

# Reducing the prison population in Europe: does community justice work?

*Omid Firouzi Tabar, Michele Miravalle, Daniela  
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European Prison Observatory. Alternatives to detention



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Omid Firouzi Tabar, Michele Miravalle, Daniela Ronco, Giovanni Torrente

Antigone Edizioni

Rome, May 2016

ISBN 978-88-98688-13-5



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[www.prisonobservatory.org](http://www.prisonobservatory.org)



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Programme of the European  
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## THE EUROPEAN OBSERVATORY ON ALTERNATIVES TO IMPRISONMENT

Various international recommendations on community sanctions and measures promote the use of alternatives to imprisonment in order to reduce recidivism and the prison population. At the same time, legislators, academics and public administration members within the EU know that imprisonment is not the only way to balance security needs and social justice, and every Member State has implemented alternatives to imprisonment systems, with their own rules, organisational set-up and procedures.

The “European Observatory on Alternatives to Imprisonment” project aims to create a functional network of partner countries, in order to reduce the disharmony and gaps among the systems. It is coordinated by Italian Associazione Antigone. The co-beneficiaries are:

- Università degli Studi di Torino – Italy
- Observatoire international des prisons - section française - France
- Special Account for Research Funds, Democritus University of Thrace, Department of Social Administration and Political Science (EL DUTH) - Greece.
- Latvijas Cilvēktiesību centrs – Latvia
- Helsinki Foundation for Human Rights – Poland
- Instituto Universitário de Lisboa (ISCTE-IUL) – Portugal
- Observatorio del Sistema Penal de los Derechos Humanos de la Universidad de Barcelona – Spain
- Centre for Crime and Justice Studies (ISTD) – United Kingdom

All the co-beneficiaries are members of the European Prison Observatory ([www.prisonobservatory.org](http://www.prisonobservatory.org)).

The main goal of the project is to provide, in a comparative way, a comprehensive picture of alternatives to detention in force within each partner country. These pictures would enable us to identify those alternative measures to detention that have led to:

- a decrease in detention rates
- the application of rehabilitative programs

To do so, starting from historical analysis, the project’s objective is to compare the legal framework of the systems, their goals, the contents of the measures and their impact on the penitentiary system as a whole.

The main target groups are, on the one hand, practitioners, social workers, NGOs and human rights associations staff and, more generally, all the justice operators, and decision makers and legislators on the other.

## SUMMARY

The research was aimed to understand to what extent the rising emphasis on alternatives is intended for probation to be used more in place of a prison sentence. Therefore, we focused on the relationship between prison and alternatives, in order to explore the extent to which the rise and the decrease in the prison population depends on fluctuations in alternatives.

In a broader perspective, we tried to explore the cultural issue of alternatives and we reflected on the effectiveness in terms of rehabilitative goals.

The data we discussed here have been collected by each partner country and systematised in national reports. The data come from various sources: other than official sources (Ministries of Justice, SPACE I and SPACE II, etc.), national reports referred to many unofficial sources, both qualitative (interviews, reports, direct observation, etc.) and quantitative.

The common data collection grid was developed using the European Probation Rules (Recommendation CM/Rec (2010) 1 of the Committee of Ministers to Member States on the Council of Europe Probation Rules, adopted on 20 January 2010) as the main reference.

In relation to these rules, the European Observatory on Alternatives to Imprisonment has sought to concentrate on and inquire into four corresponding levels:

- Legal provisions: assessing whether the law of each country has implemented the requirements of the European Probation Rules: if so, how have they been implemented, or what eventual gaps persist
- General current conditions: description of current alternatives to imprisonment conditions, notably regarding probation practices, procedural guarantees and staffing
- The worst conditions: special focus on critical conditions observed in each country
- Best practices: examples of countries observing the rights of persons subjected to alternatives to imprisonment.

We used the same analytical structure for the European Prison Observatory ([www.prisonobservatory.org](http://www.prisonobservatory.org)). In this regard, we must highlight greater difficulty in collecting and comparing the data with respect to the area of detention. The collection and organisation of available data on prison systems presented a higher level of standardisation and homogeneity across countries. However, discussing alternatives to imprisonment means referring to a more diversified set of patterns, with more complex and variegated language and implementation. This is the main reason why, in many cases, we lacked data or had greater difficulty in making comparisons among countries.

Here below we give an overview of the main results of the research.



The first issue is the effectiveness of the alternatives in terms of reducing prison populations. We found a widespread increase in the use of community sanctions. Unfortunately, the results of our observatory did not produce evidence on a connection between the development of community sanctions and the decrease in prison population rates.

Broadly speaking, the functions of community justice seem to be strongly influenced by the country's historical context and political climate. This was particularly true in the era of mass incarceration, where the introduction of alternative sanctions did not produce a decrease of prison population. On the contrary, we found that the increase of alternative sanctions is associated with an increase of prison population in some countries.

Therefore, even if delimited in time and space, though alternatives to imprisonment may be a means to contain the prison population, they are not a way to drastically reduce the prison system. In order to produce that aim, they should be accompanied by structural reforms reducing the number of people entering the penal system.

Within this general framework, we must underline a widespread positive decrease of pre-trial prisoners. Nevertheless, we must consider a relevant phenomenon: a significant shift in some pre-trial alternative functions. Increasingly frequently, they became a form of pre-sanction applied before the final sentence. In this sense, there is an issue about accountability with the European Probation Rules, which prescribe that any intervention before guilt "shall be without prejudice to the presumption of innocence" (Article 7).

The second issue is the confirmation of the structural crisis of the rehabilitative ideology. Within the wide set of measures applied, the goal to contribute to the re-integration and social inclusion of the convicted is rarely reached or even pursued, notably as concerns alternative sanctions. In particular, financial sentences and simple suspended sentences (without probation) have little if any rehabilitative content. The same considerations are also relevant for parole. Moreover, the broad expansion of electronic monitoring is a signal of transformation in penal monitoring strategies: although its goal is to reduce the prison population, it is usually applied without any form of support to promote social inclusion.

Even when treatment strategies oriented to rehabilitating the sentenced person are present, they are always followed by elements of monitoring and of restriction of freedom, which seem to have only a deterrent feature. Moreover, our research highlighted linguistic confusion among regarding obligations sentenced parties must observe (unpaid work, reparation to the victim, etc.) and social reintegration. Such confusion seems to conceal a broader crisis of the "penal welfare" ideology. The ambiguity lies in the dual aim ascribed to such obligations. They are justified with the aim of both punishment and rehabilitation, but are rarely accompanied by any kind of support for the sentenced party. Such a tendency breaches the traditional functions of community justice as established by the European Probation Rules.

It is important to underline that the (few and unsystematic) studies on recidivism show a direct relationship between the way an alternative to imprisonment is served and recidivism rates (if compared, i.e., to a sentence served entirely in prison). In particular, the level of social support seems to make a difference in terms of reducing recidivism, confirming the greater success of the penal-welfare policies than merely control-oriented strategies.

## PART ONE - IMPRISONMENT AND ALTERNATIVES TO CUSTODY: AN OVERVIEW

The political climate regarding prison numbers since 2000 shows some similar trends and some differences in the European countries included in this observatory. As for the similarities, the number of people in prison increased, at least in the first ten years of the millennium, in line with contemporary theories on penal expansionism and mass incarceration (Scott, 2013; Wacquant, 2009; Garland, 2001). It began decreasing in some cases (Italy, Spain, Poland) starting in 2010, while it continued to increase in others (UK and France<sup>1</sup>); in yet others it stabilized (Greece). Latvia<sup>2</sup> and Portugal are unusual cases: the first because its prison population has decreased significantly throughout the entire past decade; while the second shows a more fluctuating trend (decrease between 2002-2008 and then a new increase). The reasons behind such trends may be different: in most cases, harsher laws and repression mechanisms are responsible for increased prison numbers. Tough-on-crime policies have been introduced or implemented in many countries (Simon, 2007). Overcrowding has been a major problem in most countries and the most widespread and proposed solution was the building of new prisons, at least until 2010.

There was a turnaround roughly from 2010 to 2013: the prison population started to decrease in some countries, often as a consequence of new legislation, but also simply reflecting a shift in practices. The UK shows an unusual trend: here, the prison population neither decreased significantly (England & Wales and Scotland) nor continued to grow (Northern Ireland). In this area, in policy terms, the emphasis has been more on reducing re-offences than on cutting prisoner numbers. Even in Scotland, where the debate was more progressive than in England & Wales and Ireland, trends in the use of custodial sentences and the sentence lengths are not reassuring.

Meanwhile, a number of countries have approved legislative reforms in order to improve alternatives to detention. Latvia, where a comprehensive Criminal Law was adopted in 2013, is paradigmatic: a number of criminal offences were decriminalised, community-based sanctions were broadened for a wider range of crimes, lower sanctions were established for a wide range of crimes, in particular for property crimes, etc. In Italy, several government Decree Laws limited pre-trial detention and strengthened alternative measures, temporarily raising the sentence reduction for good behaviour, while a 2010 law offered the possibility of serving the last year of a sentence at home, which was raised to 18 months in 2012. The 2010 reform of the Spanish Penal Code emphasized the implementation of alternative measures, in particular to tackle short sentence imprisonment.

Also in France, where the results of the 2014 law are disappointing with respect to Minister Taubira's initial reform project, we recorded greater access to sentence adjustments, suppression of minimum sentences in cases of recidivism, broader access to conditional release and so on. Almost everywhere, alternatives to detention policies are increasingly focused on technical solutions, and notably electronic monitoring.

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<sup>1</sup> However, the French inmate population started to decline in April 2014, when it reached a peak of 68 859 detainees.

<sup>2</sup> We must consider that Latvia had one of highest prison population rates in Europe.

We will try to present an analysis of these evolutions in the following pages, in order to understand to what extent the rising emphasis on alternatives is intended for probation<sup>3</sup> to be used more in place of a prison sentence. Therefore, we focus on the relationship between prison and alternatives, in order to explore the extent to which the rise and the decrease in the prison population depends on fluctuations in alternatives.

In a broader perspective, we will try to explore the cultural issue of alternatives, notably the extent to which they are considered “in the shadow of prison” (Worrall, Hoy, 2005). We will reflect on the features of alternatives, both for their potential reduction in the prison population and their net-widening effects (Cohen, 1979; Tonry, Lynch, 1996; Aebi, 2015). In particular, we will present an overview of the community justice framework in partner countries. In the second part, we will discuss alternatives to pre-trial detention. We will examine alternative sanctions in Part Three. And in Part Four, we argue about alternatives during implementation.

The data we discuss here have been collected by each partner country and systematised in national reports. The data come from various sources: other than official sources (Ministries of Justice, SPACE I and SPACE II, etc.), national reports referred to many unofficial sources, both qualitative (interviews, reports, direct observation, etc.) and quantitative.

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We used the same analytical structure for the European Prison Observatory (Maculan, Ronco, Vianello, 2013). In this regard, we must highlight greater difficulty in collecting and comparing the data with respect to the area of detention. The collection and organisation of available data on prison systems presented a higher level of standardisation and homogeneity across countries. However, discussing alternatives to imprisonment means referring to a more diversified set of patterns, with more complex and variegated language and implementation. This is the main reason why, in many cases, we lacked data or had greater difficulty in making comparisons among countries.

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<sup>3</sup> The concept of “probation” is conceptualized differently across countries. We use the broad definition adopted by the Council of Europe, which includes “the wide diversity of sanctions and measures that may lead a person to be placed under the responsibility of probation agencies in different European countries” (Aebi, 2015, p. 577)

# 1. PROBATION PRACTICES

## 1.1 SUPERVISION BETWEEN CARE AND CONTROL

The European Probation Rules state that alternatives to detention should develop the offender's skills and social inclusion. While social rehabilitation is the main purpose mentioned in the national laws, specific programs are not always implemented. This depends on several factors.

First, mandatory supervision, considered a necessary condition to pursue these objectives, cannot be imposed on un-convicted persons. However, the main reason lies in the different kinds of measures. In Italy, for example, since 2010, alternative measures during execution have seen increasing use of home detention, which is the alternative characterised by the lower degree of the offender's social inclusion and development of skills.

Another key factor is the kind of relationship with the probation officer and his/her professional skills, which may impact concrete social inclusion and skills development. In the UK, in a context of reduced resources, staff are often more involved in performing other functions (enforcing the court's sentence, managing perceived risks to victims, etc.). Also, coordination with social services is not sufficiently assured (see France), so the impact of the measures in terms of integration and prevention of recidivism is reduced.

In many cases, the ambivalence between care and control, typical of the probation officer role (Vanstone, 2004; Bhui, 2001; Hemmens, Stohr, 2000; Bondeson, 1994; Harris, 1980; Harris, 1977), affects the concrete implementation of social inclusion and skills development. In Greece, for example, many alternatives do not include probationary supervision (as in all countries), but even when they do, no standards exist to ensure consistency in probationary supervision. Often the primary aim of supervision is the prevention of recidivism, with a shift toward control: this is the case of unpaid work and tagging in the UK. England and Wales are a paradigmatic case, due to more than a century's history of probation (Gard, 2007; Vanstone, 2004). Here, probation has become less traditionally rehabilitative or social-welfarist and more control-based and punitive (Canton, 2009; Faulkner, 2008; Downes, 1998; Johnstone, Bottomley, 1998) in recent decades. In particular, England and Wales offer an interesting mirror of the shift toward the risk-oriented perspective and the rising managerial approach within the probation field (Kemshall, Pritchard, 1996).

As for the increasing interest toward risk factors, England and Wales developed OASys, a risk and needs assessment tool intended to account for factors contributing to offending behaviours such as employment history, living conditions and substance abuse, in order to measure threats and risks (Crawford, 2007; Robinson, 2003; Robinson 2002). France has also developed a system of

supervision which is not standardized but structured by levels (i.e. according to the seriousness of the crime). Risk and needs assessments are key factors in the Latvian supervision model as well: an offender's risk and needs assessment must be done during the first two months of supervision to identify the risk of re-offending, criminogenic needs, factors supporting desistance (resources) and necessary level of supervision.

England and Wales also developed the MAPPA system (Multi-Agency Public Protection Arrangements) to ensure that police, probation and other agencies share information and agree on strategies to reduce the likelihood for those under supervision of committing serious offences (Kemshall, Maguire, 2001; Gilling, 1993).

Finally, rising managerialism is permeating the probation field (Flynn, 2002; Garland, 2001; Beaumont, 1995; McWilliams, 1992; Statham, Whitehead, 1992). England and Wales are once again forerunners: since 2014, the private sector has been involved through the “payment by results model”. The “Transforming Rehabilitation Strategy” recently implemented by the government was meant to open up the market to a diverse range of rehabilitation providers in order to “get the best out of the public, voluntary and private sectors, at the local as well as national level” through “new payment incentives for market providers to focus relentlessly on reforming offenders, giving providers flexibility to do what works and freedom from bureaucracy, but only paying them in full for real reductions in reoffending” (Ministry of Justice, 2013, p. 9).

So, bringing down reconviction rates is the main reason behind recent evolutions (Nash, 2000).

## 1.2 THE SUPERVISION MODEL AND STIGMATIZING NATURE OF SOME ALTERNATIVES

According to the European Probation Rules, alternatives to detention, notably community service (Article 47), should not be of a stigmatizing nature. This issue is strictly related to the model of supervision adopted, generally a combination of control and assistance. We have already mentioned that control is much more marked than assistance during pre-trial measures almost everywhere. The most stigmatizing measures are those involving a higher level of control.

First, almost everywhere, electronic monitoring is the measure with the highest risk of stigmatisation. Wearing a tag is stigmatizing in itself and offers no rehabilitative value. Many dysfunctions may occur: in France, for example, if the tag fails to connect to the network (in a bus, public office, cinema, etc.), an alarm may sound and an electronic voice orders the person to leave the zone.

Second, specific concerns regarding home detention are expressed in Italy and Greece. In Italy, people under house arrest or serving their sentence in home detention are subject to senseless bureaucratic police control with no discretion and perhaps even during the night, so that the neighbours are necessarily aware of what is going on. More generally, the Portuguese report also highlights the problem that people in the immediate surroundings of the person serving an alternative sentence are aware of the fact that he/she has been convicted of a crime.

This is particularly true if disproportionate stigma results from the obligation to wear visible marks,

as in the case of orange “tabards” or jackets bearing the word “community payback” for unpaid work in England & Wales.

Finally, a relevant factor of stigmatisation is related to the information owned (and used) by the media. They sometimes have enough information to reveal where someone is serving an alternative measure or, more generally, use information from criminal records. The role of the sensationalist mass media is often intended to stigmatize convicted people—helping to facilitate conditions associated with moral panic (Cohen, 2002; Garland, 2008)—rather than raise awareness and knowledge about the effectiveness in reducing recidivism.

## 1.3 PROGRAM INDIVIDUALISATION AND EVALUATION

All national laws provide for individualised programs, though this is not always fulfilled in practice. Judges’ provisions are often standardized (see Italy) and the Courts pronounce obligations almost automatically. As the intermediary between the person and the judge, the probation officer is entrusted with individualising the program, but his/her role varies according to the system and the measure.

Regarding the first aspect, in Scotland, for example, the Criminal Justice Social Worker has a plays directive role than in other countries in that he/she seeks to influence the sentence rather than merely provide information that will help the sentencer (as is the case in England and Wales). This is probably due to the unusual organisation of the system, which is strongly community related: in 1968, the National Probation System was disbanded and the role of probation services was transferred to local authority social work services (Whyte, 2008; McNeil and Whyte, 2007; McNeil, 2005).

In the Latvian system, the plan is drafted with the sentenced person regarding the goals he is to meet during supervision, while activities to achieve those goals are set by the case manager (after discussion with offender).

Second, various measures provide for different degrees of individualisation: unpaid work in England and Wales, for example, is not individualised but depends on the programs available. This is the same, in general terms, as for all pre-trial measures, which are less individualised than alternative penalties or alternatives to detention, due to the fact that supervision is not considered for pre-trial.

Finally, the level of individualisation depends on the relationship between the individual and the probation officer: the low number of probation officers in many cases (see Portugal) makes it difficult to develop individual probation plans.

Offender evaluation is provided for by all national laws, both in the course of implementation of the sentence and at the end of the supervision period. In France, a regular assessment is provided for only in a new kind of sentence, the “contrainte pénale”, and not in other alternatives with probation. In Poland, the report on completion of the supervision process does not need to be prepared if the supervision ended differently than upon expiry of the period of probation (i.e. when it was ordered that a sentence of deprivation of freedom should be suspended, when parole

was revoked or the court discharged the sentenced person from supervision at the probation officer's request).

The evaluation activity often focuses on assessed risk and needs (see Spain, England & Wales). Northern Ireland uses the Assessment, Case Management and Evaluation System, which focuses not only on the offender's needs, but also on motivation levels and likely responses, permitting the measurement of progress in every stage.

In every country, the contents of the measure can be changed during implementation. However, modifications are not properly the result of an evaluation of progress, as provided for by the European Probation Rules (Article 66: "*When required before and during supervision, an assessment of offenders shall be made involving a systematic and thorough consideration of the individual case, including risks, positive factors and needs, the interventions required to address these needs and the offenders' responsiveness to these interventions*"): in most cases they stem from practical requests from the individual (for education, work or family reasons) or are set by the judge.

## 1.4 FOREIGNERS AND ALTERNATIVES TO DETENTION

*"The interventions of probation agencies shall be carried out without discrimination on any ground such as sex, race, colour, language, religion, disability, sexual orientation, political or other opinion, national or social origin, association with a minority ethnic group, property, birth or other status."* (Article 4, European Probation Rules).

The case of foreigners highlights an *indirect* process of discrimination. While the provisions of the law are the same as for nationals, in practice foreigners face many limits to serving alternatives to detention. The lack of family relationships, greater difficulty in finding a job and a domicile can be obstacles to access to alternatives to prison (Melossi, 2003).

Moreover, foreigners face two legal limitations: the lack of a legal residence permit and expulsion (as an alternative sanction or at the end of the penalty), both of which contribute to hindering access to alternatives. More generally, it has been suggested that the court culture and the probation officer's pro-activity in seeking to persuade the courts may affect a foreigner's concrete possibility to access an alternative. Evidence suggests that both probation officers and judges in the UK favour community payback over supervision for foreigners, i.e. the measure including less rehabilitative content and a more punitive-restorative emphasis (Canton, 2012).

