

Estonia

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.

CONDITIONAL SENTENCE	
Name of the judgement or the probation decision	<ul style="list-style-type: none"> - Karistusest tingimisi vabastamine (Probation) - Karistusest tingimisi vabastamine süüdimõistetu allutamiseega käitumiskontrollile (Probation and subjection of convicted offender to supervision of conduct)
Classification of this judgement or the probation decision	Conditional sentence
Legal basis of this judgement or the probation decision	Penal Code § 73, 74 (Penal code in English www.legaltext.ee/indexen.htm)
Definition of this judgement or the probation decision	<p>Probation - If a court, taking into consideration the circumstances relating to the commission of a criminal offence and the personality of the offender, finds that service of the imprisonment imposed for a specified term or payment of the amount of the pecuniary punishment by the convicted offender is unreasonable, the court may order suspension of the sentence on probation. Unless otherwise provided, the imposed punishment shall not be enforced in full or in part if the convicted offender does not commit a new intentional criminal offence within the period of probation determined by the court.</p> <p>Probation shall be ordered for a period of three to five years.</p> <p>If a convicted offender commits a new intentional criminal offence during the period of probation and is sentenced to imprisonment, an additional punishment shall be imposed.</p> <p>Probation shall not be applied to a person who has committed an intentional criminal offence and has been previously sentenced to imprisonment.</p> <p>Probation and subjection of convicted offender to supervision of conduct - If a court, taking into consideration the circumstances relating to the commission of a criminal offence and the personality of the offender, finds that the service of the imposed imprisonment for a specified term by the convicted offender is unreasonable, the court</p>

	<p>may order suspension of the sentence on probation.</p> <p>Probation shall be imposed for a period of eighteen months to three years.</p> <p>If a convicted offender commits a new intentional criminal offence during the period of probation and is sentenced to imprisonment, an additional punishment shall be imposed.</p>
<p>Legal Conditions of this judgement or the probation decision</p>	<p>Punishment shall be based on the guilt of the person. Court or an extra-judicial body shall take into consideration the mitigating and aggravating circumstances, the possibility to influence the offender not to commit offences in the future, and the interests of the protection of public order. Imprisonment may be imposed only on the condition that the aims of the punishment cannot be achieved by a less onerous punishment (Penal Code § 56).</p> <p>Mitigating circumstances are e.g prevention of harmful consequences of the offence, and provision of assistance to the victim immediately after the commission of the offence; voluntary compensation for damage etc (Penal Code § 57).</p> <p>If a court, taking into consideration the circumstances relating to the commission of a criminal offence and the personality of the offender, finds that the service of the imposed imprisonment for a specified term by the convicted offender is unreasonable, the court may order suspension of the sentence on probation (Penal Code § 74).</p> <p>In case of juveniles a prosecutor or a judge are obliged to order pre-sentence report describing the situation and risks of the person and giving professional view regarding further actions from the probation officer prior sentencing. In case of adults it's an option.</p> <p>Consent of an offender is required in case of imposing community service and electronic monitoring device.</p>
<p>Type of probation measures</p>	<p>Persons belonging under probation supervision are:</p> <ul style="list-style-type: none"> - <i>A conditionally sentenced offender</i> - A person with regard to whom the probation period of 18-36 month is applied; - <i>A person released from prison prior to the expiry of the term of punishment (parole)</i> - a person who has been released prior to the expiry of the term of punishment and with regard to whom the probation period to the extent of is applied, which is not shorter than 1 year. Such measure can be combined with electronic monitoring obligation (consent is required). - <i>A person who has been imposed to community service</i> - a person whose up to two year's imprisonment has been substituted with his/her consent with community service. The time for community service is up to 24 months. The community service can be also imposed to a person during criminal procedure as a ground for a waiver of proceedings. The obligation is in range of 10-240 hours. - <i>A minor with regard to whom supervision of conduct has been applied as sanction</i> - a minor can be released from a punishment and subjected under probation supervisor's surveillance for one year. If necessary, the probation period may be extended. <p>During supervision of conduct (Penal Code § 75), a convicted offender is, nevertheless of imposed sanction, required to comply with the following supervisory requirements:</p> <ol style="list-style-type: none"> 1) to reside in a permanent place of residence determined by the court; 2) to report at intervals determined by the probation supervisor at the probation supervision department; 3) to submit, in his or her place of residence, to the supervision of the probation officer and provide the probation officer with information relating to the performance of the offender's obligations and his or her means of subsistence; 4) to obtain the permission of the probation officer before leaving the place of residence for longer than fifteen days; 5) to obtain the permission of the probation officer before changing residence, employment or place of study. <p>The court may impose the following obligations on the convicted offender for the period of supervision of conduct:</p>

