

# Malta

## 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>PROBATION ORDER</b>	
<b>Name of the judgement or the probation decision</b>	The Maltese name of the judgement or the probation decision is 'Probation Order' and in Maltese it reads 'Ordni ta' <i>Probation</i> '.
<b>Classification of this judgement or the probation decision</b>	In Malta's case the most similar definition would be 'alternative sanction'.
<b>Legal basis of this judgement or the probation decision</b>	The legal basis is set out in the Probation Act (Cap. 446) which was enacted in 2003 in order to make provisions for a probation order, a community service order or a combination order.
<b>Definition of this judgement or the probation decision</b>	<p>According to the Probation Act (Cap. 446), a probation order has the meaning assigned to it by Article 7 of the Act.</p> <p>According to Article 7, the Court may, instead of sentencing the offender, make a probation order, that is to say, an order requiring the offender to be under the supervision of a probation officer for a specified period as ordered by the Court. This specified period will be from 1 to 3 years.</p> <p>If the offender fails to comply therewith or commits another offence, the offender will be liable to be sentenced for the original offence.</p> <p>In the case of minors:</p> <ul style="list-style-type: none"> <li>- If the offender is not less than fourteen years of age, the court will not make the order unless the offender expresses willingness to comply with the requirements thereof;</li> </ul> <p>A copy of the probation order will also be given to the parent or person charged with the upbringing of the probationer, if any.</p>

<p><b>Legal Conditions of this judgement or the probation decision</b></p>	<p>In Malta, the order will only be made if the offender is convicted of :</p> <ul style="list-style-type: none"> <li>(1) not an offence punishable only with a fine;</li> <li>(2) not being an offence which apart from any increase of punishment in view of continuity or of previous convictions, which is punishable with imprisonment for a term not exceeding 7 years;</li> <li>(3) the court is satisfied that the supervision of the offender by a probation officer is desirable in the interest of securing the rehabilitation of the offender and, or protecting the public from harm from the offender or preventing the commission of further offences;</li> <li>(4) having regard to the circumstances of the case, including the nature of the offence and the character of the offender, the issue of such order is appropriate.</li> </ul> <p>Provided that where in the opinion of the court circumstances, which are to be clearly stated in the order, exist that merit the placing of the offender under a probation order in the case of an offence which, apart from any increase of punishment in view of continuity or of previous conviction, is punishable with imprisonment for a term exceeding seven years but not ten years, the court may make a probation order.</p> <ul style="list-style-type: none"> <li>(5) at the pre-sentencing stage, the law permits the Court to issue a provisional order of supervision during any criminal proceedings, under conditions set by the same court.</li> <li>(6) the sentence pronounced imposes conditions set by the same Court.</li> </ul>
<p><b>Type of probation measures</b></p>	<p>The Probation Act (Cap. 446) mentions 2 important conditions which could be imposed. However, the Court may deem it necessary to impose other conditions after considering the pre-sentencing report presented by a Probation Officer when asked for by the Court, or any other conditions relevant to the nature of the case as deemed necessary.</p> <p>Therefore, the law stipulates that:</p> <ul style="list-style-type: none"> <li>(1) a probation order may include requirements relating to the residence of the offender;</li> <li>(2) a probation order may include a requirement that the offender should submit to treatment not exceeding the length of the order in cases of substance dependency or mental health;</li> </ul> <p>In Malta, Article 7 (7) of the Probation Act (Cap. 446) on 'probation order' provides that prior consent of the sentenced person is required. This Article provides that: "If the offender is not less than fourteen years of age, the court shall not make the order unless the offender expresses willingness to comply with the requirements thereof". The offender endorses such compliance by signing the Order. The foregoing Proviso of Article 412 D (1) of the Criminal Code (Cap. 9) on 'Treatment Orders' makes a distinction between a convicted person and a person who is only at indictment stage, which reads as follows: Provided that where any person is convicted with an offence, a treatment order by the court may be made with or without the consent of the convicted person and in the case of a person accused with an offence, a treatment order may only be made with the consent of the accused. That is, whereas prior consent is not required when the offender is sentenced and is given a treatment order; prior consent is required when a treatment order is given by Court at indictment stage.</p> <p>Moreover, in Court the probationer signs a contract form which also includes a clause stating that the Probation Officer may issue any other directive that is deemed necessary in each particular case.</p>
<p><b>Combination of sanctions or measures</b></p>	<p>A probationer may be placed under supervision by a probation order and/or a combination order. The latter would include a community service order and a probation order.</p>