Such a scenario produces a widespread difference in access to alternatives between nationals and foreigners: in France, for example, foreigners represent 19% of the prison population, but just 5.6% of probationers.

European data and practices show the racial selectivity of the criminalisation process (Hester, Eglin, 1995), notably in its final phase: the execution of penalties. Prison takes the form of ethnoracial closure well-described by Wacquant (2000). Foreigners face social stigma which makes it more difficult for them to access alternative measures, both in the pre-trial phase and during execution (Marchetti, 2002).

## 1.5 AFTERCARE AND SUPPORT FOR THE OFFENDERS' FAMILIES

Resettlement is a very tricky phase, where the risk of recidivism is always just around the corner (Box, 1981). For this reason, the European Probation Rules provide for support from probation services in this particular phase as well. They prescribe the possibility of aftercare services to ex-offenders and support, in terms of advice and information, for the offenders' families.

*“Once all post-release obligations have been discharged, probation agencies may continue, where this is allowed by national law, to offer aftercare services to ex-offenders on a voluntary basis to help them continue their law-abiding lives” (Article 62).*

*“Where appropriate, and in accordance with national law, probation agencies, directly or through other partner agencies, shall also offer support, advice and information to offenders' families” (Article 56).*

These two rules are commonly ignored in practice, due to a general lack of resources (time and staffing). In many cases, support should be provided through a network of cooperation with local social services, but the reports highlight insufficient connection between probation staff and social services. Counselling and information for the families of offenders is generally not a formal task of the probation services or is provided only occasionally.

## 1.6 THE ROLE OF VICTIMS AND RESTORATIVE JUSTICE

The role of the victim in the alternative to detention programs is almost non-existent in all countries but the UK. There, victims are involved both during the trial and after the sentence, at least in theory. They may present Victim Personal Statements (VPS) on the consequences of crimes in order to be heard. Both the police and probation officers have various duties to contact the victims throughout the process. Moreover, Restorative Justice can be used for every type of crime and at any stage of the criminal justice system, although in practice, RJ is not fully embedded and occurs only in a very small number of cases.

The victim is not systematically involved in any of the other countries: this generally happens in the Juvenile Justice System or with for specific crimes (high-risk sex offenders, etc.). However, these are only experiments or limited programs and the service often does not include participation of the probation officer in restorative justice is not included in his/her professional tasks, although circles of accountability and support are currently in implementation, as in Latvia.

National laws sometimes provide for the duty of the offender to act as much as possible in favour of the victim, in order to access an alternative measure, as in the case of the Italian “Affidamento in prova al servizio sociale” (the most common alternative measure to detention consisting in participating in social service programs). A special committee instituted by the Ministry of Justice in 2002 to analyse the Italian situation of restorative justice and mediation highlighted several problems related to a general lack of knowledge, a lack of competence of penitentiary workers, a lack of relations with the regions, difficulties faced by social services in acquiring relevant



information on victims and offenders, and a lack of continuity in the relationship with surveillance judges.

Again in the UK, where restorative justice is more structured, questions have been raised about claims that restorative justice represents an alternative to prison and can reduce imprisonment. It is argued that it may become another sanction rather than a real alternative.

More generally, many scholars (Garland, 2001; Simon, 2007) have highlighted the risks of manipulation of the role of victim. The “rise of the victim” is more related often to political issues and has little to do with requests presented by individual or associated victims. The victim is used symbolically to create consensus around moral panic campaigns instead of producing safeguard tools for vulnerable people. Therefore, the gap between what the law provides for and practice is relevant to this end.

## 1.7 EFFECTIVENESS OF ALTERNATIVES TO DETENTION

The European Probation Rules pay great attention to feedback from the general public on the effectiveness of alternatives to prison .

Article 16 states: *“The competent authorities shall enhance the effectiveness of probation work by encouraging research, which shall be used to guide probation policies and practices”* and Article 17 asserts *“The competent authorities and the probation agencies shall inform the media and the general public about the work of probation agencies in order to encourage a better understanding of their role and value in society.”*

Systematic research projects are implemented only in the UK, where they are government funded and commissioned. They are often conducted by Ministry of Justice or National Offender Management System expert staff in conjunction with independent research bodies or academics. Such studies focus mainly on reconviction patterns and desistance theory (studies on individuals over long periods of time to assess what has been effective or ineffective in leading them to desist).

Research studies are sometimes conducted within the framework of EU or bilaterally funded projects or by university students or academic staff (Greece, Portugal, Poland), but not systematically.

Broadly speaking, alternatives to detention are poorly understood by the general public. This is also related to the role of the media: as the Italian and French reports highlight, when an offender serving an alternative to detention re-offends, the media tend to emphasize the failure of alternative measures without any quantitative evidence. Although the few research studies on the topic show that recidivism is systematically lower for alternatives as compared to prison, they are not shared with the media and the general public to raise awareness on probation policies and practices.

The political and academic discourse on punishment tends to equate the penalty with prison, and community sentence as a “soft option”, confirming the theory that the alternatives are “in the shadow of prison” (Worrall, Hoy, 2005). Lack of feedback on effectiveness, the availability of only

statistical data (in most cases produced by the Ministries of Justice), a lack of in-depth analysis, a lack of awareness by the general public and the controversial role of the media, are all aspects of the poor attention and social interest on alternatives.

The budget is another key element reinforcing the “probation in the shadow of prison” theory. The UK and Latvia are the only countries able to provide such information. Portugal has such information until 2011. In all other countries, there is no separate budget and the costs of alternatives cannot be identified (the budget includes amounts allocated to both prison and probation, without distinguishing between them). At the same time, it is broadly claimed that alternatives are much less costly than prison.

## 2. PROCEDURAL GUARANTEES

### 2.1 HUMAN RIGHTS SAFEGUARD AND DISCRIMINATION

According to Article 2 of the European Probation Rules, “*Probation agencies shall respect the human rights of offenders. All their interventions shall have due regard to the dignity, health, safety and well-being of offenders.*” Moreover, Article 4 states: “*Probation agencies shall take full account of the individual characteristics, circumstances and needs of offenders in order to ensure that each case is dealt with justly and fairly. The interventions of probation agencies shall be carried out without discrimination on any ground such as sex, race, colour, language, religion, disability, sexual orientation, political or other opinion, national or social origin, association with a minority ethnic group, property, birth or other status.*”

From a legal point of view, all national laws provide for humanitarianism, equality of treatment, respect for the offender's human rights and dignity, and adherence to the principle of legality. In most cases, there are currently no known cases of discrimination of persons subject to alternative measures on grounds of gender, religion, race or political beliefs.

Nevertheless, in fact, it is not always easy to know whether offenders’ human rights are always respected due to a lack of external and independent monitoring mechanisms. Moreover, many violations may result from the very features of the alternatives: as the UK report explains, serious disruption to private and family life and to the right to freedom of association due to electronic monitoring, curfews and similar restrictions could amount to a breach of rights enshrined in the European Charter on Human Rights. The Greek report provides some examples: probationers are not guaranteed access to the social security system and they are required to observe very demanding and inappropriate obligations incompatible with the social reintegration aims of

community sanctions. The French report also denounces the recurring inappropriateness of the obligations/prohibitions of control measures: the hours during which probationers are permitted to leave the home are too limited to develop a social life or engage in administrative procedures, etc., prohibition from frequenting certain localities or designated areas which may limit employment opportunities, etc.

Another critical point is related to foreigners. As already stated, the case of foreigners highlights an *indirect* process of discrimination because they face many concrete limits to serving alternatives to detention, and rehabilitation is, in practice, applied differently for foreign nationals. Moreover, from a legal point of view, deportation, both as a substitutive sanction and as an alternative to detention, raises at least serious doubts in terms of the prohibition of discrimination.

## 2.2 OFFENDER COOPERATION AND INFORMED CONSENT

According to Article 6 of the European Probation Rules, *“As far as possible, the probation agencies shall seek the offenders’ informed consent and co-operation regarding interventions that affect them.”*

Informed consent is generally requested before beginning supervision (always in the UK), as is the offenders' cooperation during all phases of the programs. In Greece, for example, probation officers ask probationers to sign contracts detailing the supervisory program. However, broadly speaking, this is often an obligation rather than a choice, if the alternative is going to prison. This is true for both alternatives to sanction or detention and pre-trial alternatives.

As regards the latter, Article 7 of the European Rules on Probation states: *“Any intervention before guilt has been finally established shall require the offenders’ informed consent and shall be without prejudice to the presumption of innocence.”*

In this case, offenders' informed consent is not always requested, i.e. in the case of an obligation to undergo examination, treatment and care for detoxification purposes (see France). In most cases, the offenders' cooperation is required for mediation and restorative justice programs.

The presumption of innocence is a controversial issue. It is always guaranteed by law and procedures. ECHR Article 5 case law is clear on this: guilt or likelihood of conviction is entirely irrelevant to proper consideration of whether to detain or impose any other restriction pre-trial. Some pre-trial restrictions risk unlawful infringement of the right to be presumed innocent, although the opportunities to challenge them on this basis are extremely limited in reality. Furthermore, pre-trial restrictions may strongly impact a person's daily life (job, family and social relationships, etc.) with many concrete consequences in terms of stigmatisation (Box, 1981).

## 2.3 PRIVACY

The European Probation Rules pay great attention to safeguarding privacy through recording, information and confidentiality. According to Article 88, *“All probation agencies shall keep formal,*

*accurate and up-to-date records of their work. These records shall typically include personal details of the individuals concerned relevant to the implementation of the sanction or measure, a record of their contact with the agency and work undertaken in relation to them. They shall also record assessment, planning, intervention and evaluation.” Article 89 asserts: “Records are subject to principles of confidentiality and data protection as set out in national law. Confidential information shall only be shared with other relevant agencies based on strict procedures of handling and used for clearly defined purposes.”*

All national laws provide for compliance to the principles enshrined in Articles 88 and 89.

In Greece, for example, all probation agencies keep formal records of their work. These records include individuals’ personal details and a record of their contact with the agency: the decision of judicial authorities, biannual probation reports, records from counselling meetings, probationers’ records and other relevant information. Such records are used exclusively by the probation service and by the competent judicial authorities when needed. The framework is very similar in all other countries.

The privacy safeguard is guaranteed everywhere by the general rule of professional and official secrecy. In Latvia, the law prescribes the obligation to refrain from disclosing the personal data even after termination of legal employment. Another relevant issue is the transfer of data to the organisation where the person is to perform the individualised program. In Spain, for example, such organisations must appoint a single person authorised to access these data. The organisation must destroy the information when the measure ends.

Despite the clear laws, privacy violations do sometimes occur. The Portuguese report points out that information on some cases promptly and consistently flows to the mainstream media. The French report provides an example: recently, a box containing the case records of approximately 200 probationers (who had been subject to monitoring from 2008 to 2011) was found on a pavement, sparking outrage. It was accidental, but the lack of space and time to properly manage archives may result in events like this.

Once again, the media’s role seems to be more to amplify moral panic than improve public awareness of the benefits of alternatives to detention in terms of reduced recidivism and effectiveness.

## 2.4 COMPLAINT PROCEDURES AND INDEPENDENT MONITORING

Article 14 of the European Probation Rules states: *“There shall be accessible, impartial and effective complaint procedures regarding probation practice.”* Article 15 asserts: *“Probation agencies shall be subject to regular government inspection and/or independent monitoring.”*

A procedure for appealing to the judiciary, public authorities and/or ombudsperson is available everywhere. The point is that these procedures need to be impartial and effective, as Article 14 stipulates. In France, for example, probationers can seize the sentence application judge to request a modification to their obligations or to eliminate some of them. However, the decision is taken

without hearing the probationer (no contradictory debate) and the request is most often rejected if the probation officer is not in favour of the change. Moreover, the term of appeal is only 24 hours. In some cases, the complaint procedure may be addressed to non-impartial bodies, such as the Inspection Service in Spain. In other cases, contrary to the case of convicted and remanded prisoners, there are no specific provisions to regulate probationers' complaint procedures (see Greece).

Government inspections take place in every country, but without regularity. In many cases (Italy, Greece, Latvia), the probation system is not monitored by any independent body. In others, there is some sporadic attention from an Ombudsman (France, Portugal), the Supreme Audit Office (Poland) or members of Parliament (Spain). Everywhere, in practice, there is little control over activities.

Proper independent monitoring is guaranteed systematically only in the UK: by Her Majesty's Inspectorate of Probation in England and Wales, by the Criminal Justice Inspectorate of Northern Ireland in Northern Ireland, and by the Social Work Inspection Agency and local authorities management in Scotland. These are all independent bodies.

## 3. STAFF

### 3.1 ORGANISATION OF PROBATION STAFF

Probation services fall under the Ministry of Justice in all countries, with the exception of Scotland, where the Criminal Justice Social Worker Services (CJSW) has formed part of the broader work of the 32 local authorities since the late 1960s.

The organisation of probation staff, however, varies according to the country, in terms of organisational structure and scientific qualifications. In most cases, there is a distinction between probation officers and case managers (many of whom are also involved in delivering services to clients). Probation officers (often staff trained in social work or similar fields) are generally supported by psychologists, administrative staff and volunteers, though not always (in Greece, for example, no administrative staff exists to support their work). In Italy, penitentiary police officers are employed at the offices for the execution of justice measures (UEPE: Uffici per l'Esecuzione Penale Esterna). The same is true in France, where some custodial officers are employed to apply and remove electronic bracelets, resolve logistical problems, etc.. Poland has professional court-appointed probation officers and social court-appointed probation officers.

The organisational structure is generally regionally based: in Latvia, for example, the State Probation Service consists of a central headquarters and 28 territorial divisions: the central office

plans and implements probation policy (drafts legislation, internal legislation, monitors the quality of probation work, hires employees and delivers training, etc.), while the local offices are composed by the office head (who assigns responsibilities to staff) and probation workers.

In England and Wales, we observe some relevant recent changes in the probation field, according to the 2014-15 “Transforming Rehabilitation” programme, which led to a complete restructuring of probation services, opening them to independent providers from both the private and the voluntary sectors under the new “payment by results” system of funding. Twenty-one Community Rehabilitation Companies (CRCs), which are regional entities (partnership between large corporations and NGOs), supervise around 200 000 low- and medium-risk offenders per year. The National Probation Service (NPS) is the public body supervising the remaining approximately 31 000 high risk-offenders.

The adult probation service and the juvenile justice system have been unified in Greece (2014) and Italy (2015). Opinions about such trends differ. In Greece, it created confusion regarding the competence and principles of each service and completely ignores the different treatment needs of juvenile and adult probationers. Some probation workers may deal with both categories of offenders, which means that the same probation officer implements completely different sanctions and measures imposed by different courts following different procedures and according to different principles. In the Italian proposal, on the other hand, there would be consideration of the peculiarity and independence of the execution of sentences in the community with respect to prison, as well as the consideration of the specific openness of the juvenile justice system, deeply integrated in the surrounding area.

A key issue is the adequacy of staff numbers and remuneration: caseloads can reach 120-150 in many countries (Italy, France, Poland, Portugal) and very less only in the UK (15-25 cases). In Latvia, probation staff’s caseloads may vary from 20 to 300, depending on the clients’ risk level (it is interesting to stress that the staff of the National Probation Service was cut significantly between 2008 and 2009, with the economic crisis). Thus, in many cases the number of probation officers is considered insufficient related to the workload (it should be doubled according to the French report). Unions frequently lodge complaints (e.g. in Italy and Portugal). The Spanish report identifies the main problem as the lack of social recognition, visibility of their work and prestige.

Such a scenario means that some European Probation Rules requirements are not respected, notably Article 29: *“Probation staff shall be sufficiently numerous to carry out their work effectively. Individual staff members shall have a caseload which allows them to supervise, guide and assist offenders effectively and humanely and, where appropriate, to work with their families and, where applicable, victims. Where demand is excessive, it is the responsibility of management to seek solutions and to instruct staff about which tasks are to take priority.”* Article 33: *“Staff remuneration, benefits and conditions of employment shall reflect the standing of their profession and shall be adequate to the exacting nature of their work in order to attract and retain suitable staff.”*

Broadly speaking, the low number of probation workers seems to be another side of the probation “in the shadow of prison” theory (Worrall, Hoy, 2005), not only adversely affecting the quality of treatment, but also tainting the credibility of alternatives to detention.

## 3.2 RECRUITMENT PROCEDURES AND TRAINING

The European Probation Rules pay a great deal of attention to probation officer recruitment and training. Articles 22-28 focus on these issues:

*22. Staff shall be recruited and selected in accordance with approved criteria which shall place emphasis on the need for integrity, humanity, professional capacity and personal suitability for the complex work they are required to do.*

*23. All staff shall have access to education and training appropriate to their role and to their level of professional responsibilities.*

*24. Initial training shall be provided to all staff and shall seek to impart the relevant skills, knowledge and values. Staff shall be assessed in a recognised manner and qualifications awarded that validate the level of competence attained.*

*25. Throughout their career, all staff shall maintain and improve their knowledge and professional abilities through in-service training and development provided to them.*

*26. Staff shall be trained and enabled to use their discretion within the framework of law, ethics, organisational policy, up-to-date methodological standards and code of conduct.*

*27. Staff who work or are to work with offenders who have committed some specific offences shall be given appropriate specialised training.*

*28. Training shall pay attention to offenders and, where applicable, victims who may be particularly vulnerable or have distinct needs.*

The relevance of probation officers' training has also been highlighted by British academic research in the field (Knight, Stout, 2009; Nicholson, Sellers, 2007; Nellis, 2003; Nellis, 2001): it has been highlighted that training is a key variable influencing placement of the probation officers' role along the care/control continuum, but the debate on training has not yet received the proper political, professional and academic attention at a European level. The relationship between the academic world and the justice system, on the one hand, and the choice between generic (social work) and specific training, on the other, are two key variables significantly affecting the probation officer's role (Ronco, 2013).

In most cases, recruitment procedures are based on internal or external qualifications and examinations. The initial qualification requirements vary among countries: in some cases, a university degree in social work is required (Italy, Spain, Scotland and Northern Ireland), or in various fields other than social work: sociology, psychology, criminology, law (France, Greece, Poland). In Latvia, no specific type of university degree is required, though preference is given to persons with training in social work, social pedagogy, pedagogy, psychology and law. Between 1998 and 2010, England and Wales experimented with the most specific model of probation officer training, with the Diploma in Probation Studies. Since 2010, the main route to qualifying as a probation officer is the Probation Qualifying Framework, which combines educational learning with on-the-job experience.

Initial training varies a great deal among countries: in most cases, it is internal to the Ministry of

Justice system, although in a few cases it is external: in Spain, for example, the Administration does not hire directly but third-sector organisations manage each part of the program, and the Administration just defines profiles. Initial qualifications in England and Wales are currently provided by three universities under a NOMS-awarded contract.

Initial training is long in some cases: in England and Wales, it takes 15 months to three years, in France two years, in Poland one year. Conversely, short-term courses are implemented in Italy and Greece: for example, the only training probation officers currently employed in Greece receive is a two-week initial theoretical education course on the operational activities of the courts and the structure of the public prosecutors' service and the prosecutors' duties and competencies.

Therefore, the overview is uneven: external trainers (academics, etc.) intervene in a few cases and both initial and ongoing training are often delivered by expert or senior staff within the probation system, with obvious risks of *self-referentiality* (Nicholson, Seller, 2007). Moreover, the growing attention to risk assessment and public protection observed in the training methodologies and programs notably in England and Wales, can be read as a shift toward control.

### 3.3 THE PROBATION AND PRISON SERVICES

The type of relationship between the probation service and the prison service varies greatly among the countries. Probation and prison systems may be part of the same department as was the case for Italy until the recent reform (Penitentiary Administration Department), and in Portugal (Directorate-General of Social Rehabilitation and Prison Service), France (Rehabilitation and Probation Prison Services) and England and Wales (National Offender Management Service). Probation and prison systems may also be administratively separate (Greece, Spain, Northern Ireland, Scotland, Poland and Latvia).

This situation is generally not static: there has been a process of gradual convergence in some cases, with the merging of two different entities into a single department. In Portugal, the probation and prison services were combined into a single General Directorate only in 2012. This was part of the government's cost-cutting strategy but also a way to further marginalise the rehabilitation service. England and Wales's probation system has a much longer history: there was no relationship between prison and probation services until the 1960s. Subsequently, there was increasing interaction until the creation of NOMS in 2004 with the aim of creating a seamless transition of offenders from prison to the community, and to end the fragmentation and duplication caused by two separate systems. NOMS is responsible for both prison and probation services.

