

ALTERNATIVES TO PRISON IN EUROPE

Portugal

*António Pedro Dores, Nuno Pontes,
Ricardo Loureiro*

European Prison Observatory. Alternatives to detention



With financial support from the
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THE EUROPEAN PRISON OBSERVATORY

The European Prison Observatory is a project coordinated by the Italian Ngo Antigone, and developed with financial support from the Criminal Justice Programme of the European Union.

The partner organizations are:

Università degli Studi di Padova - Italy

Observatoire international des prisons - section française - France

Special Account of Democritus University of Thrace Department of Social Administration (EL DUTH) - Greece

Latvian Centre for Human Rights - Latvia

Helsinki Foundation for Human Rights - Poland

ISCTE - Instituto Universitário de Lisboa - Portugal

Observatory of the Penal System and Human Rights - Universidad de Barcelona - Spain

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The European Prison Observatory studies, through quantitative and qualitative analysis, the condition of the national prison systems and the related systems of alternatives to detention, comparing these conditions to the international norms and standards relevant for the protections of detainees' fundamental rights.

The European Prison Observatory highlights to European experts and practitioners 'good practices' existing in the different countries, both for prison management and for the protection of prisoners' fundamental rights.

Finally it promotes the adoption of the CPT standards and of the other international legal instruments on detention as a fundamental reference for the activities of the available national monitoring bodies.

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ALTERNATIVES TO DETENTION IN EUROPE

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.

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.

INTRODUCTION

Due to the problems encountered in collecting the requested data the authors had to rely on scouring the few, and often contradictory sources they could find. The data presented comes as much as possible from official sites. They also conducted interviews with a number of individuals who were or are under some form of probation supervision; they interviewed a probation officer and people working with NGOs involved with the probation system. All of these people spoke under condition of anonymity.

PART ONE. GENERAL DATA

Imprisonment and alternatives to custody: an overview

Political climate regarding prison numbers since 2000

Following the 2001 publication of the extremely high numbers of deaths in the Portuguese prisons, especially for the year of 1997 when, at 106 per 10,000 prisoners, was 5 times the Council of Europe average, and the unusual public attention that followed, there were two policy reactions: a) a reduction of the number of prisoners, and b) the creation of more restrictive, higher security prison regimes. This was not as a consequence of new legislation, but simply as a shift in practices.

The political debate was evasive and poorly informed, but between 2001 and 2004 prisons and related issues were part of the discussion. All electoral campaigns during that period addressed the prison issue. In early 2004 an in-depth report commissioned by the government on the question of prison reform was published. The report, critical of most aspects of the Portuguese prison system, laid out an ambitious 12 year action plan, aiming to bring the nation's prisons up to European standards. With this the debate around prison issues died out altogether. In 2007 Parliament approved a new Enforcement of Sentence Code (Código de Execução de Penas) allegedly favourable to defendants, especially to those accused of sexual child-abuse offences. In the public eye, the implications of this new leniency, whether or not real, was complicated by the powerful emotional response at the national level caused by the 2002 investigations, prosecutions and still ongoing aftershocks of the exposed history (from decades back to the present) of sexual abuse of institutionalized children at the nation's oldest and most prestigious state controlled child-welfare organization (running orphanages, schools, shelters, etc. for needy and abused children). At the same time the National Prosecutor's Office was campaigning for the criminalization of bullying. In this climate, prisoner numbers that had come down to 100 per 100,000 inhabitants, launched into a new upward trend.

With the financial crisis of 2007-2008 the prison overcrowding alarm sounded again. An ambitious mega-prison building programme ran out of funding. The government attempted to remedy the problem of overcrowding by stuffing more beds into existing facilities. Yet the problem continued to grow with prison population reaching 120% of capacity. Over the past few months there have been signs of a halt in the upward trend.

Again, as in 2001, there is no information about policies or measures being implemented to decrease the number of prisoners, nor are there any studies that may inform such policies or measures if they were to exist.

Reforms to alternatives to detention since 2000

Although alternatives to incarceration, as presently understood, have been part of the courts sentencing arsenal since 1982, with the creation of the Institute of Social Rehabilitation (Instituto de Reinserção Social), it is with the reforms of 2007 (Law no. 59/2007, of September 4), spurred on by public debate over the need to reduce the prison population, that legislation is put in place to broaden the practical application of these measures by the courts. The idea was to make sentences adequate to the crimes, promote rehabilitation and reduce recidivism. In 2009 the Sentencing Code (Codigo de Execução de Penas e Medidas Privativas da Liberdade de 2009) further refined reforms intended to incentivise the application of alternative measures by the courts, whose judges tended to not recognize a capacity on the part of the Probation Department to apply alternative measures.

Decree-Law n. 126/2007 of April 27 established the General-Directorate of Social Rehabilitation (Direcção-Geral de Reinserção Social, DGRS) which, along with Ordinance (Portaria) n. 517/2007 of April 30, restructured the Portuguese Probation Department, substituting the previous Institute of Social Rehabilitation (Instituto de Reinserção Social). The DGRS has since been joined with the Directorate-General of the Prison services by Decree-Law n. 215/2012, of September 28, creating the current Directorate-General of Social Rehabilitation and Prison Services (Direcção-Geral de Reinserção e Serviços Prisionais, DGRSP).

Electronic monitoring was subject of much public debate and various studies. It was first legislated in 1999, and codified in 2001. After a trial period (2002-2004) involving pre-trial detainees, it became an option for the application of other existing alternative measures by the courts. Its application may be, in practical terms, the most significant alternative measure in the Portuguese system.

The total prison population (flow and daily rate) for each year between 2000 – 2014

Year	Number of people in prison as of 31 December	Flow rate	No. of people entering prison	No. of people leaving prison
2000	12944	0.4	5844	5921
2001	13260	0.5	6936	6595
2002	13918	0.5	7264	6604
2003	13835	0.5	6872	7009
2004	13152	0.4	5670	6354
2005	12889	0.4	5617	5880
2006	12636	0.5	5775	6028
2007	11587	0.5	5420	6469
2008	10807	0.5	5065	5845
2009	11099	0.5	5756	5464
2010	11459	0.5	5873	5356
2011	12681	0.5	6286	5218
2012	13614	0.5	6605	5672
2013	14284	0.4	6149	5479
2014	14003	0.4	5415	5696

Source: <http://www.dgsp.mj.pt/>

prison population rate per 100,000 population				
Year	Prison population	Portuguese population		Prisoner rate per 100,000 population
2000	12944	10330774	125.295549	125.3
2001	13260	10394669	127.56539	127.6
2002	13918	10444592	133.255564	133.3
2003	13835	10473050	132.100964	132.1
2004	13152	10494672	125.320734	125.3
2005	12889	10511988	122.612393	122.6
2006	12636	10532588	119.970514	120
2007	11587	10553339	109.794635	109.8
2008	10807	10563014	102.309814	102.3
2009	11099	10573479	104.970181	105
2010	11459	10572721	108.382695	108.4
2011	12681	10542398	120.285726	120.3
2012	13614	10487289	129.814292	129.8
2013	14284	10427301	136.986551	137
2014	14003	10367800	135.062405	135.1

Source for prison population: <http://www.dgsp.mj.pt/> General Directorate of Prison Services Annual statistical reports

Source for all Portuguese population numbers as of December 31 of each year: Instituto Nacional de Estatística at https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=211394338&DESTAQUESmodo=2 For years 2000 to 2013 all totals represent final adjusted rates: for 2000, "Anuario Estatístico de Portugal 2012"; for 2001-2002, "Estatísticas Demográficas 2011"; for 2003-2013, "Estimativas de População Residente em Portugal 2013". For 2014 total represents provisional rate: "Buletin Mensal Estatístico Janeiro 2015".

Note: divergence with SPACE I rates results from its use of provisional national population numbers

Number and proportion of the total prison population (based on the daily rate prison population 2000 – 2014) by length of sentence (e.g. less than 6 months; 6 months to less than 12 months; 12 months to less than four years; 4 years plus; other)

Year	Up to 6 months	% of total population	Over 6 months to 3	%	Over 3 years to 9 years	%	Over 9 years	%	Indeterminate sentences	%
2000	60	0.46	1367	10.56	5454	42.14	1890	14.60	50	0.39
2001	133	1.00	1603	12.09	5667	42.74	1877	14.16	55	0.41
2002	169	1.21	1777	12.77	5674	40.77	1811	13.01	48	0.34
2003	225	1.63	1858	13.43	5978	43.21	1958	14.15	50	0.36
2004	227	1.73	1637	12.45	5850	44.48	2125	16.16	56	0.43
2005	238	1.85	1577	12.24	5628	43.67	2092	16.23	53	0.41
2006	259	2.05	1649	13.05	5403	42.76	2097	16.60	47	0.37
2007	264	2.28	1509	13.02	5112	44.12	2076	17.92	49	0.42
2008	453	4.19	1445	13.37	4522	41.84	1967	18.20	56	0.52
2009	269	2.42	1640	14.78	4430	39.91	2014	18.15	46	0.41
2010	260	2.27	1688	14.73	4666	40.72	3817	33.31	41	0.36
2011	309	2.44	1833	14.45	5164	40.72	2151	16.96	47	0.37
2012	330	2.42	1967	14.45	5660	41.57	2233	16.40	44	0.32
2013	328	2.30	2173	15.21	6043	42.31	2349	16.44	46	0.32
2014	220	1.57	2073	14.80	6138	43.83	2450	17.50	47	0.34
Figures as of 31st December of each year										
Source: http://www.dgsp.mj.pt/										

Number of pre-trial detainees¹ and as a percentage of the prison population (based on the daily rate prison population 2000 – 2014)

Number of pre-trial detainees and percentage of the total prison population			
Year	Pre-trial detainees	Prison population	% of total prison population
2000	3854	12944	29.8
2001	3690	13260	27.8
2002	4219	13918	30.3
2003	3492	13835	25.2
2004	3000	13152	22.8
2005	3044	12889	23.6
2006	2921	12636	23.1
2007	2327	11587	20.1
2008	2108	10807	19.5
2009	2370	11099	21.4
2010	2482	11459	21.7
2011	2470	12681	19.5
2012	2661	13614	19.5
2013	2592	14284	18.1
2014	2330	14003	16.6

Source for numbers of pre-trial detainees:
<http://www.dgsp.mj.pt/> General Directorate of Prison Services Annual statistical reports

Probation practices

The particularities of the Portuguese “Probation” system

To give some sort of understanding about what is thought of as the Portuguese Probation Department, and the difficulties in gathering some of the data and information sought in this report, it is necessary to present a few facts that perhaps distinguish the Portuguese model from most other such departments. In Portugal the Probation Department is an integral part of the prison department. Both departments exist under a single General Directorate and are headed by the same director, although with its own sub-director. This consolidated dynamic took hold soon after the original Institute of Social Rehabilitation (Instituto de Reinserção Social) was founded in the early 80's with the intention of it being a counterbalance to the incarceratory mission of the prison department. Since then the work of the Probation Department has been shaped by the prison department. The social support teams (probation department) providing services within the prisons included a member of the prisons services who, although informally, directed the team's

¹ In this grid, the term “pre-trial” refers to those awaiting for the first instance.

work, and in practice diluted their rehabilitative efforts. The social support staff levels, both on the prison side (counsellors) and on the Probation side (rehabilitation technicians), were always insufficient. In 2001 the rehabilitation technicians started to work outside of prison, free of the direct control of prison staff, but the bureaucratic habits remained. The production of reports for the courts did, and continuous to take up practically all of their working time. A dedication that is not reflected in the quality of the work, with psychological profiles and background reports that are often protested as having been produced without any consultation with the subjects or the people that might know something about them.

