

Electronic Monitoring in Belgium

Kristel Beyens and Marijke Roosen
*Department of Criminology, Research Group Crime & Society
Vrije Universiteit Brussel, Belgium*

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Kristel Beyens and Marijke Roosen

Key findings

- Electronic monitoring (EM) is used in Belgium as an alternative for pre-trial detention and as a way of implementing prison sentences. In 2016, it will be introduced as an autonomous standalone sentence and as a way of imposing restrictions on offenders with a mental illness.
- The increasing use of EM is strongly linked to the persistent problem of prison overcrowding.
- The rehabilitative potential of EM has been limited by the increasing use of EM as a standalone order.
- Where EM is used for the implementation of prison sentences, it is organised as a two-track system, creating substantial differences between sentences of 3 years or less and more than 3 years. The system is standardised for the former, whereas a highly individualised system with the supervision of a Justice Assistant is used for the latter.
- The reduction or lack of supervision by Justice Assistants was reported to have reduced the effectiveness of EM.
- Respondents were critical of the policy relating to obtaining the consent of cohabitants of monitored people because a lack of informed consent can lead to difficulties during the EM period.
- The operation of EM is highly bureaucratic. The introduction of the Siset workflow system has facilitated information exchange between the agencies involved in EM, improved transparency and increased the speed of work processes.
- The mean cost of one day under EM is €25 (staff costs included).
- The mean period under EM in 2015 was 109 days (3.6 months) but it varies considerably between the different modalities.
- Private sector involvement in EM is currently limited to the provision and maintenance of the equipment.

1. Introduction

Since its introduction in Belgium, EM has been subjected to many policy changes, aiming for a wider use of EM. This has resulted in multiple uses of EM at the different levels of the criminal justice system, which try to serve different goals. Currently, EM is used in Belgium as a replacement of remand imprisonment and of prison sentences. In 2016, EM is introduced as a free standing sentencing option. Not only has the scope of EM been extended throughout the years, policymakers have also showed an eagerness to introduce other technologies than radio frequency technology, such as voice recognition and GPS-tracking.

1.1 A short history of electronic monitoring in Belgium

In 1988, the introduction of EM was suggested for the first time as an alternative to remand custody by Senator Blanpain (Beyens, 1996). In 1995, EM was put on the political agenda again and in 1996 EM was mentioned in the then Minister of Justice De Clerck's White Paper 'Penal policy and Penitentiary Policy' as a possible alternative for remand and as a way to serve a prison sentence. A pilot project was set up in 1998 at the Brussels Saint-Gilles prison and that year 72 people serving a prison sentence of up to 18 months were placed under EM. The selection of the candidates was very strict: they all had to demonstrate or participate in a 'useful professional or educational activity', which was an important criterion for being eligible for EM, illustrating the rehabilitative approach from which EM was introduced (Beyens & Kaminski, 2013).

Although no evaluation of the pilot project was available at the time, EM was rolled out nationwide in 2000 and a National Centre for Electronic Monitoring became responsible for the implementation and follow-up of all persons under EM. Right from the start, quantitative targets were set about the number of persons that should ideally be placed under EM, starting with a target of 400, increasing to over 600, up to a 1000 persons under EM. These quantitative targets created a dynamic of subsequent parliamentary questions about their achievement, leading to political pressure to meet these targets. Therefore there was a weakening of eligibility criteria over the years (Beyens & Kaminski, 2013; Beyens & Roosen, 2013).

The rapid implementation of EM, together with the dynamic created by formulating quantitative targets, shows a political eagerness to apply EM, resulting in a continuous expansion of the EM population in Belgium. Where EM was introduced as a back-end strategy before being conditionally released, it soon became a front-door measure as well. Since 2014, pre-trial EM has been introduced to replace remand custody and, in 2016, it has also become an autonomous sentencing option.

Not only did the scope of EM extend throughout the years, policymakers also showed a willingness to apply new technologies such as voice recognition and GPS tracking.

It is interesting to note that, throughout the years, members from diverse positions of the political spectrum supported EM. Subsequent Ministers of Justice of different political parties (Catholic, socialist and liberal) all showed a particular interest in EM for various reasons, with alleviating the prison overcrowding being the most important one.

1.2 Existing research on electronic monitoring in Belgium

1.2.1 Evaluations

Since the start of EM, several research studies have been requested by the Ministry of Justice, which illustrates the interest of the government in this penal innovation.

Devresse, Luypaert, Kaminski and Beyens (2006) (see also Beyens et al., 2007b; Beyens and Devresse, 2009) evaluated the first period of EM by analysing the regulations, the decision-making and the practice of EM between 2000 and 2006. They conducted an analysis of the regulations, performed observations in the National Centre of EM and did in-depth interviews and focus groups with different stakeholders. They concluded that EM fulfils a number of diverse and sometimes contradictory goals, and the then 'Belgian model' was described as 'hyper individualised' with a balance between control and social support (Devresse et al., 2006). The researchers strongly advised such a balance and questioned the withdrawal of the social enquiry report and cutbacks on the home visits that started in 2006. Human supervision was put forward as a necessary addition to the technical control.

However, this report – at the request of the Minister of Justice – did not prevent the prioritisation of the systemic rationale of meeting quantitative targets at the expense of the rehabilitative goal (Devresse et al., 2006; Beyens et al., 2007a; Beyens & Devresse, 2009). The researchers described the justice assistants as a genuine added value for EM, and distinguished three tasks: an informative, a controlling and a supportive one. These three roles were regarded to be in balance. The individualised time schedules were considered to be essential for EM to activate and increase the responsibility of the person under EM. The home visits facilitated the construction of the professional rehabilitation plan and provided the opportunity for the justice assistant to work around themes that are prominent in the monitored person's life, such as financial problems where applicable, and the offences that were committed. Contact happened through home visits and phone contact. The researchers reflected on the impact of 'communication at a distance' and stressed the necessity of face-to-face communication for a good and constructive execution of punishment (Devresse et al., 2006). The importance of the written consent of the cohabitants was further emphasised, from the point of view of respecting their freedom and the value of social enquiry reports were stressed (Devresse et al., 2006).

Other research was ordered by the Minister of Justice to look at the desirability of new applications or uses of EM. Goossens et al., (2005) studied the desirability of transforming EM into an autonomous sanction through literature review and an analysis of quantitative data, and an analysis of judicial files. This was supplemented with two roundtable discussions with magistrates who would eventually have to impose EM (Goossens, Vanneste, Maes & Delterne, 2005). The roundtable discussions with magistrates led to the conclusion that the magistrates did not feel the need for introducing EM at the sentencing phase. A number of drawbacks were identified associated with the imposition of EM as an autonomous sentencing option, such as its time-consuming nature, due to the necessity of gathering detailed information. Furthermore, it was unclear for the respondents where EM would be positioned within the punishment scale if different sentences would exist alongside each other. The authors concluded by stating that the introduction of EM as an autonomous sentencing option would bring along a severe risk of net-widening (Goossens et al., 2005).

Notwithstanding these dismissive conclusions, EM has since become an autonomous main sentence.

A few years later, The National Centre for Criminalistics and Criminology (NICC) was asked to conduct research about the desirability of extending EM to the pre-trial phase using GPS tagging and tracking. A study of the international literature was undertaken, together with a round table discussion. The findings were supplemented with quantitative data (De Man, Maes, Mine & Van Brakel, 2009; Maes, Mine, De Man, & Van Brakel, 2012; Maes & Mine, 2013). The researchers started with the current use of pre-trial detention in Belgium and focused on the possible reduction effect of the use of EM on the use of pre-trial detention and the size of the remand population. Using semi-structured interviews with judges, Maes *et al.* (2012) found that the risk of escaping was the primary factor for judges not to consider EM in the pre-trial phase. It was also stated that the application of GPS would be rather considered as a more intense form of provisional release under conditions, than as a real replacement of pre-trial detention. The researchers concluded that EM would probably be applied to a certain extent, but might only have *some* reduction effect on the prison population. However, the authors warned for the possible side effect of net-widening and an increased risk of re-incarcerations in the case of non-compliance, which should moderate overly optimistic expectations of a possible reduction effect on the prison population. The costs that would be saved by placing defendants under GPS-tracking would not be substantial enough to make up for the investment. These rather critical conclusions did not prevent the government from introducing GPS tracking in the pre-trial phase in 2014.

1.2.2 Experiencing electronic monitoring

Two studies have been conducted to investigate the experiences of those who are subjected to EM. Firstly, a small scale study (18 respondents) took place at the time of the pilot project in the prison of Sint-Gilles and found that the monitored individuals mainly opted for EM to be able to stay in their social environment. They regarded it as an opportunity to maintain their professional activity, to prepare an education and contribute to the financial situation of their family (Stassaert, 2000; Stassaert, Peters & Parmentier, 2000; Robert & Stassaert, 2009). The research furthermore pointed at the following consequences of EM for the monitored persons:

- (1) from a psychological point of view, stress, tensions in the relationships and psycho-physical related complaints were reported;
- (2) from a physical point of view, participants said that the anklet caused difficulties in daily activities such as getting dressed and sleeping; and
- (3) financial problems.

During the first period of EM, monitored persons had to contribute to the costs of EM and phone bills also increased due to the necessary contact with justice assistants and the National Centre for Electronic Monitoring (NCEM). The obligation to pay a fee, that was reimbursed after the measure when no damages to the devices were reported, was abolished after some years (Robert & Stassaert, 2009). Even though a number of difficulties were reported, the overall evaluation concluded that EM prevented problems with family and a monitored person's social and professional environment.

EM was further seen as a swift way to move towards full release after having been imprisoned (Robert & Stassaert, 2009).

The PhD-research of Delphine Vanhaelemeesch focused on the experiences of the monitored persons and the cohabitants. In order to gain a clear insight into the experiences of being placed under EM, the researcher wore an anklet herself for the duration of one month and had to comply with a time schedule that resembled the time schedule of monitored persons with a fulltime daily activity. In Vanhaelemeesch (2012), she describes her own experiences with this form of punishment and how she dealt with the contradictions of being relatively free on the one hand, but feeling restricted at relevant moments in an individual's life on the other. Furthermore, Vanhaelemeesch (2015; 2014; 2013a; 2013b) interviewed more than 100 respondents about their experiences with EM. The results show that EM is chosen over imprisonment. Although the impact of EM on the household members is limited in some cases, the researcher does observe a negative impact, which can be rather important in some cases. The household members must make changes in their daily lives in order to be able to make the EM work. They furthermore fulfil a number of roles, going from social assistant to controller. It is concluded that, even though EM has a number of negative side effects for the household members, the negative consequences are still considered to be less important than the positive ones according to the respondents in this research (Vanhaelemeesch, 2015; 2014; 2013a; 2013b).

This report describes the current regulatory framework of EM in Belgium, its application and organisation, based on an empirical research that was carried out in 2015.

2. The organisation of electronic monitoring

2.1 Legal framework

To illustrate the history of EM in Belgium, this overview of the legal framework is organised chronologically.

2.1.1 Electronic monitoring replacing a prison sentence

The first use of EM was as a replacement of (part of) a prison sentence and still today, in the majority of cases, EM is used as a way of executing prison sentences. As in Belgium many aspects of the implementation of imprisonment and release from prison are organised following a system that differentiates between prison sentences of up to three years on the one hand, and prison sentences of more than three years on the other, the use and implementation practice of EM is also differentiated according to sentence length.

The actual EM procedure for convicted prisoners with a prison sentence of up to three years is defined in various Ministerial Circular Letters. The Act of 17 May 2006 regulates the EM regime for prisoners convicted with a sentence of more than three years.

- **Electronic monitoring for prisoners convicted to a prison sentence of more than three years**

The act of 17 May 2006 on the External Legal Position regulates the application of EM for prisoners convicted and sentenced to a prison sentence of more than three years (back-end measure). When prisoners are six months from their eligibility date of conditional release, they can serve their prison sentence in the community under the regime of EM. Four months before being eligible for EM, prisoners can, of their own initiative, file a written request to continue their sentence under EM. The prison governor gives advice to the sentence implementation court, that takes the final decision (Art. 29 § 1) and further determines the specific modalities and additional individual conditions (Art. 42). If the request for EM is rejected, a date to file a new request is fixed that should not exceed a period of six months after the rejection verdict (Art. 95/18 §2). Together with EM, general and individual¹ conditions are imposed by the sentence implementation court (Art. 62 §1)

Justice assistants control the monitored individuals' compliance with these individual conditions. They also inform the monitored individual about the EM measure (Art. 62 § 2) and ask for the cohabitants' consent.

Furthermore the law foresees that the justice assistants and the Monitoring Centres provide regular feedback to the sentence implementation court. One month after having been placed under EM, the justice assistant files a follow-up report to the sentence implementation court. Reports are subsequently produced when deemed necessary by the justice assistants or after a request of the sentence implementation court. Without requests, reports are issued every six-months.

An individual time schedule is set up by the justice assistants, in consultation with the monitored individuals. Two categories of time are set: curfew hours and non-curfew hours. Non-curfew hours are defined for so-called useful activities, such as work and commuting time, and for free time, which can be used for leisure activities and practical matters such as shopping, medical visits or job interviews.

As convicted monitored individuals have the legal status of prisoner, they are also eligible for penitentiary furlough during their EM period.

- **Electronic monitoring for prisoners convicted to a prison sentence of up to three years**

For prisoners convicted and sentenced to a prison sentence of up to three years, the original provisions of the Act of 2006 are not yet implemented. Currently their situation is regulated by the Ministerial Circular Letter ET/SE-2 of 17 July 2013, 'concerning the regulation of electronic monitoring as a modality for prison sentences of which the executable part does not exceed three years'.²

In order to become eligible for EM, the Ministerial Letter mentions the following general conditions to be fulfilled³:

- Not committing criminal offences;

¹ Conditions can be related to drugs, training, work, therapy, etc.

² Between 2008 and 2013, this procedure was regulated by the Ministerial circular letter nr. 1803 of 25 July 2008 (III) with regard to 'Regulations with regard to electronic monitoring as a modality of sentence implementation'.

³ After the terrorist attacks in Paris in November 2015, cases of terrorism are not eligible for EM any more. (Ministerial circular letter no. ET/SE – 2 bis of 26 November 2015).

- Being available by telephone;
- Having a fixed abode in Belgium and only changing it after agreement of the prison governor (in practice, the management of the Monitoring Centres has to agree with any change of address);
- Responding to the requests of the prison governor, the management of the Monitoring Centres and the justice assistant (where applicable) and provide requested certificates;
- Complying with the modalities of executing EM, including the time schedule;
- Not manipulating the equipment.

For the majority of cases, the prison governor takes the initiative to start the procedure and has the power to decide about the imposition of EM.

The *prisoner's* consent is always required and is asked for by the prison governor. When consent is lacking, the prison sentence will be executed in prison. The consent of the *cohabitants* has been changed over time (see section 3.5). The obligation to obtain the cohabitants' consent differs according to whether or not monitored individuals have their domicile at the address where they will undergo their EM.⁴ If the convicted person is domiciled at the address where the EM will be executed, the cohabitants' consent is no longer required. Only if *not* domiciled, consent of the adult cohabitants is required.

In cases of **sex offences** against minors, the final decision is taken by the Detention Management Service, after a more profound assessment. Here a social enquiry report will always be requested and prisoners can only serve (a part of) their prison sentence under EM when a number of counter-indications are absent. These counter-indications relate to⁵:

- The view of the co-habitants about the EM, or their consent;
- The family context;
- The residence and environment;
- The nature of the committed offence;
- The manifest risk that the monitored individual poses for the physical integrity of a third party;
- The risk for committing serious new offences;
- The risk that the individual under EM will evade their sentence;

⁴ This is different from the procedure followed when the prisoner is serving a part of their prison sentence of more than three years under EM. In those cases, the cohabitants must always consent.

⁵ Ministerial Circular Letter ET/SE-2 of 17 July 2013, 'concerning the regulation of electronic monitoring as a modality for prison sentences of which the executable part does not exceed three years'

- The attitude of the convicted person towards the committed offences.

For this separate procedure, the prison governor also gives advice to the Detention Management Service about the useful daytime activity of the individual requesting EM.

A standard time schedule is applied for sentences to up to three years imprisonment, imposing fixed non-curfew hours between 8:00 am and 12:00 am, and which can be adjusted after a written request filed by the monitored individuals. Persons eligible for EM are informed of the procedure by the prison governor, and receive the relevant documents⁶ when they present themselves at the prison gate to serve their prison sentence. The timetables are described in the Ministerial Circular letter. Non-curfew hours are determined by the monitoring management based on the availability of 'useful' daytime activities. These may include performing a professional activity, being enrolled in an educational program or participating in a therapeutic program.⁷ In case of a full time activity, monitored individuals will be granted twelve hours of non-curfew time per day⁸. In case of a part-time 'useful' activity, a maximum of eight hours of non-curfew time per day is granted. This non-curfew time has to be requested by standardised forms, which the monitored person receives from the prison governor. All requests must be motivated and supported by official documents (such as an employment contract) to prove their truthfulness. The Ministerial Letter does not define the difference between a part-time and full-time activity, so interpretation is open to the discretion of the monitoring management.

Individuals under EM are allowed to work a maximum of six days per week. When they are not working (e.g. weekends), the above-mentioned fixed free hours from 8:00am until 12:00noon are applicable. After one month, the free hours increase during the weekends with two hours, from 8:00am until 14:00. The third month, individuals under EM receive free weekend hours from 8:00am until 16:00. Free time increases every month during the weekends, until they have free time between 8:00 and 20:00. Additionally to this free time, monitored individuals are eligible for 'penitentiary furlough'⁹ for 36 hours every month.

In 2012, a separate procedure called 'home detention' was introduced for individuals convicted to a prison sentence between four to up to eight months, with the use of technology of voice verification. Justice assistants are not involved in the execution of the sentence. The technology of voice verification (see section 4.1.) has, however, recently been gradually abandoned, and this modality of home detention has been integrated in the recent legislation on 'classic' RF-EM for persons serving a prison sentence of up to three years¹⁰

⁶ Among others, the standardised forms used to request an adjustment of the time table, cf. *infra*, 5.3.

⁷ The recognition of an activity as a 'useful' activity in the context of EM, is taken by the management of the monitoring centres.

⁸ This includes both work/education and transport to and from work/education. This implies that monitored individuals who spend a lot of time commuting from and to their work do not have four hours free time, as the maximum non-curfew time is 12 hours.

⁹ As convicted prisoners under EM keep their legal status of prisoner, they are eligible for the same sentence execution modalities as prisoners who are in the same phase of their sentence in prison.

¹⁰ Ministerial Circular Letter nr. ET/SE-2 from 17 July 2013 concerning the regulation of electronic monitoring as a modality for the execution of prison sentences of up to three years.

2.1.2 Pre-trial electronic monitoring replacing remand detention

In January 2014, with the implementation of the Act of 27 December 2012 'Regulating various matters in justice' and the Ministerial Circular Letter ET/SE-3 'Concerning arrest warrant executed under electronic monitoring', the scope of EM was further extended to the pre-trial phase.¹¹ Until then, investigating judges had three options at their disposal (apart from release): temporary release with conditions ('vrijheid onder voorwaarden'), bail and remand custody. A fourth option of placing a defendant under GPS-tracking was added.

The preparatory legislative documents¹² refer to prison overcrowding, which is also due to the large number of remand prisoners, having a negative impact on the prisoners' wellbeing and the social climate in prison. Again, an explicit link is made between the introduction of this new form of EM and the ambition to alleviate prison overcrowding. To avoid net-widening, it is emphasised that the introduction of EM at the pre-trial phase is not intended as an additional modality of temporary release with conditions, but as a genuine alternative for remand custody. Every day spent under GPS tagging and tracking is the equivalent of one day in remand custody.

The objective to avoid net-widening has far-reaching implications for the way EM is used in the pre-trial phase. Contrary to EM for convicted persons, defendants under GPS are not allowed to leave their house and, paradoxically, the tracking technology is merely used to control the defendant's presence in their residence on a 24/7 basis. Exceptions to leave the house can only be made with the explicit permission of the investigating judge and for the reasons described in the Ministerial Circular Letters, being:

- The needs of the investigation (e.g. to attend a hearing);
- The needs of the ongoing procedures (e.g. to consult the judicial file);
- Another judicial procedure;
- Medical needs;
- Cases of *force majeure*.

The defendants have to present themselves at the prison gate, where the prison governor contacts the Monitoring Centre, in order to arrange the time and date for the installation of the GPS device at the home. The Monitoring Centre aims to execute the installation within 48 hours after the measure has been imposed. Exceptionally, when this is not possible (e.g. during the weekends), defendants must remain in prison while awaiting the installation of the GPS. The electronic tag is attached in prison, and defendants have to take the shortest route from prison to the place where the remand under GPS will be executed. A monitoring officer at the Monitoring Centre controls the route from prison to the home in real time. Once at the individual's residence, the technician from the mobile unit of the Monitoring Centre passes by to install the base

¹¹ This Ministerial Circular Letter does not have a date.

¹² Bill concerning various provisions of Justice, 2 October 2012, *Belgian House of Representatives*, 2429/001.

unit. With the introduction of GPS, the Monitoring Centres became staffed around the clock.

As defendants under GPS are not allowed to leave their house to continue their professional or other activities outside, the Ministerial Circular Letter foresees in the possibility of granting financial support for the defendants under GPS (see section 1.2.). As they are not convicted yet, they are not eligible for penitentiary furlough. The Act of 27 December 2012 does not mention the issue of consent and thus does not foresee a specific procedure in case defendants refuse GPS-tracking. It can, however, be assumed that if defendants refuse GPS-tracking, they are sent to prison. Consent of the cohabitants is also not mentioned.

2.1.3 Electronic monitoring as an autonomous penalty

The Act of 7 February 2014 introduces EM as a free standing sentencing option which can be imposed by a sentencing judge to be applied as a main sentence for offences punishable with a prison sentence of up to one year. Simultaneously, the judge has to pronounce a substitute imprisonment, which becomes applicable if the standalone sentence under EM is not performed. To calculate the duration of the remaining substitute sentence, one day under EM is considered to equal one day in prison (Art. 7).

In order to impose EM at the sentencing level, the public prosecutor, investigating judge or the court may request a brief information report or a social enquiry report at the Houses of justice. The Act stipulates that these reports may only contain 'pertinent' elements to inform the public prosecutor, the investigating judge or the court about the desirability of imposing EM. Cohabitants of the monitored individual *can* be heard when conducting a social enquiry report or by the judge at the court hearing (Art. 7), but there is no obligation to gain their consent.

The judge determines the duration of the period under EM (between one month and one year), together with suggestions about the execution. Only individualised victim related conditions¹³ can be imposed. As other offender-related individualised conditions are not foreseen, another modality of 'naked' standalone EM is introduced without the supervision or support of justice assistants.

The implementation of this Act took place on 1 May 2016. So the Houses of Justice and the Monitoring Centres have had to prepare to receive this new and additional group under EM. A working group with members of the Houses of Justice and the Monitoring Centre is installed to prepare the implementation of EM as an autonomous penalty.

2.1.4 Overview

The scheme below summarizes the differences and similarities between the different categories:

¹³ Restraining order or location ban.

Table 1 Overview of the differences and similarities between categories of EM

Sentence Category	Technique	Imposition	Act/MCL	Consent prisoner	Consent cohabitant	Non-curfew hours	Social Report	Stand Alone	Penitentiary Furlough
Prison sentence > 3 years	RF	SIC ³	Act	Yes	Yes	Individual schedule	Compulsory	No	Yes
Prison sentence 4 months to ≤ 8 months	RF	PG ²	MCL ¹	Yes	no if permanent address yes if no permanent address	Standard schedule	No	Yes	Yes
Prison sentence >8 months to ≤ 3 years	RF - voice	PG ² -DMS ⁴	MCL ¹	Yes	no if permanent address, yes if no permanent address	Standard schedule	Optional (<5%)	Mostly	Yes
Pre-trial	GPS	Investigating Judge	Act	Yes	No	No	No	Yes	No
EM as autonomous sentence	RF	Sentencing judge	Act	Yes	Optional	Standard schedule	Exceptional	Yes	No

MCL, Ministerial Circular Letter; 2. PG, Prison Governor; 3. SIC; Sentence Implementation Court; 4. DMS, Detention Management Service

Besides the above described ways of using EM, it is also available for use with two other groups of convicted individuals. The Act of 2007, which was implemented in 2012, allows EM for persons put at the 'disposal at the sentence implementation court', which is an additional punishment for recidivists or for what are considered as heinous crimes and that starts after the prison sentence is served. As this modality is not commonly used at the time of writing, we do not further discuss it in this report. The same applies to EM as a modality of internment, which is a measure for mentally ill offenders and which was introduced by law of 2014 (implementation from 1 January 2016).

2.2 Legal status of monitored individuals

To date, individuals under EM are officially considered and treated as convicted or remand prisoners, which has an impact on the social benefits to which they are entitled to. Therefore they are not eligible for minimal living allowances ('leefloon'), which free citizens without income normally receive. Instead they receive a 'financial allowance', which, however, does not equal the minimal living allowance. Single monitored individuals receive €20.85 per day; individuals who are living together receive €13.90 per day.¹⁴ Monitored persons thus receive a total allowance of €417.07 per month

¹⁴ Ministerial Circular Letter nr. 1790 of 1 December 2007 – individuals under electronic monitoring without *livelihoods*.

when living together with a partner (instead of €555,81 living allowance) and €625.60 when single (instead of €833.71 living allowance when living alone and €1111.62 when living alone with the charge of at least one child).¹⁵ The application and payment of this financial allowance raises a lot of practical problems, in part because these allowances have to be paid every week. Administrative issues, leading to delays in the payment of the allowance, can thus have far-reaching consequences for the monitored individuals who depend on this allowance money. A director of a House of Justice, who is regularly confronted with people who do not receive their allowance on time, denounces this policy and calls for equal treatment of individuals under EM and free citizens in this regard. Very often, monitored people are financially responsible for a family, which causes a lot of distress.

'You get really absurd situations, where you wonder: aren't we pushing these people into crime? Why? [...] a lot of people have to appeal for the charity of Justice, which is too low to survive, and because of that, the link to start dealing drugs, or committing theft, is easily made.' (R 10, director House of Justice).¹⁶

With the transfer of the Houses of Justice from the Federal State to the Walloon – Brussels federation and the Flemish Community, the matter of social allowances is being discussed and might, hopefully, terminate inequalities between monitored and free citizens.

2.3 Contractual framework

Currently the electronic monitoring equipment is provided by 3M, a private company which has been contracted by the government for five years. A tender procedure is currently underway and the initially intended deadline to end the tender procedure was 30 March 2015. It has however been extended to September 2015 and then further extended every month until the procedure will be finished. At the time of writing (January 2016) the procedure is still pending. The new contract will cover a period of five years and the exact starting date is not known yet. There will be a roll-out period, where the old equipment will gradually be replaced by the new equipment. Due to the long duration of the tender and decision-making, a lot of problems occur with the equipment, which is not being replaced any more, causing technical problems.

