. It is left to the court's (suspended sentence) and the public prosecutions service's (conditional release) discretion to determine which conditions should be attached (within the general limitations set by fundamental human rights and the requirements of proportionality). Many of the conditions mentioned in article 4 of the FD are regularly imposed in the Netherlands.

6. Other than in exceptional cases, the Dutch judiciary will always impose an obligation to report to the probation service ('meldingsgebod') if there are conditions attached to a suspended sentence or conditional release, in addition to any other obligations deemed necessary. This obligation to report is to ensure that the sentenced person appears at the probation service offices when the supervision of the imposed conditions starts. If the sentenced person does not appear after repeated requests to do so, this is seen as infringement of the obligation to report. The Dutch Probation Service thinks it would be difficult to carry out the supervision of the conditions without this obligation to report. That is why the Netherlands, in its capacity as executing state, is asking the other EU member states, in their capacity as issuing states, to impose an obligation to report as a matter of course in cases with a suspended sentence or conditional release. The table below lists the probation measures to which this does not apply.

7. In the Netherlands, the imposition of probation measures is always based on a thorough investigation carried out by the probation service during the criminal proceedings. The probation service

- determines the risk of the suspect reoffending, doing so by means of standardised diagnostic tools;
- indicates which probation measures would be appropriate and what the intensity of the supervision of the conditions should be;

· carries out a feasibility study that considers such aspects as the availability of the probation measures recommended.

In the opinion of the Dutch Probation Service, it would be undesirable for an EU member state to impose very specific probation measures in its capacity as the issuing state (e.g. a specific behavioural intervention such as the ones listed in the answer to question 2) without a detailed investigation of this nature. In such a case, there would be the risk that the behavioural intervention cannot be executed in the Dutch context. Instead of this, we would ask the member state to opt for a general wording of the probation measure as formulated in Article 4 of the FD. Alternatively, the member state could contact the Dutch competent authority during (rather than after) the criminal proceedings to enable an exploratory look at what would be the best way of realising the wishes of the issuing state in the case in question. This way the member states can prevent the necessity of adaptation of a sentence or measure to meet the Dutch judicial and practical frameworks.

**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
<b>Obligation for the sentenced person to inform a specific authority of any change of residence or working place</b>	<ul style="list-style-type: none"> <li>- This probation measure is not imposed as a separate condition in the Netherlands. The Netherlands is, however, able to supervise this condition.</li> <li>- In practice, this condition will be implemented in the form of an ‘obligation to report’.</li> <li>- As far as ‘change of residence’ is concerned, it is important to note that in the Netherlands the probation service registration system is linked to the municipal personal records database. Consequently, the probation service is always aware of a change of residence even if this condition has not been imposed (unless the sentenced person neglects to inform the municipality of his change of residence).</li> </ul>
<b>Obligation not to enter certain localities, places or defined areas in the issuing or executing State</b>	<ul style="list-style-type: none"> <li>- This probation measure is regularly imposed in the Netherlands (‘locatieverbod’);</li> <li>- Electronic monitoring may be used as a means of checking on compliance with this obligation. See question 3 for more information.</li> </ul>
<b>Obligation containing limitations on leaving the territory of the executing State</b>	This probation measure can be imposed as a separate condition in the Netherlands. Hence, the Netherlands are able to supervise this measure.
<b>Instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or</b>	The judge can issue many kinds of instructions relating to behaviour, residence, education and training, leisure

<p><b>modalities of carrying out a professional activity</b></p>	<p>activities and professional activities. The most common instructions concern:</p> <ul style="list-style-type: none"> <li>- Behavioural interventions that meet quality criteria specified by a commission that was set up to evaluate such behavioural interventions: <ul style="list-style-type: none"> <li>• Aggression Replacement Therapy (ART Wiltshire-NL)</li> <li>• Individual aggression regulation training</li> <li>• Stopping Domestic Violence (BORG)</li> <li>• Aggression &amp; alcohol abuse training</li> <li>• Training in cognitive skills</li> <li>• Training in cognitive skills for the mentally impaired</li> <li>• Training in work skills</li> <li>• Training in dealing with accommodation and living on your own</li> <li>• Training in budgetting</li> <li>• Lifestyle training programme</li> <li>• Short lifestyle training programme for addicted offenders</li> </ul> </li> <li>- Bans on drugs or alcohol. Physical checks may be used to confirm compliance with this condition.</li> <li>- Restriction to certain localities: the sentenced person is required to be at a specific locality at specified times during a specified period. This is only covered by the FD if it does not involve deprivation of liberty. Electronic monitoring may be used as a means of checking on compliance with this obligation. See question 3 for more information about electronic monitoring.</li> </ul> <p>In the Netherlands, it is not possible to impose professional disqualification by means of a suspended sentence or a conditional release (see recital 10 of the FD.)</p> <p>The Central Authority for FD 947 has very often contact with the Dutch International Desk, part of the Dutch Probation Service in case it is not completely clear if the Netherlands has an equivalent of an imposed instruction relating to behavior.</p>
<p><b>Obligation to report at specified times to a specific authority</b></p>	<ul style="list-style-type: none"> <li>- Other than in exceptional cases, the Dutch judiciary will always impose an obligation to report to the probation service' ('meldingsgebod') if there are conditions attached to a suspended sentence or conditional release, in addition to any other obligations deemed necessary. This obligation to report is to ensure that the sentenced person appears at the probation service offices when the supervision of the</li> </ul>