The data collected and published by the Probation Department is inconsistent and not clearly presented. For most years up 2005 there are no overall reports pertaining to probation. Even then there are sometimes gaps of several years between data sets, and outright discontinuities in the reports available. The one consistent characteristic of all the available data is the focus on probation staff workload. For this reason we are offered numerous tables and charts showing the numbers of reports and measures requested and undertaken, but nearly none as to the actual numbers of individuals under supervision, with what measures, success rates within specific programmes, violations, resentences, recidivism, etc. Portugal does not keep statistics on recidivism. There are very few studies on the effectiveness of any programmes being offered, and those that there are leave much to be desired in terms of rigor. The Probation Department, beyond being part of the prison department, is also an all-in-one department for juveniles, adults, and individuals under certain non-criminal supervision measures. This broad supervisory field, combined with the tendency to focus on workload rather than people, often adds to the difficulty of teasing out relevant data from what is available.

Secondly, another perhaps singular aspect of Portuguese probation is the specific focus on electronic monitoring, not just as a tool to facilitate the implementation of existing alternatives, but as a monitoring option with its own legal references, which functions as an additional legal and bureaucratic layer, for which specific data is collected, further complicating the statistical picture. Much of the data offered on electronic monitoring is then not offered on the same actual alternative measure if electronic monitoring has not been ordered as part of its implementation. Given its special status, and its not quite fitting in the context of the actual alternatives addressed in this report, we opt for giving here the most relevant information about the use of this tool. Relevant laws: Law no 33/2010 September 2; Ordinance (Portaria) no 26/2001, of January 15.

Background²

The introduction of electronic monitoring (EM) in Portugal was a response to a steep rise in prison numbers in the 1990s. Incarceration rates reached almost 150 prisoners per 100,000 inhabitants, with almost [34%] of the prison population in pre-trial detention. The length of time in such detention was increasing, with some cases lasting for three years or more.

In the late 1990s, reforms were proposed to relieve pressure on the prison system including the use of EM (piloted between 2002 and 2004). This measure aimed to ensure appropriate control over bail curfews, which, based as they were on defendant's mere obligation to comply, were mostly considered unenforceable. The government hoped that EM would make home confinement a viable alternative to pre-trial detention in a significant number of cases.

² Source: Caiado, N. (2014) 'Pre-trial electronic monitoring in Portugal', CJM, Issue 95, pp.10-11

Anticipating unfavourable reactions by the courts, the EM programme was meant to enlist judicial support by placing emphasis on the ideas of 'security' and 'flexibility'.

A specialist EM unit in the Portuguese Probation Department (then a separate entity) was given the responsibility of monitoring the programme and maintaining contact with defendants. This appeared to satisfy the Portuguese stakeholders in EM, especially the judges.

A 24 hour approach was "the only way of convincing the courts that there was a viable, intermediate, option between the unrestricted freedom of conventional bail and prison" (p.10). However, only a minority of defendants are permanently confined during periods of pre-trial EM.

Operation

The Probation Service currently deals with an average of 500 EM cases on a daily basis, equivalent to 15 to 20% of pre-trial detention cases. By June 2013 more than 5,000 cases had been dealt with.

The average period of time spent on EM is about six months.

EM operates within mandatory national protocols which prescribe the circumstances in which it can be used.

Judges request information on the appropriateness of using EM from the probation services.

The decision to use it is made solely by the judge, after seeking the informed consent of the defendant and cohabitants.

Judges review the ongoing use of EM in each case every trimester.

EM is delivered by a public service; the private sector supplies and operates the technology but has no responsibility for monitoring, responding to alarms, or even installing/uninstalling equipment.

Support, contact and absences

Contact with offenders is framed by the following protocol: one phone call 24 hours after the beginning of EM, one home visit within three working days, and at least one phone call and one home visit per month. In addition, defendants have a toll-free telephone line to discuss problems, to ask for advice or to seek authorised absences. Other contacts occur between defendants and EM services around issues such as courts appearances and police contacts. Links between defendants and educational and welfare services operating in the area, and participation in these can be arranged.

Authorised absences from home are allowed in three situations:

- To enable work, study, or the receipt of prolonged health care
- To attend the police and courts, health service appointments or other issues
- Medical emergencies.

Reception

A Probation Department request to the courts for some indication of satisfaction in 2011 revealed a "positive" evaluation in 50% cases ("very positive" in 46%), figures which were sustained the following year.

Defence lawyers have unsurprisingly been vigorous supporters. From defendants and their families, given the alternative, the response remains largely positive. Testimonies on the advantages of spending time on EM have been shared on television and newspapers, and these have probably helped to win moderate support for the programme among the public.

GPS and domestic violence

Since 2001 Portugal has adopted GPS tracking technology to enforce the use of restraining orders in domestic violence cases. These have mostly been used at the pre-trial stage to help courts manage medium or medium-high risk offenders, who would otherwise always have been remanded in custody.

The technology permits the pinpointing of defendants' movements, but also, with their consent, the movements of the victim, which enables the probation service to monitor their proximity to each other, and to keep them apart.

The programme is popular with the courts. As of June 2013, the programme hosted more than 150 cases on a daily basis.

The success rate has been high, with 96% cases getting to court without incident.

Do alternatives to detention develop skills and social inclusion of the offenders?

There are no specific legal provisions that we can find. However, in 2013 the Presidency of the Council of Ministers issued a resolution, signed by the Prime Minister, laying out an ambitious, broad and comprehensive national plan for rehabilitation (Plano Nacional de Reabilitação e Reinserção 2013-2015) including the implementation and effectiveness study of numerous support, educational and therapeutic programmes. The executive summary of this resolution reads, "The National Plan of Rehabilitation and Reintegration 2013-2015 is intended to be a strategic document for the practices of the system of enforcement of sentences and measures in Portugal, as a fundamental pillar of justice within the rule of law of a democratic State. The present plan reflects an ideology, defines a vision and operationalizes a strategy which sustains ambitious, but realistic, objectives as to the impact of its measures, being framed within the current economic and social realities, yet containing aspects of innovation and modernization applied to various areas, from models used to professional practices" (Resolução do Conselho de Ministros no. 46/2013). What this may mean in practical terms we cannot establish, although the 96 measures for the adult probation and prison system certainly are impressive, specific, and accompanied of strict reporting requirements. "The programmes exist but are not being applied" (DGRSP agent, under condition of anonymity).

Are alternative measures free of stigmatizing features?

It depends a great deal of what alternative is applied. Most are stigmatizing in that most people in the immediate world of the person serving said sentence are aware of the fact that the s/he has been convicted of a crime, with all the stigma that this brings. There is also the fact of the criminal record, which will have a great practical impact on the life of the individual, be it in seeking employment or many other social activities. "In my opinion they stigmatise. The case of the criminal record" (ibid). There is no news of any processes or discussion on how to combat the stigmas inherent in criminal sentences.

Are probation programmes individualized?

The law (Penal Code, article 54) specifies the development of an individual rehabilitation plan (plano de reinserção social), which should define objectives and activities. Measures of support and accompaniment are also to be established. The law also states that, as much as possible, the agreement of the individual should be secured prior to the implementation of the individual plan. In practice the question is much more complicated: the law has foreseen the execution of a rehabilitation plan since 1979. Throughout the debate surrounding prison issues in the first years of the new millennium support for that legislation was reaffirmed, and in the 2007 reforms it was included in new legal codes with the acknowledgement that there was yet the need to turn it into a reality. The individuals interviewed reported no knowledge of the development of any such individual plan.

A probation/conditional release plan, as stated in article 54 of the Penal Code should entail the following:

- 1) the probation/conditional release plan contains the social rehabilitation objectives for the individual, the activities that s/he must undertake, the respective phases of the process as well as oversight and support measures to be provided by the probation services.
- 2) the individual is given knowledge of the probation/conditional release plan, obtaining her/his previous consent whenever possible.
- 3) the court may impose the obligations and rules of conduct listed in articles 51 and 52 of the Penal Code, as well as other obligations which may be of value to the rehabilitation plan and to the development of the individual's sense of social responsibility, namely:
 1. answer convocations of the judge responsible for the implementation of the plan and of the probation agent;
 2. receive visits of the probation agent and supply information or documentary proof of gainful employment or other means of subsistence;
 3. inform the probation agent of any change of address or of employment, as well as any trip of more than eight days and the foreseen return date;
 4. obtain prior authorization from the judge responsible for the implementation of the plan for any trip abroad.

In practice these plans tend to be generic and meaningful accompaniment is non-existent. All of this is rendered very difficult to concretize in practice by the institutional culture and given the number of officers available to accompany individuals: in 2014 each officer had on average 142.62 cases to accompany; each of these officers also was responsible for researching and writing an average of 151.68 reports at the request of the court. Often the officer will ask the individual being accompanied where they want to serve their community service, when this is part of the sentence, and limit themselves to keeping track of the hours worked until the requirement is met. There may be some people directed to unemployment services, but this is not as part of specific rehabilitative programmes for sentenced individuals.

Is the progress of the offender evaluated in the course of the measure's implementation?

In interviews with individuals under supervision the picture is one of a system of reporting, with little being offered other than an occasional request for more information when the court asks for

a status report. To which extent an actual evaluation of progress is being made is difficult to say, especially given the lack of any rehabilitative programmes. “No” (ibid).

Is the plan of work reviewed according to this evaluation?

None of the individuals interviewed reported any such revision. “No” (ibid).

Are there possibilities to change its content in the process of implementation?