	<p>1) to remedy the damage caused by the criminal offence within a term determined by the court;</p> <p>2) not to consume alcohol or narcotics;</p> <p>3) not to hold, carry or use weapons;</p> <p>4) to seek employment, acquire general education or a profession within the term determined by the court;</p> <p>5) to undergo the prescribed treatment if the offender has previously consented to such treatment;</p> <p>6) to perform the maintenance obligation;</p> <p>7) not to stay in places determined by the court or communicate with persons determined by the court;</p> <p>8) to participate in social assistance programmes</p> <p>9) to submit to electronic monitoring if the offender has previously consented to such monitoring.</p>
Combination of sanctions or measures	<p>Probation Supervision can be combined with imprisonment in which case certain period of imprisonment is served before probation supervision starts. This is decided by the court.</p>
Authority responsible for taking such a decision	<p>All judgement jurisdictions.</p>
Authority responsible for supervising	<p>Estonian probation supervision system started to function on 1st May 1998 and is currently belonging to the structure of the Prison Service. The probation work is done by the probation officers in four departments of three regional prisons - the Tallinn Prison, the Tartu Prison and the Viru Prison. The Prison Department of the Ministry of Justice is responsible for the management of the Prison service.</p> <p>The probation supervisor's work is based on case-management principle, which includes risk-assessment, sentence planning and cooperation with the state and local government structural units and non-profit associations.</p> <p>A probation officer is expected to have higher education (preferably in social sciences) and good stress tolerance. Voluntary probation workers are also involved in probation supervision who work in their free time without receiving remuneration.</p>
Authority responsible in case of infringement	<p>The violations in case of offenders supervised by the probation officers are reported to the court for further decision-making.</p> <p>Penal Code 74 (4) states that if, during a period of probation, a convicted offender fails to comply with the supervisory requirements or to perform the obligations imposed on him or her, the court may, on the basis of a report prepared by the probation officer, impose additional obligations, extend the period of probation by one year or enforce the punishment.</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.

Probation measures /	Explanation
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alternative sanctions	
Obligation for the sentenced person to inform a specific authority of any change of residence or working place	<p>During supervision of conduct, a convicted offender is required to comply with the following supervisory requirements:</p> <ol style="list-style-type: none"> 1) to reside in a permanent place of residence determined by the court; 2) to submit, in his or her place of residence, to the supervision of the probation officer and provide the probation officer with information relating to the performance of the offender's obligations and his or her means of subsistence; 3) to obtain the permission of the probation officer before leaving the place of residence for longer than fifteen days 4) to obtain the permission of the probation officer before changing residence, employment or place of study. <p>(Penal Code § 75)</p>
Obligation not to enter certain localities, places or defined areas in the issuing or executing State	<p>Taking into consideration the circumstances relating to the commission of the criminal offence and the personality of the convicted offender, the court may impose the following obligation on the convicted offender for the period of supervision of conduct: not to stay in places determined by the court or communicate with persons determined by the court (Penal Code § 75).</p>
Obligation containing limitations on leaving the territory of the executing State	<p>During supervision of conduct, a convicted offender is required to comply with the following supervisory requirement: to obtain the permission of the probation officer before changing residence, employment or place of study (Penal Code 75).</p>
Instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity	<p>Taking into consideration the circumstances relating to the commission of the criminal offence and the personality of the convicted offender, the court may impose the following obligations on the convicted offender for the period of supervision of conduct:</p> <ol style="list-style-type: none"> 1) not to consume alcohol or narcotics; 2) to seek employment, acquire general education or a profession within the term determined by the court; 3) to undergo the prescribed treatment if the offender has previously consented to such treatment (Penal Code § 75).
Obligation to report at specified times to a specific authority	<p>During supervision of conduct, a convicted offender is required to comply with the following supervisory requirement: to report at intervals determined by the probation supervisor at the probation supervision department (Penal Code § 75).</p>
Obligation to avoid contact with specific persons	<p>Taking into consideration the circumstances relating to the commission of the criminal offence and the personality of the convicted offender, the court may impose the following obligations on the convicted offender for the period of supervision of conduct: not to stay in places determined by the court or communicate with persons determined by the court (Penal Code § 75).</p>
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	<p>Taking into consideration the circumstances relating to the commission of the criminal offence and the personality of the convicted offender, the court may impose the following obligations on the convicted offender for the period of supervision of conduct: not to stay in places determined by the court or communicate with persons determined by the court (Penal Code § 75).</p>

