

# Poland

## 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>SENTENCE FOR DEPRIVATION OF LIBERTY, THE EXECUTION OF WHICH IS CONDITIONALLY SUSPENDED</b>	
<b>Name of the judgement or the probation decision</b>	<p>Sentence for deprivation of liberty, the execution of which is conditionally suspended</p> <p>Wyrok skazujacy na kare pozbawienia wolnosci z warunkowym zawieszeniem jej wykonania</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>Article 69 § 1 of the Penal Code of the Republic of Poland of June 6th, 1997</p> <p>Article 69. § 1. The court may conditionally suspend the execution of a penalty of deprivation of liberty of up to 2 years or execution of a fine adjudicated as a one-off penalty, if it is regarded as sufficient to achieve the objectives of the penalty with respect to the offender, and particularly to prevent him from relapsing into crime.</p> <p>§ 2. In suspending the execution of a penalty, the court shall primarily take into consideration the attitude of the offender, his personal characteristics and conditions, his way of life to-date and his conduct after the commission of the offence.</p> <p>Article 70. § 1. Suspension of the execution of a penalty shall be granted for a probation period, which runs from the time the sentence becomes valid and final and is for:</p> <p>1) from 2 to 5 years - in the case of a conditional suspension of the execution of a penalty of deprivation of liberty,</p> <p>2) from one year to 3 years - in the case of a conditional suspension of the execution of a fine or a penalty of restriction of liberty.</p> <p>§ 2. In the case of the conditional suspension of the execution of a penalty with respect to a offender who is a young offender or the one specified in Article 64 § 2, the probation period is from 3 to 5 years.</p> <p>Additionally, on the ground of Art. 60 § 3 of Penal Code of the Republic of</p>

	<p>Poland of June 6th, 1997, the sentencing court may conditionally suspend an execution of a deprivation of liberty with regard to the culprit who has cooperated with investigative agency.</p> <p>Art.60§ 3. The court shall apply be applied an extraordinary mitigation of the penalty or may even conditionally suspend the execution of the penalty, with respect to a offender who, co-operating with others in the commission of an offence, reveals information pertaining to the persons involved therein or essential circumstances thereof, to the agency responsible for its prosecution.</p> <p>§ 4. Upon a motion from the state prosecutor, the court may apply an extraordinary mitigation of the penalty or even conditionally suspend the execution of the penalty with respect to a offender, who irrespective of any explanation provided in his case, revealed and presented to the agency responsible for prosecution, essential circumstances, not previously known to that agency, of an offence subject to a penalty exceeding 5 years deprivation of liberty.</p> <p>§ 5. In the cases referred to in § 3 and 4, the court, in imposing the penalty of deprivation of liberty for up to 5 years, may conditionally suspend the execution of the penalty for a probation period of up to 10 years, if it recognises that, in spite of not serving the penalty, the offender would not commit the offence again.</p>
<p><b>Definition of this judgement or the probation decision</b></p>	<p>The sentence for deprivation of liberty, the execution of which is conditionally suspended is a judicial decision rendered by a trial court immediately after hearing the case. It consists of an adjudication of guilt, imposition of a punishment, and of a decision to suspend it's execution (probation decision)</p>
<p><b>Legal Conditions of this judgement or the probation decision</b></p>	<p>The court should take into consideration the culprit's attitude, his personal character's features, previous lifestyle.</p> <p>An application of a suspended sentence in general is excluded with regard to repetitive offenders defined in art. 64 § 2 which refers to art. 64 § 1 of the Polish Penal Code</p> <p>Art. 69 § 3. Suspension of the execution of the penalty shall not be applied to the offender as specified in Article 64 § 2, unless there is an exceptional case justified by extraordinary circumstances; suspension of the execution of the penalty specified in Article 60 § 3 through 5 shall not be applied to the offender as specified in Article 64 § 2.</p> <p>Article 64. §1. If a offender sentenced to the penalty of deprivation of liberty for an offence committed with intent, during the 5 year period after having served at least 6 months of the penalty, commits an intentional offence similar to the offence for which he had been sentenced, the court may impose the penalty of deprivation of liberty, prescribed for the offence committed, within the statutory limits, up to the highest statutory penalty further increased by a half.</p> <p>§2. If a offender previously sentenced in under the conditions specified in §1, who has served the total of at least one year's deprivation of liberty and in the period of 5 years after the serving of the last penalty in full or in part, again commits an intentional offence against life or health, or rape, robbery, housebreaking or burglary, or other offence against property, committed with the use of violence or the threat of violence, the court shall impose the penalty of deprivation of liberty, prescribed for the offence committed, exceeding the lower statutory limit, or may impose a penalty up to the highest statutory penalty further increased by a half.</p>