Most people are not aware of the possibility of any such alterations. The law does permit for requests and adjustments, but generally that is an informal processes happening as a result of the low level of practical supervision, and the abstractness of the individual plan. The measures that matter are those specifically imposed by the court. “It is always possible. It is reviewed annually” (ibid).

Is a final evaluation carried out at the end of the supervision period?

The individual interviewed who had completed supervision report no knowledge of any such evaluation. “No” (ibid).

Do workers in alternatives to detention have the same rights and safeguards as other workers?

There were none found specified in the law. We do know that prisoners working in two high threshold work programmes, one involving work within the prison, and the other work outside the prison, get paid, respectively, 2.12€ per day and the national minimum salary, but neither enjoys Social Security or health/accident coverage. Questioned on the issue the DGRSP claims to take care of these prisoners as it does all others.

Supervision model adopted in alternative measures (e.g. control-oriented, assistance-oriented...)

Pre-trial alternative measures:

Term of identity and residence (“termo de identidade e residência” article 196 Of the Code of the Penal Process). Consists of requirement of presentation to authorities at any time. Requirement to inform of any change of address for more than five days. This is a control measure

Bail (“caução” article 197 Of the Code of the Penal Process). If the individual cannot afford to post bail, the court may substitute bail for any other coercive measure(s) with the exception of incarceration or house arrest. The amount of the bail must take into consideration the gravity of the crime, damages that may have occurred and the socioeconomic situation of the accused. This is a control measure

Mandatory periodic presentation (“obrigação de apresentação periódica” article 198 of the Code of the Penal Process). The individual must present Him/herself periodically (the period to be

determined by the court) at some official location, such as a police station, or a courthouse. This is a control measure.

Suspension of work, function, activities or rights (“suspensão do exercício de profissão, de função, de actividade e de direitos” article 199 Of the Code of the Penal Process). The individual may be ordered to suspend any professional activity or any other occupation; may have parental rights, rights to manage property or any other control rights suspended. This is a control measure.

Prohibition and imposition of activities (“proibição e imposição de condutas” article 200 Of the Code of the Penal Process). May prohibit access to a structure, areas, items such as weapons and contact with certain individuals. Restrictions to travel within and/or outside the country. May mandate compliance with treatment programme (drug or alcohol). Involves Probation Department. This is a control measure that may involve some aspect of assistance.

House arrest (“obrigação de permanência na habitação” article 201 Of the Code of the Penal Process). The individual may not leave the place of residence (be it private residence, treatment centre or healthcare facility) without prior authorization. There may be authorization to work etc. May, and typically does, include the use of electronic monitoring to ensure that the individual remains within the approved place of residence at the prescribed times. May be combined with prohibitions of contact. Involves Probation Department. This is a control measure.

Conditional Suspended case (“suspensão provisória do processo” articles 281 and 282 Of the Code of the Penal Process). There may be conditions applied with the suspension, such as surrendering money to the state or to NGO’s or perform a public service, to indemnify the victim, offer appropriate moral satisfaction to the victim (apologize), maintain residence in a certain location, attend programmes or activities, not exercise certain professions, not frequent certain places, not reside in certain areas or regions, not contact certain individuals, not attend certain events, not have possession of certain objects which may facilitate criminal activity, and refrain from other activities particular to the case. To enforce these conditions the court may require the services of the police, administrative authorities, or the Probation Department. This is a control measure that may involve some aspect of assistance.

Alternative Sanctions:

Decriminalization of consumption, purchase for consumption, and possession for consumption of drugs (decriminalização de consumo, a aquisição e a detenção para consumo próprio da droga Law no 30/2000, of November 29). In some cases that rise to the level of crime, thus resulting in arrest and criminal prosecution, the statute permits that Individuals be remitted by the court to the services of a Commission for the Dissuasion of Drug Use (Comissão para a Dissuasão da Toxicodpendência, CDT) for evaluation as to level of consumption (whether or not problematic), and then are given advice and, if interested, offered assistance in finding and enrolling in whatever medical and social assistance services may be helpful. The process is completely voluntary at every step. And there are no conditions whatsoever as to what the individual must or must not do. There is no possibility of failure to comply, and the case can never be returned to the court. This is a strictly assistance based alternative.

Community service (“prestação de trabalho a favor da comunidade” articles 58 and 59 of the Penal Code). Consists of unremunerated services to the state, other collective public or private entities the aims of which the court may consider in the public interest. Each day of the sentence corresponds to one hour of work, to a maximum of 480 hours. The work can be performed on week days, Saturdays, Sundays and holidays, with the condition that, if the individual is gainfully

employed, the community service cannot interfere with the performance of her/his job. There may other conditions applied as part of the sentence such as rules of conduct. This is a control measure that may have some positive rehabilitative impact as to the possible acquisition of new skills.

Suspension of internment (“suspensão da execução do internamento” article 98 of the Penal Code). It is a partial or complete substitution of incarceration for a probationary treatment programme performed in the community. All individuals declared of diminished capacity who are subjected to any treatment programme must have a Therapeutic and Rehabilitation Plan (Plano terapeutico e de Reabilitação) (art. 128 do Código da Execução das Penas e Medidas Privativas da Liberdade) submitted for approval to the Sentence Compliance Court (Tribunal de Execução das Penas). This plan is drawn to promote therapy and rehabilitation goals the progress of which is then to be periodically evaluated by the court, and the plan redrawn accordingly. This measure follows a similar regime to that of the suspended sentence. This is a control measure that should involve therapeutic care, and as such a large degree of assistance.

Suspended sentence (“suspensão da execução da pena de prisão” articles 50 to 57 of the Penal Code). Involves the censure of the act and the threat of prison imposed as control measures. There are three types of suspensions: simple suspension; suspension subject to obligations and rules of conduct; and suspension with probation. These can involve both control and assistance measures including any available programme the court may care to impose.

Substitution of prison sentence (“substituição da pena de prisão” article 43 of the Penal Code). Sentences of up to one year may be substituted for a fine or for another applicable non incarceration sentence. For cases subject to sentences up to a maximum of three years, the sentence can be substituted by a prohibition sanction of between two to five years, and may consist of prohibition to exercise a certain profession, function or activity, when the crime has been committed in the exercise of that same occupation. This can be both a control and/or assistance measure.

House arrest (article 44 of the Penal Code). Controlled by electronic monitoring, this is a direct substitution control measure.

Sentence modification for need (“Modificação da execução da pena de prisão de reclusos portadores de doença grave, evolutiva e irreversível ou de deficiência grave e permanente ou de idade avançada” Title XV, Articles 118 to 122 of the Code of sentences and liberty depriving measures). This measure permits the exceptional alteration of a prison sentence at the time of sentencing if the physical or mental condition of the individual is deemed by the court to so justify it. It is a control measure involving house arrest or commitment to a care institution.

Incarceration by free days (article 45 of the Penal Code). Weekends in prison. This is a control measure.

Semi-incarceration regime (article 46 of the Penal Code). This is a control measure.

Alternatives during execution:

Conditional release (articles 61° to 64° of the Penal Code). Conditional release is in overseen by the Probation Department. It may consist of any number of control and assistance measures set out by the court to specifically address the needs of the individual and the particulars of the case.

Sentence modification for need (“Modificação da execução da pena de prisão de reclusos portadores de doença grave, evolutiva e irreversível ou de deficiência grave e permanente ou de

idade avançada” Title XV, Articles 118 to 122 of the Code of sentences and liberty depriving measures). This measure permits the exceptional release of a prisoner if the physical or mental condition of the individual is deemed by the court to so justify it. It is a control measure involving house arrest or commitment to a care institution.

Suspension of internment (“suspensão da execução do internamento” article 98 of the Penal Code). It is a partial or complete substitution of incarceration for a probationary treatment programme performed in the community. All individuals declared of diminished capacity who are subjected to any treatment programme must have a Therapeutic and Rehabilitation Plan (Plano terapeutico e de Reabilitação) (art. 128 do Código da Execução das Penas e Medidas Privativas da Liberdade) submitted for approval to the Sentence Compliance Court (Tribunal de Execução das Penas). This plan is drawn to promote therapy and rehabilitation goals the progress of which is then to be periodically evaluated by the court, and the plan redrawn accordingly. This measure follows a similar regime to that of the suspended sentence. This is a control measure that should involve therapeutic care, and as such a large degree of assistance.

Does the probation system offer aftercare services?

“No” (DGRSP agent, under condition of anonymity).

Do foreigners have any limits to serve alternatives to detention? Are there specific provisions for them?

There is a clause (article 97 of the Penal Code) for foreigners deemed of “diminished capacity” (inimputáveis) which states that, rather than being committed, they may be expelled from the country.

Are there any gender specific programmes?

“Yes” (ibid). No other information was forthcoming and we cannot find any reference to such a programme.

Are the victims of crime involved in the alternatives to detention programmes? If yes, which is their role in these programmes?

“No” (ibid).

Do probation services offer, directly or indirectly, support council or information to families of offenders?

“There are no support services” (ibid).

Are there specific restorative justice programmes?

There are no such programmes related to probation/conditional release. There is a pilot restorative justice programme being developed by an NGO in one prison.

Does the probation service give a systematic feedback about the effectiveness of the alternatives to prison to the general public? How is the information shared?

No. There are statistics published on the official site, but these are limited in scope and there is no in depth analysis of specific programme results. “No, because the programmes are not being applied” (ibid).

Are there systematic research projects concerning the alternatives to imprisonment and, if so, who carries them out?

No. There have been some international projects, but these have been of a superficial scope and never systematic. There are also some studies performed by university students, but these too are narrow in scope and never systematic. Studies by the Probation Department of programme effectiveness and results are not done, with a few exceptions that offer no usable results. “Don’t know” (ibid).

Probation budget

The Portuguese governmental structure includes a General-Directorate of the Budget. That directorate was contacted and advised they do not have the information, not even as far as the budget for the probation department. They advised that we should enquire of the concerned departments themselves. The concerned departments did not reply to requests for information. What we have been able to find follows.

Budget for Probation Department (DGRS) prior to fusion with Prison Department		
Year	total budget	total spent
2005	N/A	£46,664,196.00
2006	£41,584,464.00	£41,153,209.00
2007	£44,502,510.00	£37,062,760.00
2008	£34,460,605.00	£31,591,939.00
2009	£38,881,339.00	£36,204,897.00
2010	£39,613,237.00	£38,190,483.67
2011	£41,152,855.00	£39,698,056.86

source: Relatório de Atividades DGRS, years 2006-2011 at <http://www.dgrs.mj.pt/web/rs/docsestat>

Electronic Monitoring		
Year	Total spent including program management	cost/person/day
2006	£1,027,396.00	N/A
2007	£1,004,637.00	N/A
2008	£1,472,780.00	N/A
2009	N/A	N/A
2010	N/A	N/A
2011	£3,479,675.68	£16.88

source: Relatório de Atividades DGRS, years 2006-2011 at <http://www.dgrs.mj.pt/web/rs/docsestat>

Procedural guarantees

Do probation agencies respect the human rights of offenders without discrimination (sexual, religious, racial, political, etc.)? Do they keep in regard offenders' dignity, health, safety and well-being in their interventions?