The tender foresees 'new' applications of EM such as biometric verification: the bidding companies are asked to suggest a reliable biometric verification method at the cheapest price. The system of voice recognition, although used only very rarely today, is maintained in the tender. There is a desire to evolve towards a hybrid technology that combines GPS with RF-EM in one device. Also devices for victims, that can prevent a monitored individual from approaching a victim are included in the tender (R 21, lawyer)

The financial costs for EM are €4.3 million on a yearly basis, only for the equipment. (R 5, director CEM).

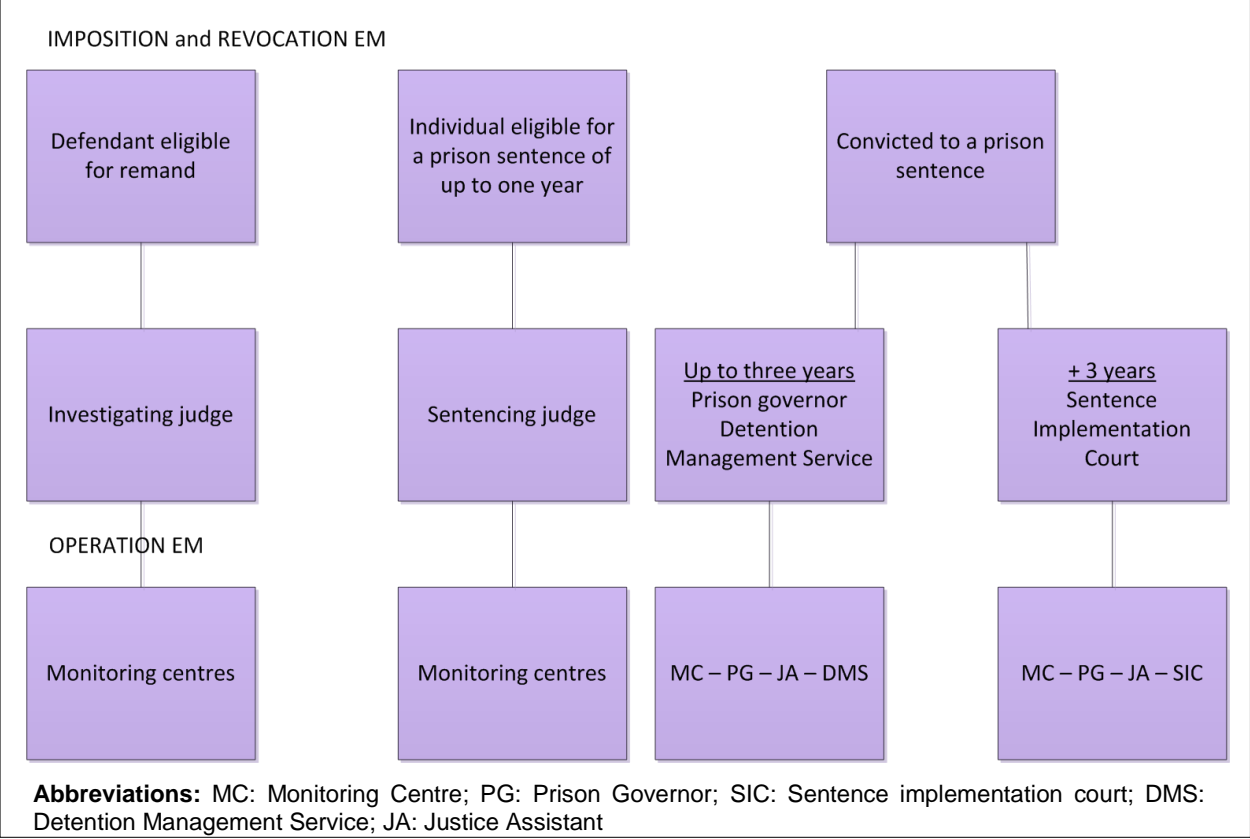
¹⁵ <http://www.justitiehuizen.be/leefvergoeding> and <http://www.mi-is.be/be-nl/ocmw/equivalent-leefloon>, rates applicable for 01/09/2015.

¹⁶ *Dan krijg je wel zeer absurde situaties, dat je denkt van, zijn we die mensen niet nog meer in de criminaliteit aan het duwen? Waarom? [...] Veel mensen moeten al beroep doen op het aalmoes van Justitie, wat eigenlijk veel te weinig is om van te leven, waardoor de link rap wordt gelegd om thuis terug over te gaan op dealen, of weet ik wat, of diefstal.* (R 10, director House of Justice).

2.4 Actors Involved in the electronic monitoring process

Actors involved in the imposition and implementation process can be divided into two categories: (1) actors with decision-making authority with regard to the imposition and revocation of EM, and (2) actors who are responsible for the operation of EM.

Figure 1. Actors involved in the EM process



2.4.1 Imposition and revocation

- **Investigating judge**

An Investigating judge decides on the imposition of GPS-tagging and tracking at the pre-trial phase. They also decide about breach and take all decisions during the implementation of GPS.

- **Sentencing judge**

In cases where a person has committed an offence that can be punished with a prison sentence of up to one year, sentencing judges can impose EM as an autonomous penalty.

- **Prison governor**

Prison governors have a crucial role in the EM process of prisoners convicted to a **prison sentence of up to three years**. They inform about the possibility of EM, ask for consent and decide about the imposition and revocation of EM. However, in practice,

EM is imposed on an almost automatic basis for the group of convicted persons to up to three years.

Although informing the EM candidates about the content of EM¹⁷ is officially a task of the prison governor, in practice this is usually taken over by the local prison administration or, very exceptionally, by the psycho-social service of the prison. It has been pointed out during the interviews that the information provided by the prison staff to the EM-candidates is rather limited. Therefore, prisoners are often unaware of the concrete practice and consequences of being subjected to EM. This can lead to a inaccurate view of the potential impact of EM on the lives of the monitored individuals and their cohabitants. It also leaves them with a number of unanswered (practical) questions during the installation and execution phase. This lack of transparency about the practice of EM fuels frustrations, which are often vented to the field workers of the monitoring centres at the time of the equipment installation. Field workers are not trained human service professionals, nor prepared to deal with these problems.¹⁸ This appears to be a very important and sensitive issue and was also particularly mentioned by two members of the Flemish Centre Electronic Monitoring, who presented a paper on EM at a Conference in Brussels about the future of the Houses of Justice.¹⁹ They denounced the field workers having to cover for the removal of the justice assistants in these cases and indicated that this sometimes causes potential unsafe situations for the field officers.

For the majority of individuals under EM with a prison sentence of up to three years, individual rehabilitation-oriented conditions are not imposed. However, in a limited number of cases, if prison governors deem it necessary for the successful execution of EM, a social enquiry report *can* be requested at the Houses of Justice. In practice this only happens in less than 5 percent of the cases, as social reports are regarded as too costly and causing an undesired delay in the imposition process (*R1, staff member FCEM*). Furthermore, the procedure to be followed to impose individualised conditions for prison sentences of up to three years is considered to be very burdensome²⁰ and therefore as a impediment to impose individualised conditions (*R 10, Director House of Justice*).

In the case of non-compliance, prison governors can decide to revoke EM and recall monitored individuals to prison, or extend the period under EM (for more details about the breach procedure, see section 6).

For individuals convicted to a prison sentence of more than three years, the prison governors' role is less crucial. They merely inform the prisoner of the possibility to file a request for EM²¹ and advise the sentence implementation court about the desirability to impose EM in each individual case. They thus have no decision-making power for this group of convicted prisoners.

- **Detention management service**

¹⁷ No information is provided to the cohabitants if EM will take place in the residence where the individuals subjected to EM are domiciled.

¹⁸ For example, during the observations we observed that field officers very often got questions about the end date of the EM. However, they do not dispose of this information and are also not entitled to answer these questions.

¹⁹ Conference Houses of Justice. *Towards a future Flemish Policy*, Brussels, 7 December 2015.

²⁰ The prison governor must request the consent of the regional prison director.

²¹ Since 2013, the initiative to start an EM-procedure is no longer with the prison governor, but with the prisoner.

Parallel to the procedure followed by the prison governors, there is an adjusted procedure for sexual offenders against juvenile victims convicted to a prison sentence of up to three years. Recently this has been extended to individuals convicted for terrorism-related crimes, where the Detention Management Service decides about the imposition of EM. For this group of sensitive cases, EM is prepared more profoundly, a social enquiry report is always requested and additional individualised conditions are always imposed.

- **Sentence implementation court**

Sentence implementation courts decide about the imposition of EM for prisoners with a prison sentence of more than three years. The decision is taken on the basis of a request by the prisoner, written advice of the prison governor and of the public prosecutor. Prisoners are heard during a court hearing in prison, during which they can defend their request, with the assistance of a lawyer. The prison governor and the public prosecutor are also present and they can present and/or adjust their advice on the basis of the information provided by prisoners and/or their lawyers during the court hearing.

Public prosecutors of the sentence implementation court have a double role. Firstly, they give advice on the whether or not to impose EM, which consists of the following elements:

- Whether the dossier consists of the necessary elements;
- Whether the prisoner is within the time conditions to request an EM;
- Absence of contra-indications:
 - ◆ The availability of a residence to execute the EM, preferably where the prisoner is domiciled;
 - ◆ The disposition of a useful daytime activity (work, including volunteering, or education);
 - ◆ Attending professional guidance for (psychosocial) problems, where applicable;
 - ◆ Risk of recidivism;
 - ◆ The risk that the prisoner will harass the victim(s);
 - ◆ The prisoner's attitude towards the victim, in case the compensation of the civil party plays an important role.

Secondly, public prosecutors also control the execution of EM and receive progress reports from the justice assistants. They are also informed by the police in cases of violations of individual conditions (e.g. prohibition to visit some places). If conditions are violated, the public prosecutor decides whether or not to intervene.

2.4.2 Operation of electronic monitoring

- **Monitoring centres**

Up until 1 January 2015, the Flemish Centre EM (FCEM) and the (French speaking) Centre for EM (CEM) operated as one Monitoring Centre, known as the National Centre for Electronic Monitoring. Following the sixth state reform, in January 2015 the responsibility for the execution of EM has been transferred to the Flemish and the French Communities. This has led to a split of the former National Centre into two independent Monitoring Centres, the ‘Vlaams Centrum Elektronisch Toezicht’ (Flemish Centre Electronic Monitoring for the Dutch speaking cases) and the ‘Centre de Surveillance Electronique’ (Centre for Electronic Monitoring for the French and German²² speaking cases). These centres are responsible for the (de)installation of the equipment, technical controls and follow-up of EM. Both Monitoring Centres are comprised of three main services: the monitoring unit, the mobile unit and the administrative service, each of which are led by a management team.

The *monitoring unit* works according to a shift work system, with four to eight monitoring officers working between 6:00am and 14:00 and 14:00 and 22:00 and controlling up to 1,200 (for the Flemish Centre) and 800 (for the French Centre) monitored individuals simultaneously. The electronic follow-up throughout the period under EM is an interchangeable task, so any monitoring officer can handle any file at any given moment. Consequently, monitored individuals often go “shopping” at the monitoring centre, as “unfavourable decisions” will encourage them to continue making phone calls until they have spoken to a monitoring officer willing to take a “favourable” decision.²³ As a result of the introduction of GPS-tagging and tracking at the pre-trial phase, a night shift was introduced in January 2014. Two monitoring officers perform the night shift and one member of the management team is on call, but can only be contacted in case of emergencies. In practice, because of the limited activity of monitored individuals during the night, this shift is also used by the monitoring officers to perform administrative tasks.

The EM equipment is installed and de-installed by the *mobile unit*. This unit consists of a fixed team of fourteen men (no women²⁴) at the French speaking and twelve staff members at the Flemish Monitoring Centre. At the Flemish Monitoring Centre however, the number of field officers from the mobile unit who are actually operational can sometimes drop to seven²⁵, due to illness, or staff leaving the centre and not being replaced immediately. This means that this unit sometimes functions at half the capacity of staff which are required, which increases the pressure on the remaining staff. It also leads to recurring adjustments in the de-installation procedure (see *section 5.4*).

The daily schedule of the field workers is generated automatically, by the scheduling program *Optitime*. This program outlines the geographic routes to be followed during

²² Belgium has also a small number of German speaking inhabitants and Brussels has officially Dutch and French speaking inhabitants. However, also many other languages are spoken. Brussels cases are allocated to the respective Monitoring Centres based on the language spoken by the individual to be subjected to EM.

²³ The researcher observed this phenomenon when doing observations at the monitoring centre. These findings were also described by Vanhaelemeesch (2015).

²⁴ The underrepresentation of female field workers is said to be a coincidence and not the result of a deliberate policy.

²⁵ The issue of staff turnover is said to be much less a problem at the French Monitoring Centre (*R5, director CEM*).

the (de)installation, based on the priorities of the (de)installation of the files and the efficiency of the route to follow. Field officers cannot adjust the prescribed route. All Belgian EM-cases are distributed over two EM centres, according to the address of the monitored individual. This means that someone who speaks French but lives in Flanders will be monitored by the Flemish Monitoring Centre. As a result of the regionalisation and the split of the Houses of Justice into two different institutions (a French and Dutch speaking one) and the replacement of the National Centre of Electronic Monitoring by two separate Monitoring Centres, the monitoring officers and field workers of the Flemish Monitoring Centre are no longer financially compensated²⁶ to help the individuals in another language than their own. This may cause problems in practice, as many monitored individuals speak a language that differs from the official one. The work of both Monitoring Centres is however coordinated and executed from within the same building.²⁷ In both centres only one person is managing the equipment and information technology.

The Monitoring Centres' field and monitoring staff have a secondary education degree, and no specific educational background in communication and/or dealing with offenders is required. As the Monitoring Centres are increasingly becoming the most important or only contact with the system for those convicted to a prison sentence of up to three years (cf. the justice assistant's diminished role for this group), this is said to be rather problematic. Monitoring officers and field workers need sufficient social and communication skills to deal with the daily problems they are confronted with. However, without any requirements about their educational training (or in-house communication training), these staff members might not be able to provide clear information or address potential frustrations and verbal abuse raised by individuals under EM, due to ambiguities in the procedures, lack of information, etc (see also *section 1.4. prison governor*). Members of the mobile unit do not carry uniforms while undertaking their tasks, have no weapons or pepper spray.

Newcomers learn on the job from other staff members whom they follow during a couple of days up to a maximum of one month, depending on the availabilities of staff.²⁸ This training on the spot is usually primarily focused on the technical aspects of the installation process and not on social aspects of the job, which are, however, becoming more and more important. Due to a victimisation of one of the field workers in January 2015²⁹, two training sessions on how to deal with aggression were organised. These training sessions are not organised on a regular basis. Also the monitoring staff do not receive any specific training, and learn their job through shadowing monitoring officers with sufficient experience.³⁰ There are no specific requirements concerning their educational background and this training on the spot is not formalised. Management staff emphasise that an adapted form of training for field workers and monitoring officers, including communication skills and skills on dealing with physical and verbal aggression is needed (*R3, director Flemish Centre EM*). However, due to organisational changes, future possibilities of this are unclear.

²⁶ With the regionalization, the 'bilanguage bonus', which was previously given to the monitoring officers when they helped the individuals in the other official language than their own, has also been abolished.

²⁷ The building is part of the French speaking community and the Flemish community rents a part of this building.

²⁸ The lack of technicians with a long working history at the Flemish Monitoring Centre is important to mention in this regard. Due to staff turnover, technicians only have a maximum of two to three years' work experience.

²⁹ During winter 2015, a field worker was attacked with an ice pick.

³⁰ Although there is also a high staff turnover here, some monitoring officers have up to five to six years working experience.

On 15 January 2015, the Flemish Monitoring Centre employed 1 director and 4 assistant directors, 14 field officers, 18 monitoring officers, 6 administrative staff and 1 secretary, totalling up to 44 members of staff at the Flemish side. These numbers, however, vary regularly. The theoretical staff formation is supposed to be 55, which indicates a structural understaffing of this centre. This causes serious operational problems, stress with existing staff and waiting lists for installation. The appointment of additional staff members has been announced for the future. Although they have less cases to deal with, the French Monitoring Centre consists of 53 staff members, including 1 director and 4 assistant directors, 14 field officers, 29 monitoring officers, 1 secretary and 4 operational staff members. In total, 102 staff members are responsible for the operation of EM in Belgium, for about 2000 cases. All management staff members have a masters degree in criminology.

The increasing numbers of monitored people and the split of the National Centre of EM into two separate monitoring centres have impacted heavily on the organisation and the staff. In order to meet future challenges of new monitored groups to be received from May 2016 onwards, a new equipment contract to be introduced, a move to a new location to be prepared and new regulations to be developed at the level of the communities, a 'business case' for evaluating the operation of EM has been announced for the Flemish Centre EM in 2016, to make in-depth quantitative and qualitative evaluation of the working processes and the staff capacity. The aim is to provide a better service.

- **Houses of justice**

Due to the refusal of the probation officers to be involved in a controlling measure at the start of EM in 2000, the National Centre for EM installed its own social service with 'in-house' EM-social assistants (Beyens, 2000). With the move of EM from the Prison Service to the Houses of Justice in 2007, justice assistants became responsible for the social follow-up of all individuals under supervision in Belgium, including those under EM. The role of the justice assistants in the execution of EM has, however, changed over time and has particularly diminished throughout the years. It also differs according to the sentence length of the convicted person.

For individuals under EM who are convicted to a prison sentence **between four and eight months**, justice assistants are not involved in the execution of EM. In these cases, the candidates for EM receive information about EM from the prison governor (in practice, the local prison administration)³¹ when they sign the consent form to be placed under EM supervision.

For those sentenced to a prison sentence **between eight months and three years**, justice assistants only play a minor role.³² They contact the monitored individuals no later than two weeks after the start of their EM, to enquire about any problems encountered.³³ Afterwards, there is no real follow-up and the justice assistant only comes back into the picture in cases of multiple violations. Monitored individuals can

³¹ This measure is taken to relieve the workload of the prison governor.

³² With the introduction of the Ministerial Circular Letter of 2013, which intended to speed up the execution of EM, the role and importance of the justice assistants changed drastically and was even almost completely removed from the procedure of those with a prison sentence between eight months and three years.

³³ In practice, justice assistants sometimes arrange this meeting before the start of the EM, in order to provide all of the relevant information in time.

request a meeting with the justice assistants during the execution of EM, but they have to take the initiative themselves. However, these contacts are not foreseen in the workload of the justice assistants and individuals under EM are thus dependent on the individual goodwill of the justice assistants to receive additional help if asked for. Therefore, it is important that the monitored individuals know who to contact and how. It is so far unclear how often justice assistants are contacted to arrange additional meetings. When there are no additional contacts requested, justice assistants will only be contacted by the Monitoring Centres in cases where an individual commits a third curfew violation (see section 6).

Justice assistants always make a 'starting report' ('*aanvangsverslag*'). These reports are rather standardised, as there have been no extensive contacts with the individuals under EM (usually only a telephone conversation and a 30 minute meeting at the justice assistant's office). The report mentions that the justice assistants have explained the procedure to the persons to be put under EM and highlights potential problems, which may have an impact on the successful execution of EM.³⁴ During an informal conversation with the researcher, a justice assistant indicated that it is difficult to make an estimation of the potential success of EM, due to the limited contacts between justice assistants and the individuals under EM.

For those with a prison sentence of **more than three years**, justice assistants play an entirely different role: they write a social enquiry report, visit the homes, ask for consent of the cohabitants and are involved in the social follow-up of the monitored individual, with whom they make up the time schedule, taking work and requests for free time into account. In the social enquiry report, justice assistants suggest individualised conditions, which they also monitor during regular meetings with the monitored person. There are no clear guidelines about the frequency of these meetings, which are organised according to the monitored person's needs. However, as a 'rule of thumb', the frequency and intensity of the meetings diminish as the period under EM progresses, going from, for instance, one meeting per week, to one meeting every two weeks, etc.

The caseload of the justice assistants differs according to the size and organisation of the local Houses of Justice, but a justice assistant usually follows an average of 25 cases simultaneously (*R 8, General director Houses of Justice, French speaking part*).

2.5 Process of electronic monitoring

The processes of implementing electronic monitoring differ according to the phase in the criminal justice procedure at which they occur and the length of the sentence.

At the **pre-trial phase**, the investigating judge decides about the imposition and revocation of EM. The control on the compliance of the curfew order is performed by the monitoring officers, who inform the monitoring management about potential violations, who contact the investigation judge, who then decides about the consequences given to the violation, based on a report that is sent by e-mail.

For **sentences between four to up to eight months and between eight months and three years**, the prison governor or the detention management service decide

³⁴ During the course of this research project, we were unable to get an insight into what extent the reports really contain this latter information.

about the imposition of EM. Prisoners can refuse or accept. The follow-up of the compliance with the curfew order is performed by the control room of the monitoring centres. No other specific (social) follow-up is foreseen. Curfew violations will lead to a standardised breach procedure, where the monitored individual is firstly informed about the breach, and subsequently receive a warning and then a recalculation of their sentence length. If the individual has a prison sentence between eight months and three years, the justice assistant used to be informed by a letter after the third violation. Currently, justice assistants have access to the Siset database (see section 8.2.) This is not the case for individuals under EM with a sentence of up to eight months, as there is no justice assistant involved. EM ends in provisional release or revocation.

For sentences of **more than three years**, the prisoner must take the initiative to start the EM procedure while they are still detained. The prison governor and the public prosecutor advise the sentence implementation court about the desirability of imposing EM and suggest individualised conditions, which are further followed-up by the justice assistants, who inform the sentence implementation court and the public prosecutor on a regular basis. Compliance with curfew orders is controlled by the staff of the control room. Violations are reported to the sentence implementation court and the public prosecutor, who have significant discretion in deciding how to respond to violations.

For process maps visualising the different procedures, see appendices 2, 3, 4 and 5.

3. Methodology and research process

The fieldwork for this research project took place between February and June 2015. Empirical data have been collected through interviews with respondents selected at the different levels of the application and operation of EM. To describe and understand EM practices, 19 days of observations have been performed. Through the data collection, we tried to cover the relevant differences in views and practices. However, as the number of interviews and observation days were rather limited, this data might not cover the whole range and differences in the application and practice of EM in Belgium. Therefore, more in-depth ethnographic research is needed.

It is important to note that, during the period of time in which this research was conducted, important organisational changes have taken place. The National Centre of Electronic Monitoring and the Directorate General of the Houses of Justice were each split into two separate organisations, according to language and coming under the government of the Regional Communities instead of the Federal State, developing their own policies and practices and being allocated their own budget. Due to the recent date of these changes, many aspects of the current and future developments in Belgium are still unclear. This has also impacted on the data collection of this research and raised additional challenges for the researchers, trying to capture the fast changes and their consequences for the EM practices.

3.1 Observations

Nineteen days of observations have been performed between February and 26 June 2015, with fourteen days at the monitoring centres (both the Flemish and the French speaking part), and five days distributed over three Houses of Justice.

3.2 Interviews

Table 2 Overview of respondents			
Respondent 1	Staff member FCEM	Respondent 16	Justice assistant
Respondent 2	Staff member FCEM	Respondent 17	Investigating judge
Respondent 3	Director FCEM	Respondent 18	Public prosecutor of the sentence implementation court
Respondent 4	Staff member CEM	Respondent 19	Member SIC
Respondent 5	Director CEM	Respondent 20	Member SIC
Respondent 6	IT FCEM/CEM	Respondent 21	Lawyer Flemish government
Respondent 7	Assistant director-general, general administration Houses of Justice	Respondent 22	Policy member Flemish government
Respondent 8	General director Houses of Justice, Walloon-Brussels Federation	Respondent 23	Cabinet Minister of Justice
Respondent 9	Prison governor	Respondent 24	Minister of Justice
Respondent 10	Director House of Justice	Respondent 25	Member of the police
Respondent 11	Director House of Justice	Respondent 26	Member of the police
Respondent 12	Director House of Justice	Respondent 27	General Director, Department of Houses of Justice, Flanders Community
Respondent 13	Justice assistant	Respondent 28	Justice assistant
Respondent 14	Justice assistant	Respondent 29	Minister of the Houses of Justice, Walloon-Brussels Federation
Respondent 15	Justice assistant		

3.3 Statistical data³⁵

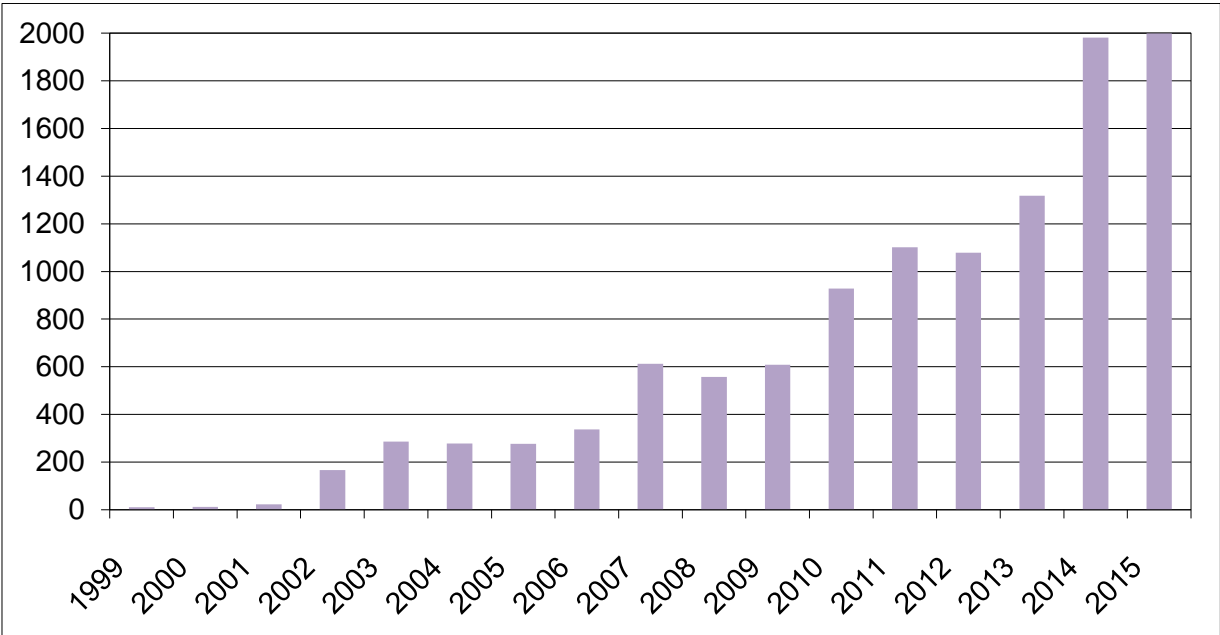
Relevant statistical data are registered by different actors in different registration systems in different databases (SIPAR, SIDIS, Siset), which leads to slightly different data, according to the source that is used.