<p><b>Type of probation measures</b></p>	<p>The measures are set for in Article 72§ 1 of the Polish Penal Code</p> <p>Article 72. § 1. In suspending the execution of a penalty, the court may obligate the sentenced person :</p> <ol style="list-style-type: none"> <li>1) to inform the court of the probation officer about the progress of the probation period,</li> <li>2) to apologise to the injured person,</li> <li>3) to carry out a duty incumbent upon him in order to provide support for another person,</li> <li>4) to perform remunerated work, to pursue an educational activity or train himself for an occupation,</li> <li>5) to refrain from abusing alcohol or using narcotics,</li> <li>6) to submit to medical treatment, particularly drug withdrawal or rehabilitation programmes,</li> <li>7) to refrain from frequenting specified community circles or places,</li> <li>8) to engage in other appropriate conduct in the probation period, if it may prevent the commission of a further offence.</li> </ol> <p>§ 2. The court may obligate the offender to redress the damage in whole or in part (...)</p>
<p><b>Combination of sanctions or measures</b></p>	<p>While suspending execution of imprisonment the court may impose a fine (Art. 71§1 of Penal Code of the Republic of Poland of June 6th , 1997</p> <p>Article 71. § 1. In suspending the execution of a penalty, the court may impose a fine of up to 180 times the daily rate, if its imposition is not provided for on another basis. In suspending the execution of a penalty of restriction of liberty, the court may impose a fine of up to 90 times the daily rate.</p>
<p><b>Authority responsible for taking such a decision</b></p>	<p>Sentencing court- it could be a court of first or of second instance</p>
<p><b>Authority responsible for supervising</b></p>	<p>Probation officer - is a professional employed in the court system</p> <p>The execution of the probation measures in a sense of decision making is within a scope of competence of the district (lowest level) court which exercises territorial jurisdiction over the convict's residence. However, the responsibility for supervising offenders serving probation sentence lies with probation officers who consist the Probation Service. Probation officers are appointed by a president of a circuit court for an unlimited term. They can be removed from the post only in the course of disciplinary proceedings. Formally they are employees of the 46 district courts. Professional probation officers are supported by volunteers i.e. by voluntary probation officers. They are also nominated by president of a circuit court but receive no remuneration for their work just only lump sums as a reimbursement of expenses. Both professional and voluntary probation officers report to the team leader who is situated at the level of district court. Team leaders work is coordinated by a Circuit Probation Officer who is subordinated to the president of a circuit court. Within the structure of the Ministry of Justice there is a Department of Enforcement of Judgments and Probation exercising administrative and organizational supervision over the Probation Service.</p> <p>The main tasks of the probation officer embrace supervision convict's behavior, especially his compliance with obligations imposed on him by the</p>

	<p>court and to report to the court on any facts and circumstances which are substantial for a due execution of the sentence. The probation officers collect information through personal contacts with the convict and interviewing persons from convict's social environment.</p>
<p><b>Authority responsible in case of infringement</b></p>	<p>Probation officer is obliged to notify the first instance court about any infringement of the terms of suspension. The first instance court may revoke suspension and order execution of the prison term that has been initially imposed. The court can also modify the list of probation measures- i.e. obligation imposed on a convict while living the prison term suspended.</p>