Discrimination is commonplace within the Portuguese justice system, especially against groups such as Roma, the poor, women, blacks, inhabitants of certain neighbourhoods, LGBT, etc. There are no studies on this topic. Interviewees speak of discrimination problems confronted by individuals from poor and historical neighbourhoods who are subjected to discriminatory attitudes arising from the historical intimacy existing between the law enforcement services and the people they are supervising, many of whom they know as individuals and as families going back generations, and against whom they may hold some sort of preconceived attitude which is then reflected in how the cases are handled (here as it pertains to probationary supervision). From the opposite perspective, the DGRSO agent, answering the same question, said "Yes, they do respect".

Do probation agencies always seek the offenders cooperation and collect their informed consent?

Some but not all of the measures under the authority of the Probation Department require the consent of the individual. The individuals interviewed had no knowledge of such a process regardless of the measure being applied in their specific cases. "Yes, for volunteer projects" (ibid).

If probation agencies carry out interventions before the establishment of the offender's guilt, do they require the offender's informed consent? Are their interventions without prejudice to the presumption of innocence?

Not all pre-trial alternatives require consent. As to whether any pre-trial measures prejudice the presumption of innocence, which is granted in Portuguese law, it is difficult to say with objectivity. It would seem that any sort of restriction presupposes some level of guilt, and therefore prejudices the guarantee of the presumption of innocence. And for those who are acquitted of the charges after having been subjected to pre-trial restrictions impacting his/her normal routine it is likely they will continue to suffer the stigma associated with that state of "presumption of guilt" in the eyes of those who became aware of the prior restrictive situation. There are also the practical aspects of some of the measures: for example, a person on a restrictive house arrest may lose his/her job, etc.

Are the task and responsibility of the probation agencies and their relations with the public authorities and other bodies defined by any national law?

There are several legally defined responsibilities, although the fact of the Probation Department being an integral part of the Prison Department renders any specific division of responsibilities difficult to establish. The responsibilities of the DGRSP are:

- 1) provide support to the government official responsible for the definition and execution of criminal policy in the execution of those tasks
- 2) provide technical support to the courts

- 3) ensure the execution and compliance with judicial decisions imposing alternative measures to incarceration.
- 4) promote and ensure the permanent evaluation of the functioning conditions of the juvenile educational centres, the probation system, and the prisons
- 5) ensure the running of the system of electronic monitoring
- 6) work to dignify and humanize the living conditions in educational centres and prisons
- 7) provide technical support to the Sentence Compliance Courts (Tribunais de Execução de Penas)
- 8) coordinate the management of the individuals committed to the educational centres and prisons as to all aspects of programmes and execution of sentences
- 9) contribute to the creation of instruments of international judicial cooperation
- 10) develop treatment programmes adequate to each individual's profile and rehabilitation necessities, as well as evaluate each individual plan
- 11) ensure the functioning and security of educational centres and prisons
- 12) develop with other public and/or private entities the economic activities of the educational centres and prisons with the aim of promoting the professional development and integration of those committed to those institutions
- 13) develop the economic potential of each institution relative to the area it is located in with the aim of improving the management of the entire system
- 14) develop and collaborate in crime prevention programmes and contribute to a greater community involvement in the management of the educational and penal justice in partnership with public and private institution as well as the public
- 15) promote the professional development of human resources
- 16) ensure the management and security of the educational centres, prisons and probation structures in partnership with the Institute of Financial Management and Justice Structures (Instituto de Gestão Financeira e Equipamentos da Justiça)
- 17) create plans of general security in the educational centres and prisons
- 18) maintain a system of data on prison security in collaboration with the National System of Internal security (Sistema Nacional de Segurança Interna)
- 19) perform audits, investigations and inspections
- 20) manage the human material and financial resources of the services
- 21) organize and schedule structural maintenance and update of the facilities according to needs in collaboration with the National System of Internal security (Sistema Nacional de Segurança Interna)
- 22) collaborate with the General-Directorate of the Justice Policy (Direção Geral da Política de Justiça)
- 23) provide occasional socio-economic support to the subjects of the activity exercised by the General-Directorate

How is the offenders' privacy guaranteed? How is the data protection of case records guaranteed to the offenders?

We are not aware of any such protections. In Portuguese law there is a principle known as secret of justice (Segredo de Justiça) which, when requested by one of the parties involved (defendant or victim) and granted by the court, establishes an obligation on the part of the authorities to maintain all information pertaining to that case secret at every stage of the process. Violations of this principle are a well-known constant of the mainstream media, to which information about

most such cases flows promptly and consistently from official sources as a matter of course. From this it is easy to estimate what any other such protection might be worth.

Are there accessible, impartial and effective complaint procedures regarding probation practice?

The problems are the same faced with all other such procedures in Portugal. There are procedures, but the system is closed and protects itself. The distance between the law as it is written and the practice confounds any possibility of complaint. “Don’t know” (ibid).

Are the probation agencies subjected to regular government inspection and/or independent bodies monitoring?

There are inspectorates, such as the Ombudsman, who may conduct such inspections, but there is no regularity, nor are they always undertaken from an independent perspective. The last significant inspection of the Probation Department was in 1997, under an exceptionally dedicated Ombudsman, José Menéres Pimentel, who issued a critical Special Report to Parliament recommending the nearly complete restructuring and reprogramming of the existing Probation Department.

Staff

Organization of probation staff

The Probation Department is directed by an appointee under the authority of the General Director of the DGRSP. Each of the 6 regional Offices of Probation Department is also headed by an appointee. Down from there are careerists flowing between the prison and probation services. According to the document approving the DGRSP staff for 2015, the probation staff is organized into regional teams (48) consisting of team coordinators (48), Superior technicians (45), Superior Technicians of Social Rehabilitation, who are the actual probation agents (465), Technical assistants (107), Operational assistants (30).

Number of probation officers in 2014, and historical series since 2003

Years	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003
Total employees			1113	1157	1141	1165	1246	1325	1676	1761	1664	1641
Probation agents (Técnicos superiores de reinserção social)	362,4	364	441	447	417	433	443	452	568	590	588	621
Coordinators (Técnicos profissionais de reinscrção social)			211	231	220	227	252	271	321	339	264	281
Probation teams (Equipas de reinserção social)			57	57	57	57	55	96	93	93	83	98

Source: DGRS Annual Statistics -2012 Annual report Source: www.dgsp.mj.pt/
 For 2013: DGRSP Annual Statistical Report 2013 www.dgrs.mj.pt/web/rs/estat
 For 2014: October 2014 figures, source: DGRSP Síntese Estatística
 Reinscrção Social Outubro 2014

Number of cases followed by each probation agent

Data only available for some years, and then only in relation to average number of sentences and measures for each probation agent (tecnico superior) – see table below

Average of sentences and measures overseen per probation agent						
2014	2013	2012	2011	2010	2009	
142,62	152,34	120,05	data not available	data not available	data not available	
2014: Numbers between January and October 2014						
2013 annual report, p.58, quadro 37						
2012:p.41, quadro 29						
Source: Sistema Integrado de Reinscrção Social (SIRS) Numbers include only probation agents (TSRS) of the teams of Social Rehabilitation (RS), without coordinators						

For 2014: October 2014 figures, source: DGRSP Síntese Estatística Reinscrção Social Outubro 2014. For 2013: DGRSP Annual Statistical Report 2013 www.dgrs.mj.pt/web/rs/estat

Recruitment procedures

The only legal directive is that the individuals hired should be considered based upon their qualifications for the work they are to do, what those might be is not stated.

Initial qualification required and ongoing training

No Information available.

Relationship between the probation service and the prison service

The probation service and prison service have been joined into a single General Directorate, overseen by one Director General. Decree-Law n. 215/2012, of September 28, created the current Directorate-General of Social Rehabilitation and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais, DGRSP) – in 2010 the then Justice Secretary of State João Correia resigned citing, among other problems, that the planned fusion of the two services, as part of the government's cost-cutting restructuring, was a way to further marginalize the rehabilitation services. Presently the two systems function seamlessly enough to often constitute a single career path, with staff crossing over from one sub department to the other at various points of their careers with a simple transfer request, and management being promoted between the two services. This is a dynamic that established itself soon after the original implementation of the Institute of Social Rehabilitation in 1982. Although specifically established to be a purposeful counterbalance to the objectives of the prison system, it was soon absorbed into the conceptual sphere of the prison services. Their relationship seems to be as seamless now as it was before: there is no evidence that the two services ever saw their missions as being at odds with each other. From what is possible to determine the probation services do not interfere with any interest to incarcerate on the part of the prison service.

Relationship between the probation service and the judiciary

A large part of the work performed by probation agents is the preparation of individual reports for the courts to use in determining any judicial decision pertaining to a defendant. They are:

- Social report (relatório social). Information about the individual's professional and family situation automatically produced for every case in order to help the judge assess the personality of the accused (par. g, art. 1 and art. 370 – Code of the Penal Process).
- Social information (Informação social). Replies to court requests for specific information on a defendant (par. h, art. 1 and art. 370 - CPP).
- Personality/psychological reports (relatório de perícia sobre personalidade). Produced at request of the court to help evaluate degree of culpability and severity of punishment (art. 160 – CPP).
- Probation agents also serve the courts by providing direct testimony as to the content of reports.
- Probation agents write progress reports at request of the court.
- Finally, probation agents apply and enforce any conditions imposed by the court as part of the individual rehabilitation plan, reporting on these to the court as required.

This work seems to go on without any problems between the courts and the Probation Department even as the court request many more reports than are delivered every year, and sentences are generally based on reports and, in more serious cases, specific individual character/psychological evaluations that offer no information concerning the defendants' prior record (with judges, having no knowledge of prior arrests or even convictions, sometimes being publically criticised for, for example, repeatedly letting a child sexual abuser go out to reoffend without any sanction or treatment being imposed). The impression is that of a ritual taking place rather than anything of substance.

Relationship between the probation service and the general social services

There is some practical involvement between the Probation Department and the Social Networks, legislated cooperatives of all social services providers, public, civil and private, assembled nationally at the level of municipalities. The degree of that involvement depends upon the dynamic in each of the municipal social networks. There can also be a working relationship between probation officers and any services they which to employ in the performance of their duties. According to interviewees under probation/conditional release supervision these relationships do not seem to be very extensive.