Figure 2 gives an overview of the use of EM since its inception in Belgium. It can be observed that, after a slow start and a period of stability and scarce use between 2002 and 2006, an increase started since 2007, where EM really became a tool to execute

³⁵ We thank Mr. Pedro Ferreira Marum, Assistant Director-General of the general administration of the French speaking part of the Houses of Justice for providing us the data.

prison sentences. Since 2014, the numbers have stabilised around a little bit less than 2000 monitored persons on a daily basis.

Figure 2. Daily EM population 1999-2015



Sources: National Centre for EM (2016); Beyens & Kaminski (2013); Vander Beken (2013b)

On 15 March 2014, 1,888 persons were subjected to EM in Belgium.

3.3.1 Yearly new mandates

Another parameter to express the evolution of EM over the years is the number of new cases that are started over a year. This also gives an indication of the workload of the staff. Also here we observe a substantial increase in numbers of activated cases over the years.

Year	New EM mandates
2011	3053
2012	3561
2013	5011

Source: Directorate-General Houses of Justice (2014: 132)

There are differences in data, according to which database is used : Siset, which is the database of the Monitoring Centre mentions 5,198 new activations in 2013, compared to 5,011 new cases mentioned in the annual report of the Directorate-General of the Houses of Justice. However, the increasing trend is clear.

Table 3 shows that between 2011 and 2013 the yearly number of new cases increased by 65 per cent in three years from 3,053 in 2011 to 5,011 in 2013. This rising trend has continued after 2013.

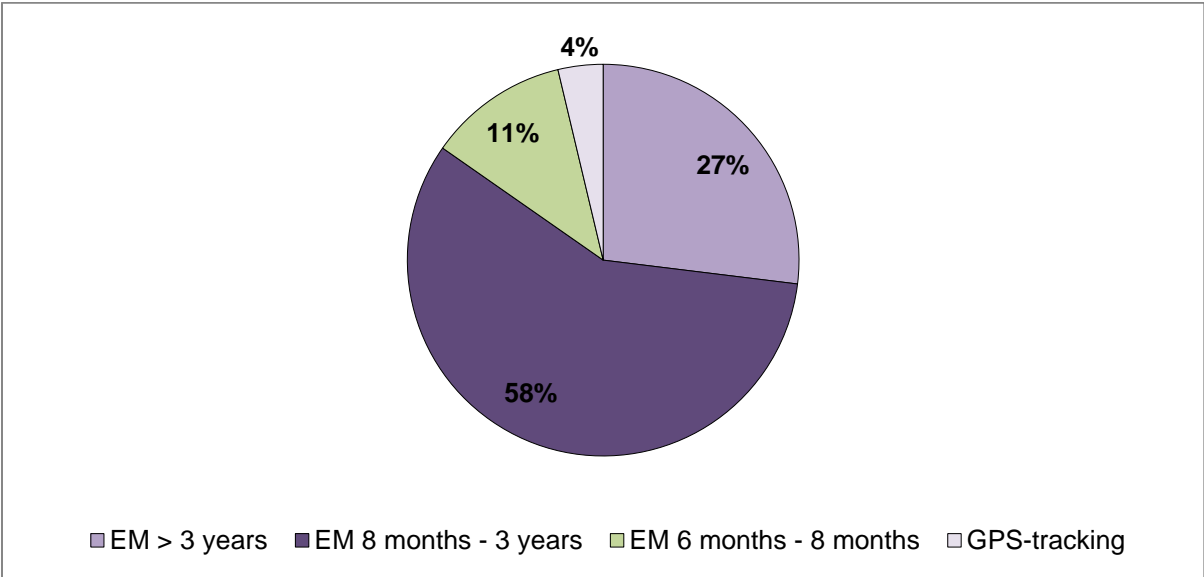
Looking at the distribution of the new mandates over the different procedures in 2013 (see **Table 4**), we see that the majority of the monitored individuals were convicted and sentenced to a prison term between eight months and up to three years (59 per cent, N=2,978). The second largest group was convicted to a prison sentence of between four and eight months (28 per cent, N=1,414). These front-door EM cases made up 87 per cent of all new mandates in 2013. It is important to note that the convicted prison term does not equal the EM term, as almost all are early released after having served one third of the imposed prison sentence.

Table 4 Distribution of newly activated electronic monitoring mandates according to sentence length: 2013		
Prison term	Number	Per cent
> 3 years	635	13
8 months - 3 years	2978	59
4 months - 8 months	1414	28
Total	5028	100

Source: Directorate-General Houses of Justice (2014: 134).

Figure 3 shows the same distribution in 2014 for the convicted persons, but also contains new GPS tagging and tracking mandates.

Figure 3 Distribution of new electronic monitoring mandates according to sentence length between 16 May 2014 and 31 May 2014



Source : National Centre for EM (2016)

3.3.2 Daily electronic monitoring population

Table 5 shows the distribution of the daily EM population on 30 May 2014 over the different categories and we see a slightly different picture with the data according to newly activated mandates. The difference is most outspoken for the shortest sentences, which is logical, because they have a higher turnover in the daily population figures, which explains their smaller proportion in the day populations compared to the number of new mandates over a year (**Table 4**). But we see that the majority of persons under EM is convicted to a prison sentence of up to three years.

Table 5 Day population under electronic monitoring on 30 May 2014 and 21 October 2015					
	Pre-trial phase	Prison sentence 4 - 8 months	Prison sentence 8 months – 3 years	Prison sentence more than 3 years	TOTAL
30 May 2014	73 (3.7%)	228 (11.6%)	1136 (57.8%)	530 (26.9%)	1967 (100%)
21 October 2015	79 (4.01%)	183 (9.28%)	1153 (58.49%)	556 (28.21%)	1971 (100%)

Source : National Centre for EM (2016)

Table 5 shows that about 28 per cent of all monitored individuals were serving sentences of more than three years. Defendants under GPS-tracking comprised about four per cent of all those subject to EM. The proportionate use of EM between different groups is relatively stable. The total daily EM population in Table 5 is 1,967 and 1,971 on the respective days.

3.3.3 Duration of electronic monitoring

The mean EM period in 2015 was 109 days (3.6 months). The duration of an EM period varies according to the EM modality with a mean period of:

- 252 days (8.4 months) for those serving prison sentences of more than 3 years;
- 120 days (4 months) for those serving sentences of between 8 months to up to and including 3 years;
- 38 days (1.3 month) for those serving prison sentences of between 4 months to up to and including 8 months; and
- 62 days (2 months) for those under GPS as a replacement of pre-trial imprisonment.

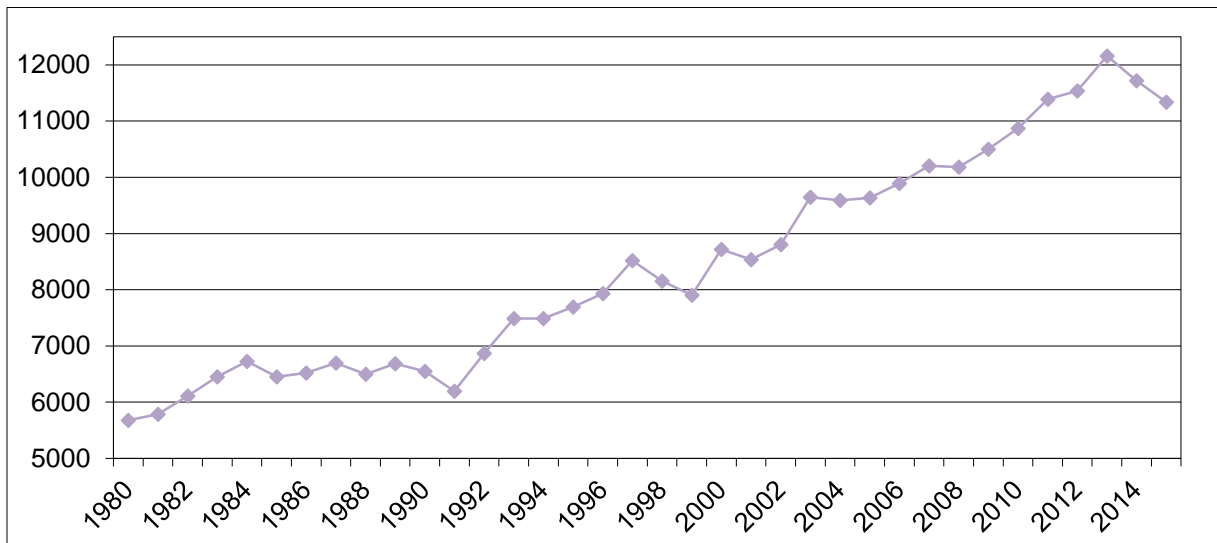
The maximum period under EM was 1,278 days or 42 months or 3.5 years. The minimum number of days under EM was 1.

3.3.4 Daily prison population

Looking at the evolution of the prison population, we see that, up to 2013, the rising numbers of people under EM did not lead to a decreasing prison population, on the contrary. However, since 2014 a slight but clear decrease of the prison population can be observed. More in-depth research is needed to understand the role of EM in this

decline, but we hypothesise that the sharp increase of the use of EM has been a driver of this decline of the prison population.

Figure 4 Daily prison population: 1980 – 2015



Source: Figure made based on data received from Prison Administration (2016)

Based on the prison population and EM day populations on 22 August 2014 (so-called '*dagstaat*' or prison day sheet produced by the Prison Service), it can be calculated that Belgium had a daily prison population rate of 101 per 100,000 registered inhabitants of the national population, and a daily EM rate of 17 per 100,000 inhabitants of the national population. Taking both rates together, Belgium has a rate of 120 persons serving a prison sentence, in prison or in the community under EM, which is an unseen high level of detention in Belgium. This shows that EM has been used to implement an expansionist penal policy.

4. Application of electronic monitoring

4.1 Objectives

Several objectives have been assigned to EM³⁶ and the change in practice shows a shift from a hyper-individualised application of EM, characterised by a balance between social support and supervision on the one hand, and technical control on the other, to EM as a standardised measure, merely performing technical control of the time schedule for the biggest group of those under EM. From the start, two types of goals co-existed: *penological* goals, focusing on avoiding detention harm, facilitating reintegration and *systemic* goals, focusing on providing a cheap alternative for prison, aiming to combat prison overcrowding and to increase the credibility of the sentencing system. Throughout the years, and under the pressure of putting an ever increasing number of prisoners under EM, meeting the systemic goals became more prominent. Eligibility criteria became less strict in order to increase the numbers and the procedures became more standardised (Beyens & Kaminski, 2013; Beyens & Devresse, 2009; Beyens & Roosen, 2013; Devresse, 2014).

³⁶ For a discussion of the many different possible aims of EM, see Daems (2013).

We already pointed out the two-track policy that has been developed for different groups of individuals under EM, and which is reflected by the removal or minimising the support and aid of justice assistants for the majority of cases subjected to EM. This makes EM for this group a merely retributive kind of punishment, instead of investing in rehabilitation and long-term change by supporting individual conditions.

Our research shows that the emphasis or importance given to the different objectives vary according to the use of EM. Different actors have also different priorities. Therefore, to describe the current stated goals of EM, we distinguish between the views of the policymakers and those who are actively involved in the implementation practice of EM.

4.1.1 Policy level

For several years now enhancing the credibility of the criminal justice system (Vander Beken, 2013a) has become a major concern of the consecutive Ministers van Justice. The non- or partial execution of prison sentences has been linked to a perception of impunity among policymakers. To tackle this perception, Minister of Justice Annemie Turtelboom increased the number of prison sentences of up to three years to be executed through EM. In particular of prison sentences that were not executed due to the prison overcrowding became executed through EM by introducing home detention using phone calls and voice recognition as a cheap alternative option.

The Ministerial Circular Letter of 2013³⁷ explicitly mentions the importance of ‘the optimisation of the sentence implementation’ and the realisation of ‘a genuine and swift implementation of short prison sentences, which is necessary for the credibility of the penal system’.

Following the White Paper of current Minister of Justice Koen Geens (2015), EM will consolidate its place in the current range of punishment modalities, and EM is described as a suitable alternative for imprisonment for less severe crimes. EM has to replace prison sentences as much as possible and as such, the prison sentence has to become a truly *ultimum remedium*.³⁸ According to the White paper, EM will get an even more prominent position, by the proposition to make EM mandatory at the pre-trial phase for individuals suspected of having committed a crime punishable with one to three years of imprisonment and by announcing the implementation of the Act of 2014 introducing EM as an autonomous penalty at the sentencing level in May 2016. EM will also become an option for mentally ill prisoners, when the authority for decision-making about conditional release will be transferred to the sentence implementation courts. During the interview with the Minister for this research, it became clear that the reintegrative goal is particularly pursued by the avoidance of detention (passive goal).

By expanding EM throughout the years, a cost efficient sentence implementation system has been the aim, as EM is regarded as a cheap way to execute prison sentences. Compared to the costs of a prison sentence per day which ranges between €130 up to more than €200 per day, with EM having an indicated ‘all in’ cost of €25 per day, EM will indeed allow for the execution of prison sentences at a much lower cost. However, due to the Sixth State Reform, the Minister of Justice is not responsible any

³⁷ Ministerial Circular Letter nr. ET/SE-2 of 17 July 2013 concerning electronic monitoring as a modality for the execution of prison sentences from which the total does not exceed three years.

³⁸ These intentions are, however, not new and have also been put forward by previous Belgian Ministers of Justice.

more for the execution of EM, as this budget has been transferred to the French and Walloon Communities. Their Ministers now have the power to develop the policies with regard to the implementation and operation of EM. However, due to the recent date of the institutional reform and to the organisational changes, their policy was still under construction at the time of writing this report.

The **Flemish** Minister of wellbeing, public health and family Jo Vandeurzen, who is responsible for the Flemish Monitoring Centre and the Flemish part of the Houses of Justice, does not go into detail yet about the goals of EM as such in his policy paper (2014). He only states that there will be an in-depth discussion about the goals and principles of EM with all relevant stakeholders. The fact that the Flemish Monitoring Centre became part of the department of social affairs and well-being, might reflect the intention to work towards positive punishment goals, such as reintegration. However, the future of the operation of EM is still unclear (R 27). Also at the Conference on the Future of the Flemish Houses of Justice and Monitoring Centre on 7 December 2015, the Minister did not go into detail yet about his future plans.

In an interview with the **Walloon** Minister Madrane, who is responsible for the Houses of Justice and the Monitoring Centre of the Walloon-Brussels federation, the following objectives, which are agreed upon on a political level in the Walloon-Brussels federation, are listed:

- executing EM in an efficient, effective and qualitative way;
- guarding the security of the public during the execution of EM;
- apart from the simple execution of EM, there has to be attention given to desistance and reintegration of the monitored person;
- developing an expertise with regard to security and desistance.

It is emphasised that security issues are important to preserve the credibility of EM.

4.1.2 Electronic monitoring practitioners

First of all, EM is recognised as a **punitive** measure and as an accepted societal reaction to crime by all interviewed practitioners. The punitive element is acknowledged in the limitations in free time (R 20, *member sentence implementation court*). The recognition of EM as a punitive measure is considered to be crucial in the perception and acceptance of EM as a real punishment.

Although EM limits the freedom of the individuals, it does not have a real incapacitative capability. For very severe crimes, EM is regarded as not punitive enough and imprisonment is still seen as a more adequate sentence (R 19, *member sentence implementation court*).

Rehabilitative goals, such as **avoiding the harms of detention and facilitating reintegration** were presented as important objectives, from the start of the implementation of EM (Beyens & Kaminski, 2013). EM is considered by respondents from the Houses of Justice as an important aid in providing structure for offenders with a chaotic lifestyle (R8, *director-general French speaking part Houses of Justice*).

Reintegration and avoiding the harms of detention are linked to being able to remain in the family and a professional environment, and can be regarded as a rather passive way of pursuing rehabilitation (not having to go to prison).

Several interviewees agree that, due to the current application of EM as a 'naked sanction', the rehabilitative goal has been eroded. Active rehabilitation is linked to the combination of EM with individualised conditions and close supervision by the justice assistant. From the perspective of prioritising rehabilitation, it is regrettable that fewer individual conditions are imposed and that the social support by justice assistants is diminished and even removed for an ever-growing group of individuals under EM.

The different types of EM have their own goals. For the GPS-tracking at the pre-trial phase, it is said that *avoiding the harms of detention and combatting the prison overcrowding* are the only objectives, as there can be no reintegration using a 24 hour curfew regime. From a judicial point of view, the individual in the pre-trial phase is not considered to be guilty yet, and consequently it is said that reintegration is not a relevant objective (*R7, assistant director-general, general administration Houses of Justice*). This argument has previously been used with regard to early release with conditions to replace remand imprisonment and shows a conflict between a judicial perspective, reducing individuals to their judicial status of not being convicted (yet) and a rehabilitative view, focused on trying to preserve professional activities, and which is primarily linked with the execution of punishment.

Because prisoners with a prison sentence of more than three years under EM do receive social guidance, EM may provide the opportunity to act upon the circumstances that initiated the offence (*R 14, justice assistant*).

This brief overview confirms previous statements in the literature (Beyens & Kaminski 2013; Vander Beken 2013b; Daems, 2013) that EM in Belgium is seen to meet many different goals, on an individual as well as a systemic level. Due to this panoply of different goals, EM can be described as a 'chameleon punishment', or a 'swiss knife' (Kaminiski, 2013) adapting to or assuming to meet different needs. However, the goal of active rehabilitation by social guidance and supervision has been abandoned for the biggest group of monitored individuals due to budgetary constraints and replaced by a form of passive rehabilitation, limiting the rehabilitative ambitions to allowing convicted persons to serve their prison sentence in the community, however, without much support or supervision. Although desistance is mentioned at the French speaking part of Belgium as a stated goal, it remains to be seen how this will be translated into the daily practice of EM.

4.2 Advantages and disadvantages

Because interviews with monitored individuals were not included in this research, we have to rely on analysis of the advantages and disadvantages of EM identified by the actors involved in the implementation and operation of EM. We point out that many of the (dis)advantages identified by our respondents are similar to the findings of Vanhaelemeesch (2015), who empirically investigated the experiences of individuals under EM and their cohabitants in Belgium.

4.2.1 Disadvantages for the monitored individuals

Disadvantages linked to the deprivation of liberty

Being a sentence that limits the individuals' freedom, it is stated that EM has a negative impact on the individuals' lives, that can be compared with the negative impact of imprisonment, albeit less serious (*R 2, staff member FCEM*). Although individuals under EM have more freedom than they would have in prison (*R 16, Director House of Justice*), this freedom is acknowledged as a 'false sense of freedom' (*R 12, Director House of Justice*), as there are a lot of limitations on this freedom due to the strict time schedule that has to be complied with.

For individuals executing remand custody under GPS-tracking who are confined in their homes for 24 hours, EM has an important impact on the individuals' lives, and may cause a significant burden. As the monitored individuals are not allowed to leave their homes, not even to go grocery shopping, they depend entirely on the help of others to provide for their daily care. Some individuals are even forced to move in with somebody when initially living alone. This impact is often underestimated, not at least by the defendant's advocate, who often request GPS-tracking to avoid remand custody (*R 17, Investigating judge*).

Disadvantages linked to wearing the equipment

Although being able to remain at home is considered to be an advantage compared to being in prison, having to wear the equipment or store the equipment at home, might cause a certain level of distress, according to some of our respondents. Wearing an anklet might be burdensome, as it causes unpleasant feelings. It may furthermore be stigmatising, when it is impossible to hide, or it may encourage the monitored individuals to adjust their clothing, in order to hide the anklet (*R 2, staff member FCEM*).

Distress might furthermore be caused by the responsibility attached to preserving the equipment at home, as the monitored individuals (and their cohabitants) must take care of it. Damage must be avoided and, if not avoided, compensated.

Disadvantages linked to the conditions of electronic monitoring

EM is considered to be an 'elitist' sanction, as candidates must have a fixed abode before being eligible for EM, which is not the case for everyone.³⁹ Moreover, individuals under EM need a social network to support them during the execution of their EM.⁴⁰ Some groups do not have such a social network, or their social network is unable to provide adequate support.

EM requires a minimal sense of responsibility and self-discipline, in order to comply with the curfew, (*R 12, Director House of Justice*), which is also considered to be challenging (*R 19, Member SIC*). It furthermore requires a capacity to plan activities in advance and stick to the planning. For instance, individuals under EM may not be able to take out the garbage during their curfew hours, so they must make sure to do these

³⁹ The Belgian prison population counts show a considerable number of prisoners without a regular residence status, and who are therefore excluded from EM.

⁴⁰ E.g. practical support, to do grocery shopping if monitored persons do not have sufficient free time to do this themselves or are not allowed to leave their homes in case of GPS.

tasks during their free time (*R 11, Director House of Justice*). The length of EM is relevant in this context. It is said that EM of more than one year is too burdensome (*R 11, Director House of Justice*). So the negative impact of the (duration of) EM also depends on the personal situation of the individuals and their social network. EM is recognized as more difficult for a single parent during summer (*R 11, Director House of Justice*).

(Dis)advantages for the cohabitants

An advantage for the family is that monitored individuals do not have to go to prison, which means that they can fulfil their part of the household tasks and that the distress of visiting prison can be avoided for the cohabitants. Visiting a person in prison is considered to be a burdensome experience for the family members, causing practical burden and psychological distress (*R 2, staff member FCEM*).

Otherwise, you have to call the prison and hope that there is room for a visit, you have to present yourself at the prison gate at that hour and make sure that you are not fifteen minutes late, or otherwise your visit will be cancelled [...], and okay, [family members] are not the ones who have to remain in prison, but you do go in and out of prison and that's not nothing. [...] you are being checked, screened, that's not nothing. Even as a visitor, it is a very intrusive experience, especially for little children. (R 2, staff member FCEM)⁴¹

Cohabitants can play a major role in the execution of EM as they can provide support to the monitored individual. As EM also affects the lives of the cohabitants to a large extent they are said to have to undergo the sentence together with the monitored individual.

EM influences the lives of the cohabitants in different ways. It can become a practical burden, as the household members must also answer phone calls from the Monitoring Centre, they must ensure that children or pets do not touch the receiver box, and living with a timetable can also induce distress among cohabitants. The individuals under EM can also become less pleasant, as EM causes distress for them and they might ventilate their frustration towards the cohabitants. Moreover, the obligation of the monitored persons to remain inside the house may trigger an escalation of problems in already difficult relationships.

Having to live with a curfew might encourage cohabitants to lie, in order to hide the EM for the outside world. (*R 2, staff member FCEM; R 4, staff member CEM; R 15, justice assistant*) One of the respondents described the experience of the cohabitants as 'being partly under EM as well' (*R 15, justice assistant*).

I can imagine the weight of that. [...] I can really imagine that you don't want to say that your husband is under electronic monitoring, but I can also imagine that it weighs a lot if you always have to come up with an excuse why your husband

⁴¹ *Anders moet ge bellen naar de gevangenis hopen dat er vlug nog een bezoek nog openstaat, dat uur aanmelden en zijt ge een kwartier te laat gaat uw bezoek niet door, euhm, en ook rekening houden met heel die schikking in de gevangenis want ook als familielid, goed, ge moet daar niet verblijven maar ge gaat wel die gevangenis in en uit, hetgeen ook niet niets betekent. Dat is ook, ge wordt gecontroleerd, ge wordt doorzocht, gescreend, dat is ook niet niets. Gewoon als bezoeker is dat al een heel ingrijpende ervaring, zeker voor kleine kinderen (R 2, staff member FCEM)*

is not with you, so that is a disadvantage that cannot be underestimated. (R 2, staff member FCEM)⁴²

EM can also have practical consequences for the cohabitants as they might have to compensate for household jobs outside the house (R 19, Member sentence implementation court).

Conflicts within the household can increase due to EM, and cohabitants also suffer from this. They are the ones who have to leave the house in case of conflict. (R 14, justice assistant)

If then all of a sudden, one person is obliged to remain at home, even when there is a fight, even when there is an argument, he cannot leave... well, than some situations escalate. The monitored individuals also often use the cohabitants to ventilate their stress (R 9, prison governor).⁴³

However, even though EM is considered stressful and a burden for the cohabitants, most cohabitants do agree to have the monitored individuals at home, because it is still a better solution than imprisonment (see also Vanhaelemesch, 2015).

I think, if you ask the people at the end of the ride, what they prefer, prison or EM, that most cohabitants prefer EM. The alternative is much worse (R 12, Director House of Justice).⁴⁴

4.2.2 Advantages for the monitored individuals

Although a number of disadvantages are highlighted by the respondents, it can be assumed that the advantages, both for the individuals under EM and the cohabitants, mostly outweigh the disadvantages.

For individuals who have been sentenced to a prison sentence of more than three years, EM is used as a transition phase between imprisonment and conditional release. Respondents see an added value in the electronic control and contend that the additional control and guidance provided by EM decreases the risk of recidivism. EM also provides the possibility to get involved in therapeutic programs, more so than in prison, and still be controlled for compliance with these therapeutic programs (R 2, staff member FCEM). On the other hand it is recognised that the strict time schedule of EM can endanger a therapeutic or medical treatment and that EM is thus less suitable for this group (R 29, Minister).

For individuals convicted to a prison sentence of more than three years, being followed-up by the justice assistant is regarded as a benefit, as it might increase compliance

⁴² *En ik kan mij wel voorstellen dat dat ook weegt. Dat ge altijd als ge dan niet, allee, ik kan mij perfect voorstellen dat ge niet wilt zeggen mijn man staat onder elektronisch toezicht, euhm maar ik kan mij ook voorstellen dat dat heel zwaar moet zijn om telkens een andere uitvlucht te zoeken waarom uwe man er niet bij is, dus dat is ook niet te onderschatten nadeel dan toch wel. (R 2, staff member FCEM)*

⁴³ *Als dan in één keer zo één van de 2 verplicht wordt om thuis te blijven uiteindelijk, zelfs bij ruzie, zelfs bij onenigheden, hij kan niet weg...ja, dat zorgt toch ook wel wat voor wat meer escalatie, merken wij in sommige situaties. Ook de stress die de gedetineerde ervaart wordt vaak uitgewerkt op de huisgenoten, dus, je zit zelf gevangen... (R 9, prison governor)*

⁴⁴ *Ik denk als je mensen voor het einde van de rit vraagt wat dat ze liever hebben, een gevangenisstraf of elektronisch toezicht? Dat de meeste huisgenoten ook wel voor het elektronisch toezicht zullen kiezen. Het alternatief is veel slechter. (R 12, Director House of Justice)*

and thus increase the opportunity to successfully execute prison sentence in the community and be fully released afterwards

(Family) context

Whether EM is beneficial in a particular case will not only depend on the material conditions, but also on the household situation. EM facilitates that individuals under EM can continue their role in their family and professional life (R 9, prison governor). Particularly individuals with a family and a job are said to lose a lot when they have to go to prison. This means that EM might for some individuals be regarded as more valuable than for others.

