

# Germany

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

**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>ISSUE OF A CUSTODIAL SENTENCE/YOUTH CUSTODY, THE EXECUTION OF WHICH IS SUSPENDED ON PROBATION</b>	
<b>Name of the judgement or the probation decision</b>	<p>Issue of a custodial sentence (1) / youth custody(2), the execution of which is suspended on probation</p> <p>Verurteilung zu Freiheitsstrafe (1) / Jugendstrafe (2), deren Vollstreckung zur Bewährung ausgesetzt wird</p>
<b>Classification of this judgement or the probation decision</b>	Suspended sentence
<b>Legal basis of this judgement or the probation decision</b>	<p>(1) §56 of the German Criminal Code (StGB)</p> <p>(2) §21 of the German Youth Court Act (JGG)</p>
<b>Definition of this judgement or the probation decision</b>	<p>"Verurteilung zu einer Freiheitsstrafe / Jugendstrafe, deren Vollstreckung zur Bewährung ausgesetzt wurde" means that the judge issues a custodial sentence, but that the execution thereof is conditionally suspended.</p> <p>The duration of the probationary period is decided by the judge and can run from 2 to 5 years with regard to a custodial sentence (1). It may subsequently be reduced to the minimum or prolonged to the maximum before its expiration.</p> <p>In case of youth custody (2): the probationary period can run from 2 to 3 years. It may subsequently be reduced to 1 year or, prior to its expiry, be extended to a maximum of 4 years.</p> <p>Within this period, if the sentenced person commits new offences or violates the probation conditions or directions, the sentence can be executed.</p>

<p><b>Legal Conditions of this judgement or the probation decision</b></p>	<p>The sentence pronounced does not exceed 2 years.</p> <p>Positive legal prognosis: it must be expected that the convicted person will not commit any crimes in future, considering his personality, his previous history, the circumstances of his crime, his conduct following the crime etc.</p> <p>In case of youth custody (2) exceeding one year, an additional condition is that the execution of the sentence is not required for the youth's personal development.</p>
<p><b>Type of probation measures</b></p>	<p>There are two types of probation measures.</p> <p>- On the one hand there are conditions (Auflagen). These are obligations (list is exhaustive):</p> <ol style="list-style-type: none"> <li>1. to make restitution to the best of ones ability for the harm caused by the offence;</li> <li>2. to pay a sum of money to a charitable organisation if this appears appropriate in light of the offence and the character of the offender;</li> <li>3. to perform community service; or</li> <li>4. to pay a sum of money to the public treasury (only with regard to custodial sentences (1) but not in the case of youth custody),</li> <li>5. to apologise personally to the aggrieved person (only in the case of youth custody k).</li> </ol> <p>- On the other hand there are directions (Weisungen). According to the German Criminal Code (1) these are obligations/instructions (list is not exhaustive):</p> <ol style="list-style-type: none"> <li>1. which relate to one's residence, education, work or leisure, or to the ordering of one's financial affairs;</li> <li>2. to report at certain times to the court or another authority;</li> <li>3. not to make or maintain contact with the victim, or certain persons or persons from a certain group who may induce one to commit further offences, nor to employ, train or harbour them;</li> <li>4. not to possess, carry or entrust to another for safekeeping, particular objects which could induce one to commit further offences; or</li> <li>5. to meet maintenance obligations.</li> </ol> <p>The following directions can only be imposed with the consent of the offender (§56c (3) of the German Criminal Code (StGB):</p> <ol style="list-style-type: none"> <li>1. undergo medical treatment of an invasive nature or treatment for addiction; or</li> <li>2. reside in a suitable home or institution.</li> </ol> <p>According to the German Youth Court Act (2), directions are instructions and prohibitions by which the youth can conduct his life and which are therefore intended to promote and guarantee his education. The judge may instruct the youth in particular (non-exhaustive list) to:</p> <ol style="list-style-type: none"> <li>1. comply with instructions relating to his place of residence,</li> <li>2. live with a family or in residential accommodation,</li> <li>3. accept a training position or employment,</li> <li>4. perform certain work tasks,</li> <li>5. submit himself to the care and supervision of a specific person (care assistant),</li> <li>6. attend a social skills training course,</li> <li>7. attempt to achieve a settlement with the aggrieved person (victim-offender mediation),</li> <li>8. avoid contact with certain persons or frequenting places providing public hospitality or entertainment, or</li> <li>9. attend a road-traffic training course.</li> </ol>