<p><b>SENTENCE FOR LIMITATION OF LIBERTY</b></p>	
<p><b>Name of the judgement or the probation decision</b></p>	<p>Sentence for limitation of liberty Wyrok skazujący na kare ograniczenia wolności</p>
<p><b>Classification of this judgement or the probation decision</b></p>	<p>Alternative sanction</p>
<p><b>Legal basis of this judgement or the probation decision</b></p>	<p>According to Articles 34 and 35 of the Polish Penal Code of June 6<sup>th</sup>, 1997:</p> <p>Article 34. § 1. Unless otherwise provided by law, the penalty of restriction of liberty shall be for not less than one month and not more than 12 months; it is imposed in terms of months.</p> <p>§ 2. While serving the penalty of restriction of liberty, the sentenced person:</p> <ol style="list-style-type: none"> <li>1) may not change his permanent place of residence without the permission of the court,</li> <li>2) shall be obligated to perform work designated by the court,</li> <li>3) shall be obligated to provide explanations regarding the progress of terms of serving the penalty.</li> </ol> <p>Article 35. § 1. The obligation specified in Article 34 § 2 subsection 2 shall be to perform supervised work for 20 to 40 hours a month, without remuneration and for community purposes designated by the court, in a suitable establishment, health service or social welfare unit, organisation or institution conducting charity work or work for the purposes of a local community.</p> <p>§ 2. With regard to an employee, the court may decide that, instead of the obligation specified in § 1, between 10 and 25% of the remuneration shall be deducted for the benefit of the State Treasury or for the community purpose so designated by the court; the sentenced person while undergoing this penalty may not terminate his employment without the permission of the court.</p>
<p><b>Definition of this judgement or the</b></p>	<p>The sentence for limitation of liberty is a judicial decision rendered by a trial court immediately after hearing the case.</p>

<b>probation decision</b>	
<b>Legal Conditions of this judgement or the probation decision</b>	There are no specific conditions with regard to the culprit and his personal features. There is no requirement of consent. There are also no subject exclusion with regard to the kind of an offence.
<b>Type of probation measures</b>	Besides the obligations set for in the art. 34 and 35, (see above) the court can subject the convict to supervision of probation officer and may additionally impose on the convict certain obligation.
<b>Combination of sanctions or measures</b>	N/A
<b>Authority responsible for taking such a decision</b>	Sentencing court- it could be a court of first or second instance
<b>Authority responsible for supervising</b>	Probation officer (see above)
<b>Authority responsible in case of infringement</b>	Probation officer is obliged to notify the first instance court about any infringement of the terms of punishment. The first instance court may revoke suspension and order execution of the prison term that has been initially imposed. The court can also modify the list of probation measures- i.e. obligation imposed on a convict while living the prison term suspended.

<b>CONDITIONAL EARLY RELEASE FROM IMPRISONMENT</b>	
<b>Name of the judgement or the probation decision</b>	Conditional early release from imprisonment Warunkowe przedterminowe zwolnienie
<b>Classification of this judgement or the probation decision</b>	Conditional release
<b>Legal basis</b>	Conditional release of a convict serving prison term is set for in the Art. 77-