Is the number and the remuneration of probation officers adequate to their tasks?

There is a repeated and consistent complaint by the union that staffing levels are insufficient to properly handle the caseload. Privately, probation staff complain that, at the policy and directorial levels, no one cares about their work. Most public employees in Portugal are underpaid by European standards.

Is the expertise and experience of probation agencies used in developing crime reduction strategies?

It is part of their legislated functions to do so. In practice any such collaboration seems to be tenuous.

PART TWO. SPECIFIC PROGRAMMES

Alternatives to pre-trial detention

Alternative measures to pre-trial detention from the legal point of view

Term of identity and residence is an alternative to pre-trial detention laid out in article 196 Of the Code of the Penal Process, approved by Decree-Law no 78/87, of February 17, with reference to articles 113 (no 1 para. c)), 250 and 333, with the latest amendment introduced and republished in its entirety by Organic Law no 2/2014, of August 6: This measure is singular in that it may be imposed by the police authority once the individual has been charged (constituído arguido). Consists of requirement of presentation to authorities when summoned and to inform of any change of address for more than five days.

Bail is an alternative to pre-trial detention laid out in article 197 Of the Code of the Penal Process, approved by Decree-Law no 78/87, of February 17, with the latest amendment introduced and republished in its entirety by Organic Law no 2/2014, of August 6: consists of posting an amount set by the court. Only applies if the crime being charged carries a prison sentence. If the individual cannot afford to post bail, the court may substitute bail for any other coercive measure(s) with the exception of incarceration or house arrest. The amount of bail must take into consideration the gravity of the crime, damages that may have occurred and the socioeconomic situation of the accused. The amount is paid to the state and not refunded as other types of bail schemes.

Mandatory periodic presentation is an alternative to pre-trial laid out in article 198 of the Code of the Penal Process, approved by Decree-Law no 78/87, of February 17, with the latest amendment introduced and republished in its entirety by Organic Law no 2/2014, of August 6: Applies to cases with potential sentences of more than six months. the individual must present Him/herself periodically (the period to be determined by the court) at some official location, such as a police station, or a courthouse

Suspension of work, function, activities or rights is an alternative to pre-trial laid out in article 199 Of the Code of the Penal Process, approved by Decree-Law no 78/87, of February 17, with the latest amendment introduced and republished in its entirety by Organic Law no 2/2014, of August 6: Applies to crimes with a maximum sentence superior to two years. The individual may be ordered to suspend any professional activity or any other occupation; may have parental rights, rights to manage property or any other control rights suspended.

Prohibition and imposition of activities is an alternative to pre-trial detention laid out in article 200 of the Code of the Penal Process, approved by Decree-Law no 78/87, of February 17, with the latest amendment introduced and republished in its entirety by Organic Law no 2/2014, of August 6: Applies to crimes with a maximum prison sentence superior to three years. May prohibit access to a structure, areas, items such as weapons and contact with certain individuals. Restrictions to travel within and/or outside the country. May mandate compliance with treatment programme (drug or alcohol). Involves Probation Department.

Conditional Suspended case is an alternative to pre-trial detention laid out in articles 281 and 282 of the Code of the Penal Process, with reference to Directive no 1/15 de Prosecutor General of the Republic (Procuradoria-Geral da República), approved by Decree-Law no 78/87, of February 17, with the latest amendment introduced and republished in its entirety by Organic Law no 2/2014, of August 6: Applies to crimes with a maximum sentence of less than five years or if the crime is candidate for an alternative sentence. The case may be suspended upon request of the accused to the Prosecutor's Office or by the prosecutor's own initiative. The prosecutor will arrive at the decision whether to suspend the case in consultation with the court. The case may be suspended for up to two years. If the accused complies with all suspension stipulations throughout the duration of the suspension, the case is then dismissed. To qualify, the accused may not have been previously convicted of the same type crime, had a previous suspension relating to a case of the same type, be subject to any other types of security internment, have a high degree of culpability (how this might be determined is not specified). There may be conditions applied with the suspension, such as surrendering money to the state or to NGO's or perform a public service, to indemnify the victim, offer appropriate moral satisfaction to the victim (apologize), maintain residence in a certain location, attend programmes or activities, not exercise certain professions, not frequent certain places, not reside in certain areas or regions, not contact certain individuals, not attend certain events, not have possession of certain objects which may facilitate crime, and refrain from other activities particular to the case. To enforce these conditions the court may require the services of the police, administrative authorities, or the Probation Department.

House arrest is an alternative to pre-trial detention laid out in article 201 of the Code of the Penal Process, approved by Decree-Law no 78/87, of February 17, with the latest amendment introduced and republished in its entirety by Organic Law no 2/2014, of August 6: Applies to crimes with a maximum sentence superior to three years. The individual may not leave the place of residence (be it private residence, treatment centre or healthcare facility) without prior authorization. There may be authorization to work etc. May, and typically does, include the use of electronic monitoring to ensure that the individual remains within the home at the prescribed times. May be combined with prohibitions of contact or frequentation of certain places.

Judicial authority responsible for the establishment of the measures

For pre-trial measures it is the Court of Criminal Instruction (Tribunal de Instrução Criminal).

Alternative measures in detail, supervision model adopted (e.g. control-oriented, rehabilitation-oriented...), relations between the public and the private sector in managing the measures, budget allocated and its suitability, and impact of the measures on the pre-trial prison population and on the lives of the subjects involved (work, physical/psychological wellbeing, family and social relationships, goals and life perspectives)

["As to the indicators of pre-trial house arrest, from its implementation in 2002 to 2007, we have a total 2,150 measures applied and 1,757 completed, including 142 revocations for violation, corresponding to 6.6%" (DGRS Statistical Report 2007, p.89)]

For reason already discussed, most of the information requested here is not available. The basics of each measure are:

Term of identity and residence: Involves no direct supervision

Bail: May be imposed along with other measures. Involves no direct supervision

Mandatory periodic presentation: The supervision is effected in the process of the periodic presentation by whatever authority has been indicated

Suspension of work, function, activities or rights: involves no direct supervision

Prohibition and imposition of activities: Depending on the conditions imposed the supervision is done by the Probation Department

Conditional Suspended case: to enforce these conditions the court may require the services of the police, administrative authorities, or the Probation Department.

House arrest, may use electronic monitoring which, as far as we can establish, is the only one that involves the private sector. The DGRSP pays a private security company for the use and maintenance of the equipment used in electronic monitoring. The cost of electronic monitoring in 2012 was €14.02 and €21.12 per day depending on technology used (radio signal or GPS) against an estimated €40.10 per day to incarcerate.

To the extent that these measures are applied they may contribute to keep what is a serious prison overcrowding problem from reaching an even more critical level. But this benefit is perhaps misleading. The fact is that with the implementation of these measures what is seen in Portugal is an increase of the overall number of individuals sentenced, so that the gains on one side are in fact lost on the other. Most of the measures applied are based on electronic monitoring, which is commonly accepted as having had a positive impact as an alternative to prison in that it permits individuals to maintain work obligations and sustain family relationships. There are few studies on these matters in Portugal, and none that deal with the detailed questions being presented here, but those that have been done seem to agree on the need for these alternatives to prison to be accompanied by social/rehabilitative support measures. In Portugal the family tends to be the only support network available, and for the most vulnerable segments of the population, even when the individual can count on some form of such support, this reliance on the family is unrealistic due to the obvious challenges those families as a whole tend face.

Total number of people serving a pre-trial alternative to detention in 2014 and historical series since 2000

Not available. Only numbers for “measure” exist. See below

Total number of people in pre-trial detention in 2014, historical series since 2000 and rate per 100,000 population between 2000 and 2014

Number of pre-trial detainees per 100,000 rate population			
Year	Pre-trial detainees	Portuguese population	Prisoner rate per 100,000 population
2000	3854	10330774	37.3
2001	3690	10394669	35.5
2002	4219	10444592	40.4
2003	3492	10473050	33.3
2004	3000	10494672	28.6
2005	3044	10511988	29.0
2006	2921	10532588	27.7
2007	2327	10553339	22.0
2008	2108	10563014	20.0
2009	2370	10573479	22.4
2010	2482	10572721	23.5
2011	2470	10542398	23.4
2012	2661	10487289	25.4
2013	2592	10427301	24.9
2014	2330	10367800	22.5
Source for numbers of pre-trial detainees: http://www.dgsp.mj.pt/ General Directorate of Prison Services Annual statistical reports			

Annual flow and the daily rate for the period 2000 to 2014, of: people serving the measure, foreigners, male/female, revocations distinguishing among non respect of conditions / re-offending / other

Numbers relating to people not available; produced other figures relating to numbers of sentences and measures in execution – see below

Sources: 2012-2014: DGSP (annual reports)
2010 and 2011: DGPJ (aggregate reports document); rest: DGRS (annual reports: for years 2007-2009 source is Annual report 2009, for years 2005-2007 source is Annual Report 2007 Vol. I; some figures for 2007 are available in the 2009 report, some in the 2007 report, see)³

³ Figures are from DGRS 2007 Annual Statistical Report. They are mostly expressed in graphic terms

Pre-trial alternative measures: total

Year	Pre-trial alternative measures by year			
	Coercive measures	Conditional suspensions	Other	Total
2014	1512	14675	3	16990
2013	1524	14473	2	15999
2012	1499	10474	5	11978
2011	1292	7757	7	9056
2010	462	3527	76	7826
2009	not given	not given	not given	not given
2008	not given	not given	not given	not given
2007	508*	1493*	59*	2060*
2006	620*	946*	48*	1614*
2005	458*	762*	54*	1274*

There is no breakdown of which measures are applied pre-trial, apart from electronic monitoring:

Year	Pre-trial electronic monitoring: total times applied				Overall total (pre- and post-trial)
	As a coercive measure	As part of conditional suspension	Other	Total	
2014	1220	14	0	1234	
2013	1245	10	0	1255	
2012	1223	1	0	1224	
2011	1043	0	0	1043	
2010	not given	not given	not given	not given	
2009	not given	not given	not given	not given	746
2008	not given	not given	not given	not given	796
2007	508*	Not specified	not given	not specified	578
2006	620*	Not specified	not given	Not specified	
2005	458*	Not specified	not given	Not specified	