<p><b>Authority responsible for taking such a decision</b></p>	<p>The Authority responsible for taking such a decision is the Courts of Law.</p>
<p><b>Authority responsible for supervising</b></p>	<p>The Department of Probation Services is headed by a public officer styled Director of Probation Services. In addition, there will be a sufficient number of qualified persons to act as probation officers, appointed by the Minister for Justice and Home Affairs.</p> <p>Article 3 (1-3) of the Probation Act (Cap. 446) lays down the duties of the Director of Probation Services:</p> <ul style="list-style-type: none"> <li>(a) to manage and direct the Department and to organise and supervise the probation services;</li> <li>(b) to direct probation officers on their work;</li> <li>(c) to give direction on record keeping and time management;</li> <li>(d) to supervise probation officers and periodically receive verbal or written reports on probationers from the probation officers;</li> <li>(e) to keep a register of each person sentenced to a community sanction;</li> <li>(f) to keep a register of pre-sentencing reports requested by courts;</li> <li>(g) to decide whether a probationer is to be arraigned in Court following a breach of any condition of a community sanction; and</li> <li>(h) to assign probation officers to probationers and to prepare pre-sentencing reports in accordance with this Act.</li> </ul> <p>The Director may delegate any of the above duties to a senior member of staff.</p> <p>The Court may commission the Department of Probation Services to prepare a pre-sentencing report before forming an opinion as to the suitability of applying to an offender a sentence of imprisonment, a suspended sentence or any other measure allowed by law on one or more of the following orders:</p> <ul style="list-style-type: none"> <li>(a) a probation order;</li> <li>(b) a community service order;</li> <li>(c) a combination order;</li> <li>(d) or a suspended sentence supervision order.</li> </ul>
<p><b>Authority responsible in case of infringement</b></p>	<p>The Probation Services are responsible for dealing with infringements. In case of infringements the Director of Probation Services or the probation officer informs the Court about the breach.</p> <p>It is the Court that decides the outcome if such an infringement is proved. In cases where an offence is committed during the operative period of a probation order, a combination order or a suspended sentence, the breach of the sanction in question is included in the charges when the person is charged in court by the police.</p> <p>The tasks and responsibilities of the Probation Services are described by means of Article 21 of the Probation Act (Cap. 446) which states that:</p> <p>(...) if at any time during the probation period it appears to the court by which the order was made that the probationer has failed to comply with any of the requirements of the order, the court may issue a summons requiring the probationer to appear before such court at the place and time specified therein, or may, if the circumstances so require, issue a warrant for the probationer's arrest:</p> <p>Article 21 of the Probation Act (Cap. 446) provides for breach of conditions of orders stipulating that:</p> <p>(...) where the alleged failure is brought to the attention of the court in a report by the probation officer, no such summons or warrant shall be issued:</p> <ul style="list-style-type: none"> <li>(a) by the Criminal Court, or by the Court of Criminal Appeal except on an</li> </ul>

information in writing filed by the Attorney General;  
 (b) by the Court of Magistrates (Malta), the Court of Magistrates (Gozo) or by the Juvenile Court, except on an information in writing and confirmed on oath.

In either case the information must be filed within three months of the alleged failure by the probationer.

(2) If it is proved to the satisfaction of the court, that the probationer has failed to comply with any of the requirements of the community sanction order, that court may, without prejudice to the continuance of the sanction, impose on the offender a fine (*ammenda*) not exceeding two hundred and thirty-two euro and ninety-four cents (232.94), or may deal with the probationer, for the offence in respect of which the community sanction was made, in any manner in which the court could deal with the offender if he had just been convicted by or before that court of that offence.

(3) A fine imposed under this article in respect of a failure to comply with the requirements of a probation order shall be deemed for the purposes of any enactment, but saving the provisions of article 22(1), to be a sum adjudged to be paid following a conviction.

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

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

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

Probation measures / alternative sanctions	Explanation
<b>Obligation for the sentenced person to inform a specific authority of any change of residence or working place</b>	Article 19 of the Probation Act (Cap. 446) stipulates that, during a Probation Order, the offender has to inform the probation officer in case of change of address.
<b>Obligation not to enter certain localities, places or defined areas in the issuing or executing State</b>	The Laws of Malta do not provide an exhaustive list of the different obligations that the court can impose on the sentenced person when ordering a probation order. Therefore, it is at the discretion of the Court to determine any obligations deemed necessary, taking into account the pre-sentencing report compiled by the Probation Officer, when available, the offender's level of misconduct, the special needs of the sentenced person (such as illicit substance abuse, employment and so forth), the interests of the victim (financial reparation) etc. It is also possible for the probation officer to issue any other directive that s/he deems necessary including obligations not to enter certain localities.
<b>Obligation</b>	The Probation Act (Cap. 446) only stipulates that the offender has to