<p><b>of this judgement or the probation decision</b></p>	<p>78 of the Polish Penal Code of June 6<sup>th</sup>, 1997 :</p> <p>Article 77. § 1. The court may conditionally release a person sentenced to a custodial sentence from serving the balance of the penalty, only when his attitude, personal characteristics and situation, his way of life prior to the commission of the offence, the circumstances thereof, as well as his conduct after the commission of the offence, and while serving the penalty, justify the assumption that the offender will after release respect the legal order, and in particular that he will not re-offend.</p> <p>§ 2. In particularly justified cases the court, in imposing the penalty of deprivation of liberty, may determine more rigorous restrictions to prevent the possibility of him benefiting from the conditional release other than those specified in Article 78.</p> <p>Article 78. § 1. The sentenced person may be conditionally released after serving at least half of the sentence, albeit with a minimum of 6 months.</p> <p>§ 2. The sentenced person specified in Article 64 § 1 may be conditionally released after serving two-thirds of the sentence, and the sentenced person specified in Article 64 § 2, after serving three quarters of the sentence; the conditional release may not occur before the lapse of one year.</p> <p>§ 3. The person sentenced to 25 years of deprivation of liberty may be conditionally released after serving 15 years of the sentence, and the person sentenced to deprivation of liberty for life, after serving 25 years of the sentence.</p>
<p><b>Definition of this judgement or the probation decision</b></p>	<p>Conditional release is a judicial decision rendered by a penitentiary court in the executive phase of criminal proceedings.</p>
<p><b>Legal Conditions of this judgement or the probation decision</b></p>	<p>Besides the requirements regarding the prison term served there must be a positive prognosis referring to convict's obedience to legal order.</p>
<p><b>Type of probation measures</b></p>	<p>The penitentiary court along with early release may impose on the convict an obligation :</p> <ol style="list-style-type: none"> <li>1) to inform the court of the probation officer about the progress of the probation period,</li> <li>2) to apologise to the injured person,</li> <li>3) to carry out a duty incumbent upon him in order to provide support for another person,</li> <li>4) to perform remunerated work, to pursue an educational activity or train himself for an occupation,</li> <li>5) to refrain from abusing alcohol or using narcotics,</li> <li>6) to submit to medical treatment, particularly drug withdrawal or rehabilitation programmes,</li> <li>7) to refrain from frequenting specified community circles or places,</li> <li>8) to engage in other appropriate conduct in the probation period, if it may prevent the commission of a further offence.</li> </ol>
<p><b>Combination</b></p>	<p>N/A</p>

<b>of sanctions or measures</b>	
<b>Authority responsible for taking such a decision</b>	Penitentiary court which consist of a life tenured judge (circuit court).
<b>Authority responsible for supervising</b>	Probation officer- a professional employed by the court (see above).
<b>Authority responsible in case of infringement</b>	Probation officer is obliged to notify the penitentiary court about any infringement of the terms of release suspension. The court may revoke release suspension and order execution of the prison term remaining. The court can also modify the list of probation measures- i.e. obligation imposed on a convict.

<b>CONDITIONAL DISCONTINUANCE OF THE CRIMINAL PROCEEDINGS</b>	
<b>Name of the judgement or the probation decision</b>	Conditional discontinuance of the criminal proceedings Warunkowe umorzenie postepowania karnego
<b>Classification of this judgement or the probation decision</b>	Conditional sentence
<b>Legal basis of this judgement or the probation decision</b>	<p>Art. 66, 67, 68 of Polish Penal Code.</p> <p>Article 66. § 1. The court may conditionally discontinue the criminal proceedings if the guilt and social consequences of the act are not significant, the circumstances of its commission do not raise doubts, and the attitude of the offender not previously sentenced for an intentional offence, his personal characteristics and his way of life to date provide reasonable grounds for the assumption that even in the event of the discontinuance of the proceedings, he will observe the legal order and particularly that he will not commit an offence.</p> <p>§ 2. Conditional discontinuance shall not be applied to the offender of an offence for which the statutory penalty exceeds 3 years deprivation of liberty.</p> <p>§ 3. In the event that the injured party has been reconciled with the offender, the offender has redressed the damage or the injured party and the offender have agreed on the method of redressing the damage, the conditional discontinuance may be applied to a offender of an offence for which the statutory penalty does not exceed 5 years deprivation of liberty.</p>