Year	Pre-trial measures as of 31 December of each year			
	Coercive measures	Conditional suspensions	Other	Total
2014	700	4.171	2	4.873
Of which, electronic monitoring:	539	8	0	547
2013	659	4.493	1	5.153
Of which, electronic monitoring:	527	6	0	533
2012	707	3.419	2	4.128
Of which, electronic monitoring:	1	167	0	168
2011	681	2.734	3	3.418
Of which, electronic monitoring:	559	0	0	559
2010	525	2.078	5	2.608
Of which, electronic monitoring:	387	n/a	n/a	404
2009	310	2.537	155	3.002
Of which, electronic monitoring:	0	310	0	310
2008	not given	1.801	not given	not given
Of which, electronic monitoring:	not given	not given	not given	not given
2007		1.192	79*	1.678**
Of which, electronic monitoring:	not given	not given	not given	not given
2006		890*	78*	1.477**
Of which, electronic monitoring:	not given	not given	not given	not given
2005		774*	63*	1.244**
Of which, electronic monitoring:	not given	not given	not given	not given

Source 2009: Appendix 8, p.71 of DGRS annual statistical report

**pages 66-7 of DGRS 2007 report, Vol.1

Alternatives sanctions⁴

Alternative sanctions from the legal point of view

Decriminalization of consumption, purchase for consumption, and possession for consumption of drugs is an alternative sanction covered by Law no 30/2000, of November 29, in conjunction with Decree-Law no 15/93, of January 22, as updated by Law no 77/2014 of November 11, article 40 (no's 1, with reference to tables I to IV, and 3). This law decriminalizing the purchase/possession/consumption of drugs, in cases of possession of up to a stipulated amount considered an average 10 day supply, permits judges to dismiss borderline cases (falling just within the crime range of this law) by remitting the individual to the services of a Commission for the Dissuasion of Drug Use (Comissão para a Dissuasão da Toxicodependência, CDT), and thus to the public health system, rather than send the case on to the trial court where the individual could be sentenced to prison. The Court making this judgment is the Court of Criminal Instruction (Tribunal de Instrução Criminal).

Community service is an alternative sanction laid out in articles 58 and 59 of the Penal Code, approved by the Decree-Law no 48/95 of March 15, with the latest amendment introduced and republished in its entirety by Law no 30/2015 of April 22. This measure can be applied as substitution for prison sentences of up to two years and requires the consent of the individual. It consists unremunerated services for the state, other collective public entities or private entities the aims of which the court may consider in the public interest. Each day of the sentence corresponds to one hour of work, to a maximum of 480 hours. The work can be performed on week days, Saturdays, Sundays and holidays, with the condition that, if the individual is gainfully employed, the community service cannot interfere with the performance of her/his job. There may be other conditions applied as part of the sentence such a rules of conduct.

Suspension of internment is an alternative sanction laid out in article 98 of the Penal Code, with reference to articles 52, 53, 54, 91 (no 2), 92, 93 (no's 1 and 2) and 95, approved by the Decree-Law no 48/95 of March 15, with the latest amendment introduced and republished in its entirety by Law no 30/2015 of April 22. Consists of the conditional suspension of the internment in a mental health detention facility of an individual judged of "diminished capacity" (inimputáveis), a special group individuals who the court has determined that due to some psychological issue are to be directed to some form of specialized treatment. This measure may be applied prior to internment or after a minimum period of internment of 3 years, depending of the severity and nature of the crime. It is a partial or complete substitution of incarceration for a probationary treatment programme performed in the community. All individuals declared of diminished capacity who are subjected to any treatment programme must have a Therapeutic and Rehabilitation Plan (Plano terapeutico e de Reabilitação) (art. 128 do Código da Execução das Penas e Medidas Privativas da Liberdade) submitted for approval to the Sentence Compliance Court (Tribunal de Execução das Penas). This plan is drawn to promote therapy and rehabilitation goals the progress of which is then to be periodically evaluated by the court, and the plan redrawn accordingly. This measure follows a similar regime to that of the suspended sentence. (We should perhaps consider this measure also as an alternative during execution as it can be imposed after 3

⁴ Those established by the judge as main sanction during the trial

years of internment, but as it deals with this special group of individuals and internment in mental/prison facilities I'm not sure)

Suspended sentence is an alternative sanction laid out in articles 50 to 57 of the Penal Code, approved by Decree-Law no 48/95 of March 15, with the latest amendments introduced and republished in its entirety by Law no 30/2015 of April 22. Once guilt is determined and a sentence imposed (of up to 5 years), the court, upon consideration of personality, circumstances, and behaviour of the individual prior and subsequent to the crime, suspends service of the sentence if it concludes that censure of the act and the threat of prison are enough as reproach and deterrent for future crimes. There are three types of suspensions: simple suspension; suspension subject to obligations and rules of conduct; and suspension with probation.

Substitution of prison sentence is an alternative sanction laid out in article 43 of the Penal Code, with reference to articles 47, 49 (no 3), 57, 66 (no's 3 and 5), 68, approved by the Decree-Law no 48/95 of March 15, with the latest amendment introduced and republished in its entirety by Law no 30/2015 of April 22. For cases subject to sentences up to a maximum of one year, the sentence may be substituted for a fine or for another non incarceration sentence, with the exception of cases where incarceration is deemed necessary to prevent future crimes. If the individual fails to pay the fine the prison sentence must then be served. For cases subject to sentences up to a maximum of three years, the sentence can be substituted by a prohibition sanction of between two to five years which may consist of prohibition to exercise a certain profession, function or activity, when the crime has been committed in the exercise of that same occupation. Failure to comply results in imposition of the original prison sentence minus any time already served in compliance with the prohibition.

House arrest is an alternative sanction laid out in article 44 of the Penal Code, approved by the Decree-Law no 48/95 of March 15, with the latest amendment introduced and republished in its entirety by Law no 30/2015 of April 22. Based on electronic monitoring and with the consent of the individual, the court may impose this alternative for sentences up to a maximum of one year (or up to two years, if the subject is younger than 21 or older than 65, has a serious disease or disability, is in charge of minors or has someone dependent for care).

Sentence modification for need is an alternative at sentencing laid out in Title XV, Articles 118 to 122 of the Code of sentences and liberty depriving measures, approved by Law no 115/2009 of October 12, with the latest amendment introduced and republished in its entirety by Law no 21/2013, of February 21. This measure permits the exceptional sentence to house arrest or commitment to a care facility of sick or otherwise debilitated individuals if a sentence of prison is to be otherwise imposed upon an individual whom the court determines to not be in proper physical and/or mental condition to serve a prison term.

Incarceration by free days is a partially alternative sanction laid out in article 45 of the Penal Code, approved by the Decree-Law no 48/95 of March 15, with the latest amendment introduced and republished in its entirety by Law no 30/2015 of April 22. For sentences up to a maximum of one year, the court may permit the sentence to be served in weekends. Up to a maximum of 72 periods, with each period having minimum 36 and a maximum of 48 hours which are counted as 5 days of continuous incarceration.

Semi-incarceration regime is a partially alternative sanction laid out in article 46 of the Penal Code, approved by the Decree-Law no 48/95 of March 15, with the latest amendment introduced and republished in its entirety by Law no 30/2015 of April 22. For sentences of up to one year the

court may permit the sentence to be served in prison but with permission to leave daily to work or to attend school. This measure requires the consent of the individual.

Judicial authority responsible for the establishment of the measures

For sentencing it is the Judicial Court of First Instance (Tribunal Judicial de Primeira Instancia), on first appeal of sentence the Court of Appeal (Tribunal da Relação), on second appeal the Supreme Justice Court (Supremo Tribunal de Justiça), and on final appeal the Constitutional Court (Tribunal Constitucional).

Alternative measures in detail, supervision model adopted (e.g. control-oriented, rehabilitation-oriented...), relations between the public and the private sector in managing the measures, budget allocated and its suitability, and impact of measures on the prison population and on the lives of the subjects involved (work, physical/psychological wellbeing, family and social relationships, goals and life perspectives, recidivism rate)

Most of this information is not available

Decriminalization of consumption, purchase for consumption, and possession for consumption of drugs is a truly alternative measure. In situations where the individual is found in possession of a criminal amount of drugs (above the legal limit established by decriminalization), the case can be dismissed, carrying no future consequence regardless of alternative outcome. The alternative involves voluntary participation in various treatment and support programmes. The CDT is a triage centre, where the individual is evaluated for level of consumption, and depending upon where the level of consumption is judged to be (recreational, moderate, addict), recommendations and support programmes are offered which the individual can choose, or not, to take advantage of. This is a positive programme, the only truly substantive alternative measure being applied in Portugal (if the individual is sent back a second time, and is not evaluated as addicted, a fine may apply, with the alternative of various other non-onerous sanctions, with no possible sanction escalation in case of non-compliance).

Community service is a control measure that, depending of the task imposed, may offer the possibility of some sort of skill acquisition.

Suspension of internment is a control and treatment measure.

Suspended sentence. There are three types of suspensions: simple suspension; suspension subject to obligations and rules of conduct; and suspension with probation. These suspension range from merely control measures to probation subject to an individual rehabilitation plan.

Substitution of prison sentence is a control measure.

House arrest is a control measure

Sentence modification for need is an exceptional consensual control measure that allows for a sentence to house arrest, with electronic monitoring if the court deems it necessary, or commitment to a medical care facility of individuals who

are exceptionally ill, with an evolving and irreversible pathology who no longer responds to any available therapies have a grave deficiency or irreversible disease which requires the permanent care of a third party and is demonstrably incompatible with prison care, or are of age equal or superior to 70 years and whose physical or mental health, or level of autonomy is demonstrably incompatible with the care available in prison or who are incapable of understanding the meaning of serving the prison sentence.