The ones who are in order with everything, yes, they have a lot to lose if they are away for a while. If you have a steady job or if you have children, or if you are participating in an education, or if you are actively looking for a job, yes, if you have to put that on hold for five to six to seven months, yes, then you lose all that, so... (R 9, prison governor)⁴⁵

However, a lot of the families and households where the individuals are executing their EM are not stable. As a result, the cohabitants will have a lot of encumbrances due to the EM.

If we talk about a very stable home situation, then it is more pleasant for everyone if the detainee is in the home environment. But, how many people are there with a stable home situation? That's not the majority, so, what do we see? Yes, there is a lot of burden on the household members, they take responsibility for a lot of things, there is not that much understanding for those people from the detainee himself and they feel that burden. As a household member, you become a bit pushed to complying with that curfew, if your partner must be home at 12am, yes, then maybe it is not so obvious for the woman to go to the market at 2pm, so [...] the entire household has to take the curfew from that one person into account. [...] it's a bit paying for the mistakes of your household member (R 9, prison governor).⁴⁶

4.3 Stand-alone versus supervisory conditions

In the pre-trial phase, EM is always a 'naked' or stand-alone order. Whether or not EM is used as a stand-alone measure or combined with supervisory conditions in the execution phase depends on the length of the prison sentence. For prison sentences of up to three years, EM is almost exclusively used as a stand-alone measure, as

⁴⁵ *Degenen die met alles in orde zijn, ja, die hebben veel te verliezen als ze een tijd lang weg zijn. Als jij een vaste job hebt of je hebt kinderen of je bent bezig met een opleiding of je bent een intensieve werkzoektocht aan het doen, ja, als je dat allemaal voor 5 à 6 à 7 maanden stil legt, ja, dan ben je dat allemaal kwijt, dus...voor degenen die hun zaken op een rijtje hebben want ja, dat is dan ook in België zo... (R 9, prison governor)*

⁴⁶ *Als we spreken over een zeer stabiele thuissituatie dan zal het zeker voor iedereen aangenamer zijn dat die gedetineerde in het huismilieu...maar ja, hoeveel van onze mensen hebben een stabiele thuissituatie? Dat zijn niet de meesten, dus, wat zien wij dan? Ja, dat er toch heel veel last op die huisgenoten komt, dat die ook heel veel opdraaien, dat er weinig begrip is ook voor die mensen van de gedetineerde zelf dan en dat die daar dan ook zelf veel last van ondervinden. Je wordt als huisgenoot ook een beetje mee gedwongen van u naar dat uurrooster te schikken, als uw man 's middags om 12 uur thuis moet zijn, ja, dan is dat als vrouw misschien ook al niet zo evident om dan in de namiddag om 2 uur naar de markt te gaan...dus, je moet...uw heel huishouden moet rekening houden met dat uurrooster van die éne persoon, dus, ik kan mij voorstellen dat dat voor die mensen ook niet altijd...alleen ja, dat is een beetje mee boeten voor de fouten van uw huisgenoot. (R 9, prison governor)*

individualised conditions are and can only be imposed very exceptionally. For prison sentences of more than three years, EM is used as an additional control on top of other supervisory conditions.

4.3.1 Prison sentences of up to three years

The context of introducing the stand-alone option was one of budget cuts and the use of EM as a tool to combat feelings of impunity and restore the credibility of the criminal justice system, due to the non-execution of short prison sentences. The large number of prisoners being placed under EM resulted, however, in increasing waiting lists and waiting times for convicted persons to execute their prison sentence under EM. To speed up the EM procedure, the highly individualised application of the measure of the early days was abandoned. This not only led to the elimination of the social enquiry report for the biggest group of individuals to be subjected to EM, but it also ushered in an increasingly standardised application of the EM measure, with fixed timetables (see section 1.1).

For prison sentences between four and eight months, EM is exclusively used as a stand-alone measure without other conditions imposed. The punishment consists solely of technical control of compliance with the curfew order, without any possibility of having contact with a justice assistant whatsoever. As a result, the successful execution of EM depends heavily on the capacities of the monitored individuals, as they - and also their family members - are responsible for dealing with the administrative and practical issues that go together with the execution of EM.

4.3.2 Supervision for prison sentences between eight months and three years

The Ministerial Circular Letter foresees the possibility for prison governors to impose individualised conditions whenever they deem this necessary. It is explicitly stated that they can only exceptionally be imposed. The procedure to be followed is so complicated, that prison governors are discouraged from doing so. A filled in form has to be sent to the central prison administration, which has to consent with the suggestion for imposing individualised conditions (*R 10, House of Justice*). This procedure leads to differences in practice between prisons, as the decision to impose such individualised conditions, and thus to follow this rather burdensome procedure, depends on the working style of the individual prison governor (*R 12, Director House of Justice*).

In case of prison sentences between eight months and three years, monitored individuals are invited for an appointment (by a letter sent to their home address) at the justice assistant's office ('*bureelgesprek*'). If necessary, the monitored individuals receive a reminder letter and a phone call. Monitored individuals are not obliged to attend the appointment, in the sense that there are no consequences if they do not attend (*R 16, Director House of Justice*). During the meeting, justice assistants discuss the general conditions of EM (e.g. the curfew), check the individuals' address and phone number, and ask about any (practical) issues. Justice assistants inform the monitored individuals about the curfew order, the breach procedure, and the possibility of penitentiary furlough. The monitored individuals can raise issues, such as financial difficulties. In those cases, they are referred to the relevant services that deal with these problems with no further follow-up of these matters (*R 14, justice assistant*). The offences and the circumstances that have led to the conviction are not discussed.

These meetings last approximately 30 minutes and are often the only contact between the justice assistant and the individual under EM during the whole EM-period. Monitored individuals can contact the justice assistant themselves, which is said to occur regularly in practice (*R 14, justice assistant*). Notice, however, that justice assistants do not have an official mandate to provide guidance to this group, as this is not included in their official task description and work load. Justice assistants *can* meet with the individuals before the start of the EM. For instance, in one House of Justice, the respondent states that the justice assistants meet with the monitored individuals fifteen days before the start of their EM. This is however not legally obliged and justice assistants may choose to only see the monitored individuals after the installation of the equipment. This lack of intervention of the justice assistant before the start of EM is mentioned to impede the preparation of EM.

After the meeting a very brief report is sent to the Monitoring Centre and the prison governor, to confirm that there has been a meeting (*R 13, justice assistant*). If justice assistants observe that the monitored individuals have difficulties to fill out the necessary documents, for instance due to illiteracy, they will assist them in doing so. Again, these (small) additional tasks are not included in the official caseload of the justice assistants (*R 13, justice assistant*). Furthermore, even though not foreseen in the Ministerial Circular Letter, the justice assistants might still choose to conduct home visits.

We don't receive a mandate to do more. Yes, what can you do when there is an illiterate person who says "I can't do that" and he wants to change his hours, and he has to go to the hospital. Yes, you do it anyway, right. That's maybe a little bit our goodwill. (R 13, justice assistant).⁴⁷

I almost always go on home visit with EM because I think it is easier, because otherwise I have to adjust to that curfew. [...] So, it is for my own convenience, that I think it is more pragmatic to pay a home visit than to adjust the curfew. (R 15, justice assistant)⁴⁸

These quotes show that justice assistants compensate on their own initiative for the lack of officially foreseen support, to avoid problems for the monitored individuals or just to simplify their own work schedule.

Because the monitored individuals must initiate the contact with the justice assistants themselves, the more empowered individuals are, the more likely it will be to find their way to the relevant actors and services and thus to receive the help they need (*R 12, Director House of Justice*). Others might never see their justice assistant or only in the context of a breach procedure, after having committed a number of violations (*R 12, Director House of Justice*). An interviewed justice assistant therefore stated that the

⁴⁷ Daar wordt ons ook geen mandaat in gegeven om daar meer te doen. Ja, wat kunde doen, met een analfabeet die zegt "ik kan dat niet" en die wil het uur veranderen, en die moet naar het ziekenhuis. Ja, dan doe je dat toch, he. Dat zal onze goodwill misschien wat zijn. (*R 13, justice assistant*)

⁴⁸ ikzelf ga bij elektronisch toezicht nagenoeg altijd op huisbezoek gaan omdat ik dat dan gemakkelijker vind, want anders moet ik dat inderdaad inpassen in dat uurrooster, dat betekent dat een wijziging van het uurrooster zodanig of allee toch het voorzien in het uurrooster dat mensen tot hier kunnen komen. Dus in, allee, het heeft een stuk met mijn eigen gemak te maken dat ik het praktischer vind om op huisbezoek te gaan dan daarvoor die, allee, dan aan die uurrooster te zitten prutsen. (*R 15, justice assistant*)

criminal justice system does not provide the means to fulfill the alleged goal of rehabilitation and criticises this policy:

There is no liberty; they cannot even get their children from school in that system of less than three years. I think that this is rather a trigger to commit more crime [...]. I don't think it is okay that we under the guise of Justice say that we are working with these people. Because we are not. The distance between us and them is so big, that we know nothing about them. And then we feel like we would rather not be involved. [...] I have never been at their home, I don't know what they are doing, I don't know whether they have problems. I don't have to ask for it, I don't have to do anything about it. (R 13, justice assistant)⁴⁹

Applying EM as a standardised stand-alone measure thus has possible drawbacks. There is not only the risk that the monitored individuals who suffer from deeper problems do not get the help they need due to a lack of empowerment. EM as a stand-alone measure being applied on an automatic basis, without thorough preparation might also lose the victims out of sight. (R 19, Member sentence implementation court).

4.3.3 Prison sentences of more than three years

EM will, in practice, only be imposed by the sentence implementation court if the prisoners can prove that they have a useful activity to take part in during EM (a professional activity or education). The plans must be realistic and be in an advanced stage before EM will be granted. For those with a prison sentence of more than three years the sentence implementation courts almost always impose individualised conditions with EM. These can be, for instance, participating in a treatment program or an educational program, looking for a job or budget planning. These conditions are not standardised or listed in the Act of 2006, but, in practice, similar conditions are usually imposed.

It is mentioned that prisoners with a sentence of more than three years are mainly better prepared for the EM-measure than the EM candidates with a sentence of up to three years. The psychosocial service within prison mainly assists the prisoners to prepare their file and the requirements to be fulfilled before going to the sentence implementation court. They also suggest individualised conditions to the sentence implementation court in an advisory report. Monitored individuals receive information about the curfews, the daily activities and the conditions. They are supervised by justice assistants, preferably by those who were already involved in the dossier. Therefore, they are often already aware of the circumstances in which the EM will be served and are acquainted with their social circumstances and personality (R 14, justice assistant). In these cases, justice assistants always pay a house visit, or at least contact the individuals, within 48 hours after the start of their EM.

⁴⁹ *Er is geen vrijheid, ze mogen hun kinderen zelfs niet van school halen in dat systeem van < 3 jaar. Dan zie ik eerder nog een trigger tot meer criminaliteit, of verveling, als niemand zich daar mee bezighoudt. Met wat zijn die bezig, allez. Dat vind ik dan ook niet zo oké dat we dat dan onder het mom Justitie, ze zeggen dan ze zijn daar mee bezig. Maar wij zijn daar niet mee bezig. We zijn daar mee bezig vanop zo'n grote afstand dat we er toch niks van weten. En dan hebben we zoiets van, dan zijn we er liever niet mee bezig. Want je hebt dan de naam van, dat dossier staat op jouw naam, maar wat weet ik daarvan? Je komt één keer naar hier, ik leg dat uit, van je hebt vier uur, heb je werk, heb je dat, je moet jouw bijlagen invullen. En dan, ik ben daar nooit thuis geweest, ik weet niet waar die mee bezig heeft, ik weet niet of die problemen heeft. Ik moet dat niet bevragen, ik moet daar ook niks aan doen. (R 13, justice assistant)*

The role of the justice assistants is to control and support. Sometimes monitored persons expect from the justice assistants help with other aspects of their life, which is however not considered as the task of justice assistant:

I have had clients who bring boxes with paperwork. This is my paperwork and I don't know what to do with it. They will not do it themselves... If there are for instance one or two creditors, we will quickly write them ourselves, because of the waiting lists of the services. Also for the civil parties, we do that through victim support. For real debt settlement or budget counseling we do refer them to the relevant services. (R 14, justice assistant)⁵⁰

If the monitored individuals have to deal with underlying problems, they are referred to specialised services, and the justice assistants control whether the individuals attend their sessions with the specialised agencies (R 14, justice assistant). The role of the justice assistant is thus bridging ('brugfunctie') between different services, rather than taking up the therapeutic or other functions themselves. The justice assistants write progress reports on a regular basis for the sentence implementation courts, about the monitored individuals' compliance with the conditions (R 13, justice assistant).

Whether the support of the justice assistants is provided through house visits or office meetings is up to the discretion of the justice assistants themselves. One of the justice assistants who was interviewed indicated that she chooses to alternate between home visits and office meetings (R 13, justice assistant). Home visits are said to be interesting and important, because they provide the opportunity to get a clear picture of the circumstances in which the individuals execute their EM, and which might differ from the image presented by the monitored individuals themselves (R 13, justice assistant). This practice, however, differs between houses of justice.

In general, respondents are positive about the follow up of the plus three year cases.

More than three years is still a good system, I think. Those people get several conditions, very often limiting recidivism, so working at problems and making sure that the situation stabilises so that there are less pitfalls for recidivism. It is being followed-up, both by the SIC and the justice assistant, with regular reports. (R 9, prison governor)⁵¹

Even though the EM measure for prisoners with a prison sentence of more than three years is highly individualised, some respondents state that the rigid way of working of the Monitoring Centres hamper the possibilities of really working towards social reintegration.

⁵⁰ Ik heb letterlijk cliënten gehad die dozen meebrengen. Voila, dat is mijn papierwinkel en ik kan er geen weg mee. Ik ga niet zelf... Wij doen wel, als er bijvoorbeeld één of twee schuldeisers zijn, zullen wij die al rap nekeer zelf aanschrijven, omdat bij de diensten die dat doen, er ook wachtlijsten zijn enzo. Ook voor burgerlijke partijen, dat doen wij dan via slachtofferonthaal. Voor effectief schuldenregeling of budgetbegeleiding, verwijzen wij dan wel door (R 14, justice assistant).

⁵¹ +3 jaar vind ik nog altijd een zeer goed systeem. Dus, de mensen krijgen verschillende voorwaarden, heel vaak recidieven beperkende voorwaarden, dus op probleemdomeneinen gaan werken en zorgen dat daar de boel wat gestabiliseerd wordt zodanig dat daar minder valkuilen zijn om te hervallen, dat wordt zeer goed opgevolgd, zowel door de Strafvuistvoeringsrechtbank zelf als door de Justitie Assistent, er zijn heel regelmatig verslagen...evolutieverslagen, meldingsverslagen, die moeten overgemaakt worden, dus...die opvolging is nog, wat mij betreft, zeer intensief en zoals het eigenlijk hoort. (R 9, prison governor)

Under three years, it is very obvious, there is even no longer any framework. There it is not even expected that the monitored individuals work towards their reintegration. For prison sentences of more than three years, there are still a number of elements in the decision of the sentence implementation court with social, reintegrative suggestions. But there, you are confronted with rather rigid regulations of the Monitoring Centre. This results in certain goals just not being obtained. (R 12, Director House of Justice).⁵²

4.3.4 Electronic monitoring at the pre-trial phase

Being a safety measure, EM at the pre-trial phase is, in principle, imposed without individualised conditions. An investigating judge (R 17) advocates more creativity in applying EM at the remand phase and to attach individualised conditions to the GPS-tracking, so defendants can already start working on certain problems. The main problem here is, however, the absence of non-curfew hours for defendants under GPS-tracking, which makes it difficult or impossible to organise their life and to undertake the basic tasks needed to survive.

4.4 Target groups

When electronic monitoring was first implemented in Belgium, a number of categories of offenders were excluded, i.e. sexual offenders whose victim(s) were a minor, individuals dealing narcotics or hormones, or “problematic” offenders, i.e. cases with severe family and relationship problems and detainees who posed a threat for public safety.⁵³ However, due to the pressure to expand the population under EM, the eligibility criteria were regularly relaxed over time. If EM candidates have an abode where they can undergo their EM, and a phone number where they can be contacted by the Monitoring Centre, all candidates are eligible for EM.⁵⁴ Individuals without a legal residence permit are thus excluded from EM, albeit not on the basis of the offence they committed. Other groups for which EM is not applied today are minors and mentally ill offenders. In 2016, the possibility of EM for mentally ill offenders (internees) will also be introduced (R 23, R 23, Cabinet Minister of Justice Minister of Justice).⁵⁵

A far-reaching use of EM is advocated so that EM will be a real alternative for imprisonment (R 8, general director Houses of Justice, French speaking part) and to avoid the harm of detention. One of the respondents refers to the term “punishment harm” as EM also causes harm, but to a lesser extent than imprisonment (R 20, member sentence implementation court).

With a wide-ranging use of EM, it is emphasised that putting people under EM does require a careful preparation and follow-up:

⁵² *Onder de drie jaar is het flagrant, daar is ook zelfs geen omkadering niet meer ... En daar wordt van de mensen ook niet verwacht dat ze nog veel integratief bezig zijn. Boven de drie jaar zijn er op basis van de vonnissen van de strafuitvoeringsrechtbank wel nog een aantal aspecten, die net als sociale, dat re-integratieve naar voor stellen. Alleen word je daar geconfronteerd met een redelijk rigide regelgeving, vanuit het centrum voor elektronisch toezicht. Wat dat maakt dat op bepaalde momenten sociale doelen gewoon niet gehaald kunnen worden. (R 12, Director House of Justice)*

⁵³ Hand. Kamer (House of Representatives), 1997-1998, 5/01/1998, 7-9.

⁵⁴ A separate, more in-depth selection procedure still exists for sexual offenders with minor victims. Since November 2015 (cf. terrorist attacks in Paris and the link with Belgium), EM is not applied any more for offenders convicted for terrorist crimes.

⁵⁵ Implementation of the Act of 5 May 2014.

Especially for the victims; rape, stalking, particularly stalkers are dangerous, I guess. If there are no conditions, I wouldn't know what the use [of EM] might be. (R 19, member sentence implementation court)⁵⁶

Some respondents however suggest the need to provide a separate procedure for (or even exclude) a number of groups, based on the following criteria: (1) offence, (2) psychosocial problems and (3) practical obstacles.

The *first* group, mentioned by several respondents, both from prison and the houses of justice, are individuals who are convicted for, or who have otherwise committed, intimate partner violence. Currently there are no procedural guarantees to prevent individuals convicted for intimate partner violence to execute their EM in the same house as the victim. Minister Madrane of the Walloon-Brussels Federation, however, does not want to fully exclude these cases, but emphasises that EM is only suitable when it is part of a broader follow up and when EM is used to reassure the victim or to enable psychosocial work with the offender (R 29).

When the individual is domiciled at the address where the EM will be executed, no consent from the cohabitants is required for cases of up to three years imprisonment. So it is possible for monitored individuals to execute their EM at the place where their victim lives (R 9, prison governor). If the victims themselves alert the prison governor of ongoing difficulties within the relationship, the prison governor will look for an alternative. However, this procedure is not formally foreseen. So, a procedure that prevents individuals from executing their EM at the residence of their victim is strongly recommended by the respondents. Important in this context is the demand for consent of the cohabitants. It is therefore strongly recommended to make this consent mandatory in all cases.

Secondly, respondents stated that individuals with psychosocial problems might experience more difficulties in executing their EM. People with problems of substance abuse are identified as a particular group. They are said to be often too chaotic to be able to comply with the time conditions of EM. This, however, does not mean that they should be excluded from EM. It does mean that they are in need of guidance and support throughout the execution of their EM.

Thirdly, a justice assistant mentions that, in cases of prison sentences of up to three years, it is more difficult to comply with the requirements of EM for those who do not speak the official language or experience difficulties with reading and writing. It is emphasised that this does not mean that EM would be less valuable for this group, but it is in practice less feasible under the conditions that EM is used today (being without the support of a justice assistant).

So, an individualised approach is highly recommended from different perspectives.

⁵⁶ *'Zeker naar slachtoffers toe, verkrachting, stalking, zeker die stalkers denk ik dat gevaarlijk zijn. Als daar dan geen voorwaarden opgelegd worden, zou ik echt niet weten wat het nut daarvan is, dan.'* (R 19, member sentence implementation court)

4.5 Consent

The issue of consent is frequently discussed in the interviews. It was already mentioned that the obligation to seek consent from the cohabitants of convicted prisoners has changed over time and differs according to the length of the prison sentence. For all types of EM, consent of the monitored individuals is always required, by signing a document in which the EM procedure is explained. In case of refusal of consent, the sentence has to be (further) served in prison.

4.5.1 Pre-trial phase

When GPS-tracking is imposed in the pre-trial phase, consent of the cohabitants is not required, also due to time pressure, as the investigating judge has to take a decision within 24 hours and does not have the time to interrogate or contact the cohabitants. It does happen however that cohabitants write a letter or protest at the moment of the installation. Then, the GPS-tracking will not take place at the foreseen address and another option can be explored, such as another address (*R 17, investigating judge*).

4.5.2 Sentence implementation phase

- **Prison sentences of up to three years**

Consent is demanded by the prison governor when deciding about the application of EM upon the arrival of the convicted person in the prison. If the convicted person does not consent, the prison sentence will be executed in prison.

The consent procedure for cohabitants differs according to whether the individuals will undergo their EM in the house where they are domiciled or not. If the monitored individuals are **domiciled at the EM-address, no consent by the cohabitants is needed**. If the monitored individuals are **not domiciled at the EM-address, consent of the adult cohabitants is required**. Prison governors obtain the cohabitant's consent through telephone contact. If the cohabitants do not agree, the monitored individuals are given the opportunity to look for an alternative option. If no alternative is available, the EM candidates have to await possible alternatives to execute their EM in prison (*R 2, staff member FCEM*). This, however, does not mean the end of EM. Imprisonment is only a temporary solution, until a new abode can be proposed. In practice, there are a lot of requests for changing addresses during the execution of EM, which might be interpreted as an indication of a lack of awareness of the cohabitants of the consequences of what they are consenting to. The interviews indicate that family members are sometimes under pressure to agree with the EM, even when they feel unwilling to receive the monitored individual in their house. It indeed occurs regularly that cohabitants initially consent, but withdraw their agreement throughout the process.

We also have a lot of people, where all of a sudden the mother calls to say that she really doesn't want to have her aggressive son in the house. She is afraid to communicate that. [...] And then you have to look for another address, where you know that if the monitored individual must find a new address that quickly,

chances are that it won't last that long at the new address either. (R 2, staff member Monitoring Centre).⁵⁷

Although the regulations stipulate that the prison governor has to ask for consent, in practice, this task is often passed onto the local prison administration. An interviewee states that it would be better if justice assistants would perform this task. Another respondent points out that the current procedure by phone to ask consent to the cohabitants does not suffice (R 11, director House of Justice).

Asking consent through the phone, what does that say? I mean, if it is a partner who says "he can stay" or "he can come", but there is no further follow-up' (R 14, justice assistant)⁵⁸.

Consent of cohabitants is thus a complex matter⁵⁹ and prison governors have an important responsibility to be alert for the conditions under which the monitored individuals will undergo their EM. Information about the possible impact of EM on the lives of the monitored individuals and their cohabitants is therefore crucial, information, that now often is unavailable. A member of the monitoring management states that this impact is often underestimated.

They immediately think of freedom, but they don't think about what happens afterwards. So consent, yes, it is really necessary and I think that it is really given a bit too quickly, without really knowing what to expect. (R 4, staff member CEM)⁶⁰

Asking for consent of the cohabitants is thus a delicate matter and the method of obtaining consent also has an impact. It is questionable whether doing this by phone is the most desirable or adequate way.

- **Prison sentences of more than three years**

Prisoners must consent with undergoing their prison sentence under EM and with the (individualised) conditions. As they have to take the initiatives themselves to start the EM-procedure, their consent is not an issue.

A social enquiry report is sent to the sentence implementation court and the prison governor will take it into account while deciding about the imposition of EM. Justice assistants do pay a home visit to the cohabitants, which is used to explain the EM procedure and to ask whether the cohabitants have their own conditions for the individual to undergo EM in their house. Justice assistants furthermore collect information about the household situation, the composition of the household, the relationship of the monitored person with the cohabitants, the level of the household

⁵⁷ *Wij zien ook heel vaak dat dat dan ook tijdens het ET, dat wij plots telefoon krijgen van een moeder die toch wel aangeeft dat ze het echt niet ziet zitten om haar agressieve zoon hier thuis op te vangen. Die heeft er bang van en durft dat ook niet te communiceren, ... [...]En dan is het op zoek gaan naar een ander adres waar je ook wel weet van, "als er op zo'n korte tijd aan de justiciële gevraagd wordt om een nieuw adres te vinden, ... dat de kans heel reëel is dat je een ander adres krijgt waar je er ook van uit gaat dat het er misschien niet zo lang zou duren. (R 2, staff member FCEM)*

⁵⁸ *Toestemming vragen, ja, langs de telefoon, wat zegt dat nu? Ik bedoel, als dat een partner is, die zegt vaak "hij mag wel blijven" of "hij mag wel komen", maar voor de rest is er daar geen opvolging. (R 14, justice assistant)*

⁵⁹ Cf. also special issue of the European Journal of Probation (December 2014, vol 6, nr. 3) on this subject.

⁶⁰ *Ils pensent tout de suite à la liberté, mais ils ne pensent pas à ce qu'il y a derrière et donc le consentement, oui, est vraiment nécessaire et je pense qu'il est vraiment donné peut-être un petit peu trop vite, sans trop savoir à quoi s'attendre. (R 4, staff member CEM)*

income and whether there are problems within the household. This is then communicated by the justice assistant to the sentence implementation court and the prison governor (*R 13, justice assistant*).

A prison governor mentions that some individuals prefer to go to prison instead of executing their prison sentence under EM, because compliance with the curfew is too hard for them, and they see (a short) imprisonment as a break from everyday life responsibilities. We do not, however, know the number of prisoners refusing EM or whether those who refuse EM had any previous experience with EM.