We observed an opposite trend in Italy: a reform recently entered into force aiming to create an autonomous Department for Juvenile Justice and for the execution of penalties in the community. Until 2015, probation services depended on the Department of the Penitentiary Administration, and the major problems faced by prisons (first of all overcrowding) monopolized the Department's attention in recent years, leaving little space to alternatives to detention. The same is reported in Portugal, where, independently of the formal level of relationship, the probation system is absorbed into the conceptual sphere of the prison services and their relationship seems as seamless now as it was before.



The separation between the two systems is clearer in other countries: in Spain, probation officers do not participate in any aspect of imprisonment and parole or final release supervision is provided by penitentiary social services. The same is true in Greece; although probation services have a statutory task to supervise released prisoners, so far probation officers have rarely been involved. This can be read as a violation of Article 39 of the European Probation Rules affirming that *“Whether or not probation agencies and the prison service form part of a single organisation, they shall work in close co-operation in order to contribute to a successful transition from life in prison to life in the community.”*

It is relevant to report that in Latvia, where the relationship between prison and probation systems is important above all in taking decisions regarding release (together with the prosecutors' office), the delivery of treatment programs by the probation service in prison, except for sex offender treatment programs, have been suspended until 31 December 2015 due to economic crises and subsequent austerity measures (2008-2012). This can also be read as a violation of Article 4 of the European Prison Rules (*“Prison conditions that infringe prisoners' human rights are not justified by lack of resources”*) and *“the economic crisis, which torments the EU countries, may not be put forward to defend possible violations of human dignity of prison population”* (Maculan, Ronco, Vianello, 2013, p. 10). According to the human rights approach to prison management, indeed, it is not sufficient for prison authorities to treat prisoners humanely, they must be committed to providing opportunities and activities to improve their skills and conditions (Coyle, 2002).

To conclude, the relationship between the prison and probation systems is a relevant and awkward issue: while frequent and closed contacts may guarantee the development of release programs for detainees, probation service easily risk being absorbed by the prison culture and mechanisms.

### 3.4 THE PROBATION SERVICE AND THE JUDICIARY

According to the European Probation Rules, Article 35, *“Probation agencies shall, in accordance with national law, liaise with and provide information to the judicial authorities, and where appropriate, to other competent authorities. This will usually include information on the likely impact of custody and the feasibility of non-custodial sanctions and measures, in general and in particular cases. Where individual reports are required, the information to be provided shall be clearly defined.”*

Most of probation officers' work involves preparing individual reports for the courts. These include social/psychological reports, progress reports, final reports, etc. So, they prepare reports before, during and at the end of the measure.

The relationship between the probation service and the judiciary is a very important issue. While the probation officer is an auxiliary force of the court, as the Poland report states, his actual possibility of influencing the court decisions may vary. The judge has the last word, but not all countries show the same force of influence. As already reported, Scottish Criminal Justice Social Workers have a more directive role in influencing the sentence rather than merely providing information. In France, the probation officers' competence to determine the nature of treatment, appropriate obligations, etc. is being increasingly recognised in relation to those of magistrates, so they occupy an increasingly important role, although probation services remain mandated.

In other cases, as in Portugal, the relationship seems to be more bureaucratic and ritualistic rather than substantial. In Greece, judges for the implementation of sentences, provided for by the founding law of the probation service, have never been appointed: public prosecutors are called to perform the relevant duties and to supervise the implementation of community measures. According to the Greek report, there is no close and regular cooperation between probation officers and the public prosecutor supervising their agencies: although conducting social inquiries and producing pre-sentence reports on the request of judges for pre-trials are statutory duties of the probation officers, this provision is rarely realised. Moreover, inquiries and reports related to early release or home leave are usually prepared by the prison social services. Therefore, Article 35 of the European Probation Rules is not always respected.

An interesting practice is recorded in Latvia, where co-operation with the judiciary is maintained through central and territorial Advisory Bodies, including representatives from court, police, prosecutor's office, social service, municipality and prison. They meet regularly to discuss problems and possible solutions in the field of crime prevention<sup>4</sup>. This appears to be a good example of implementation of Article 12 of the European Prison Rules: *“Probation agencies shall work in partnership with other public or private organisations and local communities to promote the social inclusion of offenders. Co-ordinated and complementary inter-agency and inter-disciplinary work is necessary to meet the often complex needs of offenders and to enhance community safety.”* Conversely, we have already seen that Latvian austerity measures following the economic crisis led to a significant reduction of pre-sentence reports to courts and prosecutors for many categories of clients.

## 3.5 THE PROBATION SERVICE AND THE GENERAL SOCIAL SERVICES

Given offenders' often complex needs, the European Probation Rules repeatedly demand effective cooperation between probation services and other public or private agencies. In addition to the already mentioned Article 12, Articles 37 and 38 respectively state: *“Probation agencies shall work in co-operation with other agencies of the justice system, with support agencies and with the wider civil society in order to implement their tasks and duties effectively.”* and *“Probation agencies shall encourage and facilitate support agencies to undertake their inherent responsibility to meet the needs of offenders as members of society.”*

A reason beyond the importance of cooperation lies in the lack of special training and expertise needed to work with a unique and vulnerable social group. This is true, for example, in the case of drug offenders: Greek and Italian reports highlight cooperation, often through pilot programmes, between probation services and drug rehabilitation services, both inside and outside prisons.

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<sup>4</sup> A very similar institution can be found in Poland, which promotes the creation of units operating in the field whose main task is social reintegration and assistance for convicts. Such councils already exist in most Polish provinces (14 out of 16), and due to its composition (representatives of the courts, local governments, prisons and other entities that perform a penalty) they can effectively take over coordinating local policies in the field of popularisation of alternatives to detention.

Frequent insufficient staffing, however, sometimes makes it difficult to consolidate relationships with other agencies. In France, liaison and coordination with social services is not assured sufficiently precisely due to the lack of staff.

The higher number of probation officers in England and Wales guarantees the possibility of working closely with local and national statutory and voluntary organisations, including those providing housing, education and mentoring services for offenders. The (now disbanded) 35 national probation trusts were key members of local partnerships in the criminal justice system and the English report highlights the importance that CRCs continue working closely with external services. Decentralisation is reported as strategic in promoting community participation in probation in Italy as well.

## PART TWO - PRE-TRIAL ALTERNATIVES

The use of pre-trial detention is a crucial aspect of the penal system. The two basic principles (a) no one may be detained (or suffer restrictions to his personal freedom) without a court decision and (b) no one is guilty until a final judgement, are the key points on which every advanced constitutional system is based. We could state that the rule of law lives mainly through the correct application of pre-trial measures.

The ECHR is clear on this subject: Article 5 states that a person may be deprived of his freedom only on the grounds specified, including bringing him before the competent legal authority on reasonable suspicion that he has committed an offence or when it is considered reasonably necessary to prevent his committing an offence or fleeing.

In this sense, some research highlights that “pre-trial detention can provide a window into the effectiveness and efficiency of a particular state’s criminal justice system, as well as its commitment to the rule of law. In the developed world, the lower percentage of all prisoners who are pre-trial and the shorter average duration of pre-trial detention indicate a relatively efficient criminal justice system: people move through the system quickly and are generally released pending trial. In developing countries, however, the great majority of all detainees are pre-trial and can languish in that situation for years. This indicates, at best, an inefficient and overwhelmed criminal justice system, and at worst, a lack of commitment to the rule of law” (Birk et al., 2009).

First of all, when applying this perspective to alternative measures, we need to clarify what we mean by “pre-trials measures”.

The classical taxonomy between alternatives measures based on “treatment” and measures based on “control” may not be useful. The goal of pre-trial measures is far from re-education or re-socialisation, but can be considered *precautionary* measures with three main meanings throughout Europe: to avoid the commission of another crime, to avoid contamination of evidence to be used during the criminal trial and to prevent flight risk. From a formal point of view, the criminal justice system considers the defendant as innocent until proven guilty, so he cannot be deemed to be in need of rehabilitation.

The first question to be asked is whether those meanings still exist or if new meanings are arising beyond the formal aspect.

### 1. RECENT TRENDS IN ALTERNATIVES TO PRE-TRIAL DETENTION

Based on the available data, it is clear that countries want efficient criminal justice through quick

and fewer trials. The new statement seems to be: fewer and faster trials for better justice.

In other words, any measure that can avoid (or reduce the duration of) a trial is welcome. From an institutional point of view, this idea has a double advantage: first for the justice system, because it appears efficient and, second for the person under process/investigation, because he can quickly clarify his position (although defendants often use dilatory tactics).

In some countries, the new idea of “rehabilitative” pre-trial measures is growing rapidly.

Italy is a clear example: law no. 67/2014 introduced a new measure called “messa alla prova” in 2014. For crimes punishable by no more than four years of detention, the defendant may request suspension of the criminal proceeding. If the suspension is granted, the person is put on probation under the supervision of social services and must follow a program. The program involves actions intended as reparation. The suspension of the criminal proceeding on probation cannot be granted more than once. Positive completion of probation extinguishes the crime.

It is clear that the defendant has a strong interest in avoiding punishment/sentencing, so he has an incentive to choose “messa alla prova”. In theory, he is still not guilty: relevant issues on the measure’s constitutionality could be raised in the future, but so far Italian legislators consider the “messa alla prova” a good tool for solving chronic prison overcrowding (at January 31<sup>st</sup>, 2016, 6.880 people received this measure out of a total prison population of 52.475 inmates, 18.008 of them are pre-trial detainees).

This example helps clarify what should be considered as “alternatives to pre-trials detention”: not only precautionary measures, but all alternatives that can be applied before the sentence. So, in this research we apply a *temporal criterion* to distinguish alternatives to pre-trial detention.

We find a similar trend in France. Under Article 132-60 of the Criminal Code, the court may defer sentencing if it appears that the offender is successfully undergoing rehabilitation, that reparation is being made for the damage caused and the nuisance caused by the offence is about to cease. Sentencing may or may not be deferred with probation. Moreover, since a law of 15 August 2014 (entered into force on 1 October 2014), the court may also defer sentencing when further information on the offender's personality, or on his material, family and social (Article 132-70-1 of the Criminal Code) situation appears necessary. In this case, sentencing should occur within no more than four months (renewable once). Although there is still little feedback on this new opportunity, which should promote the individualisation of penalties, many professionals and academics welcome this reform, while emphasizing that it would require additional resources.

Since March 2015, the procedure under Article 132-60 has been used to support an interesting experiment led by the Ministry of Justice and an Inter-departmental agency for fighting drugs and addictions (called MILDECA). The experiment is being conducted in the jurisdiction of a court in the Paris region. It involves defendants with a criminal record and who have committed an offence for which the magistrate would traditionally issue a prison sentence, but whose criminal behaviour is due largely to addiction problems (alcohol or drugs). Fifty people are expected to participate in the scheme. Eight have already been involved, mainly alcoholics with a record of petty offences (theft, violence, etc.)

Candidates are identified at the pre-trial stage. During police custody, or in his office, the prosecutor may request a specific social investigation by an association specialised in this field,

which also takes initiative. The association submits a questionnaire to the offender regarding his alcohol and drug use. The interview is intended to determine the link between consumption and offence, if there is a desire for change and if the offender is willing to participate in a program with a multidisciplinary approach. If it appears that the offender could fit into the program, the court places him under judicial supervision (pre-trial measure) for a two-month period. During this time, the person undergoes a thorough evaluation on his degree of drug/alcohol dependence and the impact of this addiction on his daily life. The evaluation is performed by a medical and social team using a scientifically validated standardized tool (Addiction Severity Index). At the same time, probation agents evaluate his potential of recidivism because of this addiction (the program is for people at high risk of recidivism). A report is submitted to the court at the end of this process. If the link between the offence and the addiction is clearly established, program placement is recommended. And if it is established that the offender is motivated to participate it, the court pronounces a deferral of the sentence for one year, as a probation period to address the addiction problem.

The probationer then follows a long program lasting five hours a day, five days a week. It has three main objectives: treatment, development of activities (sportive or creative), and reinsertion. Interventions include specialised medical addiction professionals (physicians, psychologists, etc.), social workers, cultural facilitators who work with detainees or probationers, etc. The aim is to offer one-third care, one-third creative and sporting activities and one-third social activities. The program must be individualised and follow three phases: the first focused on care and treatment adherence, a consolidation phase and a third phase devoted to preparing program release and reintegration. Furthermore, the magistrate responsible for the execution of sentences ensures supervision in addition to daily monitoring by probation officers (because they are on site). An interview is scheduled every month to review progress, aspects remaining to be worked on, etc. All stakeholders, including magistrates, receive training on the addiction exit process; notably on the fact that the process is not linear and there may be a relapse.

This experiment comes in response to the inefficiency of prison sentences that are not conducive to such medical care, guidance and social assistance. A scientific committee has been set up to supervise the experiment. Assessments are done by an independent body (the Sociological Research Centre on Law and Penal Institutions in Paris): a first on the experiment's ability to reach the targeted public (January 2017), and a second on the program's impact on recidivism (after a few years, to see the evolution of social and penal trajectories).

The experiment is still in an early stage. However, it has already generated some positive impacts. Although for a small number of people, the imposition of prison sentences has been avoided. And, in addition to having received training in common, the professionals involved have learned to work together. They better understand the logic of each other's intervention, and what can be expected. Magistrates are also trained in motivational interviewing, which is a change in their practices. In general, professionals emphasise that the experiment for which resources have been developed gives them the time and opportunity to work properly and provide real support for people.

## 2. THE IMPACT OF PRE-TRIAL DETENTION ON THE PRISON POPULATION. THE PRE-TRIAL ALTERNATIVE MEASURE AS AN ANSWER

Primarily, we need to consider general data on the use of pre-trial detention, and only then seek to analyse alternatives to pre-trial detention.

Two main questions arise:

- 1) Is the use of pre-trial detention linked to (increased or reduced) use of detention as the main instrument to deal with criminality?
- 2) If yes, does pre-trial detention provide a correct representation of current prison trends?<sup>5</sup>

We need to analyse available data to answer the first question. We asked partners to provide the number of pre-trial detainees, including as a percentage of the prison population, for each country.

The general framework is interesting. We note a common trend in the use of pre-trial detention, between 20% to 30% are pre-trial prisoners, the only exceptions are England and Wales where the use of pre-trial detention is much lower (around 10%, 18% in Scotland, and over 30% in Northern Ireland. Paradoxically, we find the highest and the lowest percentage of pre-trial prisoners in the same geographical area), and Poland where the data fluctuates the most (there were 31% of pre-trial detention prisoners in 2000, but only 11% in 2014, even though the total prison population has increased).

The following graph provides a clear framework of the past 14 years (2000-2014).

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<sup>5</sup> See the first part of this report for a description of recent prison trends.

Graph 1. Use of pre-trial detention: European comparison (% of prison population)

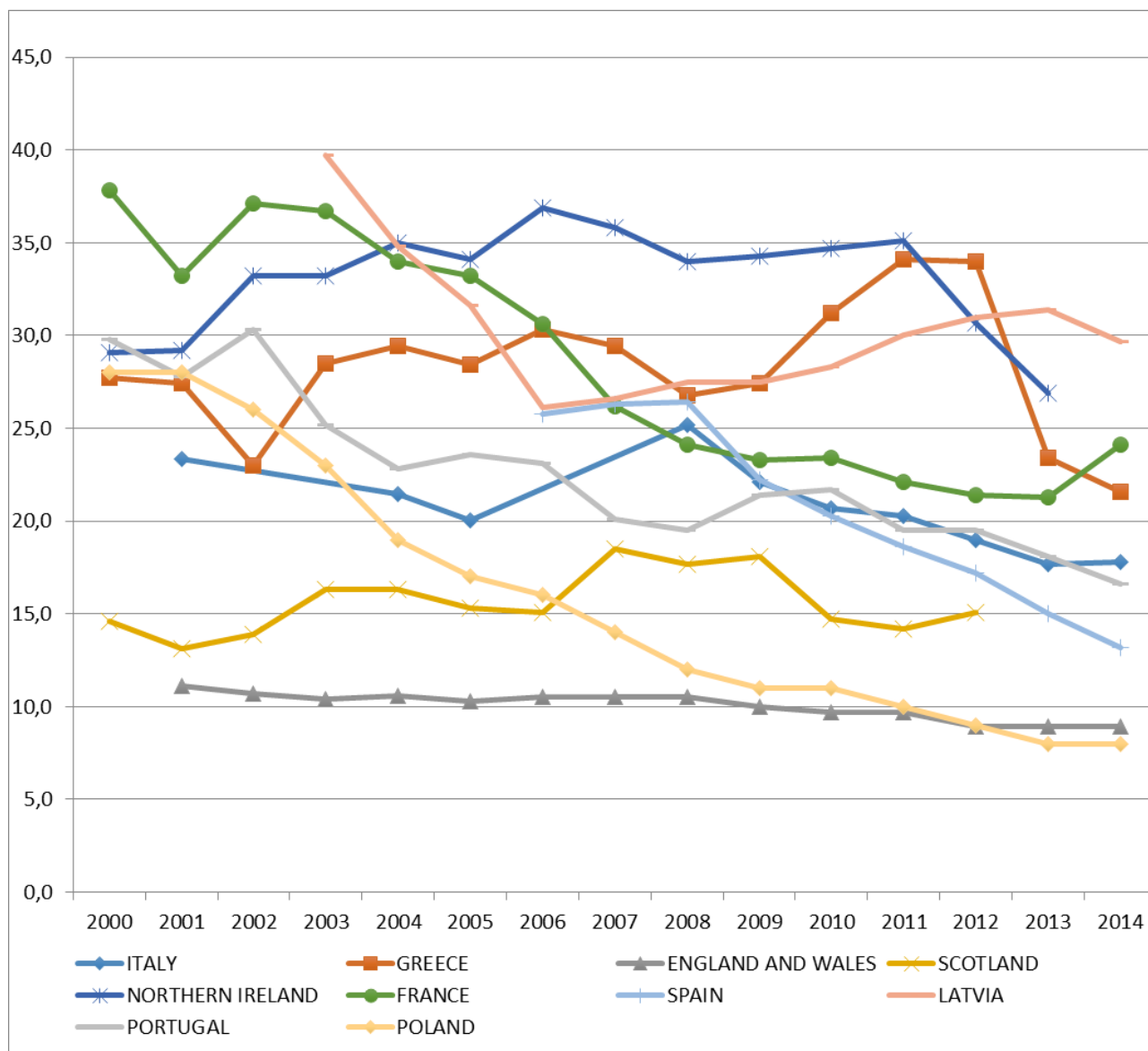


Table 1. Use of pre-trial detention: percentage details (% of prison population)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
ITALY		23,4	#N/D	#N/D	21,4	20,1	#N/D	#N/D	25,2	22,1	20,7	20,3	19,0	17,7	17,8
GREECE	27,7	27,4	23,0	28,5	29,5	28,4	30,3	29,5	26,8	27,4	31,2	34,1	34,0	23,4	21,6
ENGLAND AND WALES	#N/D	11,1	10,7	10,4	10,6	10,3	10,5	10,5	10,5	10,0	9,7	9,7	8,9	8,9	8,9
SCOTLAND	14,6	13,1	13,9	16,3	16,3	15,3	15,1	18,5	17,7	18,1	14,7	14,2	15,1	#N/D	#N/D
NORTHERN IRELAND	29,1	29,2	33,2	33,2	35,0	34,1	36,9	35,8	34,0	34,3	34,7	35,1	30,7	26,9	#N/D
FRANCE	37,8	33,2	37,1	36,7	34,0	33,2	30,6	26,2	24,1	23,3	23,4	22,1	21,4	21,3	24,1
SPAIN	#N/D	#N/D	#N/D	#N/D	#N/D	#N/D	25,8	26,3	26,4	22,2	20,3	18,6	17,2	15,0	13,2
LATVIA	#N/D	#N/D	#N/D	39,7	34,8	31,6	26,1	26,6	27,5	27,5	28,3	30,0	31,0	31,4	29,7
PORTUGAL	29,8	27,8	30,3	25,2	22,8	23,6	23,1	20,1	19,5	21,4	21,7	19,5	19,5	18,1	16,6
POLAND	28,0	28,0	26,0	23,0	19,0	17,0	16,0	14,0	12,0	11,0	11,0	10,0	9,0	8,0	8,0

Based on an analysis of the data, the answer to our first question must be affirmative: there is a direct link between the total prison population and the pre-trial prison population.