Total number of people (flow and daily rate) in prison serving a final sentence in 2014, historical series since 2000 and rate per 100,000 population for this period

Year	Number of people serving a final sentence	Portuguese population	Prisoner rate per 100,000 population
2000	8917	10330774	86.3
2001	9335	10394669	89.8
2002	9479	10444592	90.8
2003	10069	10473050	96.1
2004	9895	10494672	94.3
2005	9588	10511988	91.2
2006	9455	10532588	89.8
2007	9010	10553339	85.4
2008	8443	10563014	79.9
2009	8708	10573479	82.4
2010	9069	10572721	85.8
2011	9979	10542398	94.7
2012	10722	10487289	102.2
2013	11441	10427301	109.7
2014	11534	10367800	111.2
Source: http://www.dgsp.mj.pt/			

Number of people serving a final sentence			
Year	Numbers as of 31 December		Numbers in
2000	8917		829
2001	9335		978
2002	9479		871
2003	10069		816
2004	9895		2631
2005	9588		2469
2006	9455		2684
2007	9010		2746
2008	8443		2949
2009	8708		3386
2010	9069		3413
2011	9979		3609
2012	10722		3770
2013	11441		3625
2014	11534		3083
Source: http://www.dgsp.mj.pt/			
Note: figures not published for sentenced exits			

Total number of people (flow and daily rate) serving alternative sanctions in 2014, historical series since 2000 and rate per 100,000 population for this period

N/A

Annual flow and the daily rate for the period 2000 to 2014, of: people serving the measure, foreigners, male/female, revocations distinguishing among non respect of conditions / re-offending / other

Generally there are no numbers relating to people. What is available follows:

2014:

Characterization of individuals, by gender and age, subject of alternative sentences and measures

Age	Male	Female	Total	%
17 -20	2.764	290	3.054	9%
21 -30	9.287	1.101	10.388	29%
31 -40	8.141	911	9.052	25%
41 -50	6.671	789	7.460	21%
51 -60	3.295	734	4.029	11%
60+	1.546	164	1.710	5%
omitted	155	32	187	
total	31.859	4.021	35.880	
%	89%	11%		

Source: Sistema Integrado de Reinserção Social (SIRS)

The values refer to the total of individuals by gender and age who were subject to sentences and measures alternative to incarceration and applied in the community in 2014. Each person may have had more than one measure or sentence applied, hence the number of individuals being less than the number of sentences and measures. For the total of 56,270 sentences and measures applied in 2014 there were a total of 35,270 individuals

Characterization of individuals subject to alternative sentences and measures by nationality

Total People	35.880	%
Portuguese	33.005	92
Foreigners	2.714	8
Africa	1.721	
Cabo Verde	812	
Angola	368	
Guiné-Bissau	273	
São Tomé e Príncipe	119	
Moçambique	63	
Guiné (Equatorial)	34	
Marrocos	23	
Senegal	8	
Congo	5	
África do Sul	5	
Nigéria	4	
Others	7	
America	528	
Brasil	480	
Venezuela	15	
Canadá	6	
Estados Unidos	6	
Geórgia	5	
Cuba	3	
Argentina	2	
Chile	2	
Colômbia	2	
Others	7	
Europe	437	
Ucrânia	108	
Roménia	98	
França	54	
Moldova (República de)	42	
Espanha	37	
Reino Unido	18	
Alemanha	17	
Rússia (Federação da)	13	
Bulgária	11	
Suiça	9	
Itália	6	
Bélgica	4	
Others	20	
Asia	28	
Paquistão	11	
China	9	
Índia	3	
Bangladesh	2	
Cazaquistão	2	
Others	1	
Data omitted	161	

Foreigners		
Continent	n.º	%
Africa	1.721	63%
America	528	19%
Europe	437	16%
Asia	28	1%
total	2.714	

The values refer to the total of individuals by nationality who were subject to sentences and measures alternative to incarceration and applied in the community in 2014. Each person may have had more than one measure or sentence applied, hence the number of individuals being less than the number of sentences and measures.

Source: Sistema Integrado de Reinserção Social (SIRS)

2013:

Characteristics of individuals serving sentences and measures alternative to prison and applied in the community

Characterization of individuals by age and gender

Age	Male	Female	Total	%
17 - 20	3.959	572	4.531	9%
21 - 30	13.231	1.592	14.823	29%
31 - 40	11.633	1.515	13.148	26%
41 - 50	9.336	1.114	10.450	21%
51 - 60	5.012	549	5.561	11%
60+	2.044	184	2.228	4%
omitted	155	23	178	
total	45.370	5.549	50.919	
%	89%	11%		

Source: Sistema Integrado de Reinserção Social (SIRS)

The values refer to the total of individuals by gender and age who were subject to sentences and measures alternative to incarceration and applied in the community in 2013. Each person may have had more than one measure or sentence applied, hence the number of individuals being less than the number of sentences and measures. For a total of 57,320 sentences and measures applied in 2013 there was a total of 50,919 individuals.

Individuals subject to alternative sentences and measures by nationality

Total of people	50.919	%
Portuguese	46.457	92
Foreigners	4.229	8
África	2.663	
Cabo Verde	1.216	
Angola	588	
Guiné	490	
São Tomé e Príncipe	189	
Moçambique	100	
Marrocos	30	
Senegal	15	
África do Sul	13	
Congo	7	
Nigéria	6	
Camarões	3	
Others	6	
América	921	
Brasil	840	
Venezuela	30	
Geórgia	11	
Estados Unidos	8	
Canadá	7	
Colômbia	5	
Cuba	5	
Argentina	4	
Bolívia	2	
Equador	2	
Others	7	
Europe	600	
Roménia	149	
Ucrânia	130	
França	81	
Moldova (República de)	49	
Espanha	48	
Reino Unido	27	
Alemanha	25	
Bulgária	24	
Federação Russa	22	
Suiça	9	
Bélgica	8	
Itália	4	
Irlanda	3	
Lituania	3	
Others	18	
Ásia	45	
Paquistão	13	
China	13	
Bangladesh	8	
Cazaquistão	3	
Índia	3	
Others	5	
Data omitted	233	

Foreigners		
Continent	n.º	%
Africa	2.663	63%
America	921	22%
Europe	600	14%
Asia	45	1%
total	4.229	

The values refer to the total of individuals by gender and age who were subject to sentences and measures alternative to incarceration and applied in the community in 2013. Each person may have had more than one measure or sentence applied, hence the number of individuals being less than the number of sentences and measures.

Source: Sistema Integrado de Reinserção Social (SIRS)

2010:

Total number of adults in the system for the year: **51018** (this includes everyone, not just people receiving sentences and measures) (Source: first table, 2010 annual statistical report, in aggregate reports document).

As of 31 December 2010: Total number of people under pre-trial measures: **2596**. Total number of people on alternative measures (including parole and excluding pre-trial): **12291**. Total number of people under EM: 638.

2009:

Numbers of actual people given this year are different again:

“On December 31 of 2009, the DGRS supervised a total of 16,464 individuals serving adult sentences and measures, of which 524 were serving sentences and measures with electronic monitoring, and the other 15,940 serving sentences and measures in the community.

Of the total 15,940 individuals serving sentences and measures in the community, 14,563 (91%) were men and 1,377 (9%) women (see table 18).” (page 30)

Individuals subject to alternative sentences and measures by age group

Age	Female	Male	Total
16 - 17	6	22	28
18 - 20	36	537	573
21 - 24	117	1.836	1.953
25 - 29	217	2.395	2.612
30 - 39	433	4.278	4.711
40 - 49	329	3.021	3.350
50 - 59	130	1.463	1.593
60 - 64	30	255	285
65 - +	32	338	370
Data omitted	47	418	465
Total	1.377 (9%)	14.563 (91%)	15.940

Source – Aplicação de registo de verbetes da DGRS

Individuals serving measures in the community for the adult system [p.32 of 2009 annual statistical report, DGRS]

Type of measure	Men	Women	Total
Conditional Suspended case	2.276	240	2.516
Community service	706	34	740
Substitution of fine for work	2.751	374	3.125
Suspended sentence	5.789	434	6.223
Conditional release	2.834	274	3.108
Deminshed capacity in freedom	207	21	228
Total	14.563	1.377	15.940

2007 [source: like the others, statistical report, DGRS website, except for years 2012-14, for which DGSP]: Info below is extracted from 2007 DGRS Annual statistical report, p.42

“In 2007 the total of 28,742 sentences and measures applied pertain to 23,118 individuals, of which 20,607 (89%) male and 2,511 (10.9) female.”

Adults serving measures and sentences, by gender 2005-2007

	MASCULINO	FEMINNO	TOTAL
ANO 2005	17.057	1.997	19.054
ANO 2006	19.224	2.324	21.548
ANO 2007	20.607	2.511	23.118

Sentences and measures applied

On December 31 2007 the total of 13.340 sentences and measures applied pertains to 12, 640 individuals. Of which, 11,536 (91.2%) male, and 1,108 (8.7%) female. In relation to the previous year there was an increase of 1,235 individuals, about 10.8%, the average of processes being followed per individual being 1.05 (see graph 55).

Between 2002 and 2007 (inclusive) the proportion in terms of gender was 10% female, 90% male

No statistical information available before 2005.

For the Decriminalization alternative we do have data for every year, with the exception of 2014, since implementation as to the number of cases sent to the CDTs

Provenance of cases brought to the CDTs		
Year	Total number of cases	Fom Criminal Court
2001*	2366	395
2002	5580	1539
2003	6100	1514
2004	5370	1240
2005	6260	1878
2006	6216	1847
2007	6744	1856
2008	6543	1291
2009	7549	1028
2010	7315	1118
2011	6898	1186
2012	8573	1171
2013	8729	1213
*Six months only - start of new system in that year		
Source: SICAD Annual Reports		

No other breakdown available in relation to **people/cases**; breakdowns available in terms of **sentences and measures** are shown below.

Alternative sentencing measures, by year						
Year	Community Service	Suspended sentence	House arrest with electronic monitoring (EM)	Measures applied to people with diminished responsibility	Other	Total
2014	16759	18510	188	508	155	36120
Of which, EM:	11	131	188	0	132	462
2013	18568	18074	219	519	99	37479
Of which, EM:	10	94	219	0	71	394
2012	16003	15875	224	481	72	32655
Of which, EM:	5	58	221	0	42	326
2011	12327	12787	181	451	39	25785
Of which, EM:	0	20	181	0	14	215
2010	not given	not given	not given	not given	not given	not given
Of which, EM:	not given	not given	not given	not given	not given	not given
2009-2008:	<i>figures not given</i>					
2007*	375	2509				
Of which, EM:						
2006*	416	2108				
Of which, EM:						
2005*	340	1883				
Of which, EM:						

*Figures are from DGRS 2007 Annual Statistical Report. They are mostly presented as graphics

Alternative sentencing measures as of 31 December of each year							
Year	Community Service	Suspended sentence	House arrest with electronic monitoring (EM)	Measures applied to people with diminished responsibility	Other	Total alternative sentences	Prison (e.g. weekends, open regime)
2014	5711	12027	71	388	115	18312	
Of which, EM:	5	107	71	0	103	306	
2013	6963	12055	72	390	70	19550	
Of which, EM:	4	80	72	0	59	215	
2012	6180	10705	106	376	56	17423	
Of which, EM:	65	205	0	0	1	271	
2011	5000	8932	78	344	30	14384	
Of which, EM:	0	20	78	0	11	109	75
2010	3524	6551	not given	303	12	n/a	
Of which, EM:	4	6	129	not given	not given		
2009	761	6406	96	381			
Of which, EM:	0	not given	96	not given	not given		
2008	574	5842		380			
Of which, EM:	not given	not given	144**	not given	not given		143
2007	439	5509		384			
Of which, EM:	not given	not given	69**	not given	not given		92
2006*	437	4768		350			
Of which, EM:	not given	not given	not given	not given	not given		105
2005*	354	4276		317			
Of which, EM:	not given	not given	not given	not given	not given		

Source for 2007-2009: DGRS 2009 Statistical report, Table 16 – Medidas na comunidade em execução no âmbito penal de 2007 a 2009 and Appendix 1, p.7

Alternatives during execution⁵

Alternatives during execution from the legal point of view

Conditional release is an alternative during execution laid out in Articles 61 to 64 (referencing articles 52, 53 [no's 1 and 2], 54, 55 [par. a) to c)], 56 [no 1], and 57) of the Penal Code, approved by the Decree-Law no 48/95 of March 15, with the latest amendment introduced and republished in its entirety by Law no 30/2015 of April 22: Conditional release is included in the work of the Probation Department and constitutes the third most applied alternative measure. Consists of the early release, upon completion of a prescribed minimum, of an individual serving a prison sentence up to five years prior to the completion of that sentence, always with the consent of the individual. Conditional release consists of the partial substitution of a certain period of incarceration for one of liberty with possible conditions. Any person with a sentence of more than six months and less than six years can be a candidate to conditional release at two points of the incarceration, each with different requirements: at completion of half (1/2) and two thirds (2/3) of the total sentence. For sentences greater than six years the requirement is completion of five sixths (5/6) of the sentence. The granting of conditional release at any one of these stages depends on the seriousness and nature of the crime and whether there are any other special reasons that may make it unadvisable. This is a measure with broad parameters which designed to permit the court to fit it to the specific needs of the individual as well as to the type of offense.