<p>Obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation</p>	<p>If a convicted offender promises to improve conduct and assumes obligations, the court may approve them as obligations (Penal Code § 75).</p>
<p>Obligation to carry out community service</p>	<p>If a court imposes imprisonment of up to two years, the court may substitute the imprisonment by community service. One day of imprisonment corresponds to two hours of community service. Imprisonment shall be substituted by community service only with the consent of the convicted offender.</p> <p>The duration of community service shall not exceed 8 hours a day. A convicted offender shall not be remunerated for community service.</p> <p>If a court imposes community service, the court shall determine the term for the performance of the service which shall not exceed twenty-four months. On the basis of a report of the probation officer, the court may suspend the running of the term due to an illness or family situation of the convicted offender, or for a period for which the convicted offender is called up for active service or training exercises in the Defence Forces.</p> <p>In the performance of community service, a convicted offender shall observe supervisory requirements and perform the obligations imposed on him or her.</p> <p>If a convicted offender evades community service, fails to comply with supervisory requirements or to perform the obligations imposed on him or her, the court may, on the basis of a report prepared by the probation officer, enforce the imprisonment imposed on the convicted offender (Penal Code § 69).</p>
<p>Obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons</p>	<p>Taking into consideration the circumstances relating to the commission of the criminal offence and the personality of the convicted offender, the court may impose the following obligation on the convicted offender for the period of supervision of conduct: to participate in social assistance programmes (Penal Code § 75).</p>
<p>Obligation to undergo therapeutic treatment or treatment for addiction</p>	<p>Taking into consideration the circumstances relating to the commission of the criminal offence and the personality of the convicted offender, the court may impose the following obligation on the convicted offender for the period of supervision of conduct: to undergo the prescribed treatment if the offender has previously consented to such treatment (Penal Code § 75).</p>

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.

<p>Other probation measures/alternative sanctions existing in your domestic law</p>	<p>Explanation</p>
<p>Supervision of conduct</p>	<p>Taking into consideration the circumstances relating to the commission of the criminal offence and the personality of the convicted offender, the court may impose the following obligation on the convicted offender for the period of supervision of conduct: to submit to electronic monitoring if the offender has</p>

	previously consented to such suspension (Penal Code § 75).
Electronic monitoring	<p>Electronic monitoring is the obligation imposed on a convicted offender for the term ordered by the court to submit to monitoring of compliance with the restrictions of freedom of movement by an electronic device attached to the body of the convicted offender which permits determination of the location of the convicted offender.</p> <p>Prior to the application of electronic monitoring, the court shall order medical examination of the convicted offender as necessary in order to verify whether the state of health of the convicted offender allows his or her submission to electronic monitoring.</p> <p>The court may order electronic monitoring with the term of one to twelve months.</p> <p>The term of electronic monitoring shall begin to run from the date on which the electronic monitoring device is attached to the body of the convicted offender.</p> <p>Based on a report of the probation officer, the court may increase or reduce the term of electronic monitoring initially imposed on the convicted offender.</p> <p>If the convicted offender withdraws his or her consent for application of electronic monitoring prior to the end of the term of electronic monitoring, the court shall order, based on the report of the probation officer, enforcement of the part of the punishment which was not served (Penal Code § 75¹).</p>

Some forms of conduct are not supervised:

If a court, taking into consideration the circumstances relating to the commission of a criminal offence and the personality of the offender, finds that enforcement of the imprisonment imposed for a specified term or payment of the amount of the financial penalty by the convicted offender is unreasonable, the court may order suspension of the sentence on probation. In such case the imposed punishment shall not be enforced in full or in part if the convicted offender does not commit a new intentional criminal offence within the period of probation determined by the court.

If the court decides that imprisonment or a financial penalty imposed is not to be executed in part, the court shall determine the part of the imprisonment or financial penalty which is to be enforced or paid immediately and such part of the imprisonment or financial penalty the execution of which is conditionally suspended.

Probation can be ordered for a period of three to five years.

Probation shall not be applied to a person who has committed an intentional criminal offence and has been previously sentenced to imprisonment. (Penal Code § 73)

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

Restraining order

3) Electronic monitoring

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

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)?

Yes, electronic monitoring is considered as conditional sentence. Amendments made to the penal code enable from 01.01.2011 also substitution of imprisonment by electronic monitoring (if a court imposes imprisonment for a term of up to six months).

Therefore, it can be considered conditional sentence, as well as custodial sentence which have been substituted by the electronic monitoring.

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

Until 31.12.2010 - conditional release

From 01.01.2011 - conditional release and execution modality of imprisonment

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

It is considered as a way of applying a probation measure.

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

The main technical means used at current stage are the home monitoring units and GPS tracking devices. The decision, which option should be used, is made by the probation officer according to the risk level of an offender. According to our 2010 public tender result the equipment is provided by ElmoTech Ltd.

Is Electronic Monitoring dependant on particular conditions?

Electronic Monitoring can be imposed only with the consent of the convicted offender.

Moreover, the offender must have a place of residence in order to apply for the electronic monitoring.

Prior to the application of electronic monitoring, the court shall order medical examination of the convicted offender as necessary in order to verify whether the state of health of the convicted offender allows his or her submission to electronic monitoring.

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).

1) assessment made by the probation office

2) court decision

Such decision is made by the judge similar for example to the choice of preventive measure. A preventive measure shall be chosen taking into account the probability of absconding from the criminal proceeding or execution of the court judgment, continuing commission of criminal offences, or destruction, alteration or falsification of evidence, the degree of the punishment, the personality of the suspect, accused or convicted offender, his or her state of health and marital status, and other circumstances relevant to the application of preventive measures.