	<p>With the consent of the parent or guardian and the legal representative, the judge may also require the youth to undergo specialist rehabilitation treatment or treatment for addiction. If the youth is more than sixteen years old, such direction should be imposed only with his consent.</p> <p>Furthermore, the court can issue the direction according to both the German Criminal Code and the German Youth Court Act that the offender is put under the supervision and control of a probation officer.</p>
<p><b>Combination of sanctions or measures</b></p>	<p>If the offender through the commission of the offence enriched or tried to enrich himself, a fine which otherwise would not have been provided for or only provided for in the alternative may be imposed in addition to a custodial sentence (1) if this appears appropriate taking into consideration the personal and financial circumstances of the offender (§41 StGB).</p> <p>Under the criminal law governing young offenders, there are further possibilities to combine non-custodial penalties in particular, but also non-custodial and custodial penalties (§8 JGG k).</p>
<p><b>Authority responsible for taking such a decision</b></p>	<p>All courts of decision</p>
<p><b>Authority responsible for supervising</b></p>	<p>All courts of decision</p> <p>The court of decision is the competent authority for the revocation of the suspension. The residence of the supervised person determines the competent probation office which assists the court of decision in the supervision.</p> <p>The court shall supervise the conduct of the convicted person during the probation period and, in particular, the compliance with conditions and instructions as well as with offers made and assurances given.</p> <p>If the court has decided to place the convicted person under the supervision and guidance of a probation officer, the probation officer supervises the probation measures in addition to the court. The residence of the supervised person is the determining factor.</p> <p>The probation officer shall offer assistance and care to the convicted person. In cooperation with the court he shall supervise the fulfilment of any conditions and directions. He shall report on the way the convicted person is conducting himself at intervals determined by the court. He shall inform the court of gross or persistent violations of the obligations and instructions.</p> <p>According to the German Youth Court Act (2) the court of decision can transfer the supervision and the power of further decision to the youth court judge in the district where the youth resides. In case of youth custody, the execution of which is suspended on probation, the judge must place the youth under the supervision and guidance of a full-time probation officer.</p>
<p><b>Authority responsible in case of infringement</b></p>	<p>See the court responsible for supervision.</p> <p>The court revokes the suspension of the primary decision, if the convicted person:</p> <ol style="list-style-type: none"> <li>1. commits an offence during the probationary period showing that the expectation on which the suspension was based has not been fulfilled;</li> <li>2. grossly or persistently violates directions or persistently evades the</li> </ol>

supervision and guidance of the probation officer, thereby giving cause to fear that he will re-offend; or grossly or persistently violates conditions.

### SUSPENSION OF IMPOSITION OF YOUTH CUSTODY

<b>Name of the judgement or the probation decision</b>	Suspension of imposition of youth custody Aussetzung der Verhängung der Jugendstrafe
<b>Classification of this judgement or the probation decision</b>	Conditional sentence
<b>Legal basis of this judgement or the probation decision</b>	§27 JGG
<b>Definition of this judgement or the probation decision</b>	<p>"Aussetzung der Verhängung der Jugendstrafe" means that the judge issues (only) a finding as to the youth's guilt while suspending the decision to impose youth custody for a probationary period which the judge fixes.</p> <p>The probationary period may not exceed 2 years', nor be of less than 1 year duration.</p> <p>The youth shall be placed under the supervision and guidance of a probation officer for all or part of the probationary period.</p>
<b>Legal Conditions of this judgement or the probation decision</b>	After exhausting all forms of investigation, there can be no certainty as to whether while committing the criminal offence the youth's harmful inclinations were demonstrated to such an extent as to necessitate imposition of youth custody.
<b>Type of probation measures</b>	The statements regarding §21 JGG (2) apply here as well.
<b>Combination of sanctions or measures</b>	The statements regarding §21 JGG (2) apply here as well.
<b>Authority responsible for taking such a decision</b>	The statements regarding §21 JGG (2) apply here as well.
<b>Authority responsible for supervising</b>	The statements regarding §21 JGG (2) apply here as well.