The prison population was growing in the early 2000s and the pre-trial percentage followed this



trend. The abuse of prison (Young, 2003; Matthews, 2009) was the main instrument to address population's security issues and had been for about thirty years (Wacquant, 2009; Bauman, 2014). Then, we find a small but significant shift towards decreasing numbers after 2010.

Greece is the most significant example, the pre-trial prison population decreased from 34.5 to 23.4% in a few months between 2012 and 2013; in absolute numbers, the percentage represents nearly one thousand people (from 4.254 to 3.104). The cause of this significant shift can be found in some important reforms (i.e. the establishment of the Greek Probation Service for Adults to implement community measures imported in the penal system).

France is another interesting example that can be considered an exception. Between 2000 and 2003, the pre-trial prison population was consistently over 35% (around 20.000 people out of a prison population of 55.000). This is impressive data to be analysed; France shows how the general prison population can increase and the pre-trial prison population decrease. Unlike the other countries, there is an inverse relationship between the data. From 2004 to 2014, the prison population grew from 59.197 to 77.291 inmates, but pre-trial inmates dropped from 20.134 in 2004 to just 16.549 in 2008, decreasing from 34 to 24%: France lost 10 points in ten years.

From a legislative point of view, the reason for this trend can be found in the stricter legal framework established in June 2000 and considered one of the three main reforms of the penitentiary system in this country: some principles have been imposed (i.e. pre-trial detention is an *extrema ratio*, the decision is made by a specific judge not in charge of investigations, limitation of the duration, creation of a Monitoring Commission for pre-trial detention, principle of full and mandatory compensation for damage sustained in cases of dismissal or acquittal, etc.).

But France's situation needs to be followed carefully, because it is the only one of the partner countries where in the last year considered (2014) the number of pre-trial detention began growing again (at least as a percentage, from 21.3% in 2013 to 24.1%, in absolute numbers 17 090 people in 2013 and 16 549 in 2014) by less than one point, but in a framework where the total prison population continues to decrease.

### 3. TYPES OF PRE-TRIAL ALTERNATIVE MEASURES

In this section, we need to examine in greater depth the different typologies of pre-trial alternatives set by European countries, remembering, as we have already stated, that the idea itself of pre-trial measures is changing, becoming a sort of "preview" of the sentence (or, better, a way to hasten the end of the trial).

Basically, we need to distinguish between *economic/monetary* and *personal* measures.

Both categories are contemplated in every country.

Please see the national reports for a complete list of pre-trial alternatives. Here, it is important that we focus on some peculiarities and relevant differences.

From a general point of view, we can state that a *personal measure* is a broad category, including all measures other than detention that restrict personal freedom and require control (by police or

other authorities).

Indeed, the content of a *personal measure* varies considerably depending on the nature of the obligations/prohibitions imposed. It may be limited to the provision of a security, the obligation to report to the police (police control) with or without prohibitions or involve submission to medical treatment or socio-educational monitoring. The number and nature of the obligations/prohibitions can generally be modified throughout the supervision. The person subject to them may request modifications to the obligations/prohibitions, or release at any time. In the event of non-compliance, the judge may usually be seized and order pre-trial detention.

The main economic measure is a *money bail*. The purpose of this measure is to provide security in the event the suspect or the defendant absconds. The greater or lesser use of bails depends mainly on tradition: Southern European countries like less this kind of alternative than do Northern and Eastern Europeans. It does not even exist in Italy or France. In Greece, bail is considered a pre-trial restrictive condition.

In Poland, money bail (and communal bail) are options, but the number of money bails imposed by the courts in 2014 was 35% lower than in 2009, and the number of money bails imposed by the prosecution service in the same period was 37% lower. The same progressive failure of money bail can be found in Latvia, where money is considered under Section 257 of the procedural criminal code.

We find money bail (“caução” Article 197 criminal procedural code) in Portugal as well. The particularity of this system is that if the individual cannot afford to post bail, the Court may replace bail with any other coercive measure with the exception of incarceration or house arrest. The amount of bail must take into consideration the seriousness of the crime, damages caused and the accused’s socio-economic situation.

In the UK, bail (technically *release pending trial*) is very important and used. English legislators even want to develop the use of such a measure: in December 2012, legislation in England and Wales restricted the use of remand into custody for offenders who would be unlikely to receive a custodial sentence on conviction. It is too early to tell whether this will result in fewer people remanded into custody, but the message is clear enough: pre-trial measures must generally be non-custodial (like bail).

In this sense, all systems (England, Wales, Scotland and Northern Ireland) are based on the same presumption, that a person not yet convicted of any offence should be released until trial. However, in England and Wales, there is no presumption in favour of bail where the defendant is charged with murder, manslaughter, rape, attempted murder or attempted rape. In such cases, bail can only be granted in exceptional circumstances and reasons must be given for any grant of bail. In Scotland, bail cannot be granted for charges of murder or treason. In Northern Ireland, bail can be granted on any charge including murder.

The main problem seems to be supervision of individuals while on bail. When offences are committed on bail, media coverage usually questions the right to bail and criticises the Courts having granted it, but despite this aspect, from the point of view of the subjects involved it is accepted that freedom compared to custody pending trial offers greater protection of the suspect’s fundamental and social rights: employment, housing, family life, presumption of innocence, fair trial rights and effective trial preparation.

When compared to awaiting trial in custody, release pending trial is a more satisfactory solution for the suspect, his family, the wider economy and society. Even if remanded prisoners were able to enjoy a regime compliant with international standards, the disadvantages of imprisoning not-convicted persons are the costs of doing so (prison costs, micro and macro-economic impacts) and the undue infringement of rights to freedom and a fair trial. However, recent reports have shown that in the UK, remanded prisoners experience a regime that is less compliant with international standards than that afforded to convicted prisoners. Therefore, the impacts of bail are less severe in the UK than being held on remand. If no conditions (or at least no intrusive or restrictive conditions) are imposed, the individual's work, home and private life should be largely unaffected and the presumption of innocence and fair trial rights would be better protected.

Considering *personal pre-trial alternatives to custody*, we need to focus on two European trends clearly emerging from the national reports:

- greater use of electronic monitoring
- new "rehabilitative" pre-trial measures (in the sense already explained)

Regarding *electronic monitoring*, we have to consider the more frequent use of ICT applied to penal control. Electronic monitoring is the new declension of police control or a new form of house arrest and is a form of surveillance (Nellis, 2009), although it appears less intense than house arrest or curfew.

The legislative emphasis on this new measure affects all of Europe, but, in many cases, it is still too early to analyse the impact on the penal system. In the Eastern European Area (Poland and Latvia), a form of electronic monitoring (during pre-trial phase) is not contemplated.

One of the most interesting cases is France, where *electronically monitored house arrest* has become an autonomous type of pre-trial measure and not only a form of judicial supervision since November 2009.

The measure involves the obligation to wear an electronic bracelet and the prohibition of leaving home (or a specified residence) except at times or for reasons specified by the judge. The electronic bracelet incorporates a transmitter that verifies that the person is in fact in the defined place when he should be there. The receiver is generally installed in the place in question (a fixed box), which does not geo-locate the person when he is free to leave. Since the 2009 law, the bracelet may be equipped with a portable receiver (GPS) in some cases which can locate the person at any time. The person may also be subject to obligations/prohibitions pronounced as part of judicial supervision, under the same conditions.

An important aspect is that electronically monitored house arrest falls under the same procedure as judicial supervision but its pronouncement implies the *consent* of the person concerned. Moreover, it may be pronounced only if the charged person faces a penalty of at least two years of imprisonment. The judge must also justify its application by the fact that judicial supervision is insufficient in view of the exigencies of the investigation or as security measure. The initial term of electronically monitored house arrest is a maximum of six months, but can be extended to two years. A GPS electronic bracelet can be imposed only when the offence involves violence, serious damage to property or life, and is punishable by imprisonment of at least seven years; five years in cases of domestic violence (children, partner). Prison administration staff provide control via the electronic bracelet. In case of non-compliance, the judge may be seized and may order pre-trial

detention. The execution time of this measure is equated with pre-trial detention and is deducted from the length of the sentence pronounced, whenever this is the case. The person may claim compensation in the case of acquittal or if the case is dropped.

In Greece, electronic monitoring (as a special case of house arrest) was introduced in 2013. It may be applied only upon request of the accused and provided if he has a fixed place of residence. The cost is prepaid by the accused, unless he is unable to pay (in which case the State covers expenses).

The main characteristic that should be highlighted is that the competent authority for the implementation of electronically monitored home detention is a private security company under the supervision of the Ministry of Justice.

In Italy, as well, this measure is too new to have impact data, but electronic monitoring is possible since 2000, but only since the “Torreggiani case” (Torreggiani et al vs Italy, ECHR, 8 January 2013)<sup>6</sup> has it become a “compulsory” measure: formally, the judge should always prefer house arrest with electronic monitoring and choose pre-trial detention only on an exceptional basis. The reform has not yet been fully implemented and the use of electronic monitoring is still uncommon, also because of the high cost of the bracelets and the GPS systems.

In the UK (that is, as described before, a “bail-focused” system), electronic monitoring can be imposed by the Court only if it is satisfied that the defendant would not be granted bail without it. This is intended to ensure that tagging is used only where necessary and to support the proper use of public funds. In practice, its use as a bail condition has increased significantly.

What we call new “rehabilitative” pre-trial measures is a trend that includes all the examples of measures based not only on control, but also on a re-educational/re-socialisation program or on activities for the accused even without a sentence.

Basically, we found example of such measures in every partner country. We have already described the *messa alla prova* in Italy. These are usually measures reserved for people with health or social diseases (above all, drug or alcohol addiction).

In this sense, Greece is an interesting case, where the principle of legality that provides that the public prosecution is obliged by law to prosecute all crimes has some limits and exceptions: alternatives procedures which may result in the postponement or refraining from prosecution. The prosecutor’s role changes and becomes more like that of a probation officer, and the basic idea is to establish a “compensatory relationship” between the accused and the public authority.

Greek legislation provides for:

A) Victim compensation (reparation), according to Articles 384 paragraphs 3-5 PC and 406 paragraphs 3-5 PC as amended by law 3904/2010. It is a diversionary settlement on condition that the victim is fully compensated.

B) Penal mediation in cases of intra-family violence, according to Articles 11-14 law 3500/2006. The prosecutor acts as mediator.

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<sup>6</sup> With the “Torreggiani” sentence, the ECHR condemned Italy for the structural conditions of its prisons. In particular, the Court censured the serious overcrowding, the absence of activities for prisoners and the excessive number of prisoners in pre-trial detention.

C) Postponement of prosecution for drug-related offenses, on condition that the suspect participates in an official drug treatment program, according to Article 31 paragraph 1(a) law 4139/2013. Prosecution may be cancelled if the treatment program is successfully completed.

D) Penal reconciliation in certain felony offenses, according to Article 308B CPP as added by law 3904/2010. The prosecutor acts as director of the procedure.

During the pre-trial stage, restrictive conditions may be imposed after a person has been criminally charged to prevent recidivism and secure the accused person's presence during the criminal proceedings (Articles 282 paragraphs 1-2 & 5, 283, 285-286, 291, 296-299 CPP).

E) Placement in a drug treatment program on request from substance abuse offenders on the condition that they participate in the program, according to Article 31a law 4139/2013, amended in 2015.

Through these few but significant measures, Greece is the main country making so many efforts in "rehabilitative" pre-trial measures, although, implementation is rare in some cases.

In France, *judicial supervision* is a flexible pre-trial measure that may subject a person to various obligations/prohibitions until his appearance in Court.

These obligations may include rehabilitative actions, such as the obligation to submit to socio-educational monitoring, undergo examination, treatment and care for detoxification purposes or to submit to social, psychological or healthcare measures in cases of domestic violence, or to report periodically to designed services in charge of monitoring.

Monitoring may be done by the probation and rehabilitation service (a penitentiary service called SPIP), by associations upon agreement with the court, or by individuals authorised by the court as judicial supervisors. In the early 1990s, it was decided to develop a private sector (primarily for budgetary reasons) to take charge of judicial supervision with socio-educational actions. The courts may introduce competition between the associations or authorised persons. Partnerships may be interrupted if the courts no longer have the necessary financial means.

All these examples of obligations highlight the rehabilitative aspect of the measure. Available data make the situation even clearer: 7% of judicial supervisions are limited to the provision of a security; 22% to the obligation to report to the police (and to respect certain prohibitions). The remainder (71%) included more or less intense socio-educational monitoring. Among these, monitoring is done by the SPIP in 17% of cases, associations in 28% of cases, and authorised persons in 55% of cases.

Even in UK systems, where *release pending trial (bail)* is the most commonly used pre-trial measure, the rehabilitative aspect may be important in this phase. Indeed, as a general rule, no conditions should be imposed on release pending trial unless necessary to ensure the defendant surrenders to custody in the future, or to prevent the commission of an offence while on bail, or interference with witnesses or obstruction of justice. In such cases, the court may impose conditions with the person's consent, including that the person undergo therapeutic treatment or treatment for addiction.

In Eastern Europe (Latvia and Poland), we find a particular mixed pre-trial measure called *personal guarantee*.

This measure involves a statement made by a trustworthy person that the suspect/defendant will appear at each call and will not hinder the proceedings. A trustworthy person is any person who complies with public order and who is an authority figure for the suspect/defendant or the public. The guarantor must guarantee that the defendant will refrain from any unlawful actions that hinder the proceedings. Available data show that the courts or prosecution service do not apply the measure very often. Over the past five years, there has been a steady decrease in the frequency of this measure (fewer than one hundred people per year) except in 2012. The purpose of the measure is to provide a security in the event the suspect or the defendant hinders the proceedings by influencing his behaviour to ensure that the suspect or the defendant appears at each call of the court or the prosecutor. The defendant is required to comply with the requirements imposed on him that may be set out in a manner similar to police supervision. Since this measure is rarely applied, it has no significant impact on the frequency of pre-trial detention. It also has hardly any impact on the defendant's work, physical and mental well-being, family and social ties, life goals or life chances.

In Latvia, the personal guarantee is provided for under section 258 of the criminal procedure code and basically works like in Poland.

It is now clear how a fair use of pre-trial measures is a crucial instrument for reducing prison population and meeting international standards (Article 5 ECHR in particular).

## PART THREE – ALTERNATIVE SANCTIONS IN EUROPE

### 1. DEVELOPMENT OF ALTERNATIVE SANCTIONS AND THEIR IMPACT ON PRISON RATES

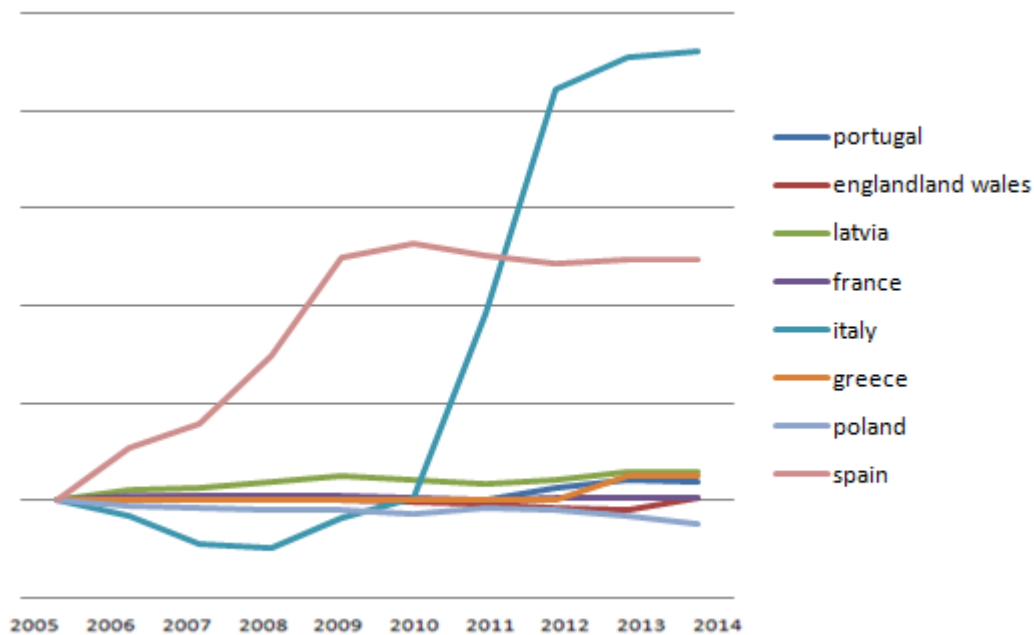
European penal codes provide different types of sanctions and measures in each country that can be selected in place of a custodial sentence. National laws identify several kinds of solutions (monetary, monitoring or treatment), although only a few are actually frequently applied. In a comparative perspective, we will concentrate on the most frequently used measures in each country.

On a general level in the past ten years, there was a growing trend in the application of alternative sanctions (Spain, Italy, Portugal, Latvia, France and Greece), while in one country (Poland), the trend decreased slightly. Significant growth is seen in two countries in particular (Spain and Italy). While in Spain, only 8.143 people would see the two alternative sanctions applied on them (suspension sentence and community service) in 2005, this number rose to 160.804 in 2013. In Italy, 338 people served semi-detention, supervised liberty and community sentence in 2000 and 10.365 in 2014<sup>7</sup>. In England and Wales, the use of community sanctions peaked in 2007 (as it did in the UK as a whole). In that year, the number for the main types of community sanction was 150.179 (and 169.000 in the whole of the UK). By the end of 2013, the numbers had fallen to 110.950 (and 131.711 across the UK). The following graph shows the trend as a percentage of the alternative measure in every country.

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<sup>7</sup> For Italy is important to underline the huge use of financial measures as non-custodial sanction (in 2012, 106.068 people have been sentenced to financial sanctions).

Graph 2. Alternative measure rates



The UK's relatively high use of community-based sanctions since 2000 has had no obvious effect on prison population rates, which have grown in most years despite rises and falls in numbers subject to community sanctions.

In Spain, the 2010 penal code reform played an important role, establishing that decreasing the prison population through greater use of alternative sanction is a priority.

When it comes to Greece, the introduction of "Greek probation for adults" probably contributed to the fact that courts used mainly alternative sanctions. In Greece, an important applied measure has been probationary supervision in recent years. We can hypothesize that legislative reforms in Portugal have also positively influenced the courts in replacing prison sentences with alternative sanctions. For these two countries, it is difficult to identify whether there is any connection between the legislative change and the alternative measures trend since available data starts only from 2010.

In France, a principle was introduced in 2009 by which a prison sentence may be pronounced only as a last resort except in cases of recidivism. It has been added that sentences promoting the rehabilitation of the sentenced person must be applied whenever possible. Therefore, since 2009, after few years of decrease, the number of alternative measures started to increase again.

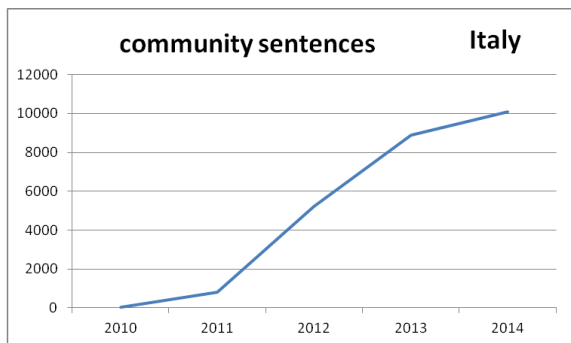
In greater detail, we can see how community sentences play the main role among the alternative sanctions. This is the only measure offered by law to the courts in all of the countries considered in this paper. In four countries (Italy, England and Wales<sup>8</sup>, Spain and Portugal), it is the solution

<sup>8</sup> The Community Order in its current form was introduced with effect from 2005 and replaced a variety of other measures: this explains the apparent sharp rise in its use from 2005, whereas in fact there was a less marked increase in community based sentences overall in this period.

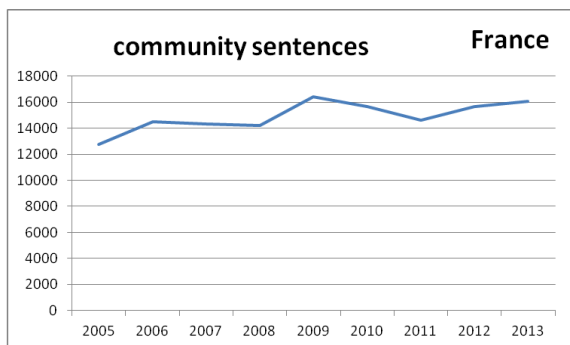


generally adopted. As we can see in the following graphs, its application has grown in the past year everywhere but in Poland. We have no detailed data for Latvia to describe the use of community sentences.