Sentence modification for need is an alternative during execution (as well as alternative sanction) laid out in Title XV, Articles 118 to 122 of the Code of sentences and liberty depriving measures, approved by Law no 115/2009 of October 12, with the latest amendment introduced and republished in its entirety by Law no 21/2013, of February 21. This measure permit the exceptional release of sick or otherwise debilitated individuals.

Suspension of internment is an alternative during execution (as well as alternative sanction) laid out in article 98 of the Penal Code, with reference to articles 52, 53, 54, 91 (no 2), 92, 93 (no's 1 and 2) and 95, approved by the Decree-Law no 48/95 of March 15, with the latest amendment introduced and republished in its entirety by Law no 30/2015 of April 22: Consists of the conditional suspension of the internment in a mental health detention facility of an individual judged of "diminished capacity" (inimputaveis), a special group individuals who the court has determined that due to some psychological issue are to be directed to some form of specialized treatment. This measure may be applied prior to internment or after a minimum period of internment of 3 years, depending of the severity and nature of the crime. It is a partial or complete substitution of incarceration for a probationary treatment programme performed in the community. All individuals declared of diminished capacity who are subjected to any treatment programme must have a Therapeutic and Rehabilitation Plan (Plano terapeutico e de Reabilitação) (art. 128 do Codigo da Execução das Penas e Medidas Privativas da Liberdade) submitted for approval to the Sentence Compliance Court (Tribunal de Execução das Penas). This plan is drawn to promote therapy and rehabilitation goals the progress of which is then to be periodically evaluated by the court, and the plan redrawn accordingly. This measure follows a similar regime to that of the suspended sentence.

⁵ Those established during the execution of the sentence as forms of early release from prison.

Judicial authority responsible for the establishment of the measures

For conditional release matters it is the Sentence Compliance Court (Tribunal de Execução das Penas).

Alternative measures in detail, supervision model adopted (e.g. control-oriented, rehabilitation-oriented...), relations between the public and the private sector in managing the measures, budget allocated and its suitability, and impact of measures on the prison population and on the lives of the subjects involved (work, physical/psychological wellbeing, family and social relationships, goals and life perspectives, recidivism rate)

Conditional release is a consensual control measure which may offer some form of rehabilitation programme. The court may order the individual to, within reason, and in any combination of measures, comply with such things as:

- 1) pay restitution, by the means, amount and time indicted by the court, to the victim;
- 2) offer adequate moral satisfaction to the victim;
- 3) to make a financial contribution, or offer labour of the same value, to public or private institutions, to charities or to the State;
- 4) reside in a specified place;
- 5) attend certain programs or activities;
- 6) follow specified obligations;
- 7) not exercise certain professions;
- 8) not frequent certain circles and places;
- 9) not reside in certain palces or regions;
- 10) not socialize, shelter or host certain individuals;
- 11) not frequente certain associations and not participate in specified meetings;
- 12) not possess implements of crime.
- 13) The court may also, with the consent of the individual, order that s/he undergo medical treatment in an adequate facility.
- 14) The court may alter any requirements if it sees cause at any time.
- 15) The court may order that the Probation Department offer support and supervise the individual in meeting the mandated requirements.
- 16) The judge may (and must do so for those who at the time of the crime were younger than 21 or who were sentence to more than 3 years) order that the individual be accompanied by probation (regime de prova) which implies compliance with a probation/conditional release plan (plano de reinserção social. See above for content of article 54 of the Penal Code).
- 17) This measure may also involve a court ordered transitional “adjustment period” (see article 62 of the Criminal Code) of up to one year of house arrest with electronic monitoring.
- 18) The potential and reach of this measure is broad. It places many control, support, educative, and support options at the disposal of the court.

Sentence modification for need is an exceptional consensual control measure that allows for the release to hose arrest, with electronic monitoring if the court deems it necessary, or to a medical care facility of individuals who are exceptionally ill, with an evolving and irreversible pathology who no longer responds to any available therapies have a grave deficiency or irreversible disease

which requires the permanent care of a third party and is demonstrably incompatible with prison care, or are of age equal or superior to 70 years and whose physical or mental health, or level of autonomy is demonstrably incompatible with the care available in prison or who are incapable of understanding the meaning of serving the prison sentence.

Suspension of internment is a control and treatment measure.

Total number of people (daily rate) serving alternatives during execution in 2014 and historical series since 2005

Measures during execution, as of 31 December of each year		
Year	Total measures	of which EM
2014	2679	20
2013	2555	19
2012	2537	73
2011	2690	18
2010	2528	30
2009	3184	25
2008	3223	N/A
2007	3490	1
2006*	3411	N/A
2005*	3363	N/A

*Figures are from DGRS 2007 Annual Statistical Report are only presented as graphics

**Source: "Relatório de Actividades" 2008-2010 at <http://www.dgrs.mj.pt/web/rs/docsestat>

Annual flow and the daily rate for the period 2000 to 2014, of: people serving the measure, foreigners, male/female, revocations distinguishing among non respect of conditions / re-offending / other

Measures during execution, by year: conditional release		
2014	Total measures	3960
	Of which, EM:	20
2013	Total measures	3842
	Of which, EM:	58
2012	Total measures	3899
	Of which, EM:	61
2011	Total measures	3999
	Of which, EM:	77
2010	Total measures	2407**
	Of which, EM:	not given
2009	Total measures	not given
	Of which, EM:	not given
2008	Total measures	not given
	Of which, EM:	29**
2007*	Total measures	not given
	Of which, EM:	1**
2006*	Total measures	not given
	Of which, EM:	not given
2005*	Total measures	not given
	Of which, EM:	not given

Following we include the statistics pertaining to sentences and measures for all three alternative phases involving electronic monitoring from 2005-2014. These figures are presented separately from all others and are often not reconcilable with the above numbers.

Electronic monitoring: measures according to type, sex and nationality as of 31 December of each year							
		Pre-trial	Alternative sentence	During execution	not applicable	Alt.Sentence & during execu.	
		Coercive Measure House arrest with Electronic Monitoring (art. 201, no 1 and 3 CCP)	Sentence to House Arrest (art. 44, no 1 CP)	Conditional release (art. 62 CP)	Domestic violence related EM to restrict contacts (art. 31, 52, 152 CP, Law 112/2009)	Modification of prison sentence (art. 120, no 1 and 2 Law 115/2009)	
2014							Total
Male	Portuguese nationality	312	65	14	276	4	671
	Foreigners	21	1	2	16	0	40
	Africa	14		1	6		21
	Europe	5		1	6		12
	America	2	1		4		7
	Asia						0
	Oceania						0
	Nationality omitted	3					3
	Total M	336	66	16	292	4	714
Female	Portuguese nationality	36	1	4	2	0	43
	Foreigners from:	0	0	0	0	0	0
	Africa						0
	Europe						0
	America						0
	Asia						0
	Oceania						0
	Nationality omitted						0
	Total F	36	1	4	2	0	43
Total	372	67	20	294	4	757	

Source: table 14, DGRS Annual Report 2014

		Coercive Measure House arrest with Electronic Monitoring (art. 201, no 1 and 3 CCP)	Sentence to House Arrest (art. 44, no 1 CP)	Conditional release (art. 62 CP)	Domestic violence related EM to restrict contacts (art. 31, 52, 152 CP, Law 112/2009)	Modification of prison sentence (art. 120, no 1 and 2 Law 115/2009)	
2013							Total
Male	Portuguese	316	70	13	207	5	611
	Foreigners	16	1	2	10	0	29
	Africa	11		1	7		19
	Europe	1		1	2		4
	America	4	1		1		6
	Asia						0
	Oceania						0
	Nationality omitted	4					4
	Total M	336	71	15	217	5	644
Female	Portuguese	48	1	3	1	0	53
	Foreigners	5	0	1	0	0	6
	Africa	2		1			3
	Europe	2					2
	America	1					1
	Asia						0
	Oceania						0
	Nationality omitted						0
	Total F	53	1	4	1	0	59
Total	389	72	19	218	5	703	

Source: table 14, DGRS Annual Report 2014

As of 31st December, previous years							
Year	Gender (where given)	Coercive Measure House arrest with Electronic Monitoring (art. 201, no 1 and 3 CCP)	Sentence to House Arrest (art. 44, no 1 CP)	Conditional release (art. 62 CP)	Domestic violence related EM to restrict contacts (art. 31, 52, 152 CP, Law 112/2009)	Modification of prison sentence (art. 120, no 1 and 2 Law 115/2009)	Total
2012							Total
	Male	955	203	50	13	204	1.425
	Female	110	5	11	1	3	130
	Total	1065	208	61	14	207	1555
2011							
	Male	888	176	64	88	3	1219
	Female	80	5	11	1	1	98
	Total	970	181	75	88	3	1319
2010							
	Male						586
	Female						52
	Total	387	70	30	20	N/A	
2009	Total	383	107	31	3	N/A	
2008	Total	349	144	29	N/A	N/A	
2007	Total	402	11	59	N/A	N/A	472*
2006							507*
2005							407*
*DGRS statistical report 2007, p.86							