<b>Authority responsible in case of infringement</b>	The statements regarding §21 JGG (2) apply here as well.
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<b>CONDITIONAL EARLY RELEASE - FIXED - TERM IMPRISONMENT, CONDITIONAL EARLY RELEASE - LIFE IMPRISONEMENT, SUSPENSION OF REMAINDER OF YOUTH CUSTODY</b>	
<b>Name of the judgement or the probation decision</b>	<p>Conditional early release - fixed-term imprisonment (1), Conditional early release - life imprisonment (1), Suspension of remainder of youth custody (2)</p> <p>Aussetzung des Strafrests bei zeitiger Freiheitsstrafe bzw. lebenslanger Freiheitsstrafe (1), Aussetzung des Restes der Jugendstrafe (2)</p>
<b>Classification of this judgement or the probation decision</b>	Conditional release
<b>Legal basis of this judgement or the probation decision</b>	<p>(1) §§57, 57a StGB</p> <p>(2) §88 JGG</p>
<b>Definition of this judgement or the probation decision</b>	<p>The further execution of a custodial sentence/youth custody can be suspended if certain criteria are fulfilled.</p> <p>In case of fixed-term imprisonment the duration of the probationary period is decided by the judge and can run from 2 to 5 years (1). It may subsequently be reduced to the minimum or prolonged to the maximum before its expiration.</p> <p>In case of youth custody (2): the probationary period can run from 2 to 3 years. It may subsequently be reduced to 1 year or, prior to its expiry, be extended to a maximum of 4 years.</p> <p>For life imprisonment (1) it should be noted that the duration of the probationary period is 5 years.</p>
<b>Legal Conditions of this judgement or the probation decision</b>	<p>§57 - <i>fixed-term imprisonment</i>(1)</p> <p>a) The court shall grant conditional early release from a fixed-term sentence of imprisonment under an operational period of probation, if:</p> <ol style="list-style-type: none"> <li>1. two thirds of the imposed sentence, but not less than two months, have been served; and</li> <li>2. the release is appropriate considering the interests of public safety and security; and</li> <li>3. the convicted person consents.</li> </ol>

The decision shall particularly consider the personality of the convicted person, his previous history, the circumstances of his offence, the importance of the legal interest endangered should he re-offend, the conduct of the convicted person while serving his sentence, his circumstances and the effects that an early release are to be expected to have on him.

b) After one half of a fixed-term sentence of imprisonment, but not less than six months, have been served, the court may grant conditional early release, if:

1. the convicted person is serving his first sentence of imprisonment, the term not exceeding two years; or
2. a comprehensive evaluation of the offence, the personality of the convicted person and his development while in custody warrant the acceptance of special circumstances, and the remaining requirements pointed out under letter a) above have been fulfilled.

*§57 a - life imprisonment(1)*

The court shall grant conditional early release from a sentence of imprisonment for life under an operational period of probation, if:

1. fifteen years of the sentence have been served;
2. the particular seriousness of the convicted person's guilt does not require its continued enforcement; and
3. the release is appropriate considering the interests of public safety and security; and the convicted person consents.

The maximum duration of youth custody (2) shall be 5 years. If the act constitutes a serious criminal offence for which general criminal law prescribes a maximum sentence of more than 10 years, the maximum period in youth custody shall be 10 years. Conditional early release from youth custody can be granted if the convicted person has served part of the sentence and if conditional early release can be justified given his development and also having due regard to the interests of public safety and security. If six months of the sentence have not yet been served, an order to suspend execution of the remainder may only be issued on particularly important grounds. In the case of youth custody exceeding 1 year, the suspension of execution of the remainder shall only be permissible if the convicted person has served at least one third of the penalty.

The decision with regard to all three: fixed-term imprisonment, life imprisonment and youth custody, shall particularly consider the personality of the convicted person, his previous history, the circumstances of his offence, the importance of the legal interest endangered should he re-offend, the conduct of the convicted person while serving his sentence, his circumstances and the effects that an early release are to be expected to have on him.