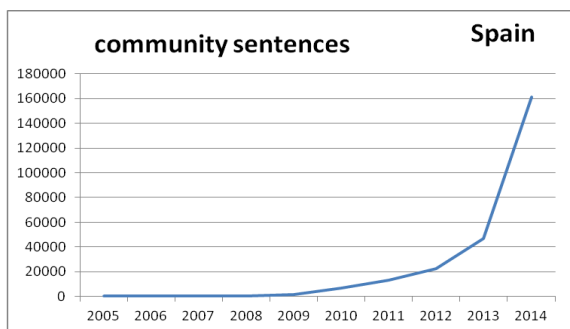
Graph 3. Community sentence in Italy



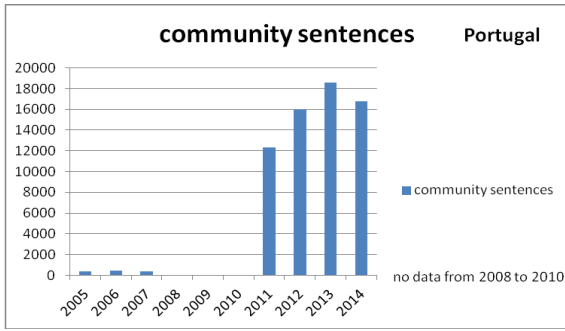
Graph 4. Community sentences in France



Graph 5. Community sentences in Spain



Graph 6. Community sentences in Portugal



Graph 7. Community sentences in England and Wales

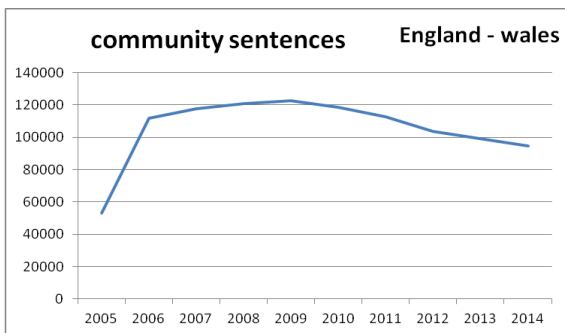
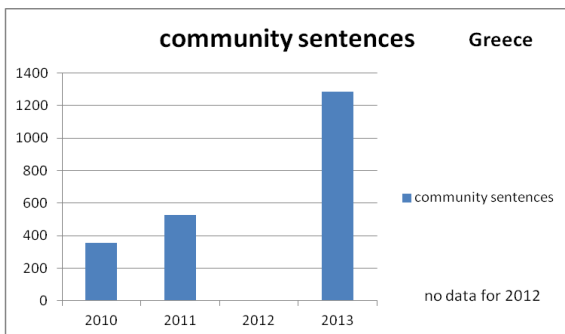


Table 8. Community sentences in Greece



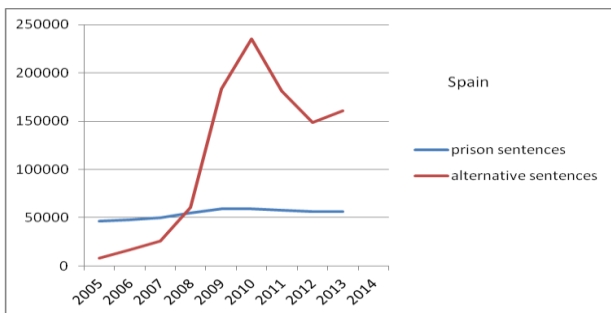
As mentioned earlier, the use of alternative sanctions is increasing in almost all of the countries analysed. We know that the total number of people in prison has been unrestrainedly increasing since the 1990s. Many sociologists (Feeley, Simon, 1992; Garland, 2001; Wacquant, 2009) hypothesize that this increase, which started in the USA, is caused by the export to Europe of a governance model focussing on compensating the welfare state crisis with the expansion of the penal and prison sphere. This trend has continued over the past ten years. In fact, the number of people serving a final prison sentence has increased constantly although more moderately and with a few exceptions.

A statistical data immediately emerges when trying to identify the connections and the impact of alternative sanction trends on detention rates. There is a direct proportionality between the data

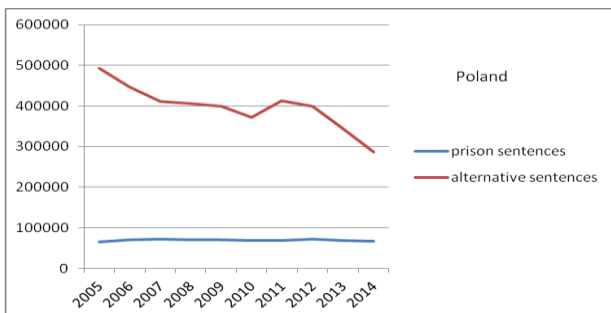
reporting prison sentence trends and those showing the development of alternative sanctions. We could hypothesize that the growing application of these alternative sanctions has had a deflationary effect on the prison population, although the following graph shows that this hypothesis is not verified.

In some countries, alternative sanctions increase along with prison penalties. In countries where we find this kind of trend (France, Portugal, Greece and Spain), we face a phenomenon known as “net widening” (Cohen, 1979), confirming the recent hypothesis presented by Marcel Aebi, (2015), which involves overall growth in the number of people for whom alternative or prison penal devices are responsible. This “parallel trend” is particularly clear in Italy. Only in Latvia is the growth of alternatives associated with a reduction in prison sentences.

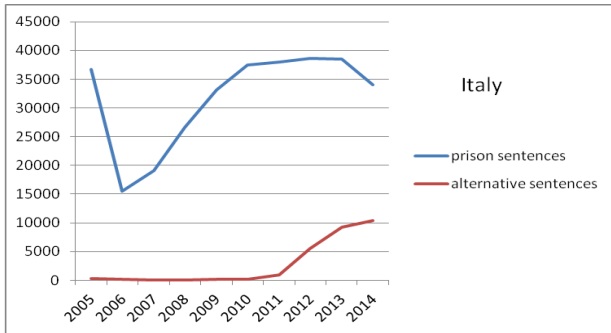
Graph 9. Alternative sanctions and prison sentences in Spain



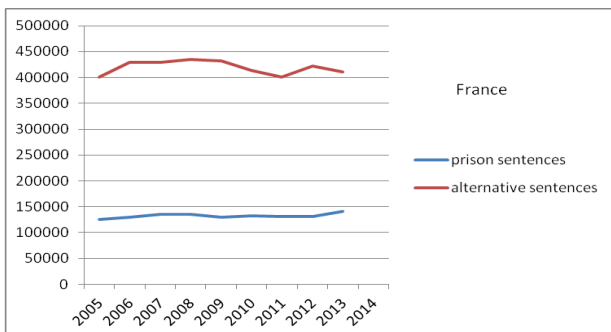
Graph 10. Alternative sanctions and prison sentences in Poland



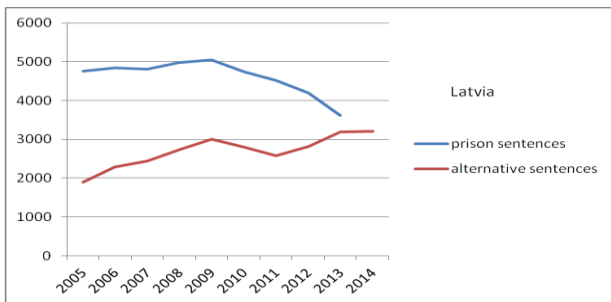
Graph 11. Alternative sanctions and prison sentences in Italy



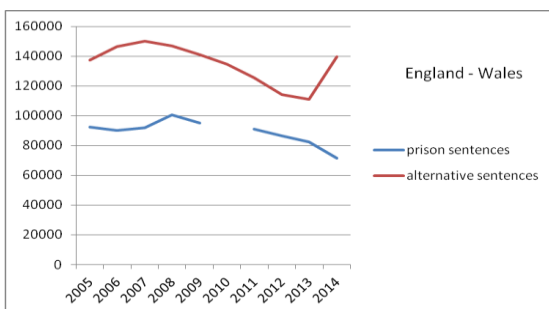
Graph 12. Alternative sanctions and prison sentences in France



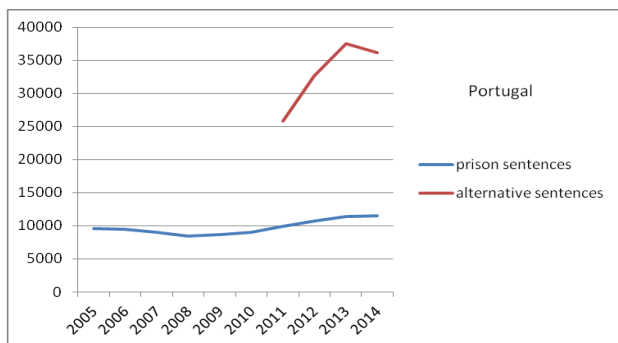
Graph 13. Alternative sanctions and prison sentences in Latvia



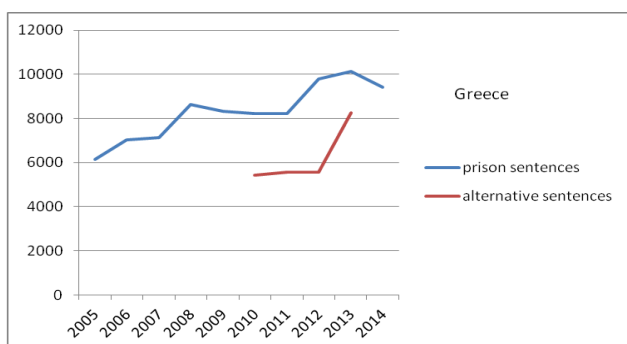
Graph 14. Alternative sanctions and prison population in England and Wales



Graph 15. Alternative sanctions and prison population in Portugal



Graph 16. Alternative sanctions and prison population in Greece



It is not easy to identify the reasons for this parallel trend. Certainly, “zero tolerance” politics adopted in Europe starting in the late 1990s play an important role. This strategy reached its peak at the end of the 2000s, just prior to the consolidation of the economic crisis.

Within the framework of the “zero tolerance” paradigm (Wacquant, 2009), in fact, the number of behaviours that were first stigmatized by politicians and the media and then criminalized, thus becoming criminally prosecutable, has significantly expanded. This strategy has targeted foreigners, especially illegal immigrants, and youth (even local) whose behaviours are defined as anti-social. We might think that the overall result of this kind of strategy is the enlargement of the penal monitoring sphere, though not necessarily the prison sphere.

The ease with which it is possible to revoke the use of alternative measures, such as community service or suspension with probation, might also play an important role in keeping detention rates high, even when the use of alternative sanctions is increasing statistically. In most countries, alternative measures are often bound to obligations and rules, and the violation of these, or the commitment of a new felony during probation, automatically leads to the revocation of the measure and reinstatement of the prison sentence. This was what would happen in France, for example, until the introduction of a new reform in January 2005. Before this date, the person’s prison sentence was automatically restored if he committed a felony during the suspended sentence period, which was one of the two alternative measures applied. This was also the case in England and Wales, and statistical data shows it: between 2000 and 2009, the number of people imprisoned in these countries for failing to comply with a community sentence rose by 470%.

## 2. REHABILITATION, SOCIAL INCLUSION OR MONITORING?

We now need to concentrate on the measures that statistically involve a considerable number of people each year. In fact, while the list of options available to judges is variegated, most frequently only one or two measures included in the legislation are actually put in practice. According to the European Probation Rules, alternative sentences must comply with human rights, must not be stigmatizing or discriminating towards the user, be applied with the individual's agreement and, above all, have the rehabilitation of the sentenced person as their priority.

Therefore, through a more in-depth analysis of the most commonly used alternative measures and with a comparative prospective, we will try to better understand if these measures have a merely controlling and punitive function or that of rehabilitation and social inclusion of the sentenced person.

We have no data or qualitative research that would allow us to observe the specific consequences of the measures on the personal biographies of the individuals involved. So, we will try to use interpretative elements by analysing the features of each measure provided in each country and the list of the possible additional obligations that can follow the alternative measures.

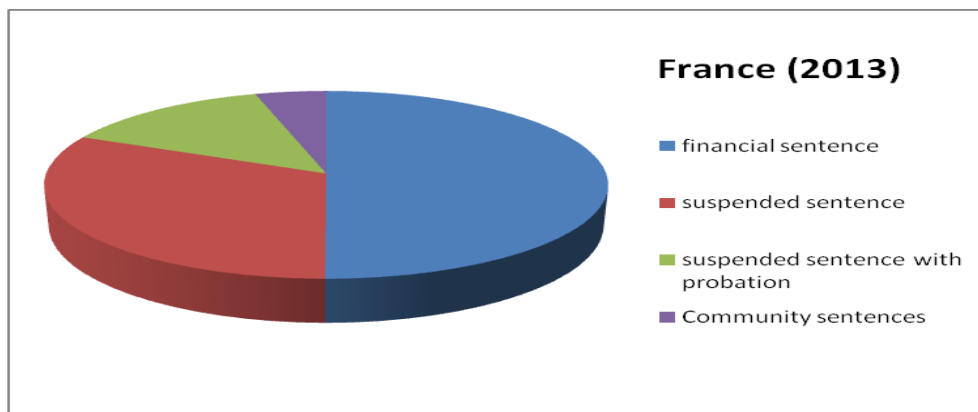
Hence, by analysing the features of the most common measures in Europe, we will try to understand whether current trends are in accordance with European Probation Rules. They provide for the re-integration and social inclusion of the sentenced person when the main function is rehabilitative, or if the major trend of the measures is merely punishment and monitoring.

The main alternative sanctions applied are community sentence, simple suspended sentence and conditionally suspended sentence. In a few cases, for application of the measure (particularly for conditional suspension), the judge may add obligations or provisions that can obviously influence the measure's function and its subjective consequences.

Although each country provides a specific situation, the financial sentence and the simple suspended sentence (without probation) are generally not used on the subject on a monitoring, treatment or re-integration level. What comes to light is simply containment of the prison population through the application of two sanctions that do not particularly limit the sentenced person's freedom, have no stigmatizing features but at the same time do not provide any individualized or collective tool for rehabilitation or social inclusion. The community sentence and the conditionally suspended sentence provide a mix of strategies that focus on monitoring and treating the subject. As we will see, what is mainly lacking in this framework, except for rare cases, are programs and politics that focus on the social inclusion of the sentenced person.

If we look at the numbers, we can see that the disinvestment on specific types of intervention on the sentenced person is the most clearly emerging data for France. The chart reveals that in the last year, the simple suspended sentence and the financial sentence were the major alternative measures applied.

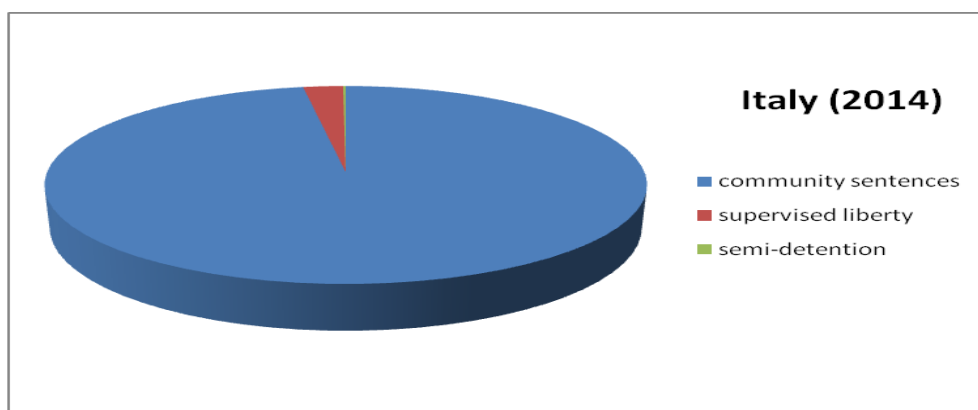
Graph 17. Main alternative sanctions in France



We can thus reflect on the other two measures—community sentence and suspended sentence with probation—although the small number of subjects involved can only give us partial elements in accordance with the ongoing tendencies in France. In the case of the community sentence, the sentenced person must perform unpaid work such as building repair, graffiti removal, assistance to people in need, etc. This does not indicate any specific rehabilitation attempt or any additional controlling elements toward the subject. In the suspended sentence with probation, the measure’s stated aim is to monitor and control, along with few (obligatory) rehabilitating elements. In fact, the probation period provides obligations/prohibitions (obligations to reside in a specific place, prohibition from traveling abroad without authorisation, obligations to follow a citizenship program, etc.) or monitoring advice (obligation to apply to the judge for permission to change job or residence, obligation to report periodically to the probation service and the judge in charge of sentence application, etc.).

Based on the graph, let us now examine the Italian situation. We see that the community sentence is clearly the most frequently used.

Graph 18. Main alternative sanctions in Italy

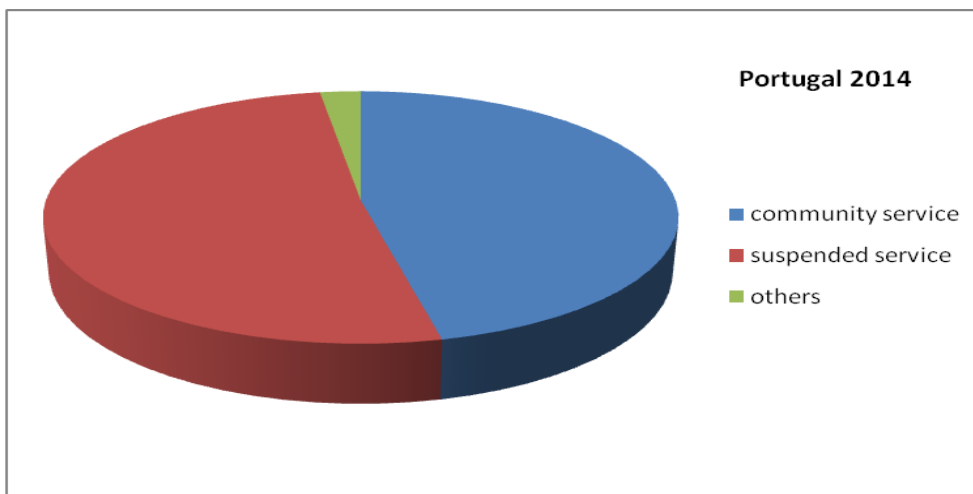


The goal of the community sentence is social reintegration, while supervised freedom, aims to favour social inclusion through the active participation in social services and provides the

possibility to enforce measures that are exclusively oriented to punish or monitor (e.g. the obligation to go at least once a day to the police station or driver license suspension). Of course, for illegal immigrants, expulsion has a solely punitive function<sup>9</sup>.

For Portugal, the lack of detailed information on the nature of the measures makes our analyses partial. The chart shows that there is a consistent use of community sentences (with simple suspended sentences, it represents 97% of the total).

Graph 19. Main alternative sanctions in Portugal



If, as we shall see later, the measure has a rehabilitative or re-integrative goal in other cases, here, with the sentenced person's authorisation, it simply implements unremunerated services and, if the sentenced person is already gainfully employed, ensures the community sentence would not interfere with the performance of his job. Certainly, depending on the type of activity imposed, the measure could offer the possibility of skills acquisition, facilitating the subject's re-integration. However, we have no concrete evidence of such programs to date. The lack of information includes the suspended sentence. In addition to the measure's basic form not providing any type of rehabilitation program, controlling tool or obligation, there are the suspensions subject to obligations and rules and suspension with probation measures. There are no data available either on the nature of these additional rules or on the number of people involved in the different types of suspension.

In Spain, we only have statistical data and we know the formal aim of the measure as stated in the penal code: "In the case of Community Service, the offender is required to render unpaid assistance in certain activities of public interest, which may include repair of the damage caused or to support victims, as well as participate in labour, cultural, traffic, sexual and similar workshops or education training or retraining."