	<p>Article 67. § 1. The conditional discontinuance shall be made for the term of probation which is between one and two years, which shall run from the date the judgement becomes valid and final.</p> <p>§ 2. In discontinuing conditionally the criminal proceedings, the court may, in the probation period, place the offender under the supervision of a probation officer or a person of public trust, association, or community organisation whose activities include educational care, preventing the demoralisation of or providing assistance to sentenced persons.</p> <p>§ 3. In discontinuing conditionally the criminal proceedings, the court shall require the offender to redress in whole or in part the damage, and may impose on him the obligation specified in Article 72 § 1 sections 1-3 or 5, and also adjudicate a pecuniary consideration as specified in Article 39 section 7, and an interdiction on driving a vehicle as specified in Article 39 section 3, for a period of up to 2 years.</p> <p>§ 4. The provision of Article 74 shall be applied accordingly.</p> <p>Article 68. § 1. The court shall resume the criminal proceedings, if the offender has during the probation period committed an intentional offence, for which he has been validly and finally sentenced.</p> <p>§ 2. The court may resume the criminal proceedings if the offender during the probation period flagrantly breaches the legal order, and in particular if he committed an offence other than that specified in</p> <p>§ 1, evades supervision, does not perform the obligations or penal measure imposed or if he does not fulfil the settlement concluded with the injured person.</p> <p>§ 3. The court may resume the criminal proceedings if, after the decision on the conditional discontinuance was rendered but before it became valid and final, the offender flagrantly breached the legal order, and in particular if he committed an offence within that time.</p> <p>§ 4. The criminal proceedings conditionally discontinued may not be resumed any later than 6 months after the expiration of the probation period.</p>
<p><b>Definition of this judgement or the probation decision</b></p>	<p>Conditional discontinuance is a judicial decision rendered by a trial court according to one of the following models:</p> <ul style="list-style-type: none"> <li>a) upon a motion of public prosecutor lodged to the court instead of act of indictment, i.e. without hearing the case; in such case the offender must consent to the conditional discontinuance;</li> <li>b) immediately after hearing the case in first or second instance.</li> </ul> <p>Conditional discontinuance literally does not consist of an adjudication of guilt, however finding guilty is its prerequisite. It does not consist any punishment. It may comprise also the imposition of the conditions.</p>
<p><b>Legal Conditions of this judgement or the probation decision</b></p>	<p>The court shall find accused guilty and find circumstances of the offence clear. It must find also guilt and social consequences of the act not significant.</p> <p>The offender must not be previously penalised for an intentional offence, his personal characteristics and his way of life to date provide reasonable grounds for the assumption that even in the event of the discontinuance of the proceedings, he will observe the legal order and particularly that he will not commit an offence.</p> <p>The proceeding concerns an offence for which the statutory penalty exceeds 3 years deprivation of liberty or 5 years deprivation of liberty in case of reconciliation or redressing the damage.</p>



<b>Type of probation measures</b>	1) Redressing in whole or in part the damage (mandatory measure). 2) Placing the offender under the supervision of a probation officer or a person of public trust, association, or community organisation whose activities include educational care, preventing the demoralisation of or providing assistance to sentenced persons (non-obligatory measure). 3) Informing the court of the probation officer about the progress of the probation period (non-obligatory measure). 4) Apologising to the injured person (non-obligatory measure). 5) Carrying out a duty incumbent upon him in order to provide support for another person (non-obligatory measure). 6) Refraining from abusing alcohol or using narcotics (non-obligatory measure). 7) Pecuniary consideration (non-obligatory measure). 8) Interdiction on driving a vehicle (non-obligatory measure).
<b>Combination of sanctions or measures</b>	N/A.
<b>Authority responsible for taking such a decision</b>	Sentencing court- it could be a court of first or of second instance
<b>Authority responsible for supervising</b>	Probation officer - is a professional employed in the court system (see above)
<b>Authority responsible in case of infringement</b>	Probation officer is obliged to notify the first instance court about any infringement of the terms of probation. The first instance court may resume criminal proceedings and complete it with imposing the punishment.