<p><b>Type of probation measures</b></p>	<p>Statements regarding §56 StGB and §21 JGG apply mutatis mutandis.</p>
<p><b>Combination of sanctions or measures</b></p>	<p>N/A</p>
<p><b>Authority responsible for taking such a decision</b></p>	<p>Strafvollstreckungskammer bei dem Landgericht (chamber for the execution of sentence at the regional court) (1).</p> <p>According to the German Youth Court Act (2) the youth court judge as the enforcement officer shall also perform the tasks assigned by the German Code of Criminal Procedure to the "Strafvollstreckungskammer bei dem Landgericht". Where the convicted person has reached twenty-four years of</p>

	<p>age, the competent enforcement officer may refer enforcement of the youth penalty executed according to the provisions applicable to execution of adult penalties, or of a measure of reform and prevention, to the executing authority having jurisdiction under the provision of general law if execution of the penalty or the measure is likely to continue longer and, in light of the convicted person's personality, the basic characteristics special to youth criminal law are no longer significant to future decisions. In this case the aforementioned statements regarding the suspension of the measure by the "Strafvollstreckungskammer bei dem Landgericht" apply here as well.</p>
<p><b>Authority responsible for supervising</b></p>	<p>If the convicted offender has served a part of the sentence the chamber for the execution of sentence located at the regional court in the district where the penal institution is located will be the competent authority for the decision on the suspension of the remainder of the sentence and the supervision.</p> <p>As, in terms of competence, the chamber for the execution of sentence replaces the court of decision, the statements regarding §56 StGB and §21 JGG apply here as well.</p> <p>The statements regarding the authority responsible for taking such a decision according to the German Youth Court Act apply here as well.</p>
<p><b>Authority responsible in case of infringement</b></p>	<p>See the court responsible for supervision.</p> <p>Statements regarding §56 StGB and §21 JGG apply here as well.</p> <p>The statements regarding the authority responsible for taking such a decision according to the German Youth Court Act apply here as well.</p>

<b>IMMEDIATE ORDER FOR SUSPENDED MEASURE</b>	
<p><b>Name of the judgement or the probation decision</b></p>	<p>Immediate order for suspended measure</p> <p>Aussetzung zugleich mit der Anordnung einer Maßregel</p>
<p><b>Classification of this judgement or the probation decision</b></p>	<p>Suspended sentence</p>
<p><b>Legal basis of this judgement or the probation decision</b></p>	<p>(1) §67b StGB</p> <p>(2) §7 (1) JGG</p>
<p><b>Definition of this judgement or the probation</b></p>	<p>The court had to impose a mental hospital order (§63 StGB)[1] or a custodial addiction treatment order (§64 StGB)[2] but had to order that the measures in question do not have to be executed.</p>

<b>decision</b>	
<b>Legal Conditions of this judgement or the probation decision</b>	<p>If the court makes a psychiatric hospital order or a custodial addiction treatment order it shall suspend the measure for an operational probationary period if special circumstances justify the expectation that the purpose of the measure may be achieved in this manner. A suspension shall not be ordered if the person is to serve a sentence of imprisonment imposed at the same time as the measure and which has not been suspended.</p> <p>The order for suspension shall automatically lead to the person being subjected to supervision (Führungsaufsicht).</p>
<b>Type of probation measures</b>	<p>The court may, for the duration of the supervision or for a shorter period, direct the convicted person (list is exhaustive) :</p> <ol style="list-style-type: none"> <li>1. not to leave his place of domicile or his residence or a specified area without the permission of the supervising authority;</li> <li>2. not to frequent specified places which may induce him to commit further offences;</li> <li>3. not to make or maintain contact with the victim, or certain persons or persons from a certain group who may induce him to commit further offences, nor to employ, train or harbour them;</li> <li>4. not to engage in particular activities which in certain circumstances may be exploited for criminal purposes;</li> <li>5. not to possess, carry or entrust to another for safekeeping particular objects which could induce him to commit further offences;</li> <li>6. not to possess or drive motor-vehicles or particular types of motor-vehicles or other vehicles, which in certain circumstances may be misused by him for criminal purposes;</li> <li>7. to report at particular times to the supervising authority, to another public authority or to the probation officer;</li> <li>8. to report promptly every change of residence or employment to the supervising authority;</li> <li>9. to report in case of unemployment to the Public Employment Agency or to another authorised employment agency;</li> <li>10. not to consume alcohol or other drugs, if based on certain information there is reason to believe that their consumption will contribute to the commission of future offences, and to undergo alcohol and drug tests of a non-invasive nature; or</li> <li>11. to present himself at certain times or at certain intervals to a doctor, a psychotherapist or the forensic outpatients' service.</li> </ol> <p>The court may also, for the duration of the supervision or for a shorter period, give directions to the convicted person, particularly in relation to education, employment, leisure, ordering of financial affairs, or the fulfilment of maintenance obligations. The court may direct the convicted person to undergo (outpatient) psychiatric, psycho-or sociotherapy (therapy direction). §56c (3)[3] shall apply mutatis mutandis, also for the direction to undergo invasive alcohol or drug tests.</p>
<b>Combination of sanctions or measures</b>	Combination with suspended sentence of imprisonment.
<b>Authority responsible for taking such a decision</b>	<p>The local court (Amtsgericht) may not order committal to a psychiatric hospital. It is the criminal division of the regional court (Landgericht) which has to decide. The regional courts shall be composed of a president, two presiding judges and two lay judges.</p> <p>Custodial addiction treatment can be ordered by the local and regional</p>