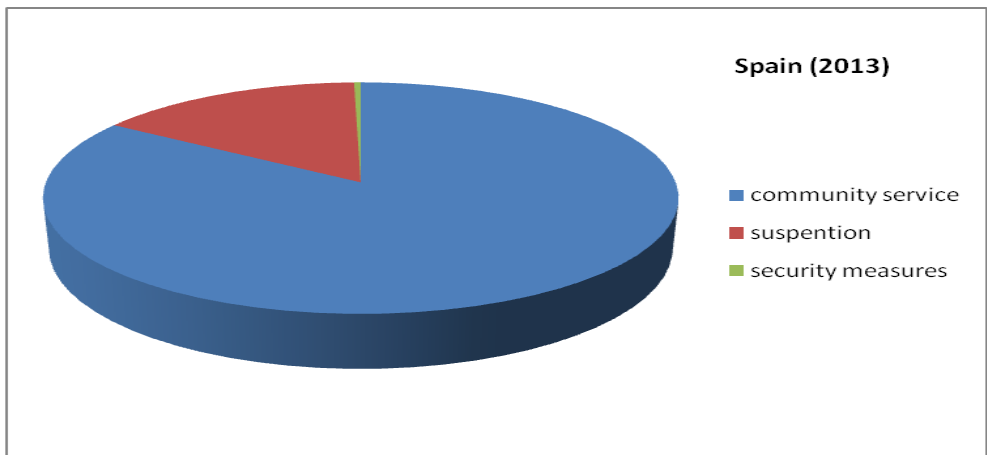
The community sentence is the most commonly used alternative measure in place of the custodial

<sup>9</sup> As we have already mentioned, the financial measure plays an important role in Italy. It is impossible to establish what the main function of non-custodial sanctions is, among those speculated by us, as "multa" and "ammenda" neither aim to monitor or restrict individual's freedom, nor to social inclusion and rehabilitation. What is provided in Italy is merely a (financial) punishment instead of prison.



sentence (83% of the total in 2013), but we have no data on how it is organized or if it is influenced by particular obligations or by specific programs oriented to rehabilitation and social inclusion .

Graph 20. Main alternative sanctions in Spain



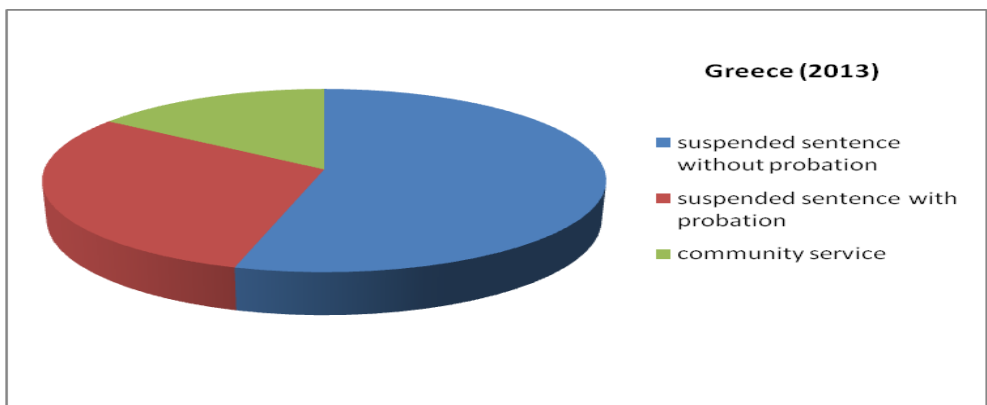
Although we have no information on the measure involving the greatest number of people, we do know that the suspension of the sentence provides the possibility of following mental health treatment, training programs or other duties. Although no information is available on the specific strategies and programs, the measure provides that the treatment plans follow the goal of rehabilitating the subject, while enhancing skills and predispositions.

The situation is more complex in other countries. While a specific function emerges in some cases, we face a mix of functions and goals in others.

The second scenario is particularly visible in Greece and Latvia.

For Greece, we have data only from 2010 on. This lack of data makes the chart very partial and incomplete. However, starting in 2010, the distribution of measures shows that the conditional suspension is most commonly applied.

Graph 21. Main alternative sanctions in Greece



A suspended sentence with probation provides a mixture of monitoring and rehabilitation, while the subject's re-integration into society is not considered by any specific program. We should highlight that the measure includes specific individualized intervention. In fact, the probation officer is required to pay particular attention to the subject's profile in determining the probation program, gathering information on living circumstances and financial situation, family relations, health condition, etc. Probation consists of weekly sessions aimed at helping the sentenced person realize the gravity of the crime committed and the reasons that led him to commit it. Obligation or restrictive measures can be applied at the same time. Some of these controlling measures (obligation to report to the police station, removal of the passport, prohibition to meet certain people or prohibition to leave the place of residence) can influence the subject's sphere of freedom greatly.

Furthermore, as an additional element of monitoring, the probation officer may visit the sentenced person at his place of residence or workplace without notice. Greece is also the only case in which the main focus in a less frequently applied measure is the social inclusion of the sentenced person.

This involves unpaid work that may be done in public and non-governmental organisations officially recognized by the Ministry of Justice. The unpaid job begins after signature by the sentenced person of a supervisory contract stating all his obligations and rights regarding the implementation of the measure. The activity is generally supervised by the probation officer and by the employer during the job itself. The latter supervises the sentenced person at work and informs the probation officer of all relevant circumstances regarding the implementation of the measure. There are no specific features to monitor or restrict the sentenced person's freedom. It is important to stress that the law introducing this alternative measure provides that the selection of the type of job take the sentenced person's needs and skills into consideration and must not damage or endanger his health.

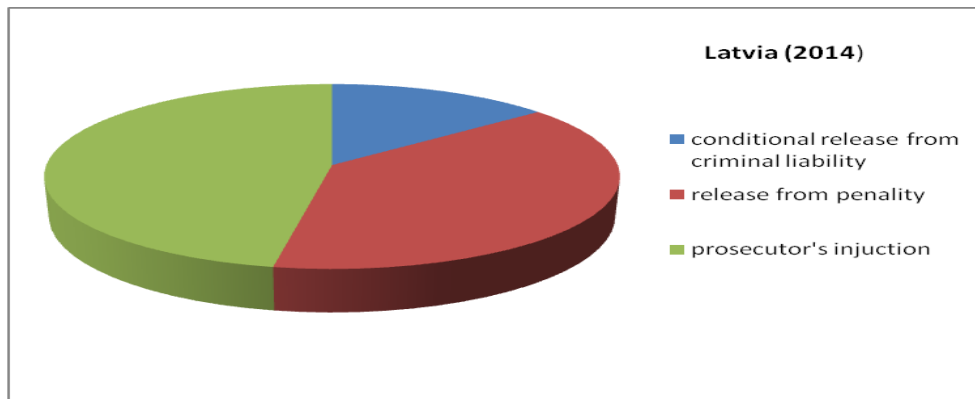
In general, the features of the main alternative sanctions applied in Greece reveal the presence of a mix of monitoring, rehabilitative and re-integrative elements.

We see a mix of rehabilitation and monitoring in Latvia as well.

There are three different alternative sanctions at the judge's disposal and none of them prevails over the other on a statistical basis.

The three measures are conditional release from criminal liability, release from penalty and the prosecutor's injunction.

Graph 22. Main alternative sanctions in Latvia

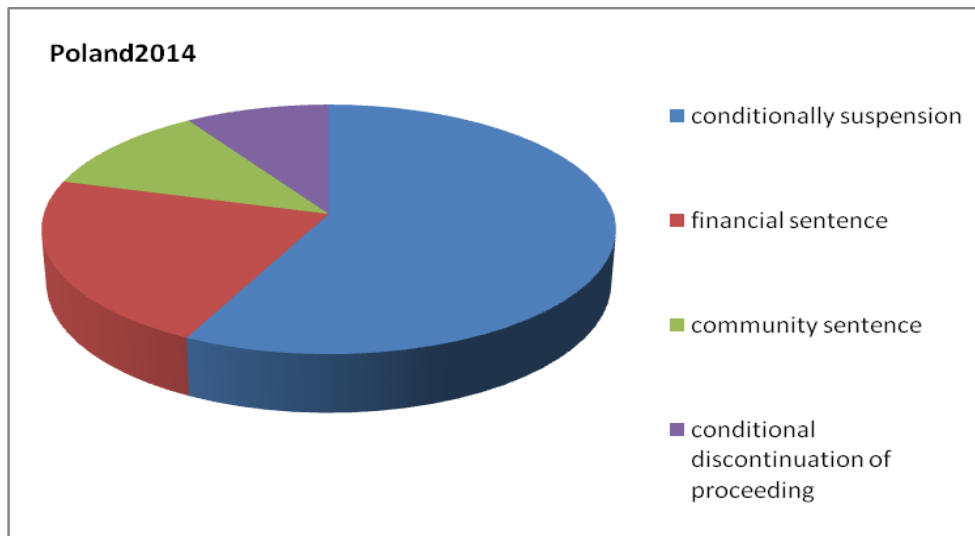


Concerning the main measure, we know that the public prosecutor may decide to replace the prison sentence with a financial sentence or the community sentence, but we have no data on how the latter is organized. The most rarely applied measure, conditional release from criminal liability, establishes a probationary period during which the public prosecutor, with the sentenced person's consent, may impose certain duties which might include elements oriented to monitoring the sentenced person (not to change place of residence without the consent of the probationary service) and others oriented to rehabilitation (to receive medical treatment for alcoholism, narcotic, psychotropic, toxic substance addiction or other addictions). The third measure is intended for specific categories of subjects. In this case, the court may release a person who has committed a crime due to alcoholism, narcotic, psychotropic addiction or toxic substance addiction from serving the custodial penalty if the person agrees to medical treatment. Here, the rehabilitative element seems to be the one that mainly emerges.

Meanwhile, in two other countries (Poland, England and Wales), the alternative sanctions most commonly applied are primarily rehabilitative, although they are often compromised by elements of monitoring or restriction of freedom.

In Poland, conditional suspension, the most commonly applied measure, may be basic, where it would not imply any particular intervention on the subject, or be subject to obligations.

Graph 23. Main alternative sanctions in Poland



Four obligations involve the greatest number of people:

- To refrain from associating with specified social groups or frequenting specified kinds of places
- To perform remunerated work and to pursue a course of study
- To refrain from excessive use of alcohol or drugs
- To undergo rehabilitation treatment or therapeutic activities
- To behave in another appropriate manner during the probation period

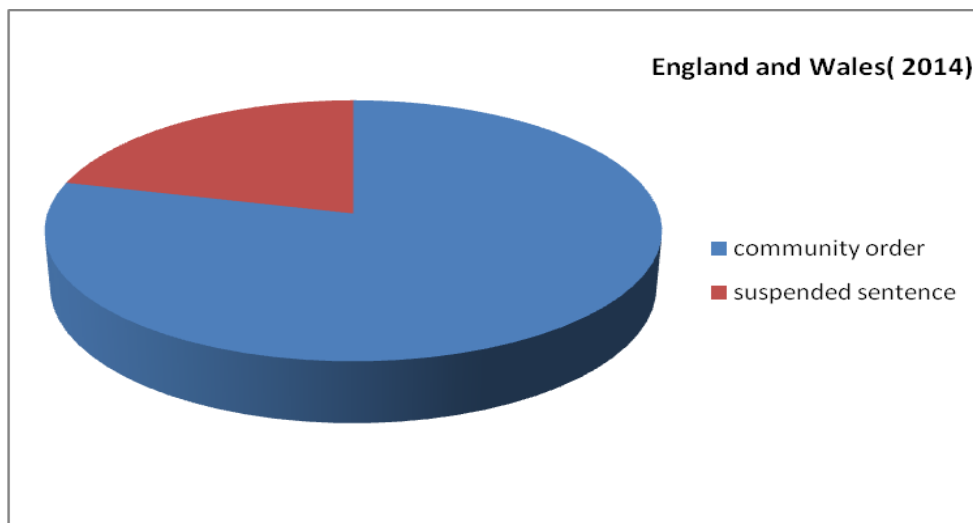
If we exclude the first, which is mainly oriented to controlling the sentenced person, the other additional obligations have a re-educational and rehabilitative goal.

The lack of data makes it difficult to clearly distinguish the goals of the other three measures. In the first case, as repeatedly highlighted, is impossible to identify a program oriented to intervening on the subject in any way but a merely punitive one in the application of the financial sanction. In the second case, we know that with the conditional discontinuation proceeding, the court may place the sentenced person under the supervision of a probation officer, trustworthy person, association, institute or social organisation responsible for education, preventing antisocial and delinquent behaviour and providing assistance to convicted people. In the same way, the court may implement additional obligations and penal measures. This leads us to presume that this measure is oriented both towards rehabilitating and monitoring the subject. Not knowing what these obligations are exactly, we cannot establish how invasive or stigmatizing the controlling function of this measure might be.

As far as the last measure is concerned, we think it particularly significant that Polish legislation interprets the community sentence as aiming to restrict freedom. Individuals subjected to such measure are required to perform non-remunerated work and must not change the place of controlled community service without the court's consent. We should add that the court may enforce additional obligations, as for the conditional suspension.

In England and Wales, sentencers have four options. For more minor offences where neither custody nor a community-based sanction is warranted, the court can order a discharge (no further punishment) or a fine. In 2014, over 70% of all people convicted of a criminal offence received a fine. Where the offence is more serious, the courts impose Community Orders or, less commonly, Suspended Sentence Orders, as alternatives to custody.

Graph 24. Main alternative sanctions in England and Wales



According to the legislation, the community sentence must include at least one punitive element (community payback, electronic tagging or participation in programs) and may impose one or more additional requirements. These requirements include both measures oriented to monitoring (curfew, residence at a specific residence, foreign travel ban) and to rehabilitating the sentenced person (rehabilitation activity requirements, drug rehabilitation, alcohol treatment).

For those receiving community sentences, unpaid work (29% of total in 2014), supervision (33% of total in 2014) and curfew (10% of total in 2014) are those mainly used.

In some areas, there have been pilot schemes whereby probation's delivery of community payback (unpaid work) takes the prospect of sentenced person's social re-integration into consideration. These successful pilots have meant that offenders can participate in training courses and gain qualifications such as the Construction Skills Certificate Scheme. Otherwise, there are no particular requirements oriented to rehabilitation or social inclusion.

Supervision, on the other hand, is executed by the probation officer, with the declared aim of "promoting the offender's rehabilitation". Supervision officers are oriented to support treatment programs.

The curfew is obviously introduced merely as a monitoring measure. The obligation to be home during set hours during the day can be combined with the use of electronic monitoring devices. Here as well, there is no clear emerging feature of the function and goal of the alternative measure that might reveal the general trend. Although the rehabilitative function is often provided as both the measure's goal and its application, the community sentence is often structurally combined with an element of monitoring or punishment.

The argument changes little when it comes to the second most applied measure in England and Wales: suspended sentence orders. Although the suspended sentence must be followed by activities oriented to rehabilitating the sentenced person, even here the controlling function is always present. For example, a sentenced person to whom this measure is applied must inform the court or the probation officer if he changes his permanent residence.

In conclusion, the imprisonment rate trend, the continuously increasing use of alternative measures, their functions and their concrete organisation reinforce two main trends.

First, as we have seen in the first part of this section, the development of alternative sanctions has not visibly affected the appeal of prison sentences, the numbers of which are on the rise. We can hypothesize that this relationship is due to both the simplicity by which alternative sanctions can be revoked and the prison sentence can be restored, and by the fact that all penal codes are increasingly oriented to criminalising behaviours defined as antisocial and deviant. Even when the use of prison sentences decreases as a percentage, this drop seems to be related to other factors such as special legislation intervening for emergencies, in order to momentarily decrease or contain the prison population.

Second, not only has the use of alternative sanctions had no impact on reducing imprisonment rates (instead expanding the penal sphere), their function also seems incoherent with the European Probation Rules and the present goals of national legislations. In regard to the latter, the goal of contributing to the re-integration and social inclusion of the sentenced person has rarely been reached, and rarely pursued. Even when treatment strategies oriented to rehabilitating the sentenced person are present, they are always followed by elements of monitoring and of restriction of freedom which seem to preserve a deterrent feature.

## PART FOUR - ALTERNATIVES DURING EXECUTION

### 1. THREE TYPES OF ALTERNATIVE

Our discussion on alternatives to imprisonment after the Court sentence shows a plurality of ways by which the sentenced person can avoid spending the entire sentence in prison. We can summarize the European framework of alternatives to prison applied after a sentence of restraint showing the three main kinds of alternatives applied. Clearly, these alternatives do not represent all of the alternatives provided for by the legislation of the partner countries. Instead, they represent the most common important types of alternatives that we can extract from the reconstruction produced by the European partners. From this point of view, they represent the main trends in the application of alternatives during implementation in contemporary Europe.

Before we describe them, we should immediately specify two aspects.

First, the measures in the European framework are generally ordered by a judge. Only in a minority of cases are they ordered by administrative procedure. From this point of view, Latvia is probably the most important case where, in the first phase, an administrative procedure determines whether the measure is ordered or not.

Second, the application of alternative measures in Europe is usually a task of the State. This does not exclude a role of the private sector in the management of specific projects or functions (i.e. community management or production of electronic tags). But, the public service and its administration play the main role in the management and application of the measure. An important exception in this framework is the UK where Community Rehabilitation Companies (a partnership that includes private sector firms, large rehabilitation charities, voluntary sector bodies, etc.) play an important role in managing and implementing probation practices in the UK.

We will now describe the three main forms of alternatives to prison currently applied in the European framework.

1) Parole. This is the most important way for a sentenced person to avoid serving the entire sentence in prison. Almost all European partner countries include some form of early release in their legislation. Obviously, the terms of application vary from one country to another, in particular regarding the *quantum* of the sanction that the sentenced person is required to spend in prison before obtaining the benefit. Nevertheless, the measures applied in the various countries share some features that we can summarize in these points:

- a) the implementation of the measure follows a period of custody in prison
- b) the behaviour of the sentenced person in prison affects approval of the benefits
- c) admission to early release is conditioned by a positive prognosis on the sentenced person's

future behaviour, in particular in relation to the risk of recidivism (with the exception of Italy).

Accordingly, the main aim of the measure is to reward well-behaved prisoners for whom the Court considers there is no high risk of recidivism.

As we will explain better later, this measure has a long history in many countries (in particular, the UK and Greece), limiting the number of inmates in national prisons.

In almost all countries, the application of the measure implies that the sentenced person must comply with various types of obligations such as curfew, unpaid work, reparation to the victim, etc. These obligations vary significantly from country to country. Nevertheless, we must highlight that these forms of obligation are presented in many legislations as a means of social reintegration of the sentenced person. By repairing the damage caused by the crime, for example, the sentenced person would gain the right to full social reintegration.

There seems to be some linguistic confusion where an “obligation” is called “reintegration”. Actually, this is just ostensible confusion. In our opinion, it hides the gradual decline of resources to support the rehabilitation processes of the sentenced person. In effect, it represents the crisis of the “Penal Welfare” ideology. Under this ideology, crime was considered not only the consequence of an individual action, but also the result of social influences, or social inequality. Consequently, one of the tasks of the State was to reduce the social inequalities that encouraged crime. It requires investments of resources to support convicted people with the aim of reducing crime in society. As explained by the literature (Feeley, Simon, 1992), this kind of penology is in crisis today, replaced by a more individualist point of view in which the sentenced person’s responsibility and the risks of committing new crimes are considered less as problems to be dealt with social interventions.

By this current point of view, we find some ambiguities where obligations are presented as rehabilitation. In fact, the sentenced person is required to follow further impositions in order to be released from prison. These obligations are justified with the aim of punishment, but also with the aim of social reintegration. Besides, in a few cases, these forms of obligations are accompanied by some form of support for the sentenced person. Nevertheless, the linguistic ploy of “rehabilitation” justifies these forms of obligations. So, the framework is the ideology of individual responsibility covering the absence of the Welfare State in the penal field. It follows a form of early release in which the sentenced person’s social and individual resources are very important for the granting and success of the benefit.

2) Home detention. In all partner countries, the law provides for the possibility of the sentenced person to spend part of the sentence at home. In this case too, the conditions for the measure to be granted vary widely from country to country. The general framework of home detention is that the beneficiary had not committed a serious crime and that the end of the sentence is not too far off.

In this case, the main goal of the measure is to avoid the consequences of imprisonment for the author of less serious crimes. Strictly related to this is the aim of reducing the prison population by diverting some convicted persons from the prison system back to their community. In this case too, however, there are few forms of social support for the beneficiary of the measure. In general, the beneficiary might be permitted to leave home for work or study, but there is no structured social intervention to encourage the offender’s complete social reintegration. Another problem of home



detention is the selectivity of the measure. People without a home or unable to obtain some form of hospitality are excluded from this alternative to imprisonment.