	<p>imposed conditions starts. See also preliminary remark no. 6 on this subject.</p> <p>- In the Netherlands, the obligation to report is also used to restrict the sentenced person's freedom of movement with the aim of introducing structure into daily life and assisting or checking compliance with other conditions.</p>
<b>Obligation to avoid contact with specific persons</b>	This probation measure is regularly imposed in the Netherlands (contactverbod).
<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>	<p>- This probation measure is not very well known as a separate probation measure in the Netherlands. What sometimes is imposed is a prohibition to use a computer and/or the internet in case of a conviction for the possession or distribution of child pornography. It should be noted here that it is difficult to check on this in the Dutch context.</p> <p>- A prohibition to drive a car is generally not imposed under this head, but as a specific measure provided for by the traffic regulations.</p>
<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>	<p>- This probation measure is usually not imposed in the framework of the conditional release, but can be imposed in the framework of a suspended sentence;</p> <p>- If this is the only condition attached to a conditional release or suspended sentence, it is not necessary to impose an obligation to report to the probation service (see preliminary remark no. 6)</p>
<b>Obligation to carry out community service</b>	<p>- This probation measure cannot be imposed as a condition to a suspended sentence or conditional release, as the community service penalty is an alternative sanction;</p> <p>- See answer to part 1, question 1, table 1 of this questionnaire concerning the community service penalty.</p>
<b>Obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons</b>	This is not a separate probation measure but a fixed condition under which probation measures and alternative sanctions are executed
<b>Obligation to undergo therapeutic treatment or treatment for addiction</b>	<p>This probation measure is regularly imposed in the Netherlands. It can involve:</p> <p>- an obligation to undergo outpatient treatment by a specialist or in a healthcare institution, which could include treatment for addiction (e.g. alcohol, drugs, gambling)</p>

	<p>- a stay in sheltered accommodation or emergency accommodation.</p> <p>The Netherlands also has a number of treatment programmes for aggression and domestic violence.</p> <p>The obligation to undergo treatment in the Netherlands may be imposed as a condition attached to a suspended sentence. A suspended sentence with this condition attached is generally not imposed without consent of the sentenced person, however consent is not required by law. It is general practice for the judge to ask the sentenced person to agree with the conditions / probation measures that are attached to the suspension of a custodial sentence. If the sentenced person does not consent to treatment, it will generally not be imposed as a condition to a suspended sentence.</p>
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**b) In your domestic law are there any probation measures and alternative sanctions which are not covered by Article 4.1?**

No

**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. In this context, Electronic monitoring is a means by which compliance with probation measures may be supervised. EM is not seen as an independent probation measure.

**- 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)?**

EM is not seen as an independent probation measure but as a means by which compliance with probation measures may be supervised. The Netherlands as executing state will not apply EM if EM is not explicitly part of the judgment sent by the issuing state.

**• Is Electronic Monitoring considered as an execution modality of imprisonment, if other than conditional release?**

No. A bill that would arrange this was rejected by the senate in 2014.

**• Is Electronic Monitoring considered a way of applying a probation measure or as a probation measure in itself?**

Electronic Monitoring is considered a means by which compliance with probation measures may be supervised.

**• What are the technical means provided for in your Member State that enables the use of the Electronic Monitoring (e.g. GPS)?**

EM may be static or dynamic.

- Static means that an alarm will be triggered if the person concerned removes himself from the transmitter which then loses contact with the bracelet around the ankle or wrist of the person concerned. For Static EM Radio Frequency Identification (RFID) is used.

- Dynamic means that the whereabouts of the person concerned can be tracked 24 hours a day through a GPS transmitter which is attached around the ankle or wrist of the person concerned. Dynamic EM is used as a means to apply 'obligations not to enter certain localities, places or defined areas'.

**• Is Electronic Monitoring dependent on particular conditions?**

The Netherlands as executing state will not apply EM if EM is not explicitly part of the judgment sent by the issuing state.

In the Netherlands, no suspect is automatically excluded from electronic monitoring because of the nature of the offence. Reasons for not applying Electronic Monitoring are the fact that it is not possible in practice for the suspect to keep to the agreements (e.g. because he/she has no acceptable place of residence) or are based on the probation service's assessment that the suspect will not keep to the agreements, which require strict compliance.

Electronic monitoring will only be recommended by the Dutch Probation Service if strictly necessary and only for suspects with a high risk of reoffending.

#### **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).

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All of the above and a report by the probation service.