	courts.
<b>Authority responsible for supervising</b>	<p>Court of decision together with the supervising authority which is established either within the regional court or the social services. The supervising authority is organised either as part of the regional court or the social services. The supervising authority has its own competence to undertake investigations in order to control the supervised person.</p> <p>The residence of the supervised person is the determining factor for the designation of the authority, whereas the court of decision will always be designated to decide in case of infringement of the measures.</p>
<b>Authority responsible in case of infringement</b>	Court of decision, see above.

<b>SUSPENDED EXECUTION OF DETENTION MEASURE</b>	
<b>Name of the judgement or the probation decision</b>	<p>Suspended execution of detention measure</p> <p>Aussetzung der Vollstreckung der Unterbringung</p>
<b>Classification of this judgement or the probation decision</b>	Conditional Release
<b>Legal basis of this judgement or the probation decision</b>	<p>(1) §67d (2) StGB</p> <p>(2) §7 (1) JGG</p>
<b>Definition of this judgement or the probation decision</b>	The further execution of a detention measure can be suspended, if certain criteria are fulfilled.
<b>Legal Conditions of this judgement or the probation decision</b>	<p>If no maximum period for the detention measure has been provided or the period has not yet expired, the court shall suspend the measure for an operational probationary period if it can be expected that the person subject to the measure will not commit any more unlawful acts if released. The order for suspension shall automatically lead to the person being subjected to supervision (Führungsaufsicht).</p> <p>The court may review at any time whether the further enforcement of the custodial measure should be suspended or the measure be declared</p>

	<p>terminated. It must perform the review within specified periods. The specified periods shall be six months for a custodial addiction treatment order; one year for a mental hospital order; two years for incapacitated orders (§ 67e StGB).</p>
<b>Type of probation measures</b>	<p>Statements regarding §67b StGB apply mutatis mutandis</p>
<b>Combination of sanctions or measures</b>	<p>N/A</p>
<b>Authority responsible for taking such a decision</b>	<p>"Strafvollstreckungskammer bei dem Landgericht" (Chamber for the execution of sentence at the regional court with three professional judges- §462a (1), first sentence StPO (German Code of Criminal Procedure), §78b (1) GVG (Courts Constitution Act) -</p> <p>The chamber for the execution of sentence at the regional court has to review the decision with three professional judges within specified periods (1 year for the mental hospital order, 6 months for the custodial addiction treatment order)and is responsible for the decision on a suspension of the orders. (1)</p> <p>According to the German Youth Court Act (2) the youth court judge as the enforcement officer shall also perform the tasks assigned by the German Code of Criminal Procedure to the "Strafvollstreckungskammer bei dem Landgericht". Where the convicted person has reached twenty-four years old, the competent enforcement officer may refer enforcement of the youth penalty executed according to the provisions applicable to execution of adult penalties, or of a measure of reform and prevention, to the executing authority having jurisdiction under the provision of general law if execution of the penalty or the measure is likely to continue longer and, in light of the convicted person's personality, the basic characteristics special to youth criminal law are no longer significant to future decisions. In this case the aforementioned statements regarding the suspension of the measure by the "Strafvollstreckungskammer bei dem Landgericht" apply here as well.</p>
<b>Authority responsible for supervising</b>	<p>Chamber for the execution of sentence as the competent authority for the suspension of the order with three professional judges on the basis of the reports of the supervising authority and the probation officer. See also statements regarding §67b StGB.</p> <p>The statements regarding the authority responsible for taking such a decision according to the German Youth Court Act apply here as well.</p>
<b>Authority responsible in case of infringement</b>	<p>Chamber for the execution of sentence (for composition see above) is competent to alter the measures and to revoke the suspension.</p> <p>The statements regarding the authority responsible for taking such a decision according to the German Youth Court Act apply here as well.</p>