<p><b>containing limitations on leaving the territory of the executing State</b></p>	<p>inform the probation officer in case of a change of address.</p>
<p><b>Instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity</b></p>	<p>The Probation Act (Cap. 446) does not provide an exhaustive list of the different obligations the court can impose on the sentenced person when ordering a probation order. Therefore, it is at the discretion of the Court to determine any obligations deemed necessary.</p>
<p><b>Obligation to report at specified times to a specific authority</b></p>	<p>Where the Court deems that such an order may help in the rehabilitation of the offender, it may include as a condition in the probation order, an order that for a period not exceeding six weeks the probationer shall, when not required to be out to work or study, present himself and remain at such residential institutions as may be approved by the Minister for Justice and Home Affairs, for the purpose, provided that such requirement may be restricted by the Court to Saturdays and public holidays and the period after 7pm in the evening, Saturdays evenings as well as public holidays. To date, this provision has not been used.</p>
<p><b>Obligation to avoid contact with specific persons</b></p>	<p>The Probation Act (Cap. 446) does not provide an exhaustive list of the different obligations that the Court can impose on the sentenced person when ordering a probation order. Therefore, it is at the discretion of the Court to determine any obligations deemed necessary.</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>The Probation Act (Cap. 446) does not provide an exhaustive list of the different obligations that the Court can impose on the sentenced person when ordering a probation order. Therefore, it is at the discretion of the Court to determine any obligations deemed necessary.</p>
<p><b>Obligation to compensate financially for the prejudice caused by the offence and/or</b></p>	<p>Article 24 of the Probation Act (Cap. 446) states that:  24. (1) A court, on making a probation order, community service order, combination order, an order for conditional discharge or on discharging any offender absolutely may, without prejudice to its power of awarding costs under articles 380 and 533 of the Criminal Code, order the offender to pay such damages for injury or compensation for the loss as the court</p>

<p><b>an obligation to provide proof of compliance with such an obligation</b></p>	<p>thinks reasonable.</p> <p>(2) An order for the payment of damages or compensation as aforesaid may be enforced in like manner as if it had been given in a civil action between the offender and the person to whom the damages or compensation are ordered to be paid:</p> <p>Provided that nothing in this article shall derogate from any right of such person to recover any greater amount by any other means from the offender or any other person liable to pay the same.</p>
<p><b>Obligation to carry out community service</b></p>	<p>The Probation Act (Cap. 446) in Article 11 (1-6) provides that:          (...) a community service order may be given to an offender aged sixteen years and over, convicted of an offence for which, in the opinion of the Court, the appropriate sentence would, except for the provisions of this article, be one of imprisonment.</p> <p>Such an offence must not be punishable only by a fine (multa or ammenda) and cannot be an offence, which apart from any increase in punishment in view of the continuity or of previous convictions, is punishable with imprisonment exceeding seven years.</p> <p>A community service order may be pronounced by court, instead of sentencing the offender to imprisonment.</p> <p>A community service order shall require the offender to perform unpaid work for a number of hours as specified in the order. In any such case no order shall require the offender to perform less than forty hours of work or more than two hundred and forty hours (240 hours).</p> <p>It shall be duty of the Director to assign work to the probationer in accordance with the community service order.</p> <p>A community service order shall not be pronounced unless the Court ascertains:</p> <ul style="list-style-type: none"> <li>- the offender's circumstances and the pre-sentencing report,</li> <li>- that the offender is suitable to perform work under such an order,</li> <li>- that appropriate arrangements can be made for such work,</li> <li>- the offender has agreed to the order; and,</li> <li>- the offender has signed the community service work agreement form,</li> <li>- to explain to the offender in ordinary language the effect of the order and that if the offender fails to comply therewith or commits another offence, the offender will be liable to be sentenced for the original offence,</li> <li>- that a copy of the order shall be sent to the offender, to the Director, the community service officer assigned to the case by the Director, and to the agencies and authorities responsible for the supervision of the community service order.</li> </ul>
<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>Before making a probation order, the Court will explain to the offender, in ordinary language, the effect of the order including any additional requirements proposed to be inserted therein, and that if the offender fails to comply therewith or commits another offence, the offender will be liable to be sentenced for the original offence. If the offender is not less than 14 years of age, the court will not make the order unless the offender expresses willingness to comply with the requirements thereof.</p> <p>Article 13 (a)(b)(c) of the Probation Act (Cap. 446) provides that an offender in respect of whom a community service order is in force shall :</p> <ul style="list-style-type: none"> <li>(a) report to the probation officer assigned to him by the Director from time to time according to the instructions issued by the probation officer;</li> <li>(b) report to the relevant authority from time to time according to the instructions issued by the community service officer;</li> <li>(c) perform satisfactorily for the number of hours specified in the order such work at such times as shall be directed by or on behalf of the relevant authority;</li> <li>(d) notify the community service officer to whom the offender is required to report under this subarticle of any change of his address.</li> </ul>