There are people who see prison as a break, who are experiencing tough times outside, who have a lot of stress, and who say “no, I will just stay here. Then I won’t have to pay my bills and I don’t have to cook and I don’t have to fight with anyone. I just want some peace.” [...] There are also the ones who have no address and who have to call an entire phonebook to ask “can I stay with you? [...] and who then decide to just remain in prison. That’s their right, to decide that. (R 9, prison governor)⁶¹

Some individuals under EM with a prison sentence of more than three years prefer to max out their prison sentence under EM, and thus refuse a conditional release, because the additional individual conditions linked to conditional release after the EM period might exceed the length of their prison sentence. This tendency of maxing out the whole prison sentence under EM instead of being conditionally released is increasing.

5. Equipment and technology

5.1 Description of the equipment

The equipment consists of three types of EM: classic RF-EM, voice verification and GPS. The costs of the equipment vary according to the technology used:

- Voice verification: €5.56/day
- RF EM: €4.37/day
- GPS: €8.51/day

The equipment is being leased. In the future, there is approximately €4.300.000 per year foreseen for renting the equipment.

The mean all-in cost per day for all the different modalities, including staff costs, is calculated to be €25.

⁶¹ *Er zijn er ook bij die de gevangenis echt zien als een rustpauze, die het buiten heel moeilijk hebben, die heel veel stress hebben buiten en die dan zeggen van “ja, neen, ik blijf gewoon even hier, dan moet ik geen rekeningen betalen en moet ik niet voor mijn eten zorgen en moet ik met niemand geen ambras maken, ik wil hier even tot rust komen”, zo hebben we er ook. Je hebt er ook die eigenlijk geen adres hebben en die dan zo heel de telefoonboek moeten afbellen om te vragen van “mag ik bij u...mag ik bij u...” en die dan op de duur ook zeggen van “laat het maar zo” en die blijven gewoon hier, dat is hun goed recht om dat te beslissen. (R 9, prison governor)*

5.1.1 GPS-tracking

During the pre-trial phase GPS-tracking is used. The equipment consists of a tag, a base unit and a mobile unit. The mobile unit must be plugged into the base unit at all times when the defendants are at home. One of the difficulties with using GPS-tracking, is that the equipment cannot receive a GPS-signal everywhere. In those cases the equipment will switch to LBS-signal (*Location-Based Services*).

Before GPS-tracking was introduced in Belgium, a test phase was conducted where defendants released under conditions were additionally placed under GPS-tracking. Additionally, some members of the then National Centre of EM wore the device themselves. Technical errors were remediated, such as drifting points, where the individuals who wore the device were located in places where they were not actually present. Furthermore, the need for a far-reaching international network with a broad network of cell towers, to guarantee that the GPS-signal would be captured, was observed and subsequently met. However, it still occasionally occurs that there is no GPS-signal, nor a LBS-signal. In those cases, there is no control of the defendants' whereabouts. The interviewed investigating judge is however positive about the strength of GPS-tracking and the increased control, which he finds interesting at the pre-trial phase.

5.1.2 Voice recognition

Since home detention was introduced for prison sentences between four and eight months, individuals can be controlled through voice verification. A special telephone⁶² is installed in the monitored individuals' house. Monitored individuals receive regular telephone calls at random times, and then they have to repeat a pre-given sentence. These sentences are chosen on the basis of their specific pronunciation. The monitored individuals must obtain a minimum matching score of 30 per cent related to the initial spoken sentences in order to have a "match" and not to generate an alarm. If the score is below 30 per cent, they will obtain a mismatch and generate an alarm.

The voice verification system has many drawbacks. The main difficulty is that the voice of the monitored individuals is not recognised when the tone of their voice is distorted, for instance due to illness or when the person has only very recently woken up. This generates false alarms. Also background noise can distort the answer and generate false alarms.

Because the monitored individuals and the cohabitants' night rest must be respected, there are no alarms between 10:00 pm and 6:00 am. This means that the monitored individuals know that there will be no control. If the individual under EM has a job, there will also be no alarms during working hours. Consequently, there is only limited control during significant hours of the day. Therefore, voice verification was initially replaced with classic RF technology for the monitored individuals who have a job. Furthermore, voice verification is considered to be very burdensome, also for family members. The telephone generates a lot of noise when a call is being made, keeping the entire family alert. In recent practice, voice verification is therefore not automatically used anymore, and only applied in (exceptional) cases of medical necessity.

⁶² The telephone can only be used to answer tests sent by the control room and to make phone calls to the control room, although the latter is not recommended due to the bad quality of the phone line.

So after only a few months, the use of the technology of voice verification has been slowly abandoned in practice, for a number of reasons:

- Too little control.
- Too burdensome for the individuals under EM and their cohabitants. Voice verification is said to be too stressful, due to the unpredictability of the phone calls.

You can get a phone call at any time of the day, and then you're not at ease in your own house anymore. [...] I think you are under stress the entire day. You want to go to the bathroom, but what if I don't hear the phone? You want to take a nap, but what if I don't wake up by the phone? Man, I would go insane. I would really go insane. (R 9, prison governor)⁶³

I think that voice verification is much more difficult than regular EM and a tag. Then at least you know "if I stay at home, I'm fine and I can take a nap, take a shower, put on the television really loud. If I'm at home, I'm fine. (R 9, prison governor)⁶⁴

The replacement of voice verification with RF EM has occurred slowly, firstly for the group of monitored people with a professional activity and later on for all monitored people under home detention.

5.1.3 RF

For the biggest group of monitored individuals, RF-EM is used. The individuals receive a tag, which is always attached to the ankle⁶⁵ and a box that captures the signal of the tag is installed in the home.⁶⁶ The box has a standardised range, which is the perimeter in which the box can detect the tag. The range takes the form of a three-dimensional circle and has four standardised sizes: small (studio or small flat), medium (average house or medium to large flat), large (villa) and maximum (institutions). False alarms may be the result of an inaccurate range.⁶⁷ Individuals under EM are never allowed to enter the basement, the attic and the garden.

The equipment regularly generates false alarms, wrongly indicating that the monitored individuals would be out at night, while they are in fact asleep in their bedroom. In case of alarms during the night, the monitoring officer will call the monitored individuals once, and wait until 6:00 am to call a second time. In case of false alarms, the field officer visits the individuals' home to install a new tag or perform the range test again.

⁶³ *Ja, dus, je kan op eender welk moment van de dag opgebeld worden en dan zit je in je eigen huis ook niet meer gerust en dat kan ook heel kort op mekaar zijn, allee, dus, je krijgt om 2 uur een telefoon, je kan om 5 na 2 nog ene krijgen, dat kan tot 3 uur duren, dat kan tot 6 uur duren, allee, je zit volgens mij een hele dag in de spanning, je wilt eens naar de wc, ja, wat als ik dan die telefoon niet hoor, je wil eens een middagdut doen, wat als ik dan niet wakker word van die telefoon, man, ik zou zot worden, ik zou echt zot worden. (R 9, prison governor)*

⁶⁴ *ik denk dat dat nog veel moeilijker is dan gewoon elektronisch toezicht en een enkelband. Dan weet je tenminste van "als ik thuis blijf, dan ben ik in orde en dan kan ik gerust een dut gaan doen, kan ik een douche nemen, kan ik de tv heel luid zetten, ik ben thuis, dus ik ben in orde. (R 9, prison governor)*

⁶⁵ Very exceptionally, the tag will be attached to the wrist, in case of a medical necessity.

⁶⁶ The box also detects signals from other tags that are within the range. Strictly speaking, it is possible to verify if two individuals under EM have contact. However, these alarms are not considered important and are thus not displayed on the monitoring screens.

⁶⁷ The range is the size of the circle in which the receiver box receives the signal from the tag. Once the receiver box does not get any signal from the tag anymore, the offender is assumed to be outside the house.

Problems emerge when walls are constructed with reinforced concrete, because the signal cannot go through these walls. In that case, the box is changed to a box from another mobile phone provider, with a stronger signal (Proximus instead of Mobistar), which usually solves the problem.

In case of a power cut, the control room receives an alarm (power failure). Because the box contains a battery, it will continue to register the presence of the monitored individuals for another 48 hours. The monitored individuals are alerted about the existence of the problem and are required to deal with it. If they fail to regain electricity, and as soon as the box no longer receives a signal (receiver missed call), monitored individuals will be reported to the police and brought to prison. An alarm indicating power failure, combined with an alarm receiver tamper, might also be due to technical problems. A field officer will visit the monitored individual's home and check whether there is a problem and possibly replace the box.

If other electronic devices are placed between the tag and the box, this might interfere with the signal and cause false alarms. Therefore, the box is never installed nearby other electronic devices.

If monitored individuals have moved, false alarms may come in as a result of a different perimeter. The alarms will continue until the technician of the mobile team visits the monitored individuals and performs a new range-test.

Strap tamper alarms might indicate that monitored individuals have manipulated the material, but might also be the result of technical problems. In the latter case, the field officer will visit the monitored individual and install a new tag. These visits are not announced, as the monitored individuals are supposed to be home anyway.

Monitored individuals can go swimming with the tag, take a bath or take a shower. Monitoring officers and field officers always inform the monitored individuals to lift their leg every once in a while when they are taking a bath, because it is said that the signal might disconnect otherwise.

It is difficult to decide whether alarms are false due to technical problems, or whether they are generated by the absence of the monitored individual. Subsequent alarms, and alarms that occur together with 'sanity' alarms⁶⁸, are an indication that there might be a technical problem.

5.2 Equipment Provider

At the time of writing (beginning of 2016) the equipment is provided by 3M. The development of the software system that supports the equipment has been performed by 3M, in collaboration with the then National Centre of EM. 3M can adjust the monitoring software, in order to only file the relevant alarms and not the alarms that are unnecessary due to the specific execution of EM in Belgium. 3M works with a 24/7 permanence system that can be contacted by the Monitoring Centres in case of problems. They monitor the monitoring systems and are notified when a system has

⁶⁸ 'Sanity alarms' are those alarms, which are registered when the equipment is functioning and the box receives a signal from the tag.

experienced difficulties, but the Monitoring Centres have to contact 3M themselves to remedy the difficulties.

3M has provided training for the members of the Monitoring Centres, but because of the current tender, currently the training takes place on a less regular basis and only in case of severe problems. They were provided in English or French, never in Dutch. For the Flemish staff members, the assistance of a translator is foreseen, but this usually led to weird translations.

Despite several attempts, we haven't succeeded to interview a representative of 3M for this research.

5.3 Installation Process

There have always been waiting lists for persons to be put under EM, which could sometimes add up to about 1000 candidates waiting for their anklet after the decision to impose EM was already taken. Several strategies have been developed to improve the efficiency of the allocation of the devices over the group of waiting EM candidates. To date, the Monitoring Centres work with 'slots', which are a fixed number of installations that can be performed per day, allowing for long-term planning. If the number of planned installations largely exceeds the slots for a given period, waiting lists are created. At the time of writing, waiting times exceed six months and waiting lists add up to 1000 persons.⁶⁹ Also, a set of criteria for priority (de)installations have been developed. Priority installations must normally be completed within two days after the Monitoring Centre is informed by the prison governor or the sentence implementation court about the decision of EM. Priority (de)installations are:

- EM for prisoners with a prison sentence of more than three years, as they are awaiting for EM in prison.
- Cases that are determined to be important by the prison governor, because it is regarded to be undesirable that the execution of the EM will be further postponed (cf. *'interruption of punishment'*).
- GPS-cases: the GPS equipment is installed as fast as possible, usually within 48 hours after the decision of the investigating judge. In the remaining time, the defendant remains in prison.
- Revocations.

The installation of the boxes in the homes is performed by field officers of the Monitoring Centres, who always operate alone.⁷⁰ At the day of the installation and de-installation of the equipment, monitored individuals must stay at home for the whole day. They must show their identity card so that the field officer can verify their identity. When they are not present at the moment of the installation of the material, or when they do not show their identity documents, they will be reported to the police and immediately be brought to prison.

⁶⁹ In the past, Belgium was struggling with waiting times of up to two years, also due to the obligation to conduct a social enquiry report before the start of EM. Consequently, the procedure for applying EM was revised, and the social enquiry report became optional. This has also diminished the waiting times.

⁷⁰ Very exceptionally the installation is done by two field officers, only after a decision of the monitoring management.

After the tag has been attached and the box installed on a fixed underground in the centre of the house, the field officer performs a range test. The monitored individuals are asked to walk around the indoor perimeter and place their ankle in every outer corner of the house, to check whether the box can trace the signal of the tag. The range test is performed in communication with the monitoring officers at the control room in Brussels. They initiate the range test behind their screen in the control room and contact the technician when the activation has successfully been completed. This range test itself has a standard duration of fifteen minutes and in most of the cases the field officer can finalise the range test in less than fifteen minutes. However, it can take a while before the monitoring officer is able to start the range test, due to the waiting time before the signal is transmitted into the EMS-software⁷¹ used by the control room. A standardised document is filled in with information of the monitored individual, who signs the document. The field worker also draws a sketch of the house, which can later be used to check where the box was installed.

The installation procedure of the GPS equipment is slightly different. The field officer goes to the prison where the defendants are detained awaiting the installation of their equipment. The tag is attached in prison and then the individuals under GPS go to the residence where their remand custody will be executed. The monitoring officer in the control room specifies the route for defendants to take in real time. When the defendant and the field officer arrive at the house, the base unit is installed.

5.4 Storage and Maintenance

The maintenance of the equipment is performed by a private company, NAOS. After the field officer has collected the equipment from people's homes, the material is cleaned, using industrial cleaning techniques. When the device is taken back because of technical problems, the remaining procedure will depend on the exact problem:

- Strap: problems with the tag straps are dealt with by the Monitoring Centres.
- Body and low battery: problems are dealt with by 3M. In these cases, the devices are sent to 3M in Israel.

In the case of damaging the equipment, the Monitoring Centres will report the individual under EM to the police, or, if the individual is convicted to a prison sentence of more than three years, send a request for reporting to the prosecutor of the sentence implementation court. Equipment might also be damaged as a result of an accident. The management of the Monitoring Centres has to assess whether the damage of the material occurred on a deliberate basis or by accident. According to a member of the monitoring management, in case of doubt, individuals under EM will always be reported to the police.

In case of deliberate damage, monitored individuals must pay for the equipment, which is a decision of the monitoring management. When individuals refuse to pay these costs, they are put on a 'black list' and will be prohibited from getting EM in the future again.

⁷¹ Software used by the control room to control alarms and activate the equipment.

6. Monitoring process

6.1 Risk assessment

6.1.1 The selection of the individuals to be put under electronic monitoring

The assessment of risk differs between cases with a prison sentence of up to three years under EM and cases of a prison sentence of more than three years. For the first group, no risk assessment is foreseen. According to a respondent, this is an intentional policy, linked with a general resistance to classify monitored individuals in advance into fixed groups (*R 7, Assistant director-general, general administration Houses of Justice*). Instead, prison governors make an estimation of the desirability of placing an individual under EM and have to filter out too high-risk cases based on their knowledge of the dossier. However, due to prison overcrowding, prison governors are under pressure to put persons with a prison sentence of up to three years almost automatically under EM. There is thus a clear tension between the pressure to place a maximum number of prisoners under EM on the one hand and the potential risk of placing high-risk individuals under EM on the other.

For prisoners with a prison sentence of more than three years, the psychosocial service (of the prisons) advises the sentence implementation court about the prisoners' suitability for EM, based on a structured clinical assessment, a personality inquiry and an assessment of criminogenic risk factors. The reports will also include an evaluation of the reintegration plan of the EM-candidate, containing information about work, educational training, and housing. These reports are considered as comprehensive and a useful tool for the further follow-up of the individuals under EM (*R 14, justice assistant*) and are regarded as a forerunner of the preparation for a later conditional release. If prisoners with a prison sentence of more than three years request EM and are found to pose a significant risk for recidivism or to harass the victim(s), and if it is not possible to impose conditions that can eliminate this risk, the prisoner will not be placed under EM (*R 19, Member sentence implementation court*).

6.1.2 Risk management

Although most management staff minimise the risks for personnel that are in direct contact with monitored individuals under EM by stating that, in the past, there have been almost no incidents, an FCEM management member points out that there seems to be increasing aggression from monitored individuals towards the field workers, however, this is mainly on a verbal level. This is attributed to the growing frustrations with the monitored individuals due to a lack or absence of support and assistance (of justice assistants). This and the increasing demand for attention to the safety of the EM field workers was also mentioned at a presentation of two members of the monitoring EM staff at a Conference in Brussels on 7 December 2015.⁷²

Field officers do not have access to any (judicial) information about the monitored individuals before entering their house. It is assumed that this enhances a neutral approach of the monitored individuals.

There are two ways to deal with problematic situations which arise during the house visits. When the field officers feel unsafe, they are allowed to leave the house

⁷² Conference Houses of Justice. *Towards a future Flemish Policy*, Brussels, 7 December 2015.

immediately, without completing the installation procedure. The monitored individuals will be reported to the police to be brought to prison. This does, however, not automatically mean the end of EM, as a new date for the installation can be planned and the individuals can be put under EM relatively quickly after the reporting.

There is also an alarm system, alerting the planning service when the technician is inside a house for more than forty minutes. However, observations show that, in practice, this alarm system is not rigorously applied.

In practice, EM-field workers manage risks on an individual basis. It is also mentioned that aggression is preferably handled by a humane and social approach of the monitored individuals, based on respect, understanding and empathy.

6.2 Keeping track

The monitoring officers from the control room keep track of the monitored individuals. Monitored persons with a sentence of up to three years have only contact with the staff of the Monitoring Centre during their EM. For prison sentences of more than three years, justice assistants are also involved. When the monitoring officers are acquainted with one of the individuals under EM, they are supposed to report this and they will not be allowed to be involved in this specific case.⁷³

Individuals under EM, whose case does not involve a justice assistant, regularly contact the control room to ask for information about their EM or with different kinds of requests for changes to their time schedule.⁷⁴ As monitored individuals are subjected to a standard scheme, the Monitoring Centres have to be contacted for all the possible exceptions and most requests have to be motivated and proved with certificates, receipts and other forms of written attestations. This makes EM a very bureaucratic form of punishment, for staff members as well as for the monitored individuals. It also presumes the necessary communicative, writing and administrative skills of the monitored people, which is, regarding their often disadvantaged social and literacy background, not always evident. It is mentioned that a lot of phone calls from monitored persons with a prison sentence of up to three years are received. Many requests for changes in curfews are approved, which indicates a certain level of flexibility in practice.

For a number of exceptional circumstances, alternative methods of keeping track have been developed.

⁷³ It is unclear to what extent this rule is actually complied with by the monitoring officers in practice.

⁷⁴ An issue that regularly initiates questions is **penitentiary furlough**. The flexibility of taking penitentiary furloughs differs according to the length of the prison sentence. Individuals convicted to a prison sentence of more than three years get penitentiary furlough according to a flexible procedure, whereas individuals with a prison sentence of up to three years have to follow a much more standardised procedure. The dates of the monitored individual's penitentiary leave are communicated through written standardised letters, sent to the monitored individual's address, but which apparently raise a lot of questions as the monitoring officers receive a lot of calls requesting clarifications. Individuals under EM can request a change of date of their penitentiary furlough. They must motivate their request and the management decides whether or not to grant the request. If individuals under EM receive their penitentiary leave on another day than a Saturday or a Sunday, they are still entitled to their weekend hours, with free time between 8:00 and 12:00am. Penitentiary leave for individuals with a prison sentence of more than three years can be taken up when the individual under EM prefers, even on weekdays, as long as the penitentiary furlough ends by 10:00 pm. The arrangements to get penitentiary furlough are taken by the justice assistant, in consultation with the individual under EM. This is another example of the two-track policy for both groups and where the help of justice assistant eases the bureaucratic burden for those with a longer sentence.

- ***Deafness***

In Belgium, a limited number⁷⁵ of deaf individuals have been placed under EM. Their deafness complicates the communication during the execution of EM. The management of the Monitoring Centres keeps track with them through e-mail.

Deafness also complicates the installation of the equipment, because the field officers are not trained to communicate through sign language. In practice, family members of the monitored individual will give assistance.

- ***Electronic monitoring in institutions***

A number of special precautions are taken when individuals undergo their EM in an institution, other than a prison, e.g. to treat a drug addiction. In these cases the prison governor asks for the consent of the institution for the individuals to execute their EM in the institution.

If the institution is not too big in size, it can be covered with the standard perimeter of the device. The range will be set at 'large' and the presence of the individual can be monitored in the entire institution. If the institution consists of a main building and several outer buildings, it is not possible to cover the entire institution. Then the monitored individuals receive very broad curfew hours, so that they can move around the facility in order to attend treatment programs. From a certain hour onwards, the presence of their tag must be detectable in their rooms.

- ***Bathroom outside the house***

Monitored individuals might have a house where the bathroom is located outside the house. In these cases the bathroom will not be included in the range, because this would allow them to go into the yard, which is prohibited. In practice, the monitored individuals must call the monitoring centre before they go to the bathroom to warn the control room about this foreseen short absence.

- ***Night work***

If monitored individuals perform night work, which is said to happen regularly, they can get their free hours eight hours later, so that the free time does not interfere with their night sleep.

6.3 Changing circumstances

6.3.1 Curfew hours

Monitored individuals are subjected to a time schedule, with pre-defined curfew and non-curfew hours. This schedule is standardised for those with a prison sentence of up to three years and individualised for those with a prison sentence of three years or longer. This is an important aspect of the two-track policy and practice that is developed following sentence length.

⁷⁵ It is said a few cases per year.

Monitored individuals convicted to a prison sentence of **up to three years** without a useful daytime activity, get a limited number of free hours per day. For monitored individuals convicted to a prison sentence of up to three years, the curfew hours are fixed from 8:00 am until 12:00 am. If they have a part-time activity, they receive eight free hours per day, in case of a full-time activity they receive twelve free hours per day. Exceptions on the curfew rules are however often requested and granted (*see section 5.2.*).

When undertaking a useful daytime activity, individuals under EM must take the initiative themselves to request a timetable for work/education. Any request for free hours has to be submitted using standardised documents, called 'annexe 5'⁷⁶, which are sent by fax or e-mail by the monitored individuals to the monitoring centre. Monitored individuals can also send the documents by post, but it usually takes too long for the documents to arrive at the control room. The address of the Monitoring Centre that is communicated to the monitored individuals is not the same as the address where the control room is actually located.⁷⁷ Therefore it takes a while before these letters arrive at the Monitoring Centre, which delays the procedure.

Individuals with a prison sentence of **more than three years** receive at least four free hours a day, administered in consultation with the justice assistant (thus not necessarily fixed in the mornings), and an additional five free hours per week. These additional hours can be spread throughout the week, or clustered on one day, but must be taken between 8:00 am and 6:00 pm. The working hours and the free hours do not have to constitute one block, nor do the free hours. It is possible, for instance, that monitored persons receive free hours in the morning to drop off their children at school, and another block in the evening, to pick them up from school.

In annexe 5, monitored individuals describe the requested timetable, together with a motivation. All relevant documents to proof the existence of the activity have to be added, i.e. job contracts, the '*dimonanumber*' and pay check in case they work as employees. Employers must send their registration in the database (*kruispuntbank*) and invoices. It is possible that monitored individuals work as employees, but do not have a job contract in advance, e.g. in case of an interim job. In cases of urgency or situations that cannot be foreseen in advance when they work in a flexible labour contract⁷⁸ the monitoring officer can give the individual free hours on '**case management**', which means that the monitoring officer can grant free hours based on a short-notice telephone call by the individual under EM. When free hours are received 'on case management', annexe 5 does not have to be sent in advance and the monitoring management does not decide. Besides temporary jobs, a medical emergency is another example for case management. Monitored individuals have three days to send the necessary documents to the monitoring management, using e-mail or fax. If the documents are not received in time, the individual under EM will be sanctioned according to the formal breach procedure (*see section 6.1.*). Justice assistants do not have the authority to grant free hours using case management,

⁷⁶ Monitored individuals receive the empty documents to be filled in, including an annexe 5, from the prison governor, which they have to fill in and send to the Monitoring Centre or the justice assistant if applicable. Monitored individuals only receive one copy and are therefore advised to take a number of copies themselves, because when they run out of annexes, they have to go to the prison themselves for new documents, which is not a real user friendly way of working.

⁷⁷ We assume that this is for security reasons.

⁷⁸ For instance, when the individual under EM is called for performing a professional activity the next day.

because this might lead to miscommunication and false alarms. In these cases, also persons with a prison sentence of more than three years contact the monitoring officers, who then decide about approving free hours on case management. Monitoring officers can thus decide autonomously about the approval of free hours on case management, without having to wait for a decision of the monitoring management. However, there are clear guidelines, which leaves only little room for discretion in the decision-making.

If monitored individuals cannot go to work, e.g. due to **illness**, the Monitoring Centre (and where applicable the justice assistant) must be informed by phone by the monitored person. If not, an alarm will go off and the monitoring officer will contact the person by phone. A lack of initiative from the monitored individuals to inform the Monitoring Centre about changes in their working scheme will, however, not result in initiating a breach procedure.

If persons convicted to a prison sentence of up to three years under EM are unable to go to work due to illness, they receive the standard free hours from 8 am until 12 am. For those with a prison sentence of more than three years, the justice assistant decides about the replacement curfews in consultation with the monitored individual, who has more flexibility in defining the new time schedule.

Individuals who participate in an educational program, receive standardised free hours from 8:00 am until 12:00 am during school holidays.

Non-curfew hours administered for **work** are limited. In case of full-time work, monitored individuals automatically receive twelve non-curfew hours a day, which cannot be exceeded, not even if this would be necessary to execute the professional activity. Exceptions to this maximum amount of free hours are only allowed very rarely. Monitored individuals are also only allowed to work a maximum of six days per week. Observations show that requests to work seven days a week are filed to the monitoring management, but will often not be approved. Working late, on the other hand, is allowed, if this only occurs exceptionally and if monitored individuals can provide proof of their overtime with a certificate.⁷⁹ When they go to work but return within five hours after having started, the free hours will be cut there and the remaining non-curfew hours are lost. When they work more than five hours, they still receive the full twelve free hours.

Monitored individuals are also allowed to perform volunteer work, but they can only receive non-curfew hours when volunteering is defined as an individualised condition. Because individuals with a prison sentence of up to three years rarely get individualised conditions imposed, they will only seldomly be allowed to change their curfew to do voluntary work. This is however not the case for individuals with a prison sentence of more than three years, where volunteer work is accepted to request working hours. Professional athletes are also allowed to receive working hours, because professional sports are considered as employment.

When monitored individuals do not have a job, but wish to go to a job interview, they are advised to schedule the job interview during their free hours between 8:00 am and 12:00 noon. Again, there is more flexibility for those with a prison sentence of more

⁷⁹ Examples in practice show that there are limitations to this possibility of working late. A monitored individual, who was systematically working late, was refused this opportunity after some time, due to the systematic nature of the overwork.

than three years under EM, as it is the justice assistant who approves (additional) free hours.⁸⁰ If these free hours do not suffice, the Monitoring Centre must be warned about the late return and individuals under EM must ask the employer for a certificate. This creates, however, a situation where candidates have to tell their potential employer about their EM, or lie about it.

