

Electronic Monitoring in Europe

A Summary and Assessment of Recent Developments in the Legal Framework and Implementation of Electronic Monitoring ¹

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1. Introduction

While the controversial debates on whether electronic monitoring and its substance, i.e. house-arrest or surveillance of the whereabouts of an offender, are certainly well remembered ², it seems now that controversies have lost their dynamic. The debates have faded away and there are several explanations for their disappearance. It might be that electronic monitoring has found its place amongst the already well established criminal sanctions, in particular among the conventional alternatives to imprisonment. It might also be that opponents of electronic monitoring have found targets better suited for those goals that have been ultimately pursued with criticizing electronic monitoring. The best and most convenient explanation, however, is that criticism has been replaced by friendly or still hostile disinterest because fears that electronic monitoring could serve as a Trojan horse in a mean attack on rehabilitation and with that on job availability or job status of social workers has proven to be wrong.

The debates in the nineties referred to empirical, normative and moral issues ³. They included a discussion on human rights and the use of electronic devices in the control of criminal offenders. Partially, exaggerated expectations could be observed which were probably the result of a zoom effect closely resembles the technological skeleton of electronic monitoring while the programme at large, as well as the framework of developments and trends in criminal penalties in general, remained outside the view. Electronic monitoring still today seems to fit in particularly well in a theoretical framework of critical criminology which centers around commercialization ⁴, risk management, privatization and new forms of exclusion ⁵. However, what is underlined with this “new penology” perspective ⁶ concerns that electronic monitoring represents at most a small element in a general trend which involves the change of systems of sanctions and social control at large as a consequence of

¹ The report is based on questionnaires sent out by CEP in order to retrieve information on selected issues related to electronic monitoring. All European countries that have introduced electronic monitoring nationwide have responded to the questionnaire.

² Levy, R.: Electