

Alternatives to imprisonment in Europe: A handbook of good practice

Catherine Heard

European Prison Observatory. Alternatives to detention



With financial support from the
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EXECUTIVE SUMMARY

1. This handbook reflects the key findings from a two year comparative project funded by the European Commission, examining alternatives to imprisonment in Europe. The project analysed statistical and qualitative evidence on prisoner populations and the use of alternatives to imprisonment across eight European Union (EU) states: Italy, France, Greece, Latvia, Poland, Portugal, Spain and the three separate jurisdictions of the United Kingdom. The data analysed covered the period 2000 to 2014.
2. The project has, in line with other recent research, evidenced the overall growth of prison populations across Europe. The reasons for these high prisoner numbers are complex and vary between countries, but an overarching theme is the criminalisation of social problems such as mental ill-health, substance dependency, low educational attainment and poverty.
3. The project has found evidence of substantial growth in the use of community sanctions, which has taken place alongside high – and, in most cases, growing – prisoner numbers. The dominant trend in the use of these sanctions is a move away from rehabilitative, supportive, individualised intervention programmes; towards greater control and punishment. The policy emphasis is increasingly on risk-management. Prison is now often the automatic sanction if a community sentence requirement is breached.

Some of the examples of good practice provided by national experts' workshops in this project demonstrate that a different approach is possible. Community measures and other alternatives can be used to divert people from prison and punishment, by improving access to treatment or social support. Some countries have developed approaches that aim to defer or cancel the criminal justice process altogether. Mental health and drug dependency are identified as obvious areas where more could be done to decriminalise people with social problems, divert them from punishment and imprisonment, and thereby downsize criminal justice.

4. The policy message of this handbook is twofold:

Firstly, many of the social problems and personal vulnerabilities that manifestly affect those who pass through today's criminal justice systems cannot be solved by criminalisation and punishment. They are better tackled through a wider reconfiguration of policy and practice, grounded in social justice principles. Only this will enable states to desist from their long-standing practice of using the law to make criminal justice the default response to social problems. This will lead to a smaller, more effective criminal justice system.

Secondly, the smaller criminal justice system that remains after this reform process will then need to work to reduce further the role of punishment and prison in society, improve access to treatment, and give a greater role to community-based measures at all levels in place of

prison. We have formulated a list of specific core principles (set out at the end of this handbook) to guide this *better* use of community-based measures in a smaller criminal justice system. The emerging good practice evidence that this handbook highlights suggests that better use of community sanctions does not equate to *more* use.

PART ONE: THE STATUS OF ALTERNATIVES TO IMPRISONMENT IN EUROPE

1 ABOUT THIS PROJECT

This handbook is the result of a comparative project funded by the European Commission: The European Observatory on Alternatives to Imprisonment. The project looked at current law and practice across eight EU states: Italy, France, Greece, Latvia, Poland, Portugal, Spain and the three separate jurisdictions of the United Kingdom.

European Prison Observatory: Population at a glance

	UK	Latvia	Poland	Italy	France	Spain	Greece	Portugal
Gross Domestic Product (\$ billion)	2.989	31	545	2.141	2.829	1.381	236	230
Population (million)	65	2	38	61	66	46	11	10
Prisoners per 100,000	see note	257	218	88	117	141	116	135

Source: World Bank and European Prison observatory national reports.

Note: Data for 2014. All numbers subject to rounding. Per 100,000 prison population for the three UK jurisdictions is: E&W: 147 (2013), Scot: 154 (2012), NI: 100. Poland prison population data is for 2012 not 2014.

European Prison Observatory prison population change, 2000 to 2014

	E&W	Scotland	NI	Latvia	Poland	Italy	France	Spain	Greece	Portugal
2000	71.218	5.975	1.068	8.135	70.544	53.165	47.837	45.104	7.616	12.944
2014	85.509	8.178	1.826	5.205	78.987	53.623	77.291	65.020	11.798	14.003

Source: European Prison observatory national reports.

Note: Population figures are for the stock prison population. E&W data for 2002 not 2000. NI data for 2013 not 2014. Latvia figures are for 2003 and 2013.

These countries have divergent criminal justice systems, notably in pre-trial detention, community sentences and probation, but also have some common elements including high prison use. There

is also a wide variance among the eight states in the numbers subject to community-based sanctions and controls, which are quite new in some countries, but well-established in others (such as France and the UK). Most of these states also have chronically overcrowded prisons, as was shown in a separate report published by the same team of researchers in 2014.¹

Work on this project involved analysis of quantitative data and information on legal and policy developments for the period 2000 to 2014. We looked at the practical application of non-custodial measures at every stage of the criminal process. Our particular focus was on measures and approaches that national experts considered capable of reducing numbers in prison and cutting reconviction rates.

Phase 1: The first phase of work on the project required each country partner to gather the available national data on: sentenced and pre-trial prisoner populations; numbers subject to alternative measures (pre-trial, sanctions and prison release schemes); probation systems and practices; and the practical effects of measures in terms of their impacts rehabilitating people, reducing imprisonment, complying with supranational standards and safeguards, and providing necessary support for victims of crime and the families of those caught up in the criminal justice process. Each country partner was given the same set of questions to answer and, by June 2015, each had produced a detailed report (with quantitative data accurate as at December 2014).

Phase 2: The second phase of work was designed to identify good practice and work out how better to implement alternatives to imprisonment in a way that avoids the twin pitfalls of net-widening and continued growth in prison populations. This phase required each country partner to coordinate national experts' meetings, to elicit examples of good practice and develop reform proposals capable of implementation across Europe.

There is little research into the impact of alternatives to imprisonment in European countries. In many of the states in the European Prison Observatory (hereafter, the observatory) there is a serious absence of reliable data. This project begins to fill this gap by identifying what the existing data shows, highlighting where better information and statistics are needed, and bringing experts together to analyse and compare practices in different states to come up with workable reform proposals.

This handbook represents a distillation of two years' research and analysis on the use and impact of alternatives to imprisonment in eight EU member states. It provides a policy-level complement to the eight detailed national reports and should guide the work of state and supranational penal reform bodies wanting alternatives to imprisonment to work better in reducing harm and enhancing community safety.

¹ European Prison Observatory (2014), *From national practices to European guidelines*, available at: www.prisonobservatory.org/upload/EPOinterestinginitiatives.pdf

2 PRISON AND PROBATION POPULATIONS

The general trend across Europe since 2000 has been one of rising prisoner numbers. This trend is also seen in the eight countries involved in the observatory. Only Latvia and Italy have managed recently to turn the tide of rising prison numbers significantly, achieving steady reductions in their overall prisoner populations (including sentenced and pre-trial populations) since 2011/2012. Yet Latvia still uses prison more than any other country in our group and still ranks among the highest user of imprisonment across the EU.

There has also been a marked increase in the use of community-based alternatives to imprisonment since 2000. A recent statistical analysis of community sanctions and imprisonment rates in Europe (covering the period 1990 to 2010), provides evidence of how community-based sanctions rarely reduce the number of people sent to prison for committing an offence.² The use of these sanctions failed to reduce the overall prison population and in some cases, contributed to an overall increase in the number of people criminalised. It was found that expansions in the use of community sanctions, and in prisoner numbers overall, had no correlation to changing crime rates. Noting the expansion of both prisoner populations and people subject to community sanctions and measures, the authors concluded:

Instead of being alternatives to imprisonment, community sanctions and measures have contributed to widening the net of the European criminal justice systems. The situation in Europe is thus similar to the one described 20 years ago in the United States and Canada. [These measures] have become one of the instruments of an increasingly punitive approach to crime control.³

The observatory project lends further weight to those conclusions.

The causes of this expanding use of punishment lie in member states' increasingly harsh sentencing and criminalisation policies, and in the wider reach of criminal law (for example, into new criminal justice 'growth areas' such as anti-social behaviour, immigration, and welfare benefit claims). Many states have increased the number of offences punishable with prison sentences and have legislated to lengthen the periods for which those sentenced to prison will spend incarcerated.

Given these more punitive policies, it is no surprise that severe prison overcrowding also blights most of the countries in this project. States' responses to overcrowding have generally been driven by expediency rather than any deeper, policy- or evidence-driven re-evaluation of prison and its effects and alternatives. Countries able to afford to build new prisons to handle the rising numbers of prisoners did so (Portugal's own 'mega prison' building programme was halted because of its economic crisis, and prison overcrowding worsened as a result). Those unable to

² Aebi, M., Delgrande N and Marguet, Y. (2015), 'Have community sanctions and measures widened the net of the European criminal justice systems?', *Punishment & Society*, Vol 17(5), pp. 575-597. The researchers analysed prisoner and probationer population data for 29 countries, including all those within this project apart from Scotland. The research drew on SPACE I and II data and looked at measures applied pre-trial and at sentence, but not prison release measures.

³ (ibid)

afford to build new prisons found other ways of reducing prisoner numbers or controlling further growth. For example, some countries cut the use of pre-trial detention and others introduced electronic monitoring, early release, or home curfew systems.

Only rarely have we seen countries adopt a coherent strategy to tackle their prisoner numbers. Latvia is one example. It has recently legislated against short-term sentences, cutting maximum and minimum sentence lengths, mandating community sanctions for previously imprisonable offences and reducing the number of criminal offences overall.

The response to ever growing prison populations has, for most of the period since 2000, been simply to try and manage or reduce the further growth, rather than cutting the numbers overall and rethinking the use of prison. England and Wales, France and Poland have all responded in this limited way to severe prison overcrowding. Portugal saw some political and public debate on prisons policy between 2001 and 2004 following a high number of prison deaths. A report was commissioned by the Portuguese government, to address prison overcrowding and poor conditions. It called for radical reforms, but resulted in little real change.

Alongside the dominant punitive rhetoric (often accompanied by a softer-toned rehabilitative message), the 'control' and 'risk management' approach has also characterised some states' penal policies over this period. As part of this, there has been an expansion in the use of electronic monitoring and semi-detention or curfew, which is expected to continue. Greater reliance on private sector (often multinational) companies that provide monitoring equipment and services has accompanied this trend. England and Wales went further, by outsourcing most of their probation services to private providers from 2014.

Italy's prison population was further expanded in the past decade by more punitive sentencing laws on immigration and drug offences, as well as measures to increase the sentences of the reconvicted and deny them access to community alternatives. As the prison population inevitably expanded even further, emergency measures were introduced in 2006 which cut the numbers in prison by almost half. The sentences of many prisoners were reduced by three years, resulting in the immediate release of thousands. However, due to the absence of any policy aimed at reducing the future use of imprisonment, numbers in prison immediately began to rise again and within three years were back at 2005 levels. Further measures have been introduced since 2010. These measures have achieved more in keeping numbers down, for example by introducing the possibility of serving the last part of the prison sentence in home detention and by reducing the use of pre-trial detention.

Political considerations drive the policy agenda as much as economic ones. Even countries that have tried to adopt radical reforms aimed at cutting prisoner numbers have ultimately failed to implement their reforms, in the face of political or media pressure. This was seen particularly in France where, in 2013/2014, the newly appointed Minister of Justice came close to delivering a consensus-based reform package aiming to halt the growth in prisoner numbers and deal with associated reoffending. The intended reforms included a package of progressive measures designed to reduce the number offences punishable by imprisonment, cut overall sentence lengths, and improve access to probation support where needed. In the face of strong resistance from the opposition, the package was watered down and is now unlikely to deliver real change.

Where truly radical measures have been introduced, such as Portugal's drug decriminalisation initiative discussed in section five, they have largely gone under the radar, escaping attention domestically and failing to spark widespread calls for change.

3 KEY DEVELOPMENTS IN ALTERNATIVES TO IMPRISONMENT SINCE 2000

In this section the key developments in alternatives to imprisonment across the eight countries in the observatory are summarised in the following sections: pre-trial alternatives; alternatives at the point of sentence (focusing on community sentences); and, finally, prison release measures.

PRE-TRIAL ALTERNATIVES

The European Convention on Human Rights (Article 5) (ECHR) contains safeguards against the misuse of pre-trial detention. The ECHR and its case-law prohibit pre-trial detention except for the purpose of bringing the accused person before the competent legal authority on reasonable suspicion of having committed an offence or when it is considered reasonably necessary to prevent their committing an offence or fleeing. The presumption under the ECHR is that the accused should remain at liberty before trial and that pre-trial detention can only occur if it is justified by relevant and sufficient reasons, such as:

- A risk that the accused person will fail to appear at trial
- A risk of interference with evidence or witnesses or other obstruction of justice
- A risk that the person will commit a further offence while on bail
- A disturbance to public order would result, or
- There is a risk of harm against which the accused person would be inadequately protected.

This project has found that states take varying approaches in complying with these principles and in striking a balance between the right to liberty of the un-convicted person and the public interest in crime prevention and the fair administration of justice. Much has changed among the countries included in this project in the period since 2000. Their pre-trial practices vary significantly.

Almost all the countries in the observatory saw reductions in the overall number of pre-trial detainees between 2002 and 2014. Some of them introduced measures designed to reduce numbers remanded in prison. Usually, where pre-trial detainee numbers fell significantly, so too did total prisoner numbers.

Several states achieved striking reductions in the rate per 100,000 of prisoners detained pre-trial (This was seen in particular in Spain, Poland, and Portugal; it was also seen in Latvia, although less

consistently). Legislative and procedural reforms were the main path to success. Greece and Italy also achieved reductions in their pre-trial detainee populations.

England and Wales, and Scotland have maintained the lowest ratios of pre-trial detainees in the prison population over the entire period under review, albeit that these states have relatively high prison populations amongst the eight observatory countries. These countries have traditionally operated a strong presumption in favour of bail (in the sense of conditional liberty before trial).

NEW DEVELOPMENTS IN PRE-TRIAL ALTERNATIVES

Greece and Italy are unusual in that their systems feature ‘rehabilitative’ measures at the pre-trial stage, involving probation supervision or similar interventions before any finding of guilt. In Italy’s case, one such measure, the *messa alla prova*, is held out as an example of good practice (pre-trial probation capable of nullifying the criminal prosecution) and is therefore described in section 5. For its part, Greece has introduced pre-trial measures involving mediation, diversion, and programme participation (although these are in practice rarely used). In both cases the successful implementation of the pre-trial ‘alternative’ can mean a complete end to the prosecution and no further penalty.

Other countries including the UK and France also enable pre-trial defendants to access addiction treatment or similar programmes during the pre-trial phase but – in contrast to the above-mentioned schemes – participation is commonly ordered as a condition to release pending trial. The measures are aimed at ensuring participation at trial or preventing a further offence, rather than diverting from, or potentially ending, the criminal justice process. Despite the requirement of consent, the conditionality sets this approach apart from the Italian and Greek examples.

Several states have adapted their use of alternatives to pre-trial detention over this period, changing their systems to bring greater efficiency into the conditional release process and reduce the numbers needing to be detained. In Latvia, for example, legislation came into force in 2005 improving access to pre-trial alternatives and imposing limits on the use of detention pre-trial.

Generally the use of money bail or personal securities has fallen significantly, perhaps due to the widespread difficulties many people face in coming up with sufficient funds.

Many states have introduced, or extended their use of, electronic monitoring as a core element of conditional release pre-trial. England and Wales have used it extensively throughout the period since 2000. Portugal introduced it on a trial basis from 2002 – 2004 and it is now widely used pre-trial. In France it is routinely ordered as a means of imposing a curfew or house arrest. Greece ran a limited pilot of electronic monitoring with home detention in 2013, but this achieved almost zero take-up.

France has also begun to make use of satellite GPS monitoring to track a person’s movements away from home if they consent but this is limited to a range of specific, serious cases (The only other jurisdiction in the observatory currently using GPS tracking in the criminal justice context is

England and Wales. This is currently limited to a pilot early prison release scheme operating with the person's consent).

Poland and Latvia do not use electronic monitoring pre-trial. In Greece, national experts consider there is insufficient use of electronic monitoring and house arrest as alternatives to pre-trial detention.

England and Wales has traditionally employed a strong presumption against pre-trial detention and has now introduced an important additional control against its unnecessary use. This is a statutory rule that detention cannot be ordered if the defendant would be unlikely to receive a custodial sentence on conviction.

It is clear that many EU countries, including some in this project, have done well in reducing their numbers in pre-trial detention. These developments are to be welcomed. However, there is still a long way to go before the use of pre-trial detention is strictly limited to what is necessary under ECHR Article 5 principles. Furthermore, there are significant concerns arising from the recent developments in this area, which are set out below.

CONCERNS

The use of electronic monitoring (now accompanied in some states by GPS tracking) has vastly increased across many of the EU states, with little consideration of its impact on fundamental freedoms or data security. Its use has grown not only as a pre-trial measure, but also as part of a community sanction, or as part of a prison release scheme.

The implications of this expansion in penal control – one facilitated by significant private sector involvement – require further analysis and debate. In relation to pre-trial detention, for example, we must guard against a 'virtual prison' resulting from new monitoring technology becoming cheaper and easier to operate and control. Not only are there risks to civil liberties that could be disproportionate to the aims of the measure. One such aim – a speedy trial – could actually be defeated if longer delays to trial result from the fact that a person can be controlled and supervised more easily and cheaply than would be the case if they were detained in custody.

Imposing probation supervision, programme participation, treatment programmes and other 'rehabilitation' requirements on a person before any finding of guilt is a significant departure from fundamental freedoms enshrined in international and European law. Despite the requirement of consent, it is questionable how 'free' such consent can be if the alternative is incarceration before trial followed by prosecution and further punishment, or when the only way to access necessary treatments is to submit to the court order. For a radical alternative, more states may wish to follow Portugal's example in relation to drug offences, where the offer of help and support instead of prosecution is entirely voluntary and unconditional. It is discussed further in section 5.

ALTERNATIVES AT THE POINT OF SENTENCE

The most frequently used measures in the countries concerned are: 1. community sanctions (often involving unpaid work for a stated number of hours or days), 2. supervision or control without treatment or rehabilitation (for example, curfews enforced by electronic monitoring, suspended custodial sentences) and 3. supervision or control with treatment or rehabilitation (for example supervised access to training, education, drug or alcohol treatment, mental health care or restorative justice, often with regular probation supervision included).⁴

Spain, Portugal, Latvia, France and Greece have all seen a rise in the overall number of people subject to alternative sanctions. In France following a slight fall in use of community sanctions, a new law was brought in in 2009 which had the effect of increasing their use again: firstly, there was a presumption against imprisonment (prison as a last resort) except in cases of reoffending, and secondly, where possible, sentences should promote rehabilitation.

England and Wales has made greater use of community-based measures for a longer period than the other countries in the observatory. However, having peaked in 2007/2008, the use of community-based sanctions in England and Wales has fallen steadily. In the same period the numbers sentenced to prison have shown far less variance. Electronic monitoring has increased in use with plans for further expansion in the future.

SOCIAL INCLUSION AND RE-INTEGRATION IMPACT

International and European rules on probation and alternative sanctions are clear, measures must prioritise the person's rehabilitation, social inclusion and reintegration, comply with human rights and not discriminate or stigmatise in their application. The individual national reports consider in detail the extent to which the most common measures comply with these rules or are purely (or mainly) control-based and/or punitive. However, these distinctions are not always helpful in reaching a full understanding of the aims or effects of particular measures, because so much depends on the nature of delivery and the accompanying support and quality of programmes, services and probation work. A summary of what the national reports say on this issue is set out below (national practices in probation are also discussed in section four of this handbook).

In the cases of Italy, Portugal and Greece there is little reliable information against which to measure the rehabilitative or re-integrative content of community sanctions, either because such sanctions have only been in use for a few years and because data about recidivism is not available, or because there is no reliable data on the extent of their use.

In France, suspended sentences (with or without probation) are a growing part of the picture and represent around half of all non-custodial sanctions. The community service element of these sentences, where probation is ordered, does contain a few obligatory rehabilitative elements, but the main purpose of the sentence is to impose a range of obligations and prohibitions based on

⁴ Despite their widespread use, this project has chosen not to focus on fines because they are not direct alternatives to imprisonment in the same way that community and suspended sentences are, and because they have no rehabilitative value.

controlling the person's movements and activities and ensuring their availability for future hearings. Typical unpaid work assignments are repairing damage to buildings and helping people in need, but there are no directly rehabilitative elements to the work.

Portugal's system of alternative sanctions is also quite undeveloped. The most common sanction is the suspended sentence but, increasingly, courts impose a community sentence involving unpaid work if the person consents to do this. There is no information on whether such work has rehabilitative or other constructive value or is simply punitive, but at least it is designed in such a way as to allow people to carry on with any paid employment they may already have. Electronic monitoring has recently been extended from pre-trial use to supporting community sentences and has been described as the most significant alternative measure now in operation.

Spain's legislation has also been amended recently to allow for community service work and this is now used far more frequently than suspended sentences. It is often combined with rehabilitative and educational programmes and training, or with mental health treatment.

In Greece, it has been common for many years for custodial sentences to be converted into a fine or suspended (without probation or other form of supervised intervention). What has changed recently is the introduction of 1. community service as a further conversion of the sentence for those who cannot afford to pay the fine (imposed as a converted sentence) and 2. probation as a second form of the suspended sentence. These changes were introduced in 1991, but probation services for adults have only been in operation since 2007.

Prison sentences of up to five years in length, imposed for misdemeanours, are usually converted to fines (for those who can pay them) and to community service orders for those who can't pay their fines. Conversion is obligatory for prison sentences of up to one year. Prison sentences between one and two years in length are normally converted (the court is obliged to justify non-conversion on existing recidivism and further offending considerations). Prison sentences between two and five years are also normally converted, unless the court is of the (specifically justified) opinion that imprisonment is necessary to deter the convicted person from reoffending. In 2010 around half of prison sentences of up to five years were converted to a fine or community supervision. Only around five per cent of imposed custodial sentences are served in prisons.

The most common alternative sanction is a suspended sentence. Taken alone this has no specific rehabilitative content but, if accompanied by probation supervision, it may have. Greece's probation system has progressed in terms of legislative reforms, but there has been little real progress in practice due to the economic crisis. The typical 'with probation' order requires a weekly meeting with the probation officer, addressing the offending behaviour and what led to it. Supervision can also involve unannounced visits from the probation officer. The court order often includes control measures including duty to report to police, removal of passport and restrictions on leaving home or contacting certain individuals. Electronic monitoring has been introduced but its use is very limited. Unpaid work is also commonly ordered, supervised by the probation officer.

Similar to Greece, the approach in Latvia also combines rehabilitation/reintegration and control, although the legal nature of the measures and the terminology describing them are unique to Latvia. The most common measure is now the 'prosecutor's injunction'. This involves a decision to impose community service (or a fine) instead of a prison sentence. The next most common measure is called 'release from punishment'. The least common measure is 'conditional release

from criminal liability' which also includes community service. If community service is granted it allows the prosecutor (with the person's consent) to impose obligations and controls, for example, on movement and residence, and also to propose rehabilitation and treatment, for example, to help with drug problems.

Poland commonly imposes 'conditional suspension' of the custodial sentence and this measure (if accompanied by conditions at all) can include rehabilitative elements, though conditions are principally aimed at control. Sometimes the person is placed under the supervision of a probation officer or other 'trustworthy' person or organisation responsible for providing assistance and preventing further misconduct. The conditions imposed frequently include restraints on going to certain places, seeing certain people, excessive use of alcohol or drugs, and taking part in study, paid work, rehabilitation or therapeutic programmes. Community service sentences can also be imposed, requiring the person to work unpaid for a period set by the court, sometimes with additional requirements similar to those just listed as available for suspended sentences.

In England and Wales the most frequently used alternatives to prison are community orders and suspended sentences. For both types of sentence, a range of requirements are available for the court to impose on the individual. Under recent amendments to the legislation, at least one punitive requirement must be imposed. The most common requirements in recent years have been unpaid work, supervision, and electronically monitored curfews. Since 2000, there has been a move away from welfarist, support-based interventions towards tougher, more publicly visible community measures. This trend has been seen in Scotland and Northern Ireland too in recent years. Less commonly, rehabilitation programmes and treatment for addictions or mental ill health can be ordered. Supervision of individuals under community measures is carried out by probation officers (known as offender managers) who both assess and manage risk, and promote rehabilitation, but with the main emphasis on preventing reoffending. Indeed the private sector 'community rehabilitation companies' that have been running the bulk of England and Wales' probation service since 2015 are remunerated, in part, based on whether there are further convictions.

It is a concern that in some states (notably England and Wales), electronic tagging and monitoring systems are not being used proportionately, either in terms of the number of hours and times of day they for which they are imposed, or how long a person can be subjected to them. More must be done to introduce flexibility and proportionality so that these measures are better geared towards supporting the individual to choose desistance and compliance.⁵

OVERALL IMPACT ON PRISONER NUMBERS

The ten years up to 2014 have seen significant growth in the use of alternative sanctions among the eight jurisdictions involved in this research. In the case of Spain, the growth has been exponential. For most of the countries there are far more people per 100,000 subject to pre-trial alternative measures and community-based sentences, than there are prisoners per 100,000. Yet

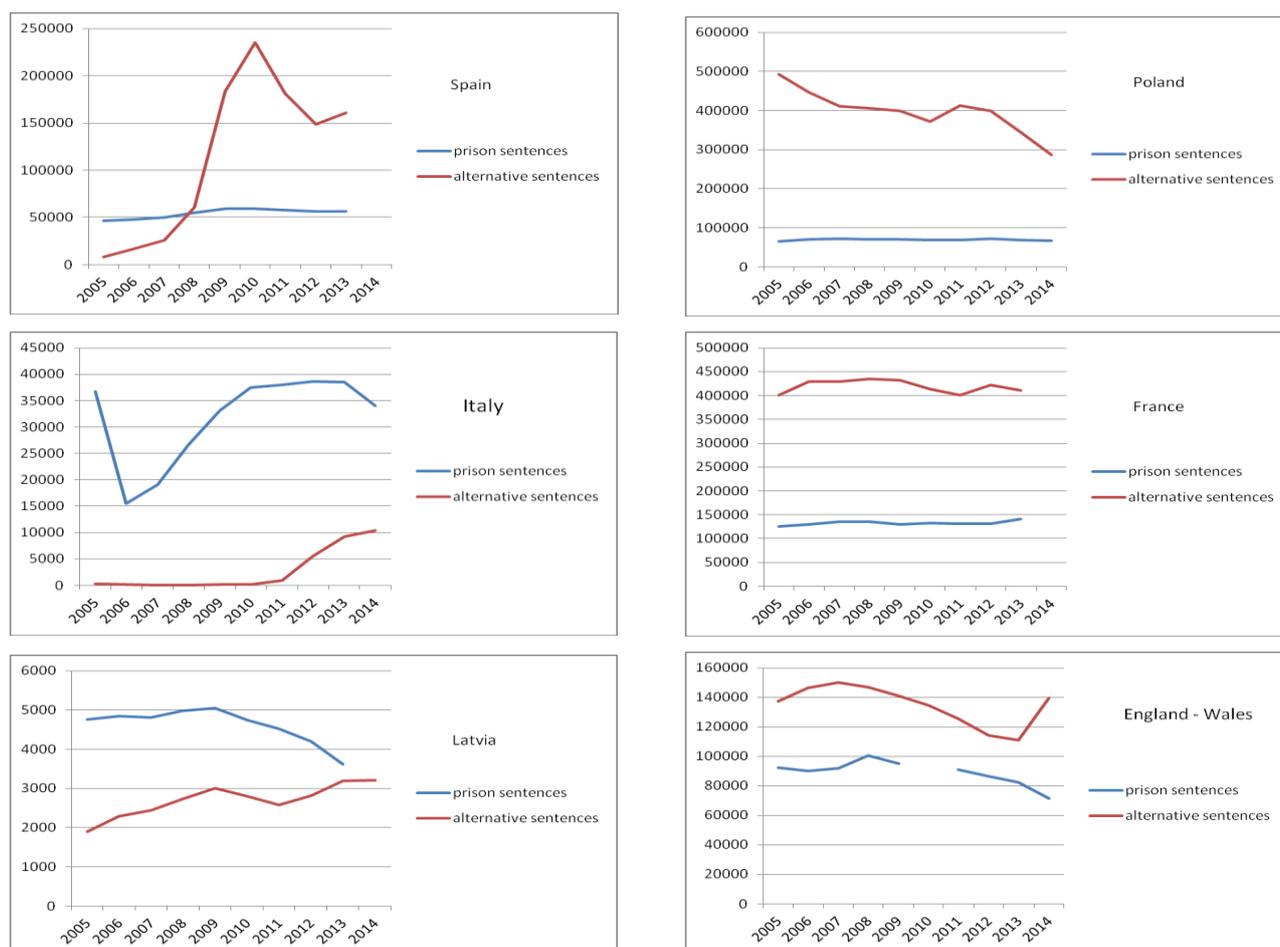
⁵ In recognition of the need for a more principled approach in this area, the Confederation of European Probation (CEP) has held several conferences on electronic monitoring. This led in 2014 to the adoption by the Council of Europe of *Recommendation CM/Rec (2014)4 of the Committee of Ministers to member States on electronic monitoring*.

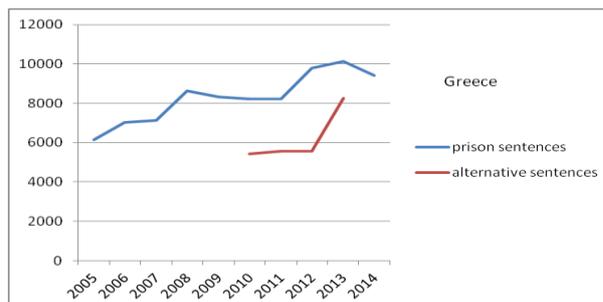
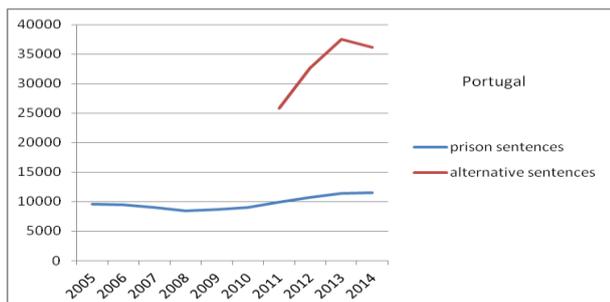
there is no clear correlation between the high or increased use of alternative measures, and the number of prisoners overall. Broadly speaking, the countries with the highest relative use of alternative sanctions also experience relatively high prisoner numbers.

Growth in the use of alternatives is rarely accompanied by a corresponding fall in prisoner numbers. Sometimes increases are seen in both imprisoned and community-sanctioned populations. In terms of the numbers of people sentenced, changes in the use of community sanctions and changes in numbers committed to custody have no obvious bearing on each other. Countries showing strong fluctuations in the use of alternative sanctions over this period saw fairly steady rates of custodial sentences imposed.

The precise relationship between the use of alternatives and prisoner numbers is complex. The data itself can be unreliable, or in the case of some countries simply absent for some of the period under review. Even countries with data available over the ten period we were interested in, it is difficult to precisely identify how the use of community or suspended sentences affected overall numbers in prison. There are many factors at play and they are sometimes hard to disentangle. One approach is simply to compare the numbers of people in prison at a given point to the numbers serving a community-based sentence.

Graph 1. Alternative sanctions and prison sentences





However, the use and enforcement of community measures has the potential to increase prisoner numbers by less direct means – including through net-widening effects. There is a clear risk that the introduction and enforcement of community-based measures can operate to enlarge the sphere of penal control by encompassing more and more kinds of behaviour or attitude seen by governments as undesirable. There is a corresponding growth in new offences around antisocial behaviour, welfare claims or immigration control breaches, which attract non-custodial penalties (at least at the first instance of sentencing) but which expand the population of criminalised people and, in the longer term, can lead to higher prisoner numbers.

The way in which community measures are enforced (and breaches penalised) has in turn led to higher prisoner numbers in some states. Countries with a zero tolerance policy towards breaches of community sanctions or suspended sentences (or non-payment of fines) come down hard on those who do not comply, in order to fend off criticism of their use of apparently ‘soft’ punishments. This was seen in England and Wales where the number of people imprisoned for non-compliance with a community sentence rose by 470 per cent between 1995 and 2009. Spain risks a similar outcome, having increased significantly the use of community-based sanctions in recent years. Participants in national workshops in Spain complained there is little flexibility in how breaches are dealt with, the default setting being imprisonment. France took measures to address this problem to some extent in 2005, when it repealed the previous rule that anyone given a suspended sentence would automatically be sent to prison if an offence was committed during the period of suspension.

Many of the community measures country experts’ described had only recently been introduced and their overall effects are as yet unknown. It is vital that further data is gathered and research conducted on long-term outcomes of different types of sentence.

The research undertaken in this project indicates that greater use of community sanctions does not lead to fewer people in prison and can have the opposite effect. If we rely on them as ‘the answer’ to crime, repeat convictions or prison overcrowding, we will be ignoring the evidence showing that the answer to these problems lies elsewhere. Worse still, we risk an ever-expanding net of criminalisation, and further growth in prisoner numbers, with all the associated harms to society. Community-based sanctions are not a panacea for the harms caused by excessive use of prison and criminalisation.

PRISON RELEASE MEASURES

Three key types of measure are used in the eight countries; parole, home detention, and electronic monitoring. Whilst such measures are long standing elements of the penal system, they have been subject to multiple (and ongoing) reform in the period under review here. The official rationale for reforming these measures is multifaceted. Relieving population pressures in prisons by increasing access and eligibility for these measures can be an important impetus to reform.

In most states these measures are decided on by courts or prison authorities and administered by state agencies; but there are a few states where private entities are contracted to administer technical measures of control including electronic monitoring. In England and Wales, the prison release supervision of several thousand individuals has been privatised and is now being carried out by community rehabilitation companies. It remains to be seen whether this produces change in the quality of reintegration and rehabilitation work. We return to the topic of prison release probation after a brief description of the three types of measure.

Parole. Eligibility conditions vary from state to state. The essential feature of all parole systems is that a decision is taken to release the prisoner early by assessing conduct in prison during the sentence, together with the risks of release (either based on reoffending or public protection criteria). Common conditions imposed are the completion of a period of unpaid work, of reparation to the victim, and a period of curfew. There is a notable trend towards decreased rehabilitation or reintegration support for ex-prisoners, in many cases this is as a result of economic downturns and reduced resources.

Home detention. In some states there is the flexibility in place for people to travel to work or study. Other than this there is little to the measure beyond continued control. One clear disadvantage is the unfair selectivity built into this measure. Home detention will not be available for the many prisoners who had no home on entering prison, or who lost their home as a result of being sentenced.

Electronic monitoring. Methods differ from state to state but the use of electronic monitoring as part of prison release schemes has expanded greatly in recent years. It has to some extent replaced the former practice of requiring people to report regularly at local police stations or probation offices. Greece has piloted electronic monitoring, but only on a small scale. To be eligible, ex-prisoners were required to pay up-front for the cost attributable to six months of monitoring and, as a result, take-up was extremely low (only three cases to date).

Wearing a visible 'tag' or bracelet around the wrist or ankle has been seen as potentially stigmatising and not conducive to full reintegration after release. This is especially so where the tag sometimes emits a sound, as reported in France.

In England and Wales, there have also been pilots of the use of GPS tracking (as distinct from electronic monitoring), enabling the police to check the movements of released persons in real time (or to search collected data reports when investigating previous movements, associations and activities). This is currently only available where the individual consents. One possible advantage is that a permanent residence is not needed because, unlike for electronic monitoring, there is no need for a linked device to be in place at the person's home. There are concerns that the use of GPS monitoring entails the gathering and storing of huge amounts of personal data by

private companies. There has been little public debate about the potential risks or the impacts on individuals and communities.

SUPERVISION AFTER PRISON

Supervision by probation following release from prison features in several states. Less commonly the released person is obliged to report regularly to police. This is the case in Greece despite legislation providing for probation support.

In England and Wales, the scope of post-prison supervision has recently been expanded significantly in recognition of the high reoffending rates of those sentenced to sentences of two years or less (see further in section 4). There is as yet no concrete evidence to show how useful continued supervision outside prison is in reducing reconviction.

There is a danger that, in extending the scope of post-prison supervision, either by imposing it on a routine or compulsory basis in many cases, or subjecting people to longer periods of mandatory control, states are simply expanding the net of surveillance and/or punishment. This would happen, for example, due to more people being restricted and controlled for longer, or because breaches of probation conditions lead to further time in prison.

Greece is notable for the absence of probation support after release from prison. Post-prison release, the usual condition imposed is regular reporting at the police station. However, stretched local police forces cannot give the assistance necessary to reintegrate those released and assess their support needs. There is an absence of any organised system for ex-prisoners to be helped with work, training or accommodation needs. However, this need is partially met by the voluntary sector and a social reintegration body called Epanodos which ex-prisoners apply to for assistance.

OTHER SUPPORT PROGRAMMES

Some states employ services outside of probation to give necessary help and support to those who have been in prison, including health and addiction support services in the public or voluntary sectors.

Italy's model includes the possibility of serving part of a prison sentence in the community, with a program to be followed under the supervision of social services, for a period equal to the prison sentence. This measure was considered by national experts as an example of good national practice, for the large number of people who fall within its scope – it is the most employed alternative to detention during execution – notwithstanding its carrying on not only a custodial intent but a clear rehabilitative one. Interestingly, having earlier restricted its scope by reducing the kinds of offender eligible, Italy has more recently chosen to extend its use, with the purpose of cutting prisoner numbers. Until 1998, to be eligible, the person had been required to undergo a process of 'scientific observation of the personality' in prison for at least one month, to establish whether the measure would aid rehabilitation. However, since 1998 the measure has been

extended to people who have not spent time in prison, if they appear likely to benefit. Its use has greatly increased as a result.

SCALE AND IMPACT OF PRISON RELEASE MEASURES

This is difficult to report on accurately, due to the paucity of data from most of the states in this project and the lack of consistent standards for the data collected by state agencies. As regards general trends and what can be gleaned from the available data, we note the following:

Parole. Despite some increases in the use of parole in some countries in the earlier phase of our review period (looking at data from 2002 – 2010), there has been a decrease in more recent years (2011 – 2014). In the case of England and Wales this drop-off has coincided with a period of enormous pressure on the parole system and a serious backlog of parole applications and appeals. This resulted in part from a court ruling that, for reasons of procedural fairness, applications that had previously been determined without oral hearings would now require them.

Home detention. Only two states hold data on this measure: England and Wales, where the number of home detention orders decreased overall since 2004; and Italy, where numbers increased between 2008 and 2014.

Electronic monitoring. Again, few states collect data on the use of this measure as part of prison release schemes. The data that does exist suggests use of the measure has steadily increasing in France, Spain, England and Wales and Poland.

Overall, the available data is insufficient to allow us to make conclusions on the interrelationship between changes in use of prison release measures and overall sentenced prisoner numbers. Even in the few states where there are reliable data on the use of these alternative measures, there are too many other factors at play to arrive at reliable conclusions.

There is a clear need for more work in this area to monitor all the effects of the measures in use, including quantitative information on the relative costs of measures, the length of time for which they are imposed, revocation rates and other consequences of breach of early release conditions. It is also important to monitor the indirect effects of these measures, including how effective they are in aiding desistance.

4 PROBATION SYSTEMS: COMMON THEMES AND KEY VARIANCES

All eight national partners provided detailed information on their countries' probation systems, as part of this project. Descriptive answers were given to questions ranging across all the main themes covered by the European Probation Rules. These fell into three main categories: probation practice models; procedural and human rights safeguards; and probation resources and organisational structures. Quantitative data, where available, were also provided by the national

partners, on matters such as probation staff numbers, caseloads, and budgets. Here, the main learning points regarding the use of alternatives to imprisonment are described.

PROBATION PRACTICE MODELS

There was substantial variation between countries' models of probation. Some have relatively un-developed probation systems, either because their systems are quite new, or due to lack of financial support, or both.

Portugal's probation system is practically non-existent due to the exceptionally low number of probation officers. In Greece, probation professionals complain of a lack of resources and of a need for more statutory and regulatory guidance and support. In Latvia, the law was amended to enhance the role of the state probation service in 2014. Responsibility for imposing conditions on those sentenced to suspended imprisonment, supervision of those under probation and those released early from prison and probationary supervision was transferred from the courts to the probation service. The work of probation had previously been badly affected by Latvia's economic downturn.

A common concern is the lack of public and professional understanding of the work of probation staff. Even judges are reported as being unaware of what probation workers do and how they can facilitate alternatives to imprisonment (this was reported for Greece, Spain and Portugal). Worse still, courts in some states are circumventing measures aimed at avoiding imprisonment. For example, in Greece, courts are failing to observe legislation aimed at avoiding prison for young adults at all costs and promoting more therapeutic approaches. Instead they are using the same measures as they do for other adults, imposing prison sentences too readily and sometimes ordering community service and similar sanctions, contrary to the legislation.

A rare contrast was Scotland where probation workers (who are part of local authority social services rather than the justice ministry) have a role not only in writing reports to inform the court about sentence options – as is the case in other countries such as England and Wales – but also in making sentencing recommendations to the court. The input of these professionals is therefore of significant influence to the way the case is sentenced.

Some states, for example Spain, complained of the lack of flexibility or discretion when people breach their community orders, as prison is virtually automatic but is rarely a proportionate or necessary response. In view of the enormous rise in numbers serving alternative sanctions in Spain this is a real concern and could cause major increases in the prisoner population. Parts of the UK had also seen prison rates increase due to recalls for breach but now greater flexibility is built into the probation and court rules, to try to prevent this.

A key trend in states with long standing probation systems, such as England and Wales, is the move towards risk management, controls and restrictions, and a corresponding move away from more traditional rehabilitative approaches. Greater levels of private sector involvement have also been seen in such states. England and Wales has gone as far as contracting out all low and medium risk offender supervision, to 21 private community rehabilitation companies set up in 2014. These are paid by the number of cases supervised and programmes undertaken but the

commissioning government department (the National Offender Management Service) only pays in full if there is no reconviction within a year.

Electronic monitoring is widely used to help states enforce community sanctions such as home detention or curfews. Often the service is provided by private contractors who cooperate with police, prison and court services. Electronic monitoring is used in some states in place of prison, as a standalone punishment. This is the case in Poland where it is beginning to replace unpaid work as the preferred community sanction. In Portugal it has also grown in use as a sanction, along with community service, without any real input from probation. Stigmatisation of those who must wear electronic tags, or high visibility clothing, has been raised in this context.

Failures were reported in the provision of prison aftercare or resettlement services. The national reports revealed a lack of staff time and insufficient budgets to provide the much-needed advice and information to ex-prisoners and their families following release. In Latvia the economic crisis and subsequent austerity measures led to the suspension of all prison-based rehabilitation and treatment programmes, except those for sex offenders.

At the other extreme, England and Wales has recently extended the obligatory prison release probation period so that it now requires anyone who was sentenced to two years or less in prison, to do at least one year of supervision after release. Newly designated 'resettlement prisons' have been established to prepare soon-to-be-released prisoners for their release and further supervision in the community. While this mandatory supervision phase might assist, this depends on how it is structured and whether it is properly resourced. If there is simply more control without practical and tailored advice, support and training, it is of little value and will be disproportionately punitive. Mandatory supervision after release may also expand the nets of punishment and custody further, if the person fails to comply and is penalised (including by recall to prison) as a result. Some fear that it would provide added an incentive to sentencers to order short custodial terms in the knowledge that supervision after release would be guaranteed.

PROCEDURAL AND HUMAN RIGHTS SAFEGUARDS

Several 'control'-based measures used across Europe have been criticised as potentially interfering disproportionately in individual freedom, privacy, and the ability to work. Greece, France, and Portugal are examples of such states, but we believe the problem is more widespread with insufficient attention paid to the need for measures to be proportionate and to have some rehabilitative purpose.

A marked difference was reported in access to alternative sanctions depending whether a person is national or non-national. Discrimination is a factor in the greater difficulty foreign nationals have in getting bail, avoiding custodial penalties, and also in the kind of community sanctions ordered. For non-nationals there is a higher likelihood that these will entail a form of unpaid work, a curfew, home detention or monitoring, rather than a rehabilitation programme or individualised supervision.

In some countries there is also a failure to adapt or properly explain alternative measures to non-nationals. In Greece, non-national and Roma people are over-represented in the criminal justice

system, but under-represented in the use of alternative measures. This is important in view of the substantial increase of migrants to EU states. Many individuals arriving as asylum seekers are denied opportunities to work, face severe health and housing needs, and will be at greater risk than general populations of entering the criminal justice system, in relation both to immigration and other offences.

Consent to community measures and programmes is an important aspect of their legitimacy and impacts on the human rights analysis of measures restricting freedom of association, for example religion, rights to privacy and family life. A number of observatory members considered that consent cannot be seen as freely given except in rare cases where the person is allowed to make a purely voluntary decision to engage in a programme and will suffer no negative consequence if they decide not to do so. One example of such a measure is Portugal's drug diversion scheme, discussed in section five.

The need to adapt measures properly to those with learning and communication difficulties has recently been the focus of expert attention in the UK, with promising new approaches piloted and guidelines published for professionals.

Finally, in many countries (for example Italy, Greece, Poland and Latvia), the absence of systematic, independent monitoring, inspection, and complaint handling systems concerning alternatives to imprisonment makes it difficult for breaches of fundamental rights to come to public attention. This is all the more true when there is little systematic, independent research or civil society advocacy on alternatives to imprisonment.

PROBATION RESOURCES AND OPERATING STRUCTURES

Despite evidence prison costs more (both directly and indirectly) than alternatives (more than even the most intensively supervised cases), there were many reports of inadequate funding of probation services. Under-resourcing, reported to be particularly acute in Greece, Latvia and Portugal, causes great strain on the profession. Staff feel unsupported by government ministries or other statutory agencies and are left to devise their own methods of working. Probation staff are subject to poor working conditions (including insufficient space and infrastructures to work and meet probationers individually or in groups). There is a lack of formal professional guidance or training. Probation officers have to find their own solutions, as no tailored programmes or other support from health, addiction and other services are available.

Privatisation has been imposed by some states as an attempt to drive down costs. Most countries operating electronic monitoring as a sanction or control do this through private sector companies. England and Wales have gone further and privatised the bulk of its probation services. Many staff have since been made redundant and concerns have been expressed about quality standards, accountability and financial transparency. It remains unclear how privatising parts of probation and prison systems can drive down costs while delivering high standards, particularly in the face of high overall demand for services.

Voluntary input has also increased with charities and non-profit entities entering into areas of criminal justice that were previously solely administered by state agencies, for example, in Italy and in Spain. In Catalonia, in Spain, probation programmes are delivered by a large number of local NGOs with funding from the justice ministry.

Probation staff caseloads differ greatly from one state to another. For example, in France, Italy, Portugal and Poland, probation staff supervise between 120 and 150 people. In the UK caseloads are reported as around 20 – 30 people per offender manager.

PART TWO: GOOD PRACTICE RECOMMENDATIONS

5 NATIONAL EXAMPLES AND PROPOSALS

During 2015, each of the eight research partners in this project convened two national workshops to discuss alternatives to imprisonment in their national systems. The aim was to highlight examples of good practice and make proposals for better use of alternatives to imprisonment. With the first phase of the project completed, resulting in a large body of statistical and qualitative data from published and official sources, this was a useful stage for the eight project partners to gather at the workshops to share their research and pool ideas for reform.

Those attending the national workshops included criminal justice practitioners (from probation, social work, the judiciary, prisons, police, prosecuting authorities and justice ministries), as well as policy makers, academics and civil society participants.

In the first round of workshops, each country involved in the observatory consulted with national experts about what 'good practice' looks like in the field of community sanctions and measures. The discussion helped to highlight the differences between the official goals of particular measures and their effects in practice.

The second round of workshops developed more detailed country-specific examples of good practice in alternatives to imprisonment. These examples are set out below in six groups depending on whether they involve: 1. Reconfiguration of policy and practice; 2. Sentencing reform; 3. Diversion from criminal justice at the pre-trial stage; 4. Diversion post-conviction; 5. Prison release measures; or 6. Other proposals for the future.

RECONFIGURATION OF POLICY AND PRACTICE

Portugal: Decriminalisation of drug possession in a health-led drug strategy

In 2000, Portugal passed laws dramatically changing how the state tackles use of illegal drugs and introducing new government bodies to promote reduction of substance dependency and to reduce drug harms. Possession of drugs for personal use was decriminalised while the criminal status of dealing and trafficking was maintained. Evaluation and treatment services are organised through 18 regional Commissions under the authority of the Ministry of Health. Services are aimed at empowering individuals and are voluntary. People can be directed to the local Commissions by

the police, public prosecutor, or criminal courts (depending on the amount of drugs involved). Between 2010 and 2013, the Commissions received on average 7.879 cases per year.

Outcomes for individuals differ according to whether they are evaluated as drug/alcohol dependant, or not. The aim of the scheme is to bring individuals closer to services they may eventually choose to use. The available tools include periodic meetings with health experts, community service and orders not to frequent certain places or meet certain people. Failures to comply can never be punished by imprisonment; the regime and its sanctions are civil/administrative, not criminal.

SENTENCING REFORMS

Latvia: Reforms to sentencing and criminal law to reduce prisoner numbers

Although still one of the highest per capita imprisoners in Europe, imprisonment in Latvia has recently achieved a reduction in prison numbers in both pre-trial and sentenced prisoners. Between 2003 and 2013 the proportion of the country's population in prison has dropped by almost 38 per cent. Recently, Latvia has enacted comprehensive changes to the criminal law, which should help achieve further reductions.

Comprehensive criminal law amendments in force from April 2013 aimed at liberalising Latvia's penal policy and bringing down the prison population by an estimated 30 per cent. In this ambitious programme of reform:

- Several offences were decriminalised;
- Community-based sanctions were broadened for a wider range of crimes (including extending availability of community service for 150 offences);
- Thresholds for minimum and maximum sanctions were lowered for a wide range of crimes (notably property crimes not involving threats to life or injury), and in some cases mandatory minimum sentences were abolished.

Scotland: A statutory presumption against short-term imprisonment

A statutory presumption against prison sentences of less than three months has been in place in Scotland since 2011, but there is no equivalent in England and Wales or Northern Ireland, despite many calls for it. This is an example of a practice which could reduce the numbers in prison overall and promote the use of alternatives to imprisonment in suitable cases. However, early results from Scotland indicate one consequence of this new measure has been 'up-tariffing' – an increase in custodial sentences of three months to one year. Useful additional measures would include reviewing statutory minimum sentences and sentencing guidance, to ensure these do not conflict with the statutory presumption. At the time of writing a consultation is underway to examine how

the measure has taken effect so far and whether the presumption against the use of short-term imprisonment should be extended to six or twelve month custodial sentences⁶.

DIVERSION FROM CRIMINAL JUSTICE AT THE PRE-TRIAL STAGE

Greece: Early diversion from prosecution for young drug offenders

From June 2012 to April 2015 a pilot project for early intervention and diversion was conducted by the Greek Organization Against Drugs (OKANA). This was aimed at diverting from prosecution young people (aged from 13 to 24) arrested for drug offences. The project aimed not only to provide an alternative to prosecution and imprisonment but also to offer an early diversion from the path of drug use. Those selected for the project were offered assessment at an early stage, and given support and advice. They were able to participate (voluntarily) in therapeutic programmes and be referred if necessary for addiction treatment. The pilots were conducted in Athens and Thessaloniki and 263 adolescents, young adults and their families were referred to the programme. At the time of writing the pilot had ended. There is a proposal for it to restart and develop of a network of services and interventions aiming at a holistic approach of dealing with the immediate needs of marginalized populations of drug users, the protection of their children, social cohesion.

Italy: Pre-trial probation, capable of extinguishing offence

This pre-trial measure, introduced for youths in 1988 but extended to adults in 2014, involves the suspension of prosecution in order for probation and reparation to take place, which, if properly completed, extinguishes the offence from the record and prevents further criminal process. In the case of adults, it is limited to offences punishable with up to four years' imprisonment. It can only be offered once to any individual and, in the case of adults, must be requested by the person who seeks it, thereby guaranteeing consent. A period of 'social investigation' is carried out first, to enable social workers to look into the person's circumstances. If granted, the order will impose a period of probation with programmes supervised by social workers. If completed satisfactorily there is no further punishment and the offence is expunged and no further punishment or restriction can occur.

The measure has been used extensively for juveniles and has had much success. Since its extension to adults, there has been a steady and significant increase, both in the numbers subject to the measure and those under the required prior social investigation.

England and Wales: Diversion from criminal justice for those in need of mental health care, having learning disability or difficulty, or communication difficulty

There is a high prevalence of people with learning difficulties or disabilities (PWLDD), and communication difficulties, in the UK's criminal justice system. These difficulties cause a range of problems and harms, many unrecognised due to poor awareness. PWLDD are not able to cope with police station, probation or prison processes, unless these are adapted to their needs and

appropriate support is given. Their ability to access support, or a fair trial or sentence, is harmed as a result. The justice outcomes for these individuals are worse, with many experiencing fear and alienation, unable to take an active role or raise problems or seek support.

Recent pilots of 'liaison and diversion' (or 'L&D') services are seen as a valuable new development to address some of these problems. Government funding was allocated for mental health professionals to work with police stations and courts so that people with mental health conditions and substance misuse problems get the right treatment as quickly as possible and staff are able to identify people with support needs or vulnerabilities. Then, relevant information from their assessments is shared with criminal justice staff. This extends to police stations, the courts, prisons and the probation service.

L&D teams:

- Screen people within the criminal justice system at the earliest opportunity to ensure their needs are met in the best setting, be it hospital, community or prison-based
- Provide one point of access for criminal justice agencies to request information and advice, or assess people who appear to present symptoms of mental health or have a history of mental health problems
- Act as a conduit for individuals who are due for release from prison to ensure their appropriate referral to mental health services
- Help in the management of complex or high risk cases alongside other agencies
- Provide criminal justice agencies with training on mental health
- Provide information to probation workers to inform pre-sentence reports and enable appropriate outcomes in court

Campaigners are calling for this system to be extended across the whole of the UK and placed on a proper statutory and financial footing (it currently covers 53 per cent of the country and is having a significant impact on the identification and assessment of people with complex health needs).

France: Deferred sentencing, with or without probation, as a method of diverting those with substance dependency from prison

This takes a variety of forms. The options for the sentencer were expanded in legislation passed in 2014 and 2015. The deferral can be to enable the person to undergo rehabilitation and make reparation for damage, and can be accompanied by a period of supervision. Deferral can also be used to obtain information about the person's circumstances. In a Paris-based pilot, this approach was used for the specific purpose of enabling those who have offended while having a substance dependency linked to the offence, to undergo an evaluation of the impact the dependency is having on the person's life. Probation officers then carry out an analysis of the risk of reoffending. A report is provided to the court and if a link between offending and addiction is established, the person may be placed in an intensive, individualised, supervised programme to address the substance issue. The pilot will be evaluated from 2017.

DIVERSION POST-CONVICTION

Poland: Non-custodial penalty replacing short-term imprisonment when suspended sentence breached

Provisions now exist whereby courts can choose not to imprison someone who had previously received (but breached) a suspended custodial sentence of up to one year, and instead impose a community penalty. The duration of the penalty must be (at least) double the duration of the custodial sentence that was originally suspended. Electronic monitoring cannot currently be selected as the penalty, only community service.

UK: Diverting women from prison and supporting them in the community

Over the past decade, a series of inquiries and reports in the UK have concluded that prison is rarely a necessary, appropriate or proportionate response to women caught up in the criminal justice system. In 2007, a report by Baroness Jean Corston called for women who did not pose a risk to the public to be kept out of prison. The report recommended a larger network of women's centres in the community, geared up to provide advice and supervision. There are now 47 centres across the UK, but geographical provision is uneven. Northern Ireland's only centre, Inspire Women, Belfast, suspended operations in 2015 due to funding cuts and a government policy to focus resources on 'high risk offending'.

Women's centres help to divert women from prison and prosecution by getting them the support and protection they need. They offer a range of alternative solutions, for example, after a community sentence has been passed, requiring attendance at a women's centre to receive support, rehabilitation, or supervision. They can also be effective as an alternative to imprisonment by giving support and advice to women seen as 'at risk of offending', including intervening before prosecution to divert the woman from criminal justice altogether.

Research on the impact of women's centres shows that they deliver value in terms of women's optimism, autonomy, self-efficacy, and establishing supportive relationships — all of which are pathways out of contact with the criminal justice system. The research suggests that all society benefits from investing in alternatives to prison for women.

Many UK organisations and experts also advocate the introduction of a statutory presumption against the imprisonment of women for all but the most pressing public protection needs. Women's Centres are well placed to ensure alternatives to short prison sentences are available.

France: Suspended sentence with individualised probation support

A new probation sentence, the 'contrainte pénale' was introduced in 2014 along with a new benchmarking methodology (accompanied by training), based on European probation rules and desistance principles. The sentence works like a suspended prison sentence with a probation requirement. It can be accompanied by a community service or a treatment order based on an individual assessment of the person's circumstances. The sentence only remains in place for as long as necessary to complete reintegration and progress is closely monitored by the sentencing magistrate. Although as yet rarely used, the new system has had a wider impact due to the

benchmarking process and training that were introduced with it, which apply to all sentences and measures.

Portugal: Community-based therapeutic scheme for certain domestic violence offences

The Contigo programme started in 2010 in two areas of Portugal. The objective is to help end violent behaviour in intimate relationships and prevent future recurrences. Under probation supervision, people referred by courts or prosecutor's office following arrest for domestic violence – as well as individuals who self-refer – are evaluated for a place on the programme. They can also be directed to programmes aimed at giving mental health care, drug counselling, and family therapy. If approved by the prosecutor or court for a place following this initial evaluation, the programme is initiated and is delivered over 18 group sessions. After two years an evaluation is carried out to see whether the person has relapsed or steered clear of further violence.

The prosecutor's office can refer people to the Contigo programme as part of a suspended sentence. If the case is positively evaluated two years after completion the case is dismissed.

Spain: Training and rehabilitation programmes to replace lengthy periods of community service

These have been developed for particular types of offence including assault, property, driving, cyber-crime and environmental offences. They seek to address the specific crime types or their causes, by increasing awareness around, for example, substance abuse, unsafe driving, domestic violence and child pornography. The time frames for the programmes vary. These programmes are considered an improvement on the previous practice of ordering lengthy, non-individualised periods of community work, which had become a frequent practice in Spain.

PRISON RELEASE MEASURES

Italy: Extensions to home detention for the last 18 months of prison sentence

Home detention has been available in Italy since 1986. In 2010, a form of home detention was introduced which extended its eligibility. In 2012 availability was further extended to the last 18 months. This measure has had enormous impact in reducing overall prisoner numbers, while being another form of control and of no direct rehabilitative value.

Poland: Regional councils aiding the resettlement of ex-prisoners

These multi-disciplinary bodies were first established in 2005 and now cover all but two of Poland's regions. They include representatives from local government, the justice ministry, prisons, probation, prosecution, courts, and the police, among others. Non-governmental organisations are also involved in regional resettlement councils but only to a limited extent and, where they are, the councils' activities tend to be more effective. The councils' main functions are to provide resettlement help to those released from prison and to promote and assist in the implementation of alternative measures entailing restrictions of liberty or requirements such as community work.

OTHER PROPOSALS FOR THE FUTURE

A number of further points arose from the experts' workshops which deserve mention, and which have contributed to the analysis and recommendations in this handbook. These are summarised by country, below.

Greece

- a. The social aspects of probation work must be better developed, to achieve a good balance between control and risk management (on the one hand), and promoting active desistance (on the other). Systems are needed to allow probation staff to liaise not only with judicial authorities, but also with all relevant social services to meet offenders' personal needs relating to treatment, rehabilitation, housing, employment and so on.
- b. Measures need to be more tailored to individuals and proportionate in scope, but should be available without discrimination based on race, faith, ability to pay, or other personal characteristics and without selecting in favour of certain offence/offender types.

Portugal

Overall there is an unacceptable absence of alternatives to imprisonment because there is no political will to change. The two practices highlighted are promising but exceptional. Though limited in scope so far, and therefore unable to influence prisoner numbers significantly, they embody elements of collaboration, voluntariness and diversion from criminalisation. They should be used more widely, and rolled out to other offence types.

Spain

- a. Courts need to do more to ensure pre-sentencing reports are obtained and that they contain sufficient information about the individual, their personal and social circumstances.
- b. Restorative justice should be introduced as an alternative measure.
- c. More flexibility is required to enable measures to be suspended as soon as the offender manager is satisfied that their goal has been achieved. This happens in the juvenile system, but in the adult system offender managers only tend to notify the court when breaches have occurred, not when it is possible to end a measure due to satisfactory progress.

United Kingdom

- a. Experts call for a deep reappraisal of our use of prison, and to adjust criminal justice policy to remove the punitive emphasis currently dominant (also effecting alternatives), in favour of rebalancing towards rehabilitative and supportive provision.
- b. Debate is needed on the current use of electronic monitoring and GPS tracking to ensure that their steady expansion does not produce adverse consequences. Clearly it has potential to reduce numbers in prison and help to support those wanting to desist from crime, but we need to ensure its *proportionate* use. We must make sure it is not a substitute for more tailored or rehabilitative support, where needed, including probation supervision and practical help with resettlement.

6. POLICY RECOMMENDATIONS

On the basis of our research and expert consultations in eight countries, the European Prison Observatory make the following policy recommendations towards reducing the use of prison and criminalisation, and improving the use of alternatives to imprisonment.

DOWNSIZING THE PRISON SYSTEM

If we are to tackle Europe's high prisoner numbers and stop the steady expansion of criminalised populations, we need to downsize our use of prisons and stop relying on criminal justice to solve social problems. For this to happen, the following three principles need to inform policy at every level.

1. Minimal resort to prison

Too many people in Europe are in prison. Many countries face high prison numbers, the result of long-term penal expansion. Yet prison does not reduce crime, either through deterrence or rehabilitation. Repeat convictions are just one example of the inadequacies of current policies that rely on prison and punishment to deal with social problems.

Our reliance on prison distracts from the need to develop more sustainable and effective responses to problems such as poverty, mental illness and drug use. It also exacerbates problems for the often vulnerable people caught up in the criminal justice system, including unemployment, homelessness, ill health and family breakdown. The evidence shows that prison leads to mental and physical harm, substance dependency, institutionalisation, radicalisation and repeat convictions. It is clear that prison costs – both in human and economic terms.

2. Reduce prison populations to reduce harms, save resources and enhance community safety

European states must refocus interventions away from criminalisation, punishment and retribution, and towards harm reduction, social justice and where appropriate treatment, reparation, and reconciliation. This would reduce the need for criminal justice responses and enhance communities' safety and wellbeing. Diversion from criminal justice for those with drug or mental health problems are one example of how states can reconfigure their policy and practice arrangements to deliver more positive outcomes for individuals and communities.

The smaller, less harmful criminal justice system that remains must then be re-balanced, with a de-escalation of punishment. As part of this, states must develop policies to cut prisoner numbers overall. This can be done by:

- Diverting people to treatment and health interventions where needed
- Deferring prosecution or sentencing, to enable other interventions to be effective

- Replacing short custodial sentences with community-based measures
- Restricting the use of long prison sentences in view of the severe harms they cause
- Promoting and extending the use of parole
- Ensuring community sanctions and measures do not result in adverse consequences such as (further) growth in prisoner numbers or expansion of criminalised populations.

3. Rethink how we use community sanctions

The use of community sanctions and other alternatives to imprisonment have spread rapidly through Europe. For much of the period under review (2000 to 2014) prison numbers have grown alongside this increased use of community-based measures. These sanctions are forms of punishment and control; they must not simply widen the net of punishment by criminalising people in ever-increasing numbers. Promoting the use of these sanctions without attending to the other priorities we have identified risks simply widening the net of criminalisation further – punishing more people differently.

The following core principles need to guide the use of alternatives to imprisonment.

ALTERNATIVES TO IMPRISONMENT: THE CORE PRINCIPLES

Community-based sanctions and measures, such as probation, have a role to play in enabling safer societies. Their use must be approached carefully: they must be targeted and proportionate. The research, analysis and expert evaluation carried out in the course of this project has produced a number of concrete examples of ‘good practice’ and calls for improved implementation of alternatives to prison (set out in section five).

Beyond those specific examples and proposals, the comparative nature of this project has also enabled us to step back from the detail and ask: What are the core guiding principles that should apply to the use of alternatives to imprisonment, in all countries? The European Prison Observatory has produced the following set of principles to guide a more restrained use of community-based measures, in a smaller criminal justice system. They comply with international standards and are capable of being applied in any European Union country.

1. Pre-trial

In view of the rights to liberty and to be presumed innocent until guilt is proven, remand in custody pre-trial should be a last resort, only used in exceptional cases. Pre-trial detention and any other restriction pre-trial (such as electronic monitoring or requests for money guarantees), should only be applied following a hearing at which the defendant has had a fair opportunity to object. Any measure applied should be no more than what is necessary and proportionate to

ensure a fair trial. There must be no discrimination based on race, faith or other personal characteristics when bail decisions are made.

If defendants are required to undergo treatment or supervision at the pre-trial stage, this must only be with their full, free and informed consent. It must not be imposed as a condition of avoiding detention.

2. Community sanctions

Several new community-based measures have been introduced in recent years, across most of Europe. Their use has expanded rapidly, with more and more people being subjected to them. It is important to ensure that the increased availability of alternative sanctions does not lead to their over-use.

Whether it involves supervision, a treatment requirement, a fine, a suspended prison sentence, unpaid work, a curfew or some other requirement, a community sanction is still a punishment, or involves the threat of punishment or restriction of liberty. Therefore, any community sanction must:

1. Be proportionate to the offence
2. Be clear in scope and realistic in requirements
3. Not stigmatise individuals or unduly infringing their dignity, privacy, and family life
4. Be properly targeted, based on a thorough, objective assessment of the person's background and support needs
5. Take account of age, maturity and any specific needs that could affect the ability to comply with, or benefit from, the measure
6. Be applied without discrimination based on personal factors such as race, faith, status or wealth
7. Help to restore individuals to an equal place in society, enabling them to choose desistance
8. Be worthwhile, helping towards personal autonomy and social integration
9. Be properly resourced and organised, supported by trained professionals from a wide range of backgrounds. Any private sector involvement must be subject to equally high professional standards and safeguards as public sector provision.

3. After prison

Any requirements imposed as a condition of early release from prison must be proportionate in nature and duration. They must be targeted and practical, aimed at the person's social inclusion, mitigating the harms resulting from time spent in prison and helping to adjust to life outside. Early release schemes must be made available without discrimination.

If conditions and requirements are necessary, they must be selected in a procedurally fair way. The individual must be given a fair chance to contest the factual basis on which they are imposed and to challenge disproportionate infringements of liberty or private or family life.

4. Effects of breach

The effects of breach of any alternative measure or community sanction must be proportionate to the nature of the breach and the offence itself, taking into account the person's circumstances. There must be no automatic recourse to prison or any other harsher sanction than that for which the measure itself was imposed. A reasoned decision must be taken based on all the available information. The decision on breach must be free from discrimination based on any personal characteristic, but must take account of the person's circumstances where these could impact on the ability to comply with requirements.

5. Accountability and transparency

Government departments and officials as well as private sector providers responsible for delivering probation and other community sanctions should be publicly accountable for the impacts of their policies on imprisonment and use of alternatives. Independent and well-resourced inspection and reporting systems should apply to public and to private sector bodies delivering alternative sanctions, programmes, probation and electronic monitoring. Inspection reports and evidence should be published promptly.

Every state should ensure the regular, on-line publication of independently verified data on the use and impacts of prison and alternatives to imprisonment (to include pre-trial measures and prison release schemes). Reconviction rates should not be the sole basis to judge a measure's effectiveness. Other key impacts are whether the person has benefited from probation or other programmes by accessing social support, completing training programmes, or finding employment or housing, depending on their personal needs.

The relative costs of prison and its alternatives should be monitored. Data should be published on these costs, at least annually and preferably quarterly. Sentencing and cost data should be presented in a way that enables the public to gain a full understanding of the costs and other impacts of crime control, including the prison system and all available alternatives.



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