As non-curfew hours for work are divided into working hours, including hours for transport, free hours are registered separately in the monitoring software. Consequently, alarms will go off when the monitored individuals are still at home, but should have left for work, or when they return early during working hours.⁸¹ When they leave late or return early during their free time, no alarm will go off.

For individuals with a prison sentence of up to three years, the management of the Monitoring Centres decides whether or not to approve the request concerning curfew hours. (Dis)approval is mainly based on the (in)completeness of the request. The curfew hours will always be administered in one block of free hours. This means that free hours can never be separated into different blocks (sets of free hours), which, however, might be useful for individuals under EM who have children and who have to bring them to school and pick them up at the end of the day. It was stated during an interview that requests for exceptions are rarely approved for this group. The procedure is different for individuals with a prison sentence of more than three years. Here, the justice assistants decide about the request and free hours can be administered in different parts.

All this confirms the two-track policy in the execution of EM where individuals with a prison sentence of up to three years are subjected to a stricter schedule system (less flexibility), compared to prisoners with a longer sentence (flexibility in consultation with the justice assistant at the start of the EM). It is however mentioned by a member of the monitoring management that many exceptions and changes to the schedules are requested and granted, suggesting that there is still a reasonable amount of flexibility for the monitored persons with a sentence up to three years.

6.3.2 Change of address

Individuals under EM very often change their residence, i.a., due to difficulties with cohabitants (see also section 3.4). Permission of the monitoring management is needed to change addresses. The monitoring officers inform the monitored individuals about the management's decision. When moving house during times of shortage of staff, monitored individuals have to take the device themselves and take it to their new address, where they have to plug it in themselves. They must inform the control room by telephone right before moving the device and after having plugged it in again. Afterwards a field officer will come to perform the range test and adjust the periphery of control at the house.

Also the de-installation process has evolved recently and the collection of the devices varies with the workload of the field officers. If possible, the field officers collect the

⁸⁰ Note that for those convicted to a prison sentence of more than three years, the prisoner must in practice already have a prospect of a job before EM will be imposed.

⁸¹ No alarms will go off when the monitored individuals leave and return during their free and thus uncontrolled time. This difference is made because monitored individuals may decide to remain inside during their free hours, outside their work. However, if they do not go to work, they will receive a standardised curfew from 8 am until 12 noon. Therefore, it is necessary to control whether they they will NOT be home during their working hours.

equipment at the monitored individual’s house. If the workload is too high, the monitored individuals have to take off the equipment themselves and bring it to the prison on their own expenses (this is said to be a temporary measure, due to lack of field officers to detach the tag). So the field officers can collect a number of devices at once at the prison, and save time and transport costs.

For individuals with a prison sentence of more than three years, justice assistants decide about the request to move and report this to the monitoring management and the sentence implementation court. The monitoring management approves the change of address after the move, which is then registered in the Siset software. This information is immediately accessible for the justice assistant and the prison governor, who also have access to the Siset software.⁸²

6.3.3 Hospitalisation and medical emergencies

In case of hospitalisation during an EM period, the electronic control is put on hold during the time of the hospitalisation. Alarms that are generated during the absence of the individual under EM are placed “in process”, and not handled.

In cases of medical emergencies, when monitored individuals have to urgently see a doctor for instance, they are allowed to do so. Afterwards, they must send a certificate to the Monitoring Centre. If, however, the situation could have been foreseen, free hours will be refused. For example, going to a foreseeable medical appointment during curfew hours will be sanctioned according to the official breach procedure. Other examples are visits to a general practitioner for on-going treatments or methadone treatments.

Table 6 Decision-makers in the monitoring process: overview		
	up to 3 years of imprisonment	+ 3 years of imprisonment
Risk assessment	Prison governor	Psychosocial service prison
Keeping track	Monitoring centre	Monitoring centre Justice asstant
Changing circumstances	Monitoring centre	Monitoring centre Justice assistant

6.4 The end of electronic monitoring

EM can end in different ways.

- **Revocation.** When monitored individuals have violated the conditions of EM or the time schedule, they are reported to the police, who bring them to prison. The file is closed at the Monitoring Centre.
- GPS-tracking ends when **remand custody ends**, which is decided by the investigating judge or the Investigation Court and communicated to the Monitoring

⁸² Previously, the justice assistant and the prison governor were informed by the Monitoring Centre by fax. The introduction of the Siset software aims to increase the procedure’s efficiency by giving all relevant actors immediate access to the database, so that other ways of communication become redundant.

Centre by the investigating judge’s administration. In practice, both the prison administration and the investigating court’s administration communicate the end of the GPS-tracking to the Monitoring Centre.

- For individuals with a prison sentence **of up to three years**, the EM will end when they are provisionally released by the prison governor, i.e. after having served one third of the prison sentence under EM. The prison governor informs the Monitoring Centre about the release, by sending a letter one or two weeks in advance.
- In case of a prison sentence of **more than three years**, the EM will end when monitored individuals are conditionally released by the sentence implementation court or at the end of their sentence.

Data on the possible ways EM can end give an idea of the success of EM in terms of completion rates. However, it is difficult to obtain reliable data. Figure 5 gives an overview of the different ways EM ended in 2015. The categories give an indication of the variations between the different modalities. Revocation/Discipline means that there has been a disciplinary measure or a revocation. A disciplinary measure does not necessarily lead to a revocation but it gives an idea of the problems encountered during EM.⁸³

Figure 5 End of EM and disciplinary measures according to different modalities in 2015, in absolute numbers and percentages

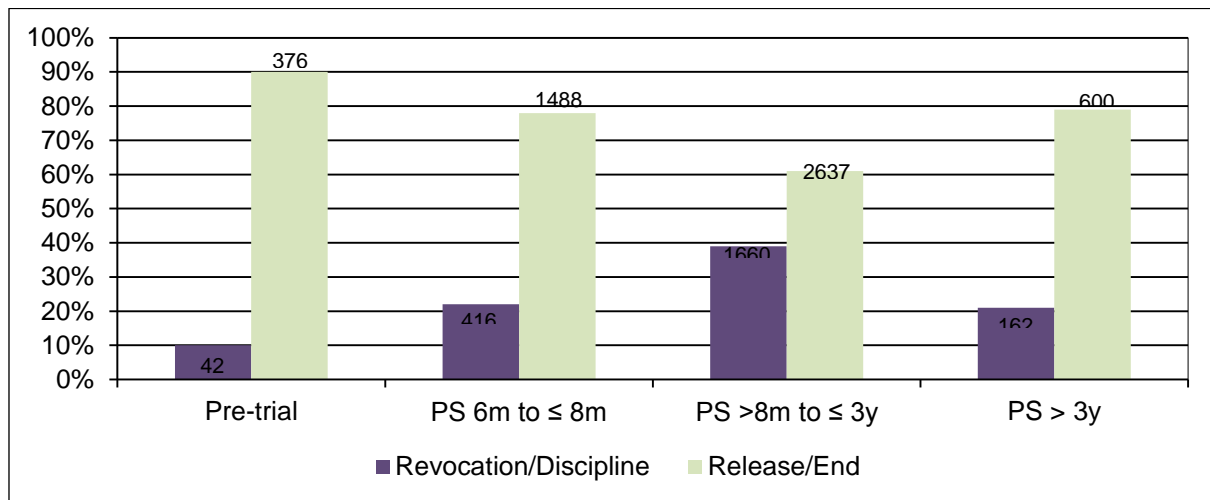


Figure 5 shows that the majority of EM cases end successfully. Sentences of between 8 months to up to and including 3 years have the highest disciplinary measures/revocation rates. Furthermore, data with regard to 2014 indicate that there is an increasing proportion of revocations in 2015, compared with 2014.

These data do not give information about the reasons of revocation. Possible explanations might be the different preparation, selection or follow up (with or without justice assistant) of the monitored persons, different decision-makers (monitoring management or sentence implementation courts) or other factors related to the the

⁸³ It has to be mentioned that the interpretation and categorisation of these data are very difficult. Getting these data right is an issue for future research.

characteristics of the monitored individual, the operational process or of the decision-makers.

6.4.1 De-installation of the equipment

The de-installation process has evolved recently and the collection of the material varies with the workload of the field officers. If possible, the field officers collect the equipment at the monitored individual's house. If the workload is too high, the monitored individuals have to take off the devices themselves and bring them to the prison on their own expenses (this is said to be a temporary measure, due to lack of field officers to detach the tag). So the field officers can collect a number of devices at once at the prison, and save time and transport costs.

7. Compliance and breach procedure

7.1 Violations and breaches

A distinction is made between two broad categories of violations:

1. First type violations: violations against curfew hours.
2. Second type violations: violations other than those against curfew hours: manipulation of the device, insults, threats, non-compliance with other conditions.

For the first type of violations, monitored individuals are not sanctioned immediately, but only after having cumulated a number of violations. When a violation of the second type is committed, an immediate reaction will often follow, depending on the estimated severity and deliberate character of these violations.

Not being reachable for more than four hours is considered to be a serious violation, and monitored individuals will be reported to the police right away and be taken to prison if caught. Shorter periods of absence are minor violations against curfew hours.

Violations against curfews can be legitimised by providing a certificate within three days to the Monitoring Centre. The management staff decide whether the non-compliance with the curfew is a violation or not and whether a breach procedure is started.

Violations are categorised in alarms generated by the software under the following categories:

- Present must be out
- Left home late
- Power failure
- Tilt
- Returned early

- Left during curfew
- Power too high
- Receiver tamper
- Left after early return
- Strap tamper
- Body tamper

Overall, participants in this research have mentioned that about 200 different kinds of alarms exist.

7.2 Who deals with violations?

The breach procedure differs considerably according to the different phases of the criminal justice system and to sentence length.

7.2.1 GPS tagging and tracking at the pre-trial phase

Because of the need for permanent control in real time, a night shift was introduced at the monitoring centres when GPS tagging and tracking came into practice. If defendants under GPS violate their conditions, the monitoring officer will immediately, on a 24/7 basis, inform the monitoring management, who will subsequently inform the investigating judge.

Investigating judges will only revoke GPS-tracking when they consider the violation to be sufficiently severe. Nevertheless, all violations, even the less severe violations, have to be communicated by the monitoring management to the investigating judge, who has to decide about the reaction to the violation. In case of non-compliance the GPS-tracking will be converted into remand custody in prison.

7.2.2 Prison sentences of up to three years

The Ministerial Circular Letter⁸⁴ describes the breach procedure very clearly and detailed, and this procedure is rigorously applied in practice. The monitoring management discusses the cases during meetings and decide about which behaviours and alarms constitute a violation.

For every violation monitored individuals receive an information letter and the prison governor is informed. It is important that these letters are sent promptly, as the monitored individuals must know when they do not comply with the adjusted curfew.

The monitoring management has the authority to report monitored individuals to the police, by sending a standardised document by fax requesting the police to pick up the individuals under EM and bring them to prison. After an individual under EM has been reported, the monitoring officer phones the police to check whether they have received

⁸⁴ Ministerial Circular Letter ET/SE-2 of 17 July 2013, 'concerning the regulation of electronic monitoring as a modality for prison sentences of which the executable part does not exceed three years'.

the request to take the monitored individual to prison. Also the local prison administration is contacted by phone, to check whether they registered the re-entry of the prisoner. After a monitored individual has been reported, the file is closed by the Monitoring Centre.

The prison governor then decides whether or not individual under EM is taken into custody. And although there is a high level of detail in the breach prescriptions for the monitoring management, this is not the case for the decision-making of the prison governors, who enjoy a much higher level of discretion. Decisions and the 'number of chances' monitored individuals receive vary between prison governors, leading to differences in revocation policy between prisons. Differences in revocations between prisons may be the result of differences in the composition of the prison population, the level of prison overcrowding or different local policies of the prison governors. The discretion of the prison governor, and particularly the swift release from prison after a recall to prison, is regarded as problematic by the monitoring staff and the justice assistants, as it undermines the credibility of the EM measure and the breach procedure.

Actually, that is a big problem, I think. [...] They are being imprisoned again. Then, they often spend only one day inside, before they are being placed in 'interruption of their sentence' again in order to wait for an activation of EM on a new date. Some even only spend a couple of hours in prison. Then you don't feel it. (R 13, justice assistant)⁸⁵

This quote thus questions the potential deterrent effect of a revocation and recall to prison, if the recalled individual is released from prison so quickly again.

When the monitoring management decides not to sanction a violation, the violation is deleted from the system. This occurs, for instance, when monitored individuals are late but able to justify their absence with a certificate, e.g. of medical urgency. A respondent from the monitoring management emphasises the need for contextualised information when making a decision about whether to label an alarm as a violation. The technical information, delivered by the monitoring software, does not suffice to take these decisions.

We have a few guidelines, based on the Ministerial Circular Letter and the internal guideline, of course. But you can see that there is still a grey zone. And that will remain. I am in favour of that. It is important. Because as soon as you say, no, there has to be uniformity [...] the story stops for us. Because you are still dealing with people. And then you have to be able to make exceptions and take the context into account. (R 1, staff member Monitoring Centre).⁸⁶

⁸⁵ *Eigenlijk is dat een zwaar probleem, vind ik. Onder de drie jaar, heb ik het nu over, he. Voor onder de drie jaar, als ze een overtreding begaan, ze worden geseind. Ze worden weer opgesloten. Dan zitten ze vaak maar een dag terug binnen, vooraleer ze weer in strafonderbreking geplaatst worden voor een aansluiting op een nieuwe datum. Sommigen maar een paar uur. En dan voel je dat niet, he. (R 13, Justitieassistent)*

⁸⁶ *We hebben daar wel een aantal richtlijnen rond, gebaseerd op de omzendbrief, en de dienstnota, uiteraard. Maar dan zie je toch wel steeds ergens met een grijze zone. En die blijf je behouden. Ik ben ook een voorstander dat die daar blijft... Die is belangrijk. Want van zodra je zegt van nee, je moet uniformiteit hebben, je moet zwart-wit kunnen beslissen, dan zeg ik dat het verhaal hier ook voor ons stopt. Want je werkt hier nog altijd met mensen. En dan moet je kunnen afwijken, en een context in overweging kunnen nemen (R 1, staff member FCEM).*

Ideally, this information is provided in the reports of the justice assistants. However, due to the limited contact between monitored individuals and justice assistants, the monitoring management often has to phone the monitored individuals themselves to gain the necessary background information of the violations. For instance, people who go to the medical emergency service every day: this can be because they suffer from a bad medical condition, but it is also possible that, according to the staff, they go to the emergency room too often or too rapidly,.

The **responses to first type violations** against the curfew are described in the Ministerial Circular Letter and are taken in different stages: ⁸⁷

- **First violation:** information of the individual under EM;
- **Second violation:** warning of the individual under EM;
- **Third violation:** recalculation of the free time by deducting the number of minutes that monitored individuals are too late from the free hours.

Individuals convicted to a prison sentence between eight months and three years receive feedback about the decision from the justice assistants, who have written the breach report. The prison governor is informed. The justice assistant thus has, above all, a controlling task for this group of monitored people. However, it is difficult for the justice assistants to play a role of importance in these cases, because of their restricted contacts with the individuals under EM. The idea is, however, that if there are important underlying problems, the justice assistant should be able to discover and address these problems during a phone call.

- **Fourth violation and further:** the prison governor can decide to extend the period under EM with a maximum of six days, or revoke the EM, which means that monitored individuals are recalled to prison to serve the remainder of their sentence in prison. However, we already mentioned that recalled monitored individuals can be placed again on EM quite soon.

If the individual under EM is reported to the police, the houses of justice and the prison governor are informed by using annexe 11 and 12 forms (standardised forms).

It has been mentioned during the interviews that the letter that is sent to the individual under EM is considered to be difficult to understand. A justice assistant (*R 13*) points out that she is often contacted by monitored individuals to explain the content of the letter.

In summary, reactions to violations are always communicated to the monitored individuals by written letters. For every violation, even the minor ones, the monitoring management decides. Decisions with regard to breach are never made on an automatic basis. Monitored individuals can provide evidence for the reason for their non-compliance with the curfew order, e.g. by providing a certificate to prove they had to work late. Monitored individuals also have the opportunity to explain what happened.

⁸⁷ Ministerial Circular Letter ET/SE-2 of 17 July 2013, 'concerning the regulation of electronic monitoring as a modality for prison sentences of which the executable part does not exceed three years'.

In that case, the monitoring management decide whether or not the explanation is plausible:

It can occur that they are stuck in traffic, but there are also people who are stuck in traffic five times a week, you see. So, that is what I mean by looking at it on an individual basis.' (R 9, Prison Governor)⁸⁸

7.2.3 Prison sentences of more than three years

As more actors are involved in the breach procedure for these cases, the procedure is more complicated and takes longer.

The monitoring management cannot report a monitored individual to the police directly, but must request the sentence implementation court to do so. It is mentioned in several interviews that the response of the sentence implementation court on violations against curfews is less strict or prompt than of the monitoring management. In practice, sometimes the number of violations against curfew hours can exceed 40 per individual, without a reaction of the sentence implementation court (R 7). The justice assistants make a first assessment of the seriousness of the violation. Compliance with curfew hours is regarded as only one aspect of a general assessment. If the monitored individual is complying with all the other conditions, e.g. participating in treatment, the sentence implementation court may decide not to sanction curfew violations.

In case of curfew violations, the Siset-database registers an alarm. The justice assistant then contacts the individual under EM to ask for a certificate. If negative, the justice assistant informs the Monitoring Centre, and the management will decide whether it is a violation or not. If positive, the free hours will be recalculated after the third violation. In case of severe violations against the curfew conditions, e.g. when the individual under EM was away all night or several days, the justice assistants inform the prosecutor of the sentence implementation court, who then decides whether this will lead to an immediate arrest. The violation will be discussed later during a court hearing of the sentence implementation court.

Because the conditional release date of individuals under EM with a prison sentence of more than three years is uncertain due to the discretionary release system, it is much more difficult to recalculate the free hours, or, in case of severe curfew violations, to extend the period under EM. A prompt reaction to the violations by extending the period under EM is therefore often not possible. (R 2, staff member Monitoring Centre).

The justice assistant assesses the usefulness of reporting certain violations to the sentence implementation court. Violations that are considered to be less severe, e.g. missing an appointment for a drug treatment, are mainly not reported to the sentence implementation court (R 13, justice assistant). The justice assistant, although not formally in power to take direct decisions to breach, has thus a quite important impact on the start of breach procedure.

If individualised conditions are violated, the justice assistant or the police (for conditions that must be controlled by the police) file a report to the public prosecutor of the sentence implementation court, who decides whether or not to bring the case before

⁸⁸ *Dat kan eens een keer maar je hebt er ook bij die 5 keer in de week in de file staan, versta je, dus, dat bedoel ik met individueel bekijken. (R 9, prison governor)*

the sentence implementation court. This procedure is said by respondent 13 to be very swift.

The sentence implementation court has significant discretion and uses this discretion to apply a policy of not being too strict on persons with multiple problems. The assessor of the sentence implementation court, who was interviewed as part of this research, states that the court will always take individual circumstances into account in cases of curfew violations or non-compliance with individual conditions. It is stressed that members of the sentence implementation court are sensitive to the difficult situation of individuals under EM, for example, for drug addicts. The difficulty for individuals with problems of substance abuse not to relapse is recognised. Therefore, the sentence implementation court will not immediately revoke in cases of relapse. Individuals under EM can explain their behaviour during a court hearing and there will a report to the sentence implementation court from the justice assistants. Taking all this information into account, the members of the sentence implementation court decide whether their explanation will suffice. If not, it can and will decide to revoke the EM and recall the monitored individual to prison.

7.3 Potential improvements of the breach procedure

Potential improvements identified by the respondents in this research, are situated in different domains.

Concerning the decision-making authority with regard to breach. An option that has been put forward by research participants is to give the monitoring staff decision-making authority, not only to determine what constitutes a violation, but also to determine the reaction in response to the violation, which is now taken by the prison governor. This would solve the inconsistencies in revocations between prisons (*R 2, staff member Monitoring Centre*). However, other interviewees state that actors who are involved in the implementation of EM should not be allowed to take decisions about the imposition and revocation of EM. It has also been suggested that an independent commission should be responsible for taking breach decisions (*R 10, House of Justice*).

The decision-making of the prison governor with regard to revocation can be linked to the issue of effectiveness of EM. The breach procedure is considered to be the 'big stick', but due to a lack of consistency in the revoking policy, this might not sufficiently deter or motivate the individual under EM to comply with the conditions.

We report it, but then it ends up with the prison governor, who gives the individual another chance, or they would take them in and the next day, you could request an EM again. Yeah, then you are undermining the measure and it becomes much more difficult to motivate the man to comply with his conditions, because he knows..., the big stick of Justice should always be there to do something. If they sense that that stick is completely gone, it becomes difficult to activate people towards care. (R 10, House of Justice)⁸⁹

⁸⁹ *wij melden dat, maar dan kom je terug bij de gevangenisdirecteur terecht, die de man nog eens een kans gaf, of ze namen hem dan binnen en de volgende dag mocht hij terug ET aanvragen. Ja, dan ben je de maatregel aan het uithollen en is het veel moeilijker om de man nog te motiveren dat hij zijn voorwaarden gaat naleven, omdat hij toch weet, de stok achter de deur van Justitie zou er altijd moeten zijn om iets te doen. Als ze voelen dat die stok volledig weg is, dan is het zeer moeilijk om in zo'n beleid mensen te activeren naar hulpverlening natuurlijk, he. (R10, House of justice)*

The **role of the justice assistant** is considered to be important, but is currently not used to its full potential in cases where the individual is convicted to a prison sentence of up to three years. Justice assistants now receive an e-mail after each violation and a notification from the monitoring centre after three violations. They only intervene after the third violation. However, a prison governor states that it might be interesting if they could intervene earlier in the process, in order to detect potential problems with the execution of EM and prevent further problems (*R 9, prison governor*).

The interviews also show a tension between a need for individualisation, in order to really be able to take the individual circumstances of the individuals under EM and their problems into account, and the need for consistency in dealing with violations. Now, the revocation policy differs between prisons, and is influenced by the level of overcrowding. A prison governor (*R 9*) argues however against standardisation. The breach procedure for individuals with a prison sentence of up to three years is already, to a certain part, highly structured. This, however, does not do justice to the often very complex dynamic behind violations. In practice, the respondent notices that the first three violations are often negligible, and very often, due to the fact that the individuals under EM have to get used to their EM.

Those first three, I think, how should I put this... you should give them as a gift to the detainee, you can test how far you can go, you can check whether the curfew is really followed up, you still have to adapt. [...] If the violations become really problematic, then organise a meeting and file a report. (R 9, prison governor).⁹⁰

Individualisation is relevant because violations might indicate underlying problems, which are important for the further successful execution of EM.

8. Diversity

8.1 Gender

As in the prison population, there is an uneven representation of male and female monitored individuals. On 21 October 2015, 7.3 per cent (N = 139) female and 92.7 per cent (N = 1731) males were subject to EM. This is a slightly higher proportion of female monitored persons than in the prison population, where there is a distribution of about 5 per cent female and 95 per cent male prisoners. On 21 October 2014, the proportion of females was, however, slightly lower: 6.3 per cent females (N = 125) and 93.7 per cent males (N = 1846). This indicates that there is not a substantial difference in gender distribution between the prison population and EM. There are no female specific EM provisions.

8.2 Ethnic minorities

There are also no special provisions for ethnic minorities, although many individuals under EM have a foreign name⁹¹ or do speak another language than the official Belgian languages. So, very often, individuals under EM do not speak the official language of

⁹⁰ *die eerste 3, vind ik, hoe moet ik zeggen...die zou je nog cadeau kunnen geven aan de gedetineerde, je mag eens testen "hoever je kan gaan, je mag eens zien of we die uurroosters echt opvolgen, je moet je nog even aanpassen", dus ik ben pleiter en ik heb dat gisteren nog eens herhaald ook op dat Bovenlokaaloverleg van verslaggeving later te doen, als die overtredingen echt problematisch worden, dat je zegt van "ja, die is nu toch echt aan het overdrijven met zijn overtredingen", doe dan een gesprek en geef dan een verslag. (R9 prison governor)*

⁹¹ Statistical data on nationality for individuals under EM are not available to us.

the Monitoring Centre that is linked to their place of residence. Since the split of the monitoring centres, Flemish monitoring officers no longer receive a language bonus to speak French and thus can refuse to speak another language than Dutch (while many of the non nationals only speak French). For individuals who do not speak or understand one of the two official languages⁹², it can be very difficult to communicate with the staff of the EM-system.

However, we can assume that, compared to the prison population, non-nationals, particularly when they do not have a regular legal status (so-called 'illegal persons') or an official address in Belgium, are underrepresented in EM compared to their overrepresentation in the prison population (43 per cent non nationals, compared to 11 percent in the global population).

8.3 Miscellaneous

Exceptions are foreseen for individuals under EM who are suffering from medical problems. For instance, a person with a muscular decease was placed under the system of voice verification instead of classic RF-EM. There are also deaf persons under EM. Instead of phone calls by the monitoring officers, they receive e-mails from the monitoring management (see section 5.2). However, the (de)installation process is hampered by the lack of knowledge of sign language by the field officers. In practice, they often depend on the assistance of family members to translate their information to the individuals under EM.

Although an official policy is lacking, in general, efforts are made to include as many EM candidates as possible and to look for alternative solutions for all kinds of medical impairments.

9. Information exchange and multi-agency working

9.1 Communication with monitored individuals

The execution of EM is **characterised by a heavy administrative burden** for the individuals under EM as well as for the controlling and supportive staff. Communication with monitored individuals is often difficult due to insufficient knowledge of their language by the staff of the Monitoring Centres. As contacts by the monitoring staff, but also increasingly by the justice assistants, are organised by phone, it becomes even more difficult for both parties to exchange information in cases where monitored individuals have insufficient language skills, because this excludes the possibilities of non-verbal and body language. Moreover, the written information and the prerequisite to motivate all the requests by written forms, pose difficulties for monitored individuals with limited reading and writing skills, which is often the case. This becomes even more problematic with the diminishing support of the justice assistant.

9.2 Communication between actors involved in the operation of EM

Recent developments in information technology within the Monitoring Centre altered the way actors involved in the operational process exchange information. Previously, information was exchanged through faxes and letters. At the end of 2014, a new

⁹² These are French and Dutch, but in fact Belgium has three official languages including German. However this population is negligible.

information system named Siset3 became operational. This system, which contains all relevant information on the EM process and decisions is accessible for the staff of the Monitoring Centres, the Houses of Justice and the prisons. Needless to say that this type of software has enhanced the speed and efficiency of the information exchange. At the time of writing this report, Siset3 was already upgraded to Siset4.