## 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.**

*Preliminary remark for all the probation measures mentioned in Article 4: German law does not provide for any exhaustive list regarding the different directions that can be imposed on the sentenced person. On the other hand the so-called conditions are exhaustive. It applies to all of them that no unreasonable demands shall be made of the convicted person nor of the convicted person's lifestyle.*

The probation officer monitors the fulfilment of directions and conditions. He does not have the right to pronounce new directions or conditions; the court cannot delegate this power to the probation officer.

<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>	The aim of this obligation is to monitor the offender. The notice has to be given to the court supervising the probation or to the probation officer.
<b>Obligation not to enter certain localities, places or defined areas in the issuing or executing State</b>	The content of this obligation depends on the circumstances of each specific case and could be e.g. the obligation not to enter specific places where children or minors are present or not to enter pubs etc.
<b>Obligation containing limitations on leaving the territory of the executing State</b>	This obligation should only be imposed if it is a prerequisite to achieve the aim of probation, in particular not to commit further offences.
<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>German law provides a broad range of instructions in this field. Courts have ruled the following instructions permissible: not to work as an independent businessman; to resist contact with minors during work. On the other hand it was ruled impermissible to instruct the offender to finish a certain form of training in a certain company. For maintenance obligations it may be permissible to order the offender to take a job pursuant to his personal abilities.</p> <p>The permissibility of the different instructions depends therefore on a case-by-case analysis. It should be kept in mind that under German law in regard to directions no unreasonable demands should be made of the convicted person's lifestyle.</p> <p>According to the German Youth Court Act (2) the youth may be instructed to live with a family or in residential accommodation. Generally, this direction is only permissible with the consent of the parent or guardian, who is responsible for the determination of the youth's residence.</p>
<b>Obligation to report at specified times to a specific authority</b>	The direction may be accompanied by the duty to report to the court, police or probation officer. Non-government authorities may be sufficient.
<b>Obligation to avoid</b>	It has to be kept in mind that directions in this regard have to be

<p><b>contact with specific persons</b></p>	<p>very specific in order to be permissible. The direction e.g. not to associate with persons who are considered to be Neonazis is too unspecific. It also has to be kept in mind that directions in this regard should be possible to supervise as well as feasible for the offender.</p>
<p><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>	<p>In particular, weapons and drugs are relevant objects. The obligation to avoid contact can lead to an obligation to hand the mentioned object over to the authorities.</p>
<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>	<p>In contrast to the above mentioned obligations, this obligation is a so-called condition under German law.</p> <p>As for directions, no unreasonable demands shall be made of the convicted person.</p> <p>In this regard the court may order the convicted person to make restitution to the best of his ability for the harm caused by the offence.</p>
<p><b>Obligation to carry out community service</b></p>	<p>The court has to determine the manner, time and location as well as the institution where the offender has to carry out his service. It cannot delegate this determination to a probation officer.</p> <p>The usual wording of the condition is usually as follows:</p> <p>"It is ordered that the convicted person has to carry out 50 hours of community service within 3 months for the xy institution in accordance with its more detailed specification."</p>
<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></p>	<p>The court shall place the convicted person under the supervision and guidance of a probation officer for all or part of the probation period if this appears necessary in order to prevent him from committing offences.</p> <p>The court shall typically issue such an order if it suspends a sentence of imprisonment of more than nine months and the convicted person is less than twenty-seven years of age.</p>
<p><b>Obligation to undergo therapeutic treatment or treatment for addiction</b></p>	<p>A direction to undergo medical treatment of an invasive nature or treatment for addiction may only be given with the consent of the convicted person. A direction for medical treatment which is not of an invasive nature, such as a psychotherapeutic treatment, could be issued without the consent of the convicted person.</p> <p>In-patient treatment always requires the consent of the convicted person.</p> <p>Dangerous treatments are not permissible, e.g. the application of medication with severe side effects.</p> <p>According to the German Youth Court Act (2) the judge may also require the youth - with the consent of the parent or guardian and</p>

the legal representative - to undergo specialist rehabilitation treatment or treatment for addiction. If the youth is more than sixteen years of age, such direction should be imposed only with his consent.