3) Electronic monitoring. With increasing frequency, the application of certain alternatives to imprisonment is paired with the use of various forms of electronic monitoring of the sentenced person's behaviour. Clearly, actual implementation of electronic monitoring as a system of monitoring the application of alternatives to imprisonment is very different from country to country. In some (UK, France, Spain), it is a consolidated way of monitoring people in home detention or other alternatives to prison. In others (Italy, Latvia, Portugal), implementation seems more uncertain. Nevertheless, we can highlight a progressive trend in which electronic monitoring seems increasingly to replace mere police monitoring on the sentenced person<sup>10</sup>.

We have to consider that electronic monitoring has potential positive effects. By reducing the employment of police and probation staff to monitor the beneficiaries, it could potentially encourage a broader use of alternatives to prison. With electronic monitoring there is the attempt to increase the number of sentenced persons (usually for less serious crimes) who could spend their sentence in the community, avoiding the negative effects of imprisonment. However, we do have to consider at least two critical points:

a) Some electronic monitoring systems are significantly stigmatizing for users. We could use for example, in particular for women, some types of electronic tags used in the UK. Another example is electronic monitoring where an alarm sounds when the convict exits the monitoring area<sup>11</sup>. These kinds of surveillance seem to violate some of the basic principles of the European Probation Rules, in particular in relation with the needs to promote successful social inclusion without discrimination

b) Electronic monitoring does not imply any kind of support for the sentenced person. In particular, in the vast majority of cases, the electronic system's monitoring mandate is paired with the absence of any kind of social support to promote rehabilitation. In fact, it becomes a way to reduce the prison population with no presence of social services to promote social inclusion.

## 2. IS THERE ROOM FOR SOCIAL INCLUSION IN ALTERNATIVES DURING IMPLEMENTATION?

Until now, the framework described shows use of alternatives to imprisonment mainly for diversion from prison, with no relevant investments in the offender's rehabilitation and where social services play a marginal role compared to that of (the various forms) of monitoring and different means of punishment.

The question now is whether there are some practices in the field of our observatory that could be considered significant from the point of view of the rehabilitation of people involved. The question, in other words, is whether in a scenario where the goal of alternatives to imprisonment seem to be

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<sup>10</sup> See Part One of this report for a general description of the increasing use of electronic monitoring and Part Two for the role of electronic monitoring during pre-trial procedures.

<sup>11</sup> For example in the French case, see Part One of this report.

to reduce prison population using other forms of monitoring, we could find institutions or practices that, instead, give precedence to the need of rehabilitation, supporting the offender during the implementation of the sentence.

It must be stated that these practices are rare and some are ambiguous in relationship to the concrete application of the law and in relationship to the real goals that are pursued with the measures. Nevertheless, two alternatives deserve to be mentioned, if only for their originality with respect to the most common practices.

The first is post-release probation. This measure was modified in England and Wales in 2015 with the goal of preventing recidivism of people sentenced to a penalty of less than two years. In Latvia, a similar measure, called “Probationary Supervision”, has existed since 2011, to supervise a sentenced person’s behaviour, encourage social reintegration and prevent the commission of new criminal offenses. Clearly, these are very ambiguous institutions. On the one hand, they have the official goal of supporting the offender (most clearly in the English case) of misdemeanours in order to address the known problem of high recurrence of these offenses. If the concrete application of these measure consists in real social support able to reduce the disadvantages caused by social inequalities, these measures could be evaluated with interest. Unfortunately, we currently have no quantitative data on recidivism or qualitative data on the re-entry in society of people having served post-release probation. On the other, we have to consider that these kinds of measure are yet another form of monitoring or punishment for people having served their sentence. So, the high risk of these measures is “permanent monitoring” of people or social groups that are considered dangerous.

The second is Italian Social Service Programs. This alternative measure to detention is served entirely in the community, for a period of time equal to that of the prison sentence, under the supervision of social services and with provisions to be followed. It can also be assigned to drug or alcohol addicts who are willing to attend a therapeutic program. Social Service Programs are an example of the survival of the Penal Welfare in the field of sentence implementation. From the beginning (the measure was created by law 354 of 1975), the measure provided a central role for social service in the offender's support to find a job, home and, broadly speaking, trying to help him in the social reintegration process. In subsequent years, a number of laws have changed the measure’s structure in part. First, was made more difficult for perpetrators of serious crimes and for repeat offenders to access the measure. In particular, limits on granting the measure to repeat offenders resulted in 2005-2010 in a reduction in the number of concessions (Graph 1)<sup>12</sup>. Only in the past few years has the use of social service programs started to increase again in Italy as a result of reforms adopted to address prison overcrowding.

On the other hand, practices connected with social service programs have changed somewhat over the years. Today, the support of the offender is not the only characteristic of social service programs and many more obligations have been introduced that the offender is required to fulfil in order to obtain the benefit. The most important is the need to repair the damage and satisfy the victim of the crime.

Another problem is that social workers’ workloads have grown over the years. Today, they are not able to follow all cases in detail. In many cases, the result is a bureaucratic approach in which

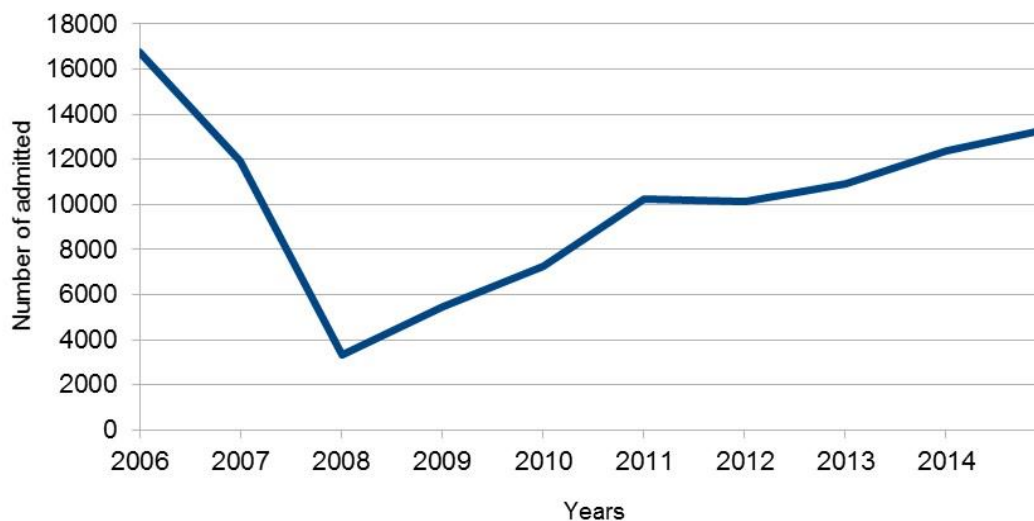
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<sup>12</sup> The drastic reduction in 2006 is due to the collective pardon granted that year.

formal monitoring plays a greater role than support.

Nevertheless, social service still remains an effective program. Some research studies conducted by the Italian Ministry of Justice (Leonardi, 2007) reveal that seven out of ten convicted persons released in 1998 returned to prison in following years, compared with two out of ten recidivists among those having served their sentence in a social service program.

Graph 25. Number of people admitted to social service programs in Italy



### 3. WHERE ARE WE GOING?

In recent years, the EU has tried many times years to promote the use of alternatives measures to reduce the use of imprisonment through different kinds of community justice. It is also well known that EU recommendations have repeatedly conflicted with the internal policies of individual countries. In this sense, the demands of law and order raised within the Member States, hardly influenced by various forms of penal populism (Bottoms, 1995; Pratt, 2007; Simon, 2007), often slow down the massive application of alternatives to prison. This is why some authors (Matthews, 2009) are very pessimistic about the capacity of supranational institutions to truly influence penal policies.

Our observatory has the opportunity to reveal some data regarding access to alternatives to imprisonment during the implementation of the sentence (Graphs 2, 3, 4). Before we comment on them, we should address the problem of data collection. As we stated in earlier parts of this report, we experienced serious problems during the observatory with inconsistencies in the collection of data on alternatives to imprisonment in the European framework. The problem is more serious than we had experienced during the previous observatory on imprisonment because the variety of measures contributes to a less homogeneous picture. In particular, we have to highlight that some countries (Greece and Portugal are the most serious cases) collected little data on alternatives to imprisonment. The scarcity of data collected in these cases makes it impossible to assess the

performance of the measure. Furthermore, in most cases the different data collection criteria, classifications and meanings attributed make it very difficult to compare the different countries.

In view of these problems, we have tried to identify some trends on the flow of alternatives measures into partner countries. The following graphs show the number of people in every country admitted an alternative to imprisonment. The aim is not to compare the countries, but to identify some trends on the application of alternatives to imprisonment within the European framework. In other words, we ask whether the total number of people admitted to an alternative measure is increasing or decreasing, and we try to understand how the individual countries have adopted the EU recommendations on the greater use of alternatives of imprisonment.

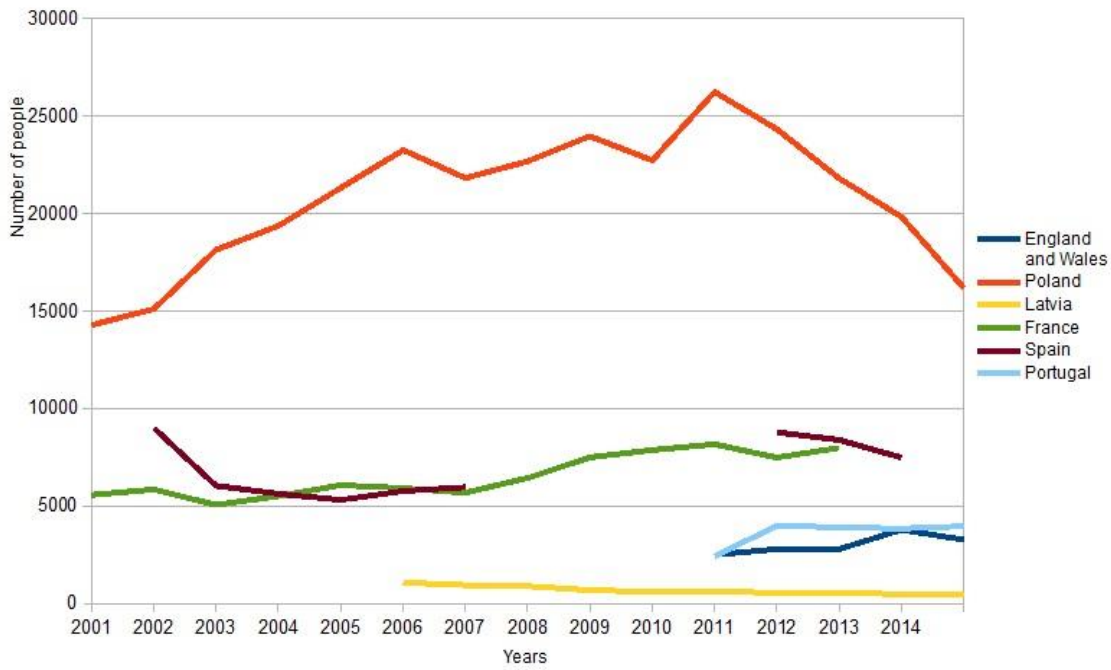
We see how the trends are mixed regarding the use of parole (Graph 2). In some countries (Poland, France, Spain), number of people released on parole increased during the years 2002-2010. However, in the past four years (2011-2014), we can see a reversal of the trend with a decrease in paroled people in many countries (England & Wales, Poland, Spain, Latvia, Portugal). Of course, the extent of the decrease differs by country. Nevertheless, we see a recent trend of a decrease in the number of people released from prison on parole that should be monitored in coming years in order to verify continuity in the medium term.

Unfortunately, we have home detention data only from England & Wales and Italy (Graph 3). We see a reduction in the number of people admitted to home detention in E&W starting in 2004. Conversely, we have an increase in the use of this measure in Italy from 2008 to 2014. Just in the past year, we see a decrease in the total number of people admitted to home detention.

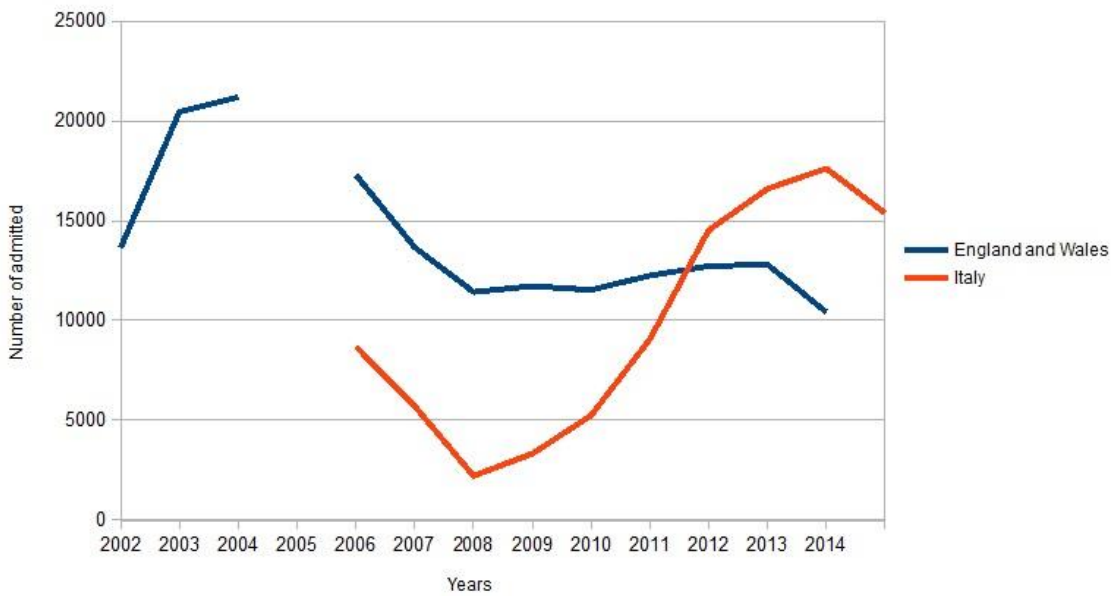
The few countries that collected data on the use of electronic monitoring show how the use of this form of social control is in general increasing (Graph 4). This increase is evident in France and Spain where there was a steady increase in the use of this form of monitoring starting in 2002. There was also a continuous increase from 2012, interrupted by the decrease in 2014 in Poland.

To conclude, we can state that the poor data collected suggest that the EU recommendations on larger use of alternatives to imprisonment have not been implemented at a general level. The general reduction in the number of people released on parole appears to be a worrying indication of recent restrictions on the use of alternatives to prison that must be monitored in coming years. Conversely, the greater use of electronic monitoring in many European countries appears to indicate the affirmation of a new scenario in penal control. As previously stated, that kind of control has controversial aspects that need to be adequately monitored in order to verify their impact on the people involved.

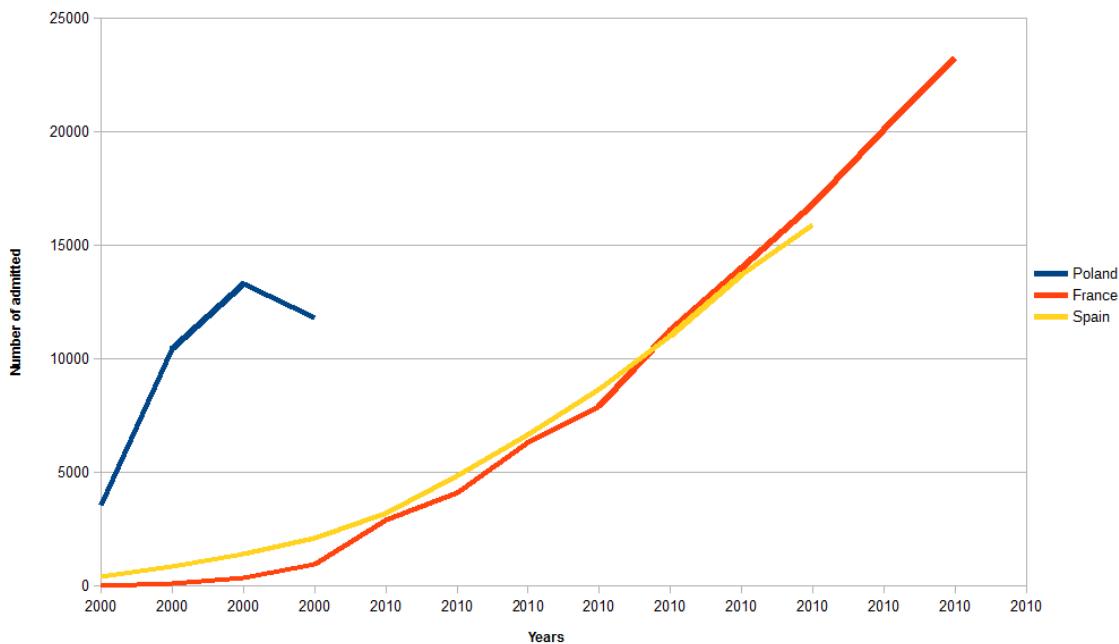
Graph 26. Number of people admitted to Parole (2001-2014)



Graph 27. Number of people admitted to Home Detention (2002-2014)



Graph 28. Number of people admitted to Electronic Surveillance (2001-2014)



## 4. DO MORE ALTERNATIVES MEAN LESS PRISON?

As stated above, the most important goal of alternatives during implementation of the sentence is to reduce the prison population. The efficiency of alternative measures in reducing the prison population is highly debated in the literature. On the one hand, European recommendations aspire to replace prison with alternatives. On the other, some authors (Cohen, 1985; McMahon, 1990) explain how the introduction of alternatives to imprisonment in the penal system does not always cause a reduction in the prison population but produces a “net widening” effect in some cases. More recently (2015), Marcel Aebi confirmed the net widening effect by analysing official European data on imprisonment and community sanctions. According to Aebi's thesis, the increasing use of community sanctions in recent years has not produced a general reduction of prison population but an increase in both imprisonment and alternative sanctions, resulting in expanding social control<sup>13</sup>.

In this report, we can contribute to the debate showing the trend of alternative measures and imprisonment in some partner countries<sup>14</sup> during the 2000-2014 period (Graphs 5-10).

The data show how there is no clear connection between the increasing use of alternatives to imprisonment and the reduction in the prison population. We found only two exceptions. The first is Spain where the decrease in the number of detainees in recent years is accompanied by an increase in the use of electronic monitoring. At the same time, however, there has been a

<sup>13</sup> According to the author, this phenomenon is not generalized. Indeed, he identified some exceptions like Finland, Norway and Switzerland.

<sup>14</sup> Unfortunately, we had to exclude Greece and Portugal from this analysis because the data collected are not sufficient for a diachronic reading of the phenomenon.

reduction in the number of people paroled in Spain in recent years (Graph 9). The second exception is Italy (Graph 10) where since 2011, the reduction of the prison population has been accompanied by an increase in alternatives during implementation. However, there was the exact opposite phenomenon during previous years in Italy: the increase in alternatives coincided with a sharp increase in the prison population that remind us of the net widening model. In France (Graph 8) as well, the increase in alternatives has coincided with an increase in the prison population since 2001.

In Latvia (Graph 7), the recent decrease in the prison population is not justified by an increase in the number of paroled people, which, in contrast, has decreased. In Poland too (Graph 6), the number of people released on parole follows the prison population: when the prison population increases, number of paroled increases and conversely.

And in England and Wales, the prison population does not appear to be strongly influenced by trends in admission to home detention and parole. In particular, the increase in the prison population in recent years does not coincide with a strong reduction in the use of alternatives.