To clarify the streams of information between the penal actors and the police, in 2013 a Ministerial Circular Letter called 'INFOFLUX' has been issued that describes in detail all the different steps that have to be taken by whom and how to exchange information about decisions and changing situations.⁹³ The role of the penal actors and of the police, who are involved in the process in case of breach and the control of prohibiting conditions is clarified. It has to be noted that the police do not have access to the Siset database.

- Sentence Implementation Court

The decision to impose EM is communicated by the sentence implementation court by letter to the prison governor, the Monitoring Centre, the House of Justice and, where applicable, the victim(s) and the victim support service.⁹⁴ The prison governor then sends a report (*PV*) concerning the execution of the decision to the sentence implementation court and the public prosecutor. The public prosecutor delivers a copy of these documents to the CGOT/G, the police of the place where the monitored individual resides, and, if applicable, to the police of the place where the monitored individual is prohibited to be, due to a restraining order, and to the public prosecutor of the place where the monitored individual resides.

If the sentence implementation court decides to adjust the monitored individuals' conditions, the public prosecutor of the sentence implementation court, the monitoring centre, the prison director, the justice assistant, and, where applicable, the victim(s) and the victim support service are notified. The public prosecutor of the sentence implementation court notifies the CGOT/G, the police of the place where the monitored individual resides, if applicable, the police of the place where the monitored individual is not allowed to be due to a restraining order and the public prosecutor of the place where the monitored individual resides, about the end of the EM (including an end due to revocation) or an adjustment of the conditions.⁹⁵

- Monitoring Centre: exchange between control room and mobile unit

The monitoring officers and the field workers of the mobile unit constantly exchange information. In the morning, monitoring officers check '*Optitime*' to consult the route that has been set out for the field workers. Monitoring officers can use this software to track the route of the field workers and to see which interventions have been completed. During the installations and deactivations, there is a constant phone contact between the monitoring officers and the technicians, as they have to cooperate. Because of the high workload in the control room, it can take some time for the field officers to reach the control room, as all phone lines are often occupied. This leads to inefficient work processes in the field, and raises frustrations with the field workers who lose a lot of

⁹³ Circular letter nr. COL 11/2013 from the Minister of Justice, the Minister of Home Affairs and the College of Attorneys General at the Courts of Appeal.

⁹⁴ This is only the case if the prisoner is convicted to a sentence of more than three years under EM.

⁹⁵ Circular letter nr. COL 11/2013

valuable time waiting for connection. Currently a project 'call centre' is being installed to solve this problem.

If monitored individuals are not locatable anymore, the monitoring centre management reports this to the prison governor, the justice assistant, the police, and in case the monitored individual is convicted to a prison sentence of more than three years, the sentence implementation court.⁹⁶

- Police

Information is only given to the police by the Monitoring Centre after a '*kantschrift*' (authorisation form that is used to formally communicate between judicial actors) is received. The police often request information about who is under EM in their zone and about the individual conditions to be followed up by the police (e.g. prohibitions) as this is interesting information for them when they have to intervene as a result of a conflict between partners, of whom one is under EM.

The monitoring management is, however, very strict in providing information to the police and information to the police is only provided after having received the authorisation form. Questions of the police to the Monitoring Centre are mainly related to whether a monitored individual was home at a given time, or which movements were registered by the Monitoring Centre on certain days, where the monitored individuals are staying, etc. In order to maintain good relationships with the police, it is said by research participants that monitoring officers do tell the police whether the monitored individuals are at home when they go and pick them up, after the monitoring management filed a request.

The police informs the sentence implementation court if an individual under EM with a prison sentence of more than three years has violated prohibition conditions.

In case a monitored individual is undetectable, the monitoring management will immediately report this to the police and the public prosecutor, and does the same when the monitored individuals report themselves at the prison gate. If the police catches disappeared monitored individuals, they will immediately signal them in the ANG database.⁹⁷

The police inform the public prosecutor if monitored individuals commit new offences, by sending a police report. When relevant, the public prosecutor will send this police report to the prison governor, considering a potential revocation of EM, and will inform the House of Justice. If monitored individuals are considered to be dangerous, or when they have violated their conditions, the police inform the prison governor. If the monitored individual is convicted to a prison sentence of more than three years, the police will also inform the sentence implementation court and the public prosecutor of the sentence implementation court. When the monitored individual poses a possible threat, the police file a succeeding report to the public prosecutor of the place where the danger is located, and a copy to the public prosecutor of the sentence implementation court.⁹⁸

⁹⁶ Circular letter nr. COL 11/2013

⁹⁷ Circular letter nr. COL 11/2013

⁹⁸ Circular letter nr. COL 11/2013

Although everything is described in detail in the Ministerial Circular Letter, in the interview with the police (*R 25; R 26*) it was stated that the information exchange is, however, very slow and there can be time lags of up to 30 days, due to a lack of staff to input the data into the ANG database and the fact that the information is still delivered by post or fax. Also the different languages in Belgium complicate the information exchange. Moreover, from this research it became clear that the role of the police in the implementation of EM needs much more in-depth investigation, as there are still a lot of things that remain unclear. Also the cooperation between the police and the other penal actors need to be considered.

- Justice assistants

There are regular phone calls between the justice assistants and the Monitoring Centres. These contacts mainly deal with the practicalities of the EM procedure. Thanks to the introduction of the Siset system, justice assistants have direct access now to all relevant information. This has considerably increased the efficiency of the working procedure.

For individuals convicted to a prison sentence of more than three years, the justice assistants have to bring in curfew hours into the database, including the motivation of their decision to impose a particular curfew, so that the information is clear for the monitoring staff of the control room. At the end of the EM, the justice assistant makes an end report that is being sent to the Monitoring Centre. Changing curfew hours can be inserted in Siset and are directly accessible for the prison governor and the staff of the Monitoring Centre. Justice assistants have access to information about violations and they receive a copy of the letters that are sent to the monitored individuals following their violation. When the prison governor decides to extend the period under EM, justice assistants receive a notification e-mail. Justice assistants inform the monitoring centres about the dates of the penitentiary furloughs and the monitoring centres subsequently inform the prison governor about these dates.⁹⁹

Justice assistants deliver **progress reports**, which are sent to the monitoring management, the prison governor and the sentence implementation court. These progress reports contain information on: (1) the source of the information (e-mail, fax, telephone call + the person who initiated the contact; (2) relevant information concerning the current situation (relationship, work, general history) and (3) an analysis of the measure and the conditions (compliance, the elements that were being discussed during the meetings, elements that should be discussed during the meetings).

For monitored individuals with a prison sentence of more than three years, the justice assistant communicates violations to the public prosecutor of the sentence implementation court, who subsequently informs the public prosecutor of the place where the monitored individual resides. If the public prosecutor was informed by another actor than the justice assistant, the public prosecutor informs the justice assistant about the violations.¹⁰⁰

⁹⁹ Circular letter nr. COL 11/2013

¹⁰⁰ Circular letter nr. COL 11/2013

The information exchange between the justice assistants and the Monitoring Centre is considered to be flexible.

- Investigating judge

All violations are communicated by the monitoring management by phone and e-mail to the investigating judges, who do not have access to Siset3.

- Prison

Also prison governors have access to the Siset system, providing them with information concerning curfew hours and violations.

The prison governors' decision to impose EM¹⁰¹ is communicated to the monitoring management and the House of Justice that is involved, by faxing a standardised form. The monitoring management subsequently informs the prison governors about the date of the installation and, where applicable, if the installation could not be completed. The prison governor then informs the public prosecutor and the police of the place where the monitored individual resides, and, where applicable, the police of the place where the monitored individual is not allowed to be due to restraining orders.¹⁰²

One or two weeks before the date of conditional release, the prison administration sends a document with the date of the end of EM to the Monitoring Centre, that can insert the date of the closure of the file into the system.

If prison governors decide to revoke EM, or to adjust the conditions¹⁰³, they will inform the monitoring centre, the police of the place where the monitored individual resides and, where applicable, the police where the monitored individual is not allowed to be due to a restraining order. The public prosecutor is informed by the prison governors in case of revocation.¹⁰⁴

- Third parties

No information about individual EM files is officially shared with third parties. However, the monitoring officer often does communicate with third parties, such as members of the monitored individual's family, e.g. when the individual under EM's knowledge of the language is too poor to explain the procedure directly to him.

We can conclude from this overview that the operation of EM is characterised by a strictly regulated and complex information exchange procedure. The communication between penal actors is recently facilitated and speeded up by the introduction of Siset, replacing contact by fax, which has strongly improved the efficiency of the operation of EM. The police has no access to the Siset system and has thus no direct access to the file of the individual under EM, indicating a strict privacy policy with regard to the information on the EM files. Information about the actions of the police is kept in a

¹⁰¹ This information is only applicable for individuals with a prison sentence of up to three years under EM.

¹⁰² Circular letter nr. COL 11/2013

¹⁰³ Note that this will only be very exceptionally the case, as the prison governor only rarely imposes individualised conditions.

¹⁰⁴ Circular letter nr. COL 11/2013

national database, called ANG. Considerable time lags in the information exchange with the police are reported by participants in this study.

10. Effectiveness of electronic monitoring

Effectiveness of a sentence is mainly evaluated through recidivism figures. Belgium does not have a tradition of measuring recidivism for any penal measure, also not for EM, for the simple reason that recidivism data are not available. Research of Blokland et al. (2015) however could make use of data from the Belgian penitentiary register to compare re-imprisonment (which is not the same as recidivism rates!) of those having served their sentence under EM and those regularly imprisoned. The analysis compared re-imprisonment data of persons convicted to a prison sentence between six months up to three years, using propensity score matching to control for pre-existing differences between these groups. The findings show a positive effect for EM in the sense that those who served their prison sentence under EM were less likely to be re-imprisoned after EM than those who were released after regular imprisonment. However, these findings are not transferable to the current situation in Belgium, as the data refer to the period of 2003 – 2005, when EM for persons sentenced to up to three years was completely differently organised than today, with much more support and guidance of justice assistants.

With regard to effectiveness it is interesting to also look at other factors than recidivism or re-imprisonment rates. It is recognised that EM can avoid detention harm and increase the opportunities for reintegration by keeping a job, housing and social networks. Not only the social costs of the punishment are reduced, but also the financial costs. In this section we reflect upon these elements and discuss the impact of policies and practices of current EM on the effectiveness of the measure.

10.1 Electronic monitoring between systemic and rehabilitative goals

EM is considered to be a useful tool for dealing with offenders and to work towards reintegration and preventing recidivism. In practice, there is a constant tension between this positive, active approach, and the desire for EM to be a cheap replacement of imprisonment. It is, however, widely recognised in the interviews that using EM as a cheap alternative for prison, without investing in human supervision might jeopardise the goals of crime prevention and reintegration.

If you consider it to be an instrument to deal with crime, with societal problems and work partially on recidivism, than there are a lot of opportunities. But that comes at a certain cost, because you have to invest in that measure and in the support surrounding that measure. It is also possible to see it as a mere cheap alternative for imprisonment. Than you have to invest differently, but then you will not be able to reach the long-term goals. Belgium has this duality. EM is still being sold as a social alternative for imprisonment, but in practice, you notice that it is primarily an alternative to combat prison overcrowding. (R 12, Director House of Justice)¹⁰⁵

¹⁰⁵ Als je het ziet als een instrument van om te gaan met criminaliteit, met maatschappelijke problemen en een stuk rond recidive te werken, dan weet het heel veel mogelijkheden. Maar dat veronderstelt dan ook een zeker kostenplaatje, want dan moet je investeren in die maatregel en in de ondersteuning daar omtrent. Als je het louter ziet als een goedkoop alternatief voor een cel, dat kan ook. Dan moet je er anders in investeren, maar dan ga je de

EM is however also recognised as a useful tool for dealing with prison overcrowding. Although prison overcrowding still remains a problem, it is pointed out that ‘*the crisis character went down a bit*’ due to the increased use of EM (R 10, House of Justice). This is confirmed by the observation of the recent decrease of the prison population (see also section 2.3.). In May 2015, the prison population had decreased to 11.043 prisoners, a reduction from about 11.700 prisoners on a daily basis in 2014.¹⁰⁶ Explanations for this drop are, however, more complex than only the use of EM, and the different factors causing this decrease have to be investigated in the near future.

One of the aspects related to the effectiveness of EM, as mentioned by some of our respondents, is the consistency in the application of the measure. Respondents refer to the previous so-called “Belgian model”, where EM was applied according to a strict paradigm of rehabilitation and reintegration. With the increasing dominance of the systemic goal to manage the prison population, new EM policies were developed and new technologies were applied to divert prisoners to the community. This leads to a lack of consistency, with different practices existing alongside each other.

I think that EM is a kind of typical Belgian architecture (‘koterij’), where you have a house and you build an additional building, with subsequently another additional building and afterward, a garden house. You get a constellation with no consistency at all. And as a result of the regionalisation, new actors are involved, who reason from another perspective. I think it is really important that we look back at what we are doing and how we are doing it. (R 12, Director House of Justice)¹⁰⁷

On the other hand, the expansion of EM is also welcomed as a way of broadening the possibilities to react to crime (cf. differentiation of punishment). Although not entirely positive about GPS-tracking at the pre-trial phase, the investigating judge does describe GPS as an interesting tool, because it diversifies the options of the judge. However, and despite the strict application, EM at the pre-trial stage is also not seen as a genuine alternative for confinement. Remand custody can only be imposed when there is a risk for recidivism, a risk that the defendant will abscond, a risk for collusion, a risk of jeopardising the evidence, or a risk for public order. EM can only partially meet these risks, despite a 24/7 control.

One of the EM practices to reconsider, according to some respondents, is the use of EM for a very short period, as the punitive or reintegrative effect will be relatively small, and the costs of starting EM relatively high. Therefore the benefits do not outweigh the costs, and cost efficiency should, to a certain extent, be taken into account. (R 22, Policy member Flemish governments, R 8, General director Houses of Justice, French speaking part)

lange termijn doelen ook niet halen. België blijft zo met die dualiteit zitten van, het wordt nog altijd verkocht als een sociaal alternatief voor de gevangenisstraf, alleen merk je in de praktijk dat dat toch vooral het alternatief voor de gevangenisstraf en het wegwerken van overbevolking is dat vooropstaat. (R 12, Director House of Justice)

¹⁰⁶ Personal communication with prison service on 23 May 2015

¹⁰⁷ Elektronisch toezicht is volgens mij nu een soort typische Belgische koterij geworden. Van je hebt een huisje waar dat een stukje aangebouwd wordt, daar is nog een stukje bij en dan een tuinhuisje erbij en dat kotteke eraan en ge krijgt ganse constellatie waar de samenhang weg is. En ook een stuk, de communautarisering, kom je met andere actoren, met andere visies. Ik denk dat dat echt wel belangrijk is dat we nu terug gaan kijken van wat gaan we doen en hoe gaan we dingen doen. (R 12, Director House of Justice)

10.2 The Need for a Careful Selection and Preparation

To be effective, a thorough selection and preparation before the start of EM is recommended. Some individuals are considered to be more likely to successfully execute their period under EM than others. Essential for a successful execution of EM, is that individuals under EM have a sufficiently structured lifestyle (*R 15, justice assistant*). The effectiveness of EM will thus, among others, depend on the life style of the monitored individual and the social context of the monitored person.

I think EM is a good modality for people who already have sufficient structure in their lives and who are able to deal with the conditions. I think that people who find it difficult to live a very structured life, well, for them EM is set up to fail. Because a lot is expected of you. And I think that some people are just too chaotic to adhere to the strict rules. They need to be able to estimate when they have to take the train or the bus if they have to be home at a given time. (R 15, justice assistant).¹⁰⁸

This quote also shows that EM is a demanding punishment and that it requires particular skills of those who are subjected to it.

Note however that EM is recognised to support the transition from imprisonment to freedom. In prison, people get used to living in a very rigid structure. EM provides the possibility to transpose this structure to their life outside prison, allowing them to function according to a fixed pattern (*R 15, justice assistant*).

The preparation of EM is also important. In this context, the social enquiry report is relevant. Where this report was previously mandatory, the obligation has now been abandoned. This is said to be a great loss, as the social enquiry report is not only a relevant instrument to determine the feasibility and desirability of placing an individual under EM, but it also provides an opportunity to inform the individuals and their cohabitants about the practicalities and impact of EM.

We used to have the social enquiry report for all the cases, but as a result of the decision by Minister Turtelboom, that step has been abandoned. The reason was, I think, that in 98 per cent of the cases, the decision to impose EM was “yes”, but in fact, the social enquiry report was very very important to involve the family and to provide the broader framework for everybody involved. (R 8, General director Houses of Justice, French speaking part)¹⁰⁹

¹⁰⁸ *Ik denk dat elektronisch toezicht een goede modaliteit is voor mensen die eigenlijk van zichzelf voldoende structuur hebben en met voorwaarden om kunnen, ik denk mensen die het daar moeilijk mee hebben om, om heel gestructureerd te leven, ja, daar is elektronisch toezicht een beetje gedoemd om, om te mislukken. Want er wordt zoveel van u verwacht [...] En ik denk dat mensen, sommige mensen, ja leiden een beetje een te chaotisch voor, voor echt zo ja de strikte regels die daar toch wel aan verbonden zijn een stuk te kunnen naleven. Om in te schatten van bon, ik heb vandaag vrije uren tot dat uur. Maar ik moet nog met het openbaar vervoer naar huis, dus misschien moet ik niet wachten op die laatste trein, want als die wat vertraging heeft gaat ge natuurlijk te laat zijn. Misschien is het beter om te anticiperen en een trein vroeger te nemen. Ehm, ik denk dat dat inderdaad maakt dat het meer geschikt is voor sommige mensen en minder voor andere mensen. (R 15, justice assistant).*

¹⁰⁹ *Normaal gezien hadden we overal een maatschappelijke enquête en in de beslissing van Mevrouw Turtelboom is die stap weggevallen want, enfin, de reden was...de grootste meerderheid, ik denk 98%, daar was de beslissing “ja” maar in feite de rol van die maatschappelijke enquête was zeer zeer belangrijk om de familie te betrekken en iedereen een beetje te kaderen, enfin, een beetje het kader te schetsen en te zeggen waarover het gaat, enfin, er waren een aantal interacties die de dingen op een andere manier konden voorbereiden en eerlijk gezegd, ik denk, nu...het is echt een verlies (R 8, General director Houses of Justice, French speaking part).*

The use of social enquiry reports is furthermore, according to a member of the monitoring management, an interesting tool to take the social circumstances of the EM into account. In that context, the abandoning of the social enquiry report for all individuals with a prison sentence of up to three years is seen as a refutable policy, as individuals now often execute their EM in difficult circumstances. This would furthermore allow the justice assistant to gauge for the family member's consent, something that has also been abandoned for the biggest part of the individuals actually under EM.

Almost all the respondents emphasise the importance of the role of the justice assistant to increase the effectiveness of EM. It is also regretted that the home visits of the justice assistants, which were previously conducted, are now abandoned, due to budgetary reasons. They are seen as being very useful for gaining insight into the living conditions in which individuals have to undergo their EM.

10.3 Reintegration

When discussing the effectiveness of EM, the human supervision, in addition to the technical control, is considered to be very relevant (*Respondent 8, General director Houses of Justice, French speaking part*).

I think that we are working with people, and if you want to get anything done, it will have to be with a humane approach and not a bit of equipment and a bit of screens and a bit of alarms and a bit of recalculating their hours. (R 8, General director Houses of Justice, French speaking part)¹¹⁰

EM facilitates a gradual transition to conditional release, which is said to prevent relapse. However, with regard to those convicted to a prison sentence of more than three years, it is pointed out that the success rate of EM is also related to the selection of the candidates by the sentence implementation court, that selects prisoners with a moderate risk of recidivism, and who have more chances of successful reintegration because they already dispose of a useful daytime activity (*R 20, member sentence implementation court*). When comparing recidivism rates of persons under EM and prisoners, this selection bias has to be taken into account.

A possible danger is however that every person with a prison sentence of more than three years will firstly be put under EM, before a conditional release, which was not the intention of the law, because it would lead to an inflation of the use of EM under all circumstances. And indeed, it is observed that certain sentence implementation courts already use EM as a regular part of the release process (cf. a so-called progressive detention trajectory). This entails the risk of an overuse of EM, merely for safety reasons.

It is also claimed that EM can be a tool for supervision for the justice assistants, because discussing the curfew and setting the time schedule initiates conversations about practical issues, which can give more insight in the lives and challenges of the monitored persons to the justice assistants.

¹¹⁰ *Ik denk toch dat we met mensen werken en als we iets willen bereiken, dan is het ook met menselijkheid en niet zo...een beetje apparatuur en een beetje schermen en een beetje alarm en hun eigen uren herberekenen om te zeggen en +1 uur en -1 uur. (R 8, General director Houses of Justice, French speaking part)*

People who have started with EM give the justice assistant access to the everyday life of those people, which is incredibly rich. In a normal conditional release, you have a meeting, and then two weeks later another one, and one week later another one, and okay. But here, because of the curfew, you have to build a relationship very quickly, because you have to deal with concrete stuff: picking the kids up from school, do this, do that, I need this and that. So, right away, you are in the middle of those people's lives. (R 8, General director Houses of Justice, French speaking part)¹¹¹

EM without any other conditions is also described as an “easy” sentence, because, apart from living with a curfew, which is very burdensome, individuals are not encouraged to take responsibility for their own actions. This is however only the case for individuals with a prison sentence of up to three years.

I can see that for the execution of prison sentences of less than three years, the monitored individuals can be very happy. They only have to comply with the curfew orders, although that can also not be underestimated. But furthermore, they do not have to be accountable for what they do. They do not have to work on their underlying problems. They can volunteer, but they do not have to account for whether they are working illegally, whether they took care of their administration, whether they worked at alcohol or drug problems. (R 11, Director House of Justice)¹¹²

The necessity to already dispose of a useful daytime activity in order to be eligible for EM for prisoners with a sentence of more than three years, is also mentioned to be contraproductive to use EM's full potential.

It think it is a disadvantage that people only become eligible for EM when they can proof they have a useful daytime activity. Consequently, the added value is a bit lost, being that you can use EM to go look for work outside prison or take part in an education or whatever. That does not happen now, because the sentence implementation court does not want to use it that way. I think that is a missed chance and I wonder what the added value still is. (R 15, justice assistant)¹¹³

¹¹¹ De mensen die via een ET begonnen zijn, dat geeft voor de justitieassistent een toegangspoort in de heel precieze werkelijkheid van de mensen die ongelooflijk rijk is wantenfin, in een normale VI heb je een gesprek en daarna 2 weken, 1 week later een nieuw gesprek, bon voilà, maar hier door een uurrooster dat met de mensen moet worden gebouwd, moet je heel vlug in een heel nauwe relatie gaan want dat gaat over zeer concrete dingen, op school gaan halen, dit doen, dat doen...ik heb dat nodig, dat nodig, dat is...dus, er is zo een...direct ben je volop in het leven van de mensen (R 18, Public prosecutor, R 8, General director Houses of Justice, French speaking part).

¹¹² Ik zie nu voldoende dat - laat ons zeggen voor de strafuitvoering voor straffen minder dan drie jaar, denk ik dat alleen de cliënt heel gelukkig kan zijn. Heel gelukkig van ehm, ik moet enkel en alleen, weliswaar niet onderschatten, mij houden aan uurroosters en ik moet die enkelband dragen. Maar er zijn van mij, eigenlijk verder dan dat moet ik mij niet verantwoorden wat ik doe. Ik moet niet werken aan onderliggende problemen. Ik mag daaraan werken op vrijwillige basis, maar ik moet mij niet gaan verantwoorden of ik in het zwart werk of dat ik mijn administratie in orde gebracht heb of dat ik aan mijn alcoholprobleem gewerkt heb of dat ik aan mijn drugsprobleem gewerkt heb, dus- En ik zal zeggen, een normale justitiabele zal met dit systeem heel gelukkig zijn. Er wordt niet veel gevraagd aan de ene kant, aan de andere kant hè, de belasting van een enkelband is voldoende groot. Is dat voldoende een straffarakter? Ja voor bepaalde wel, voor anderen misschien niet. (R 11, Director House of Justice)

¹¹³ Ehm, waar dat ik daar inderdaad het nadeel aan vind is dat er geen, dat dat nog altijd zo is dat mensen eigenlijk pas in aanmerking komen, mensen niet kunnen gaan werken voor dat elektronisch toezicht als een dagbesteding kunnen voorleggen, waardoor dat, ja, dat voor mij dan de meerwaarde die het zou kunnen hebben wat verloren gaat. Namelijk dat ge het kunt gebruiken om buiten de gevangenis op zoek te gaan naar een opleiding of werk of

Individualised conditions are considered by some respondents to give meaning to the monitored individual's time under EM. It is therefore suggested that imposing individualised conditions, where possible, could also be useful for those with a prison sentence of up to three years. Examples of possible individualised conditions are taking part in drug or alcohol abuse treatment programs. On the other hand, it is pointed out by a member of the Cabinet of the Minister of Justice that not all cases need the individual conditions or a justice assistant (e.g. for traffic offences).

The way EM is applied to individuals with a prison sentence of up to three years is argued to be less effective for vulnerable groups, as they cannot count on support from a justice assistant and are said to be less able to rely on an informal social network. Furthermore, the financial allowance for those without an income is lower than the minimum living allowance for free citizens, leaving these people with too little resources to meet their material needs in everyday life.

So it is more interesting to decide whether monitored individuals will be followed up by a justice assistant based on their own needs, as opposed to the total length of the sentence. This decision could also be based on a risk assessment or a screening instrument.

To conclude, we see that there many respondents agree that EM should be more about support and guidance and building a relationship with the justice assistant rather than about control as such. This is however not possible during very short periods of EM.

10.4 Need for Flexibility

In order to use EM on a larger scale, it became increasingly standardised, with every exception to the schedule to be demanded through a bureaucratic, cumbersome procedure (*R 14, justice assistant en R 3, director Monitoring Centre*). The lack of, or at least the reduced flexibility, is considered to have a demotivating effect on the monitored individuals, and to encourage an attitude where only the minimal rules are followed

*The flexibility is gone. And you notice that people, just because they get tired, say okay, fine, than I will start doing less and less myself" (R 12, Director House of Justice).*¹¹⁴

*The way it is structured now is that cumbersome, there are so many rules, that it actually becomes impossible. If you want things to go smoothly, if you do not want any additional burden and if you do not have a job, it is better to just remain sitting in your couch. You get four free hours and for the rest, you do nothing, because doing something will cause a whole lot of burden. So I do not see the use of that. (R 15, justice assistant).*¹¹⁵

wat dan ook. En dat, allee, dat gebeurt nu niet omdat dat strafuitvoeringsrechtbanken het niet op die manier willen gebruiken. En dat vind ik wel een gemiste kans en dan stel ik mij soms wel vragen bij wat er dan nog de meerwaarde van is eigenlijk (R 15, justice assistant).