**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.**

Other probation measures/alternative sanctions existing in your domestic law	Explanation
<b>Obligation to pay a sum of money to a charitable organisation</b>	This can only be ordered if it appears appropriate in light of the offence and the character of the offender. In every day court decisions this is one of the most ordered probation conditions apart from the obligation to perform community services. The amount of money has to be proportionate to the level of guilt.
<b>Obligation to pay a sum of money to the public treasury</b>	This obligation basically means a fine in combination with a custodial sentence which is conditionally suspended.
<b>Obligation to follow instructions which relate to the ordering of the offender's financial affairs</b>	This can take the form of an obligation to attend debt counselling.
<b>Obligation to meet maintenance obligations</b>	Whoever evades a statutory maintenance obligation so that the necessities of the person entitled to maintenance are endangered or would be endangered without the assistance of others, can be subject to this obligation.

According to the German Youth Court Act (2) the following conditions (Auflagen) and directions (Weisungen)[4] can be considered as probationary measures as well:

Other probationary measures	Explanation
<b>Obligation to attempt to achieve a settlement with the aggrieved person (victim-offender mediation)</b>	Notwithstanding the settlement regarding material harm, the victim-offender mediation comprises a non-material settlement, i.e. an apology, reconciliation between the offender and the victim. It takes place out of court.
<b>Obligation to attend a road-traffic training course</b>	This direction aims on the one hand at teaching road-traffic rules, whilst on the other hand also referring to the more fundamental issue of consideration for other people; it also includes additional training for drink drivers.

<b>Obligation to apologise personally to the aggrieved person</b>	This condition should be fulfilled in the presence of the judge, i.e. during the main hearing.
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**c) Does your domestic law provide for a specific treatment regarding any category of offences (e.g. sexual offences, domestic violence)?**

No. According to §56c StGB the court shall impose directions for the duration of the operational period if the convicted person requires such assistance to abstain from committing offences. The non-exhaustive list of possible directions applies to all convicted persons and not only to those who committed a certain kind offence e.g. sexual offences.

For those offenders who are put under supervision (cases of §67b and §67d (2) StGB) the court may direct the convicted person to undergo psychiatric, psycho- or sociotherapy (therapy direction).

**3) Electronic monitoring**

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

a) Order within the scope of probation instructions

Pursuant to §56c (1), first sentence of the Criminal Code (*Strafgesetzbuch* - StGB), the court will issue instructions to the person convicted for the duration of the probation period if he needs such help in order to avoid committing additional criminal offences. §56c (2) no. 1 StGB provides in particular that the court may instruct the convicted person to follow orders which relate to his residence and leisure time. According to the consistent past decisions of the German courts, electronically monitored house arrest may be based upon this provision if such instruction is in line with the purpose of promoting the reintegration of the offender. However, the instruction may be issued only with the consent of the convicted person (cf. Frankfurt/Main Regional Court, order of 6 December 2000, file no.: 5/27 Qs 64/00).

b) Order within the scope of supervision of conduct

Since 1 January 2011, federal national law expressly provides in §68b (1), first sentence no. 12 StGB for the possibility of electronic monitoring within the scope of supervision of conduct. Supervision of conduct is a measure of reform and prevention. By virtue of law, it will be applicable when measures of reform and prevention which involve deprivation of liberty (preventive detention or placement in a psychiatric hospital or in a detoxification facility) are suspended on probation. Pursuant to §68b (1), first sentence, no. 12 StGB electronic monitoring can be issued to specific dangerous offenders without the consent of the convicted person. If the convicted person refuses to carry the devices necessary for the electronic monitoring, he or she may be held criminally responsible.

In addition, an order of electronic monitoring may in principle also be made pursuant to §68b (2), first sentence, StGB. For the duration of the supervision of conduct, the court may issue instructions to the convicted person which relate inter alia to education, work or leisure time. Such instructions might include carrying on one's person the technical means to enable electronic monitoring. However, consent by the convicted person is - in contrast to §68b (1), first sentence, no. 12 StGB - a prerequisite for this. On the other hand, one has to stress that electronic monitoring within the scope of supervision of conduct pursuant §68b (2), first sentence, StGB has not yet been used in practice.