## 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.**

<b>Probation measures / alternative sanctions</b>	<b>Explanation</b>
<b>Obligation for the sentenced person to</b>	This obligation is provided for in Polish domestic law. There are no particular limitations of this obligation

<p><b>inform a specific authority of any change of residence or working place</b></p>	
<p><b>Obligation not to enter certain localities, places or defined areas in the issuing or executing State</b></p>	<p>This obligation is provided for in Polish domestic law in two variants:  a) General model, without particular limitations of the obligation  b) Specific model</p> <p>According to Article 72. § 1.5 of the Penal Code of June 6<sup>th</sup>, 1997: <i>In suspending the execution of a penalty, the court may obligate the sentenced (...) to refrain from frequenting specified community circles or places.</i> There are no more detailed provisions regulating the matter so judge may exercise his discretion while determining specific conditions of this obligation. The convict may be placed under probation's officers supervision. In such a case the responsibility to control compliance with the obligation lies with probation officer. The instruments available to probation officers that enable him to perform the control are: interviews, consulting evidence collected in the course of criminal proceedings, and also his personal observations. There are no specific instruments to control compliance with the said obligation in case of convict who is not placed under supervision of probation officer. However any official body that obtains information on such infringement as well as natural person, including the victim of crime, may notify the court.</p>
<p><b>Obligation containing limitations on leaving the territory of the executing State</b></p>	<p>Such an obligation is so far not provided by Polish law.</p> <p>However, it can be covered by Article 72. § 1. 8 of the Penal Code: "In suspending the execution of a penalty, the court may obligate the sentenced person (...) to engage in other appropriate conduct in the probation period, if it may prevent the commission of a further offence. There is no specific mechanism that could be used for controlling the compliance. The measure could be enforced similarly to the solutions provided for the obligation not to enter certain localities, places or defined areas.</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>This obligation is provided for in Polish domestic law in four variants:</p> <p>a) The court may impose interdiction on occupying specific posts, the exercise of specific professions or to engage in specific economic activities, if the offender has abused his post or profession, or has shown that by his continuing in the present post or profession would threaten certain essential interests protected by law. The interdiction is imposed for a period ranging from 1 up to 10 years. As its term is not correlated with the term of the probation, it is treated as penal measure.</p> <p>b) The court imposes an obligation to prevent from staying in particular environments or places or an interdiction of leaving a specified whereabouts without the court's permission, while sentencing to imprisonment for an offence against sexual latitude or decency committed against a minor; the obligation or interdiction may be cumulated with an obligation to report regularly to the Police station or other agency. The interdiction is imposed for a period ranging from 1 up to 15 years. As its term is not correlated with the term of the probation, it is treated as penal measure.</p> <p>However, the court shall impose such an interdiction forever, when the offender has been previously convicted in the circumstances aforementioned.</p>

	<p>c) The court may oblige the offender to carry out a duty incumbent upon him in order to provide support for another person, to perform remunerated work, to pursue an educational activity or train himself for an occupation and to refrain from abusing alcohol or using other intoxicants.</p> <p>d) In general the court may oblige the sentenced person to engage in other appropriate conduct in the probation period, if it may prevent the commission of a further offence. Since there are no specific instructions provided by law the scope of the obligation is a subject of judicial discretion</p>
<p><b>Obligation to report at specified times to a specific authority</b></p>	<p>This obligation is provided for in Polish domestic law. According to Article 73 § 1of Penal Code: " In suspending the execution of a penalty, the court may, in the probation period, place the offender under the supervision of a probation officer or a person of public trust, association, or community organisation whose activities include educational care, preventing the demoralisation of or providing assistance to sentenced persons."</p>
<p><b>Obligation to avoid contact with specific persons</b></p>	<p>This obligation is provided for in Polish domestic law in two variants:</p> <p>a) General model, without particular limitations. Since there are no specific instructions provided by law the scope of the obligation is a subject of judicial discretion.</p> <p>b)There is also specific variant of this obligation. The court may impose an interdiction of communicating with particular persons while sentencing for an offence against sexual latitude or decency committed against a minor as well as for the offence committed intentionally by using violence, including the offence against the person nearest to the offender; the interdiction may be cumulated with an obligation to report regularly to the Police station or other agency.</p> <p>The interdiction is imposed for a period ranging from 1 up to 15 years. As its term is not correlated with the term of the probation, it is treated as penal measure. However, the court shall impose such an interdiction forever, when the offender has been previously convicted in the circumstances aforementioned.</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>Literally there is not such an obligation provided for by Polish law. However, the court may oblige the sentenced person to engage in other appropriate conduct in the probation period, if it may prevent the commission of a further offence. Since there are no specific instructions provided by law the scope of the obligation is a subject of judicial discretion</p>
<p><b>Obligation to compensate financially for the prejudice</b></p>	<p>This obligation is provided for in Polish domestic law. There is a variety of legal instruments aiming at compensation of damages provided by Polish law, and one of them is of probational nature.</p>