¹¹⁴ *Die soepelheid is weggefallen. En dan merk je dat mensen ook een stuk, gewoon uit moeheid zeggen van oké dan is het goed, dan doe ik ook minder en minder. (R 12, Director House of Justice)*

¹¹⁵ *Terwijl dat de manier waarop dat nu gestructureerd is, allee, zoveel regelkes en zo'n log iets, dat het dat eigenlijk onmogelijk maakt. Dus als ge zelf denkt van goh ik wil dat dat vlottektes verloopt, ik wil daar geen misère mee en ge zijt niet aan het werk dan denk ik ja blijf gewoon in uw zetel zitten. Ge krijgt vier uur op een dag en*

Suggestions for a more creative use of EM are the introduction of the possibility to adapt the technology (RF or GPS), the conditions and the intensity of the control throughout the individuals' trajectory under EM, according to their risks or needs. For instance, when individuals comply with all the conditions, control may become weaker over time and they might receive 'rewards', such as extra free time. Individuals possessing a high risk would be subjected to a stricter form of control.

10.5 Swiftness

The long time lag between the actual implementation of EM and the conviction (sometimes several years) impedes the start a new life for the monitored person (*Respondent 9, prison governor*). There is not only the time lag between the conviction and the moment of being called to prison to serve the sentence, but also between the decision of the prison governor to impose an EM and the actual start of the measure. With the political pressure to increase the use of EM, waiting lists were created, due to a lack of staff at the Monitoring Centres and the Houses of Justice and to a lack of available devices. Solutions have been developed. In 2013 the waiting lists were decreased by introducing a *last in first out* policy, as opposed to a *'first in first out* policy.¹¹⁶ The *first in last out* list is currently almost eliminated. Consequently, in 90 per cent of the cases, the installation is performed within 15 weeks. However, there are still cases on the *last in first out* list, which are still waiting for the execution of their sentence. It can be concluded that the creation of waiting lists is a problem that regularly turns up, for different reasons.

10.6 Technology

The use of technology is also a matter of concern. Although some respondents indicate that using GPS might be interesting, because it provides a higher level of surveillance, others state that it is not necessary to have access to such detailed information on the whereabouts of the individuals under EM. Furthermore, the use of GPS tagging and tracking at the pre-trial phase is regarded as contradictory, due to the way it is currently applied. Using GPS-tracking to confine the defendants in their homes on a 24/7 basis, does not apply the technology in its full potential. Some respondents therefore suggest that it would be more interesting to use classic RF EM for defendants, as they are not allowed to leave the house any way. GPS can then be an exceptional measure, for individuals in need of strict surveillance, e.g. because of their high risk of recidivism or absconding.

A staff member of the Monitoring Centre suggests that the application of the technology could be improved by using a hybrid GPS-system, so the monitored individual would not need to carry the GPS device separately, because it would be integrated into the tag. Relatedly, it would also be interesting to be able to locate the position of the box. Currently, the control room receives an alarm when the box has been moved, but not knowing where to the box has been moved.

onderneem vooral voor de rest niks, want dat gaat een heel hoop misère zijn. Dus dan zie ik er eigenlijk zo het nut totaal niet van in. (R 15, justice assistant)

¹¹⁶ *This was a deliberate policy of the then Minister of Justice Turtelboom, who wanted to politically score with this decision.*

11. The future of electronic monitoring

A number of recent and announced developments might lead to a different application of EM in the future, and even to a further expansion of EM in Belgium.

1. The target group of EM will be extended by introducing EM for mentally ill convicted persons. The law of 5 May 2014 concerning internment also foresees mentally ill detainees can be placed under EM. The implementation of this law was intended for 1 January 2016, but is postponed again. The law stipulates that the person can undergo his internment measure under EM when there are no counter-indications which cannot be met through individualised conditions. These counter-indications relate to:

- The absence of a prospect of social reintegration;
- Insufficient progress of the mental illness from which the detainee suffers, unless the modality of the execution of the measure aims to provide an adapted ambulant or residential treatment;
- The risk of committing severe offences;
- The risk of harassing victims;
- The attitude towards the victims of the facts that have led to the internment;
- The refusal of following treatment for the offences that have led to the internment, if these were sexual offences committed against minors;
- The measures taken to compensate the civil party.

A respondent indicates that EM necessitates a sense of responsibility and accountability of the monitored person, and is therefore sceptical towards using EM for mentally ill offenders, as these people are not held responsible for their offence (*R 12, Director House of Justice*). Another respondent however finds mentally ill prisoners a useful new target group, as some internees are able to function well in everyday life. (*R 2, staff member Monitoring Centre*).

2. In May 2016, EM will be implemented as an autonomous sentence for offences punishable with a prison sentence of up to one year. This will probably increase the population under EM and increase the workload of the monitoring centres.

3. Another proposition with regard to EM is situated within a potential shift in the broader field of sentence implementation, which can have a serious impact on the use of EM. Where Belgium has adopted a bifurcated policy, leading to a different approach for sentences of up to three years and sentences of more than three years, Minister of Justice Geens (2015) proposes in his recent White Paper to differentiate between sentences of up to **five** years and more than five years instead of **three** years. If the current policy is maintained, this would mean that an increasing group of prisoners would be subjected to stand alone EM, without an individualised follow-up by justice assistants.

4. GPS-tracking is proposed to become mandatory when an individual is suspected of having committed an offence punishable with a prison sentence between one and

three years. However, it is unclear which measures will be taken to prevent individuals from being confined to their house together with the victim of the offence for which they are suspected. The investigating judge interviewed in this research warns of the risk of recidivism when defendants of intimate partner violence have to be placed under EM on a mandatory basis.

5. It is furthermore still unclear whether the application of GPS-tracking at the pre-trial phase will remain the same as it currently stands. Will the system to remain inside the house 24/7 be kept? It is neither known yet whether GPS-tracking at the pre-trial phase leads to net-widening, meaning that GPS replaces provisional release under conditions instead of remand imprisonment. An evaluation of the first year of GPS-tracking was announced, but is not available yet, although we are two years after its introduction.

6. The split of the Houses of Justice and the Monitoring Centres brings along a lot of organisational problems and might lead to the development of two different monitoring and supervisory practices in the long run, as they are under the responsibility of different governments. For the administration of EM, a construction of co-management has been set up. Due to the sensitive character of EM, this co-management is not easy, as there is a need for a clear chain of command. A co-management *light* has therefore been installed, meaning that the Communities only cooperate if cooperation has an added value (e.g. for administering the tender). The Communities have, however, their own teams and internal communication. It is unclear how EM will develop in the future in both regions and in which way the policies will converge or diverge.

7. In the future, the technology might be significantly diversified and probably intensified. The running tender includes new techniques, such as biometric verification and tagging victims. Ideas for what to include in this tender have come from the personal knowledge and skills of those who are involved in administering the tender, international developments shared through international networking (cf. 'travelling policies') and input from the private sector companies who compete for the contract (*R 21, lawyer*). Although the tender includes new techniques, it is stated by the members of the Cabinet of the Minister of Justice that there are no indications to believe that the RF EM will lose its importance in favour of GPS-tracking or other techniques (*R 23 Cabinet Minister of Justice Minister of Justice*). However the decision-making responsibility for these matters is not exclusively with the Minister of Justice any more. The views of the Ministers of the Flemish community and the Walloon-Brussels Federation will be crucial too.

There are currently no indications that the private sector will play a more significant role in the execution of EM (*R 23, Cabinet Minister of Justice and interview with the Minister of Justice*). However, also here the point of view of the Ministers of the Flemish community and the Walloon-Brussels Federation will be crucial in these matters.

12. Conclusion

The story of electronic monitoring in Belgium is one of continuous growth. The number of monitored individuals has risen throughout the years, due to an expansion of the target groups and the introduction of new technologies. Today, EM is applicable in every phase of the criminal justice process.

Our research shows that EM is organised according to a two-track policy with substantial differences in the execution of EM between those with a prison sentence of up to three years and those convicted to a prison sentence of more than three years. We observe a tendency towards merely control and less leniency in the application of EM for those with a prison sentence of up to three years. Respecting the time schedule is controlled in a very strict manner. Changes in timetables are only allowed exceptionally and all requests for exceptions must be motivated. This happens in an administrative way. The breach procedure is very strict and, to a certain extent, very formalized. There is little room for contextualisation and individualisation in the decision-making.

Formerly, justice assistants could explain the “global picture” of EM to those who would be subjected to EM and to their cohabitants. With the withdrawal of the justice assistants for certain groups and their diminishing role in the procedure, the monitoring officer and field worker have become more important. They also have to fill the gaps that are created due to the removal of the justice assistants (*R 2, staff member Monitoring Centre*). Monitoring officers are therefore often contacted by the monitored individuals to gain information about the EM procedure, questions that were previously dealt with by the justice assistants. The field workers are now very often the first and only professionals with whom the monitored individuals have personal face-to-face contact. These staff are, however, not trained to explain the entire EM procedure or to deal with other issues or emotions that may arise with the monitored individuals or/and the cohabitants.

Together with the diminishing individualisation for individuals with a prison sentence of up to three years, the role of the justice assistant has also become one of mere control, rather than support and guidance. Justice assistants only become involved when individuals under EM violate their conditions for the third time. They must then contact the individuals under EM to discuss the violations and report back to the Monitoring Centre.

On the other hand, the EM-procedure for those serving a part of their prison sentence of more than three years under EM, before being conditionally released, is much more individualised and reactions to non-compliance are less prompt and more contextualised. Compliance with the timetables is not an end in itself for this group, but EM is merely an instrument to support other, individualised conditions, aimed at reintegration. Individuals under EM are followed-up by the justice assistants during their period under EM and are thus encouraged to work on the circumstances that have led to the offence. Consequently, non-compliance with the curfew orders will not automatically initiate a breach procedure, except when non-compliance is considered to be problematic for the successful execution of EM.

The EM procedure is experienced as very administrative burdensome and bureaucratic. The monitored individuals and the cohabitants are made responsible for their own sentence (see also Vanhaelemeesch, 2015). They have to make sure to send the right documents to the right place on the right time. Not only does this make EM an administrative arduous measure, but it might also induce inequality between the monitored individuals. Some individuals might be able to fulfil this administrative tasks on their own or have a network to fall back on, whereas others might be facing difficulties. The risk of inequality is further enhanced by the social background of many of the monitored individuals. A lot of monitored individuals do not (fluently) speak the

main language of the region they are in, or are unable to read or write. The legislation does not foresee any measures to combat these potential problems.

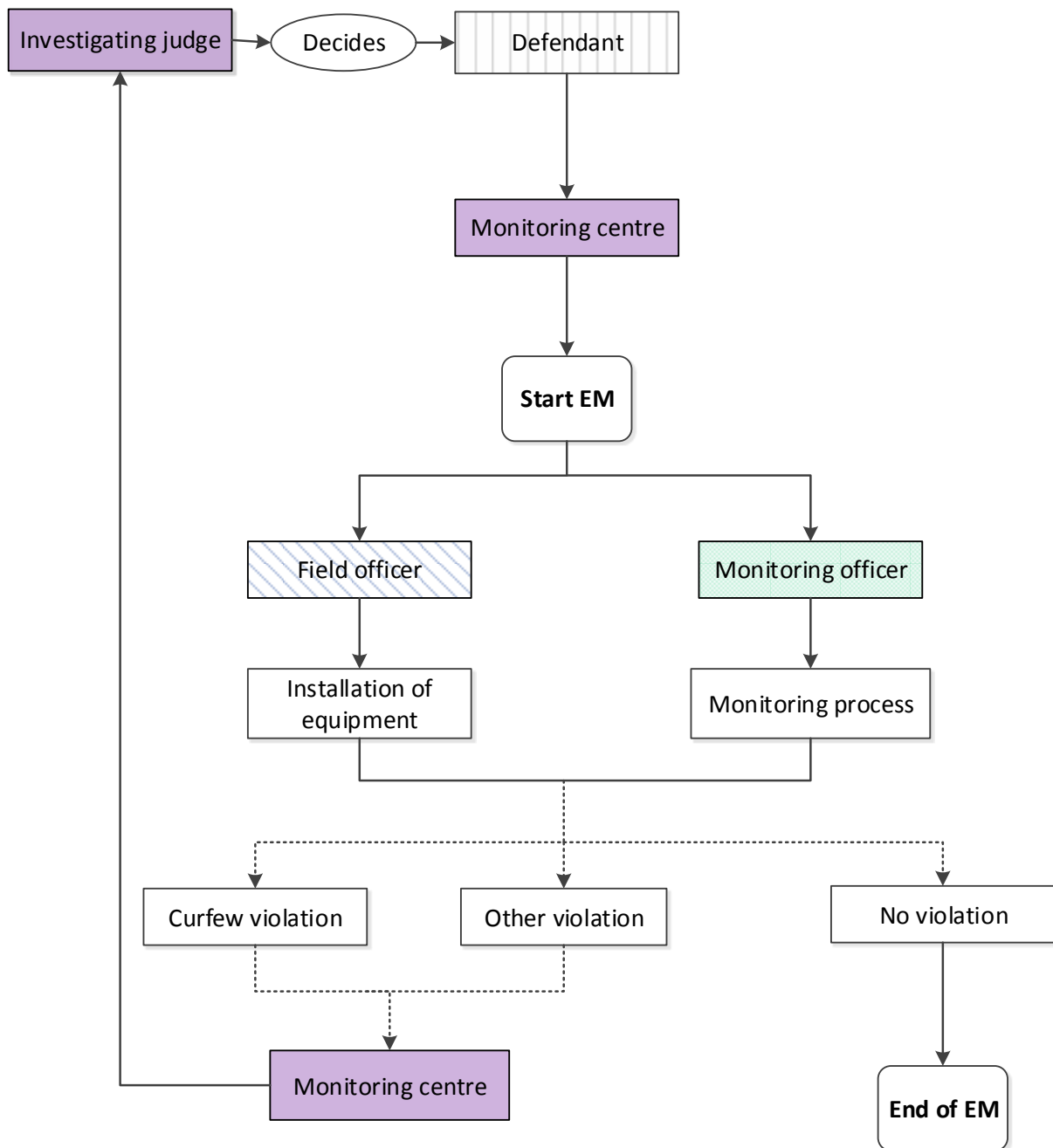
There is a tendency of policy makers of looking towards new and innovative technologies. However, there is currently no reason to assume that classic RF-EM will lose its prominent role.

13. Recommendations

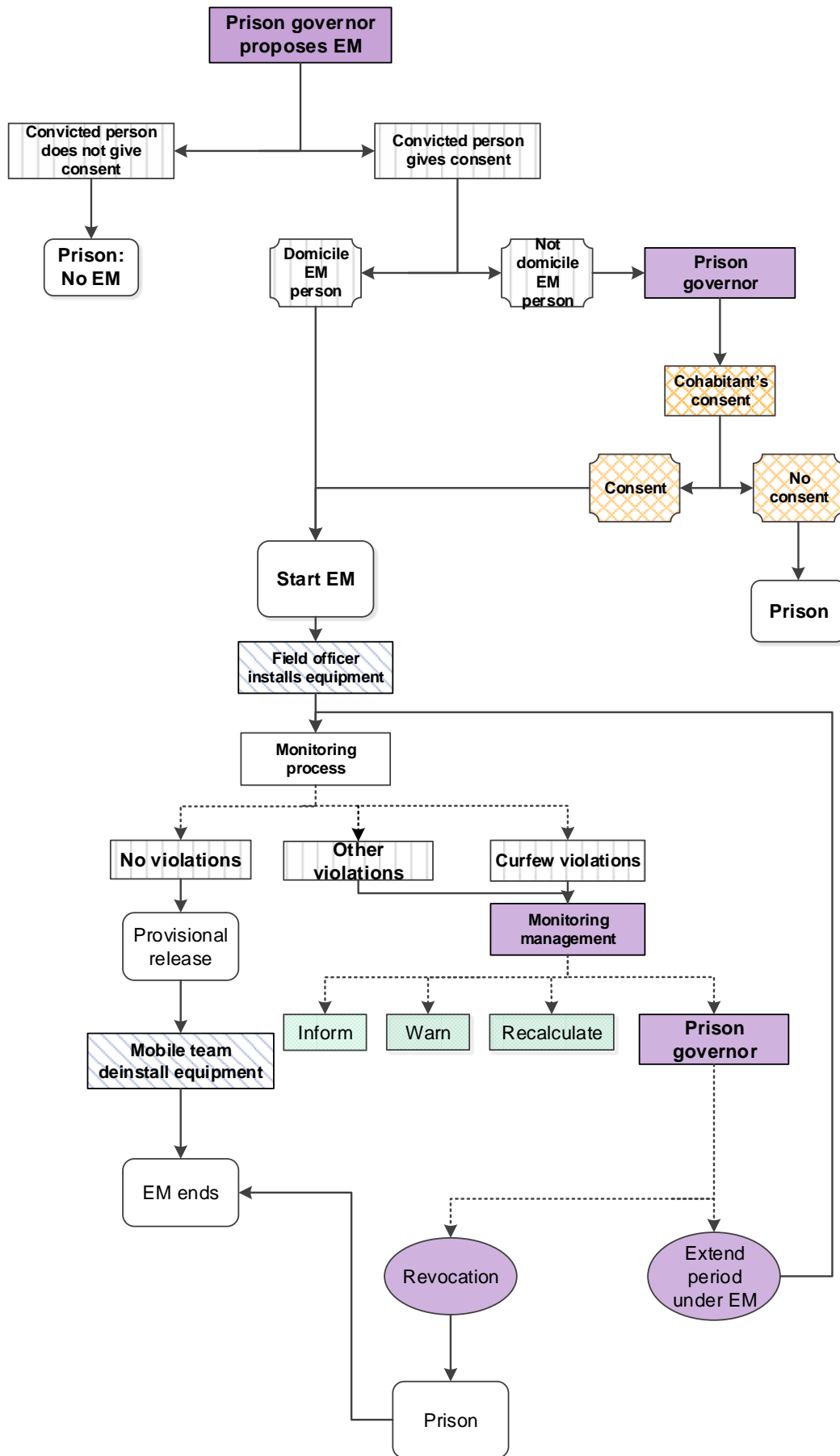
- EM should be organised so that it assists monitored individuals to lead meaningful lives. The allocation of justice assistants to EM cases should be considered, based on individual assessments of monitored people's needs rather than sentence length.
- The introduction of a new role of 'EM Social Assistant' at the Monitoring Centres should be considered. They would assist monitored individuals and cohabitants with social, administrative and practical issues.
- The policy on informed consent should be revised.
- An inclusive approach should be considered, whereby monitored people have the same rights and minimal allowance as free citizens.
- Alternative accommodation should be provided for monitored people who do not have a suitable place of residence.
- The administration relating to the operation of EM should be simplified.
- The work processes and issues of staff workload should be assessed to ensure adequate services are provided to monitored people. Sufficient time and opportunities should be allocated for positive personal interactions between the monitoring and supervision staff and the monitored individuals.
- Breach policies should be consistent across the different modalities of EM.
- The strict GPS regime at the pre-trial stage should be reconsidered and made more humane.

14. Appendices

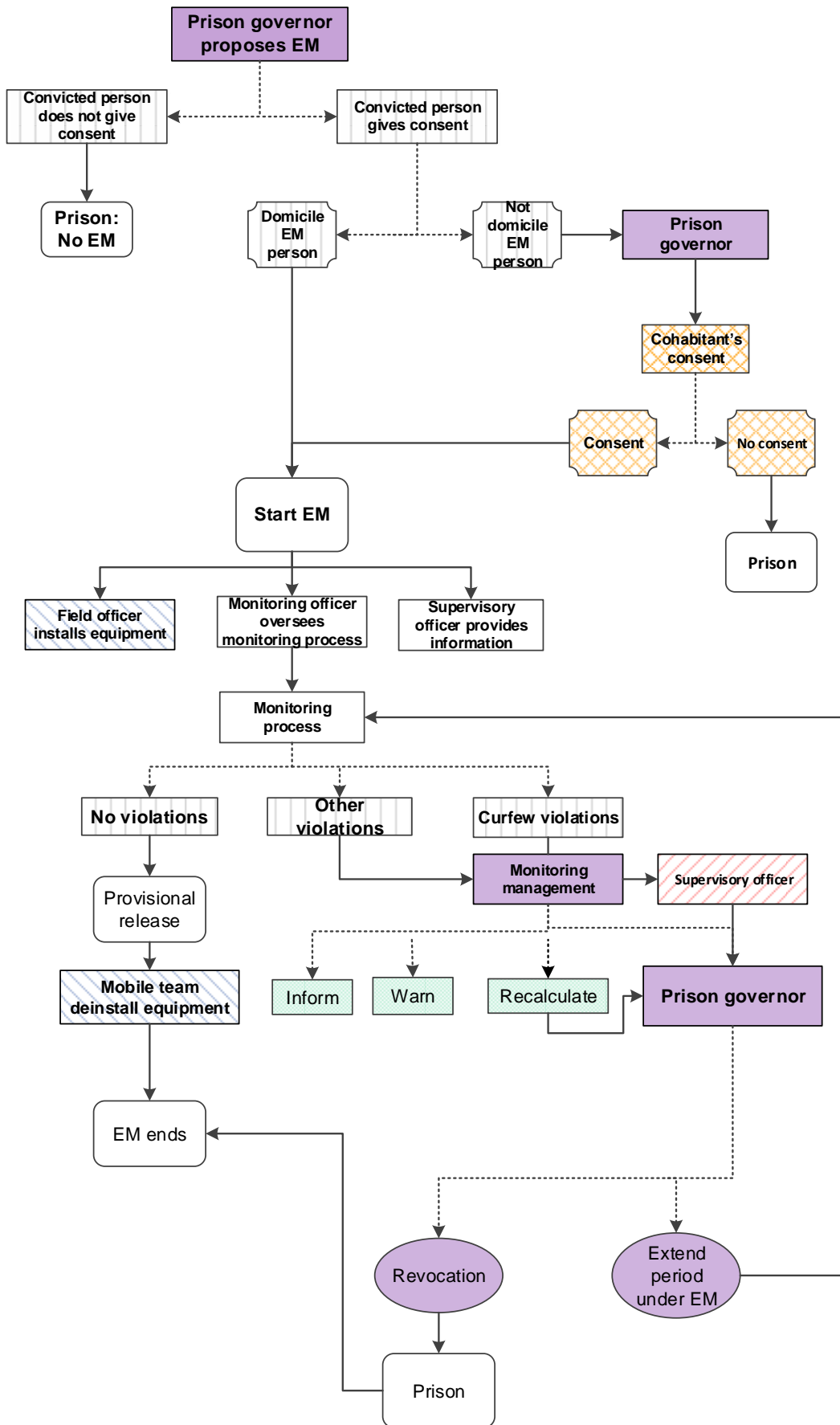
Appendix 1 Pre-trial Electronic Monitoring (GPS)



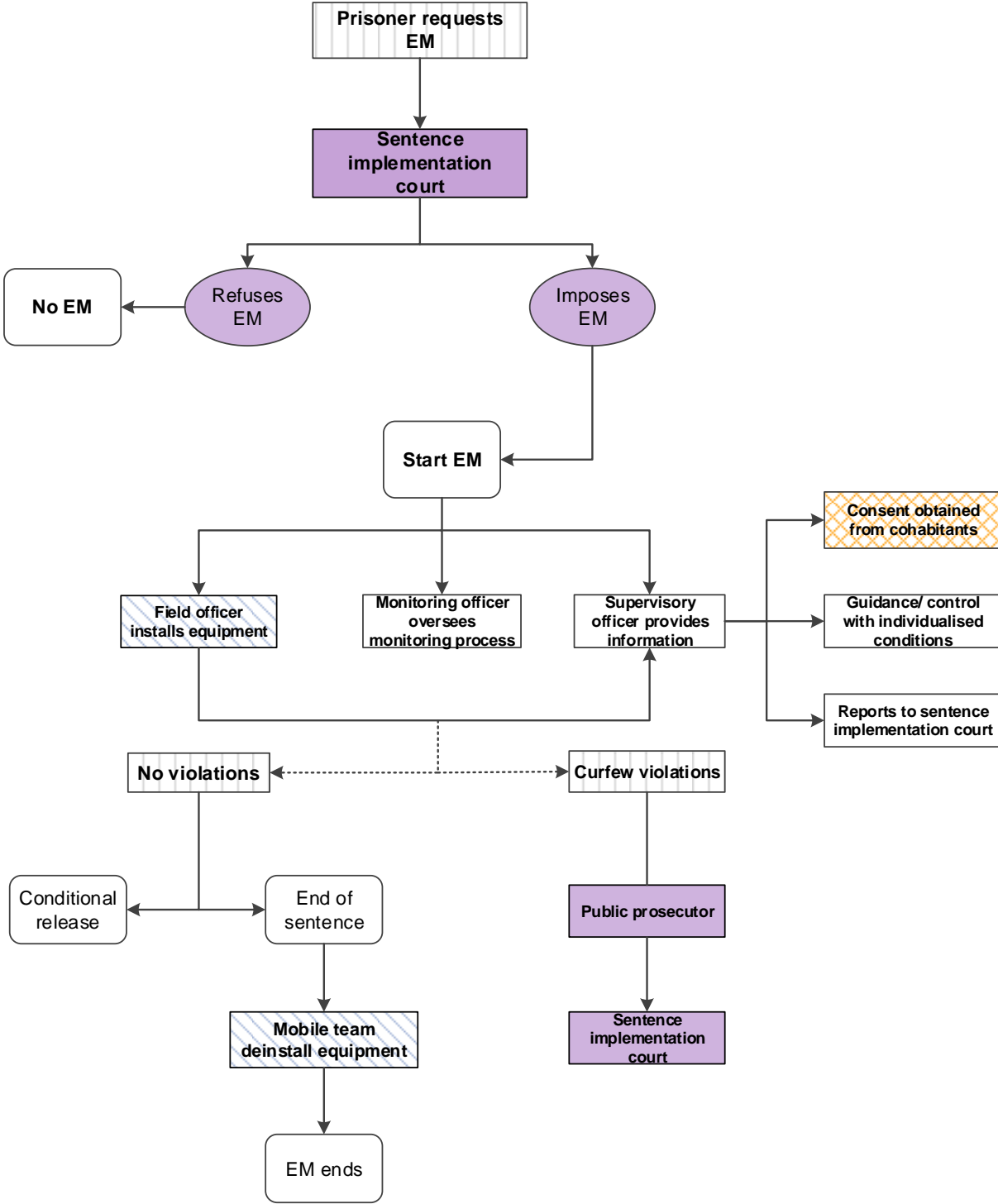
Appendix 2 Prison sentences of six to eight months



Appendix 3 Prison sentences between eight months and three years



Appendix 4 Prison sentences of more than three years



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