<p><b>Obligation to undergo therapeutic treatment or treatment for addiction</b></p>	<p>A probation order may include a requirement that the offender will submit to treatment for substance abuse. Such treatment period will not exceed the length of the order and will be under the directions of a suitably qualified person with a view to the improvement of the offender's mental condition or with a view to free the offender from drug addiction. The treatment may be of any of the following kinds :</p> <ul style="list-style-type: none"> <li>- treatment as a non-resident patient in a hospital or other appropriate agency or institution;</li> <li>- in-patient residential treatment in a hospital or other appropriate agency or institution; or</li> <li>- treatment by or under the direction of a suitably qualified person as may be specified in the order.</li> </ul> <p>The law specifies that 'a suitable qualified person' should be a professional in conjunction with the probation officer responsible for the treatment of the offender.</p> <p>In Malta, if the Court applies Article 28 A of the Criminal Code (Cap. 9) on its own, the Court cannot oblige an offender to undergo therapeutic or treatment for addiction.</p> <p>However, when the Court is suspending a sentence and is placing the offender under the supervision of a supervising officer in accordance with Article 28 G (2) of the Criminal Code, then the Court requires prior consent of the sentenced person.</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?**

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

<p><b>Other probation measures/alternative sanctions existing in your domestic law</b></p>	<p><b>Explanation</b></p>
	<p>Article 28A(1) of the Criminal Code (Cap. 9) provides for the suspended sentence with or without a supervision order (28 G) as follows:</p> <p>Subject to sub-Articles (2) - (7) and to Articles 28B to 28I, a Court which passes a sentence of imprisonment for a term of not more than 2 years for an offence may order that the sentence will not take effect unless, during a period specified in the order, being not less than 1 year or more than 4 years from the date of the order, the offender commits another offence punishable with imprisonment, and thereafter, a court competent to do so orders under Article 28B that the original sentence will take effect; and in this Article and whenever it occurs in Articles 28B to 28G and in Article 28I 'operational period', in relation to a suspended sentence, means the period so specified.</p> <p>Article 11 (2) of the Probation Act (Cap. 446) provides that the Court may, instead of sentencing the offender to imprisonment, order the offender to be placed on a community service order. A community service order requires the offender to perform unpaid work for a number of hours as specified in the order. In any such case no</p>

order will require the offender to perform less than 40 hours of work or more than 240 hours.

Article 18 of the Probation Act (Cap. 446) provides that the Court may, instead of sentencing the offender to imprisonment, order the offender to be placed on a combination order. A combination order requires the offender to be placed under probation supervision and perform a community service order. Nevertheless, such order will not require the offender to perform less than 40 hours of work or more than 100 hours in addition to any number of hours of work still to be performed under any previous community service order.

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

Article 412D(1) of the Criminal Code (Cap. 9) provides that, together with, or separately from, a protection order under Article 412C of the same Code, after proper arrangements have been made or can be made for treatment, the Court may make an order (referred to as a "treatment order") requiring a person to submit to treatment subject to the conditions which the Court may deem appropriate to lay down in the order:

Where any person is convicted of an offence, a treatment order by the court may be made with or without the consent of the convicted person and in the case of a person accused of an offence, a treatment order may only be made with the consent of the accused.

The Criminal Code (Cap 9) provides for treatment orders to persons reprimanded under the Probation Act (Cap 446).

The treatment may be of any of the kinds specified in Article 7(5) of the Probation Act as follows:

The provisions of article 412C(5) and (6) of the Criminal Code shall apply to an order under this article;

If at any time during the period that the order is in force it is proved to the satisfaction of the court that the person has failed to comply with any of the requirements or conditions of the order, the court may impose on such person a fine not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1164.69).

## **3) Electronic monitoring**

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

Currently, electronic monitoring in Malta is not provided for. However, consideration is being given to the possible introduction of electronic monitoring in Malta in the future.

## **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).

In Malta, the competent authority may require the following documents as listed below in order to be able to give a judgement and where applicable a probation decision :

- Criminal Record;
- Indictment Sheet;
- Previous Court/Tribunal Judgements/Decisions (if any);
- Social Inquiry Report;
- Professional Experts Reports;
- Official Employment Records; and
- Residential Institutions Records.