<p><b>caused by the offence and/or an obligation to provide proof of compliance with such an obligation</b></p>	<p>According to Article 72 § 2 of the Penal Code the <i>court may obligate the offender to redress the damage in whole or in part (...)</i>. The execution of the measure lies with the district court holding jurisdiction over convict's residence place. The court may require a proof of payment from the convicts or may rely on information from the beneficiary to determine whether the conditions of probation are met.</p>
<p><b>Obligation to carry out community service</b></p>	<p>Such an obligation can be imposed only as a part of a limitation of liberty as it is prescribed in Art. 34-35 of the Polish Penal Code</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 may obligate the sentenced person to engage in other appropriate conduct in the probation period, if it may prevent the commission of a further offence. Since there are no specific instructions provided by law the scope of the obligation is a subject of judicial discretion.</p>
<p><b>Obligation to undergo therapeutic treatment or treatment for addiction</b></p>	<p>This obligation is provided for in Polish domestic law. Since there are no specific instructions provided by law the scope of the obligation is a subject of judicial discretion. The convict must consent to be subjected to this obligation.</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><b>Other probation measures/alternative sanctions existing in your domestic law</b></p>	<p><b>Explanation</b></p>
<p><b>Probation measures</b></p>	<p>Probation measures are:  - obligation to apologise the injured person,  - obligation to leave a place shared together with injured person.</p>
<p><b>Penal measures</b></p>	<p>Penal measures, which can be imposed along with suspended sentence are:  - interdiction on driving vehicles,  - making the sentence publicly known.</p> <p>The period of penal measure is not correlated with the term of the probation. Moreover, its imposition is irrespective of suspending the deprivation of liberty. Thus, the penal measure may go with</p>

incarceration as well as with suspended sentence.

The other special measure of probationary nature is warunkowe zwolnienie z przymusowego leczenia (conditional release from mandatory treatment) defined in the Article 97 of the Polish penal code (see below).

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

Special treatment which applies to persons sentenced to non-custodial sentence is provided for in the Art. 72 § 1.6 of the Penal Code: "*In suspending the execution of a penalty, the court may obligate the sentenced (...) to submit to medical treatment, particularly drug withdrawal or rehabilitation programmes.*", The consent of the sentenced is required.

However, there are some special non-probational measures regarding offences against sexual liberty committed with relation to the culprit's mental actions malfunctions of sexual nature and offences connected with an addiction to alcohol or a narcotic drug which are set for in Articles 95-98 of the Polish Penal Code. In this case a consent of the sentenced is not required.

Article 94. § 1. If the offender has committed a prohibited act of significant harm to the community, in a state of irresponsibility as specified in Article 31 §1, and that there is a high probability that he will commit such an act again, the court shall commit him to a suitable psychiatric institution.

§ 2. The duration of the stay in the institution shall not be fixed in advance; the court shall decide on the release of the offender from the institution if his stay there is no longer deemed necessary.

§ 3. The court may again decide on committing a offender as specified in § 1 to a suitable psychiatric institution if it is advisable in the light of the circumstances specified in § 1 or Article 93; the order may not be issued later than 5 years after the release from the institution.

Article 95 a § 1. In imposing a penalty of deprivation of liberty without a conditional suspension of its execution, for an offence against sexual liberty committed with relation to the culprit's mental actions malfunctions of sexual nature other than mental illness the court may decide to commit the offender to a closed medical institution or place him under ambulatory treatment.