Furthermore, there is the possibility at the *Land* level to provide for electronic monitoring within the scope of execution of punishment. The *Land* of Baden-Württemberg has made use of this for enforcement of default imprisonment, to prepare for release, and to supervise measures which allow the offender to leave the prison (for example, daytime release) in the Act on Electronic Monitoring in Enforcement of Prison Sentences (EASTVollzG-BW).

**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)?**

To the extent that electronic monitoring is ordered pursuant to §56 c (2), no. 1 StGB within the scope of probation instructions, it represents a probation measure within the meaning of Article 2 no. 7 of Framework Decision 2008/947/JHA (FD). Pursuant to this, probation measures are obligations and instructions imposed by a competent authority on a natural person, in accordance with the national law of the issuing state, in connection with a suspended sentence, a conditional sentence or a conditional release. Probation instructions pursuant to §56 c (2) no. 1 StGB are issued in connection with both a suspended sentence (Article 2 no. 2 FD) or a conditional release (Article 2 no. 6). The respective instructions are issued in the form of an order, which represents a probation decision within the meaning of Article 2 no. 5.

As far as electronic monitoring is possible within the scope of supervision of conduct according to §68b (2) StGB, it also represents a probation measure within the meaning of Article 2 no. 7 FD. Instructions pursuant to supervision of conduct are issued in connection with both a suspended sentence (Article 2 no. 2 FD) or a conditional release (Article 2 no. 6 FD).

The electronic monitoring provided for at the *Land* level within the scope of execution of sentence does not fall under the legal definitions of Article 2 FD.

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

In Germany, the *Länder* are responsible for the legislative design of prison sentences. To date, only Baden-Württemberg has provided for the possibility of using electronic monitoring for execution of sentence in its EAStVollzG-BW, which enables execution of default imprisonment and preparation for release with electronically monitored house arrest as well as electronic monitoring during measures which allow the offender to leave the prison (see above).

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

Electronic monitoring pursuant to §56c (2) no. 1 StGB serves to monitor house arrest or bans on/requirements of being present in certain locations which are ordered pursuant to an instruction. As such, it is merely a means which accompanies the actual instruction as to whereabouts and which supports the probation officer, who is competent for controlling compliance with the instructions. But electronic monitoring may also be the substance of an instruction. Along with instructions as to his whereabouts, for example, the convicted person is also instructed to keep the devices necessary for electronic monitoring on his person and in working order. Accordingly, violation of these requirements could lead to the revocation of probation.

As far as electronic monitoring is possible pursuant to §68b (1), first sentence, no. 12 StGB and §68b (2), first sentence, StGB within supervision of conduct, the same applies for this kind of measure as well.

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

The *Land* of Baden-Württemberg uses the Global Positioning System (GPS). The *Land* of Hessen, which can only supervise house arrest electronically, uses a technology with which we are not familiar, and which only allows monitoring of whether the convicted person is present at his residence or not. Concerning the above mentioned §68b (1), first sentence, no. 12 StGB the *Länder* are responsible for the implementation of the electronic monitoring. It is not yet clear which technical means the *Länder* will choose.

**Is Electronic Monitoring dependant on particular conditions?**

If the convicted person is subject to probation or supervision of conduct, a precondition for ordering electronic monitoring is that it appears to be a suitable means of helping the convicted person not to commit any new criminal offences. Within §56c (2) and §68b (2), first sentence, StGB it may be undertaken only with the consent of the convicted person.

The latter is true as well for the ordering of electronic monitoring within the scope of execution of sentence for the *Land* of Baden-Württemberg.

#### **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 criminal record is needed to decide if an offender can be subject to a probation decision. Other documents are not required as long as the court is convinced of the information given by the offender.

The chamber for the execution of sentence has to obtain an expert psychological opinion on the question of whether there is still a risk that the convicted person still poses the danger apparent from his offence in cases where the court is considering suspension of the execution of the remainder of a sentence. This obligation applies only to sentence of life imprisonment, or a determinate prison sentence of more than two years for a serious criminal offence of the type required for the order of preventive detention.