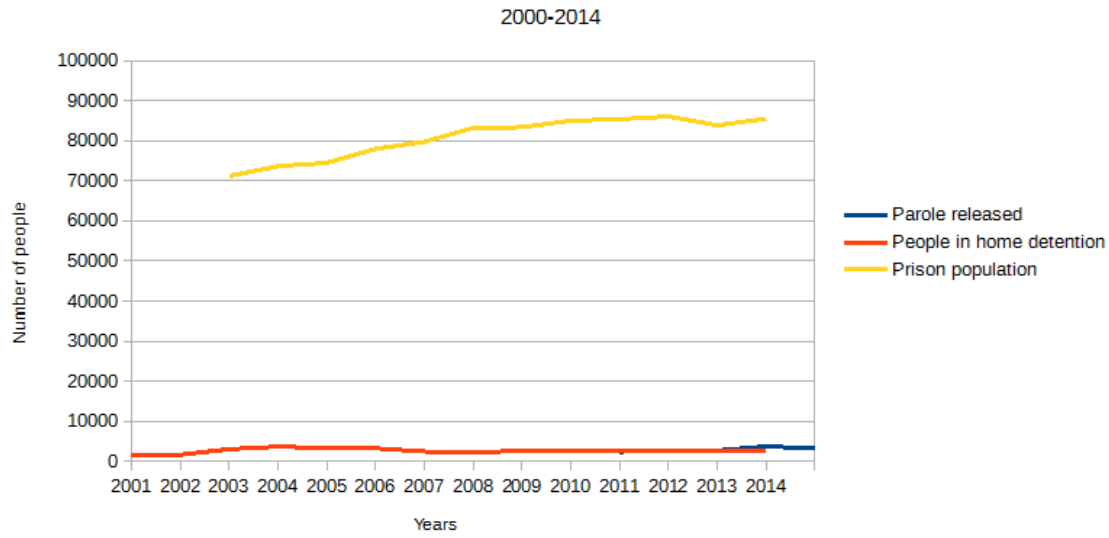
In conclusion, we can highlight two points:

- In the area of alternatives during implementation, it is probably difficult to establish a clear net widening effect. This phenomenon is probably more evident in the area of alternative sanctions where the use of different sanctions is often used as a tool to justify new penal sanctions with the effect of enlarging the area of social control. Notwithstanding, in some countries where alternatives during implementation are very important in the penal field as a way of avoiding prison (France, Italy), we did find evidence of net widening during the implementation of the sentences.

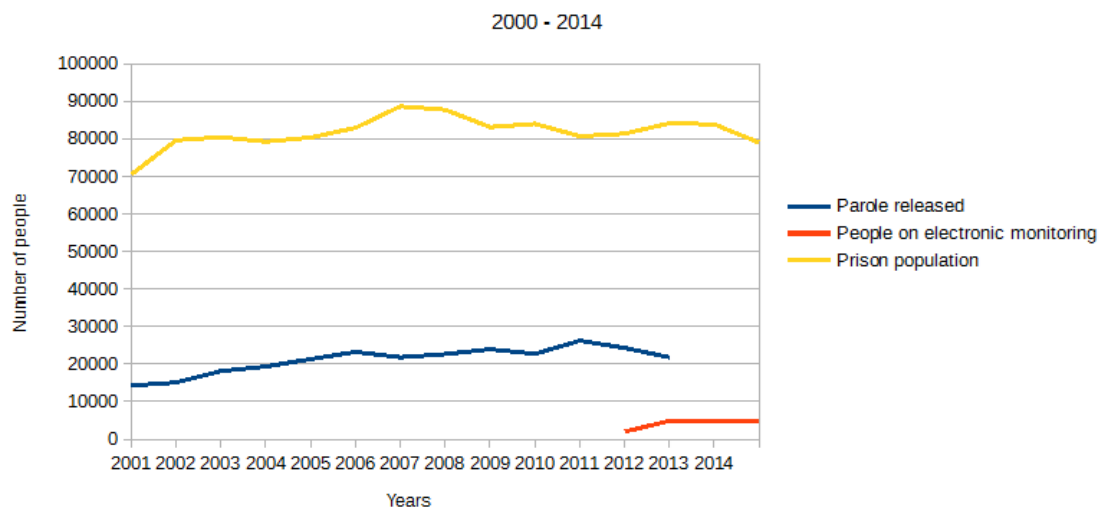
- Alternatives to imprisonment are a form of control and containment of the prison population. They are not a way of drastically reducing the prison population. From this point of view, parole is the most important example. In many countries (Poland, Latvia, Spain), the number of people released on parole fell when the prison population also fell. This happens because, with a reducing prison population, there is a reduction in the number of prisoners meeting parole criteria, and because the measure's social function of a "release valve" is less urgent.

These considerations suggest that alternatives to imprisonment are not currently a sufficient tool to promote a decrease in the prison population. Clearly some of them can help, but they must be accompanied by structural reforms able to reduce the number of people entering the penal system.

Graph 29. Number of prisoners and alternatives in England and Wales

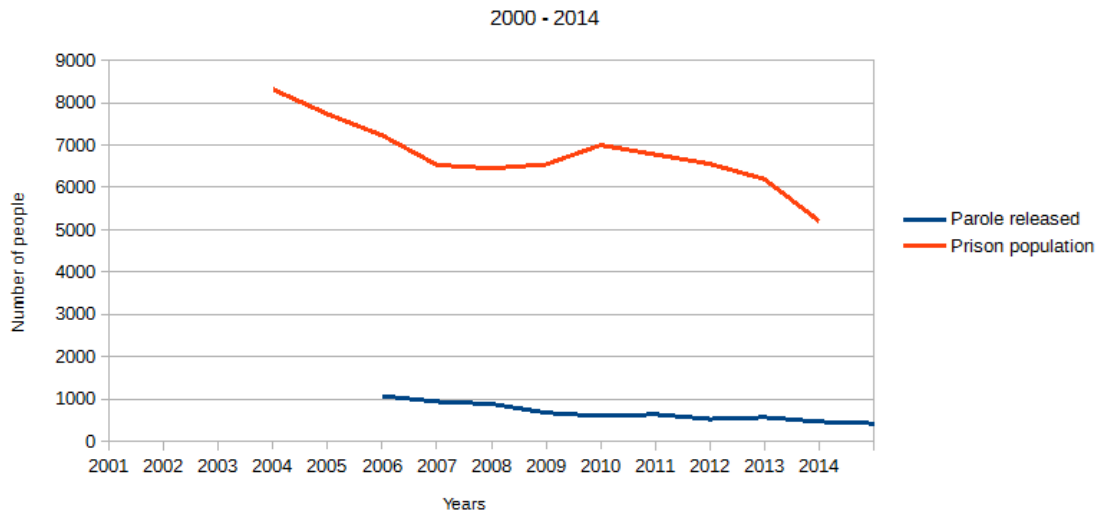


Graph 30. Number of prisoners and alternatives in Poland

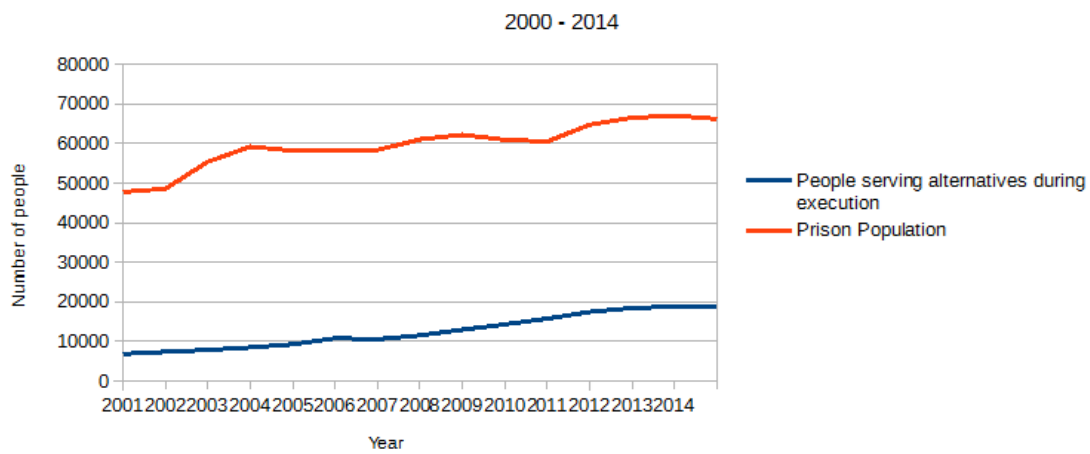




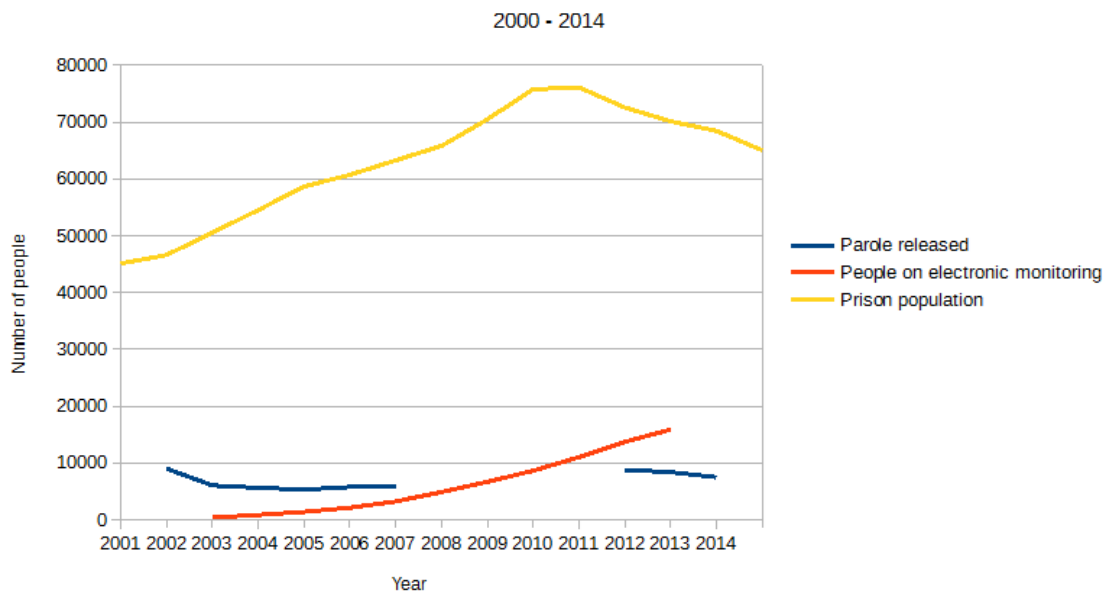
Graph 31. Number of prisoners and alternatives in Latvia



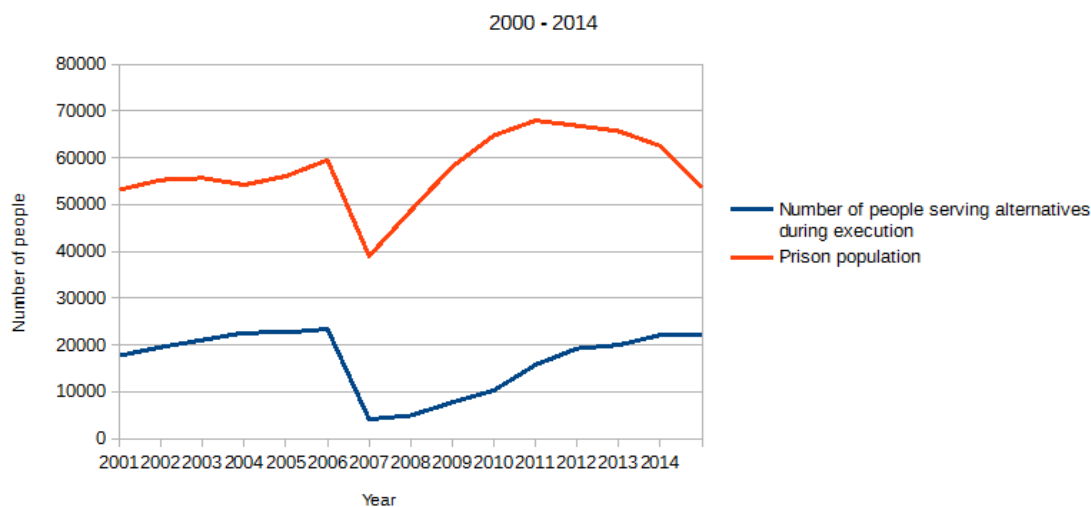
Graph 32. Number of prisoners and alternatives in France



Graph 33. Number of prisoners and alternatives in Spain



Graph 34. Number of prisoners and alternatives in Italy



## 5. SOME CONSIDERATIONS ON THE EFFICIENCY OF ALTERNATIVES DURING EXECUTION

To conclude this part of the report, we propose some considerations regarding the efficiency of alternatives during imprisonment. There is a broad debate, mostly in the political field in relation with the goal of obtaining favourable public opinion, on the advisability of the early release of inmates from prison. According to some, early release encourages recidivism, a return to prison and, in general, an increase in crime in society.

In our observatory, we tried to use two indicators to verify the veracity of these opinions. The first is the level of recidivism of beneficiaries of alternatives to prison during implementation. The second is revocations of measures applied during the year. The first indicator is a signal of the efficiency of alternative measures in supporting the offender in the rehabilitation process. The second reflects the level of failure of the measure applied.

Unfortunately, we have very poor data for both indicators. There is still very little research on recidivism in the European framework. At the same time, only a few countries collect statistical data on revocations. Consequently, we can comment on just a few data on these topics. Nevertheless, some seem quite interesting.

Regarding recidivism, we wrote in the second paragraph of this section about Italian research on recidivism of people assigned to social service programs. Their very low recidivism rates, compared to the very high recidivism of people having spent their entire sentence in an Italian prison suggest that social service programs are probably one of the rare cases of alternative measure where offender support is still high and can contribute to rehabilitation.

In this final part of the report, we should mention other data from Latvia. In 2013, research findings on recidivism were released (Kipena, Zavackis, Nikisins). The research sample included 1 767 offenders (community supervision and community work service vs. imprisonment), followed up after the end of a probation period of 32 months. The results showed how recidivism of the suspended sentence was 15%; recidivism of released on parole, 25%; recidivism of community work, 17%; and recidivism after full term of imprisonment (*no probation*), 51%.

Regarding revocation of the measures, we have some data from England & Wales and Italy (Table 1). These data show a significant difference in the revocation rates between the Italian Social Service Programmes measure and other measures. It is also interesting to observe how Home Detention in England & Wales, Semi-Freedom and Home Detention in Italy show similar revocation rates especially in recent years.

Revocation rates for these measures vary over the years. Home detention in England & Wales, for example, had a high level of revocation from 2003 to 2009; in the next years revocation rates decreased and are currently at levels similar to the first years of the new century. Unfortunately, we have no Italian revocation data from 2000 to 2004, but semi-freedom in Italy had a high level of revocations from 2005 to 2008. On the other hand, home detention revocations in Italy constantly appears at a lower level than in England & Wales, although in the past three years, with the decrease in revocation rates in England & Wales, the two countries' rates are almost identical.

We should highlight the coincidence where the highest revocation rates occur in the years in which Europe saw the highest level of incarceration<sup>15</sup>. In those years, for example, England & Wales and Italy saw very high incarceration rates, the highest of the past 30 years. One hypothesis that we might suggest is a connection between the political climate - with the adoption of zero tolerance policies - and the trend to withdraw alternative measures granted. We should also highlight how Social Service Programs seem to be immune from these processes. The revocation levels of this measure in Italy were constant from 2005 to 2014 at around 4% and 5%. These data suggest that the adoption of an alternative measure with a high level of social support could ensure better

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<sup>15</sup> We refer to the data from the previous European Prison Observatory report by Alessandro Maculan, Daniela Ronco and Francesca Vianello (2013).

performance on prisoner social re-entry, reducing the risk of failure and recidivism.

*Table 2. Revocation rates of alternative measure in England & Wales and Italy*

Year	Rate of Home Detention Revocation in E & W	Rate of Social Service Programs Revocation in Italy	Rate of Semi-Freedom Revocation in Italy	Rate of Home Detention Revocation in Italy
2000	4.96%	N/A	N/A	N. A:
2001	4.93%	N/A	N/A	N/A
2002	7.23%	N/A	N/A	N/A
2003	12.82%	N/A	N/A	N/A
2004	15.56%	N/A	N/A	N/A
2005	15.19%	5.33%	14.89%	11.35%
2006	15.98%	4.23%	12.93%	8.6%
2007	14.47%	4.68%	12.16%	8.12%
2008	12.3%	5.58%	9.63%	8.03%
2009	12.49%	5.55%	8.83%	7.32%
2010	9.42%	5.73%	9.4%	6.52%
2011	9.26%	5.16%	6.28%	7.12%
2012	7.22%	5.59%	10.15%	7.77%
2013	6.73%	5.08%	8.85%	7.74%
2014	N/A	4.41%	8.17%	6.97%

## CONCLUSION

Do alternatives to imprisonment work? This is the issue which brings us back to the opening question. Our aim was to evaluate the effectiveness of alternatives from two main points of view.

The first is their effectiveness in terms of reducing prison populations. First, we found a widespread increase in the use of community sanctions. Unfortunately, the results of our observatory did not produce evidence on a connection between the development of community sanctions and the decrease in prison population rates. Such a connection is clear only in Latvia and Italy. These are both unique cases. For many years, Latvia had one of the highest prison population rates in Europe. Only in recent years, including the use of alternative sanctions, did the prison population begin decreasing. The Italian case, instead, is also known because after the ECtHR sentence (“Torreggiani et al. v. Italy”) the Italian government was forced to reduce the prison population in order to address the structural overcrowding of Italian cells. This was also obtained through more widespread use of alternatives during implementation.

In all the other cases, the situation is more complex. Broadly speaking, the functions of community justice seem to be strongly influenced by the country’s historical context and political climate. This was particularly true in the era of mass incarceration, where the introduction of alternative sanctions did not produce a decrease of prison population. On the contrary, we found that the increase of alternative sanctions is associated with an increase of prison population in some countries. This is the case of France, where we found a general increase both in the prison population and in alternatives during implementation. These trends refer to the well-known net-widening phenomenon. In our research, we found evidence of such a phenomenon in some countries (France, Portugal, Greece and Spain), but limited to a few years. Moreover, it is more evident for alternative sanctions than for alternatives during execution. Therefore, even if delimited in time and space, though alternatives to imprisonment may be a means to contain the prison population, they are not a way to drastically reduce the prison system. In order to produce that aim, they should be accompanied by structural reforms reducing the number of people entering the penal system.

Within this general framework, we must underline a widespread positive decrease of pre-trial prisoners. Nevertheless, we must consider a relevant phenomenon: a significant shift in some pre-trial alternative functions. We found many types of pre-trial measures that play a *de facto* role that is very far from the formal meaning that those kinds of measures should have. Increasingly frequently, they became a form of pre-sanction applied before the final sentence. In this sense, there is an issue about accountability with the European Probation Rules, which prescribe that any intervention before guilt “shall be without prejudice to the presumption of innocence” (Article 7).

The second point of view was the assessment of the effectiveness of alternatives in terms of rehabilitative programs. Our research confirmed the structural crisis of the rehabilitative ideology.

Within the wide set of measures applied, the goal to contribute to the re-integration and social inclusion of the convicted is rarely reached or even pursued, notably as concerns alternative sanctions. In particular, financial sentences and simple suspended sentences (without probation) have little if any rehabilitative content. The same considerations are also relevant for parole. Moreover, the broad expansion of electronic monitoring is a signal of transformation in penal monitoring strategies: although its goal is to reduce the prison population, it is usually applied without any form of support to promote social inclusion.

Even when treatment strategies oriented to rehabilitating the sentenced person are present, they are always followed by elements of monitoring and of restriction of freedom, which seem to have only a deterrent feature. Moreover, our research highlighted linguistic confusion among regarding obligations sentenced parties must observe (unpaid work, reparation to the victim, etc.) and social reintegration. Such confusion seems to conceal a broader crisis of the “penal welfare” ideology. The ambiguity lies in the dual aim ascribed to such obligations. They are justified with the aim of both punishment and rehabilitation, but are rarely accompanied by any kind of support for the sentenced party. Such a tendency breaches the traditional functions of community justice as established by the European Probation Rules.

It is important to underline that the (few and unsystematic) studies on recidivism show a direct relationship between the way an alternative to imprisonment is served and recidivism rates (if compared, i.e., to a sentence served entirely in prison). In particular, the level of social support seems to make a difference in terms of reducing recidivism, confirming the greater success of the penal-welfare policies than merely control-oriented strategies. The lack of systematic data and research and the difficulties in comparing countries, intrinsic to the area of alternatives to imprisonment, complicate the analysis of recidivism rates, although our observatory highlighted various suggestions upholding that type of interpretation.

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With financial support from  
the Criminal Justice  
Programme of the European  
Union

This publication reflects the views only of the author, and the European Commission cannot be held responsible for any use which may be made of the information contained therein.