§ 2. The measure specified in § 1 shall not be imposed if the offender was sentenced to the penalty of deprivation of liberty exceeding 2 years.

§ 3. The provisions of Art. 94 § 2 and 3 shall apply accordingly

Article 96. § 1. In imposing a penalty of deprivation of liberty without a conditional suspension of its execution, for an offence connected with an addiction to alcohol or a narcotic drug, the court may decide to commit the offender to a closed medical institution for withdrawal treatment, if there is a high probability of him committing another offence connected with his addiction.

§ 2. The measure specified in § 1 shall not be imposed if the offender was sentenced to the penalty of deprivation of liberty exceeding 2 years.

§ 3. The duration of the stay in the closed withdrawal treatment institution shall not be fixed in advance, it may, however, not be for less than 3 months or for more than 2 years. The court shall decide on the release from the institution on the basis of the results of the treatment, having heard the opinion from the person conducting the treatment.

§ 4. The duration of stay of the offender in the institution as specified in § 1 shall be credited to the penalty.

Article 97. § 1. Depending on the progress in the treatment of the offender specified in Article 96 § 1, the court may send him, for a probation period lasting from 6 months to 2 years, for outpatient treatment or to a rehabilitation programme in a rehabilitation/treatment facility. At the same time the court may place him under the supervision of a probation officer or a person of public trust, public institution or community organisation whose responsibilities include educational care, preventing the demoralisation of or providing to the sentenced persons.

§ 2. The court may again order placing the offender in the closed withdrawal treatment institution or in a penal institution, if the offender under probation, evaded treatment or rehabilitation, committed an offence or flagrantly breached the legal order or breached the by-rules of the treatment/rehabilitation facility.

§ 3. If in the probation period and in the course of the following 6 months, no order on the placement of the sentenced person again in a closed withdrawal treatment institution or a penal institution has been issued, the penalty shall be considered to have been served at the lapse of the probation period.

Article 98. If it is advisable in the light of the effects of the treatment specified in Article 96 § 3, the court shall conditionally release the sentenced person from the serving of the balance of the sentence, under the conditions specified in Articles 77 through 82, without restriction resulting from Article 78 § 1 or 2; the supervision shall be then mandatory.]

### **3) Electronic monitoring**

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

Polish domestic law allows for application of Electronic Tagging as a form of serving a custodial sentence of a term up to 1 year. A sentence up to 6 months of imprisonment can be served wholly under electronic surveillance as well as the last six months of a sentence of the length between six months and one year. However, there is legislative proposal to allow serving under electronic surveillance the whole term of up to one year. It is very likely that this amendment will be implemented before July 2010.

#### **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)?**

Currently Electronic Monitoring does not apply to measures enlisted in Article 2 of this Framework Decision and there are no plans to extend its scope of application to those measures.

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

Yes, it is just considered rather as a specific type of imprisonment.

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

Actually yes, since the convicts behavior is being continuously assessed by probation officer and can result in remanding the convict to "ordinary" prison by a penitentiary judge.

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

The technology that is currently used in Poland is RFID based.

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

Electronic Monitoring is a form of serving a prison term. Currently it can be applied by penitentiary court in the executive stage of criminal proceedings to all convicts who have not been previously sentenced to deprivation of liberty unless the previous conviction has expunged. This limitation does not apply to convictions for criminal acts committed before the first sentence has been issued with regard to any of those acts.

There are following formal prerequisites:

- the convicts and persons of the age of majority living together with him, if any, must express their agreement for placing him under Electronic Monitoring
- the convict must have a permanent residence place
- the technical conditions of convict's dwelling must allow for functioning of the Electronic Monitoring equipment
- the technical and organizational capabilities of the Electronic Monitoring service provider must allow

for functioning of the Electronic Monitoring equipment at convict's dwelling

- there must be no special security concerns or other circumstances excluding the use of 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).

- Criminal records.
- Copies of previous judgments, including motivations.
- Social inquiry.
- Medical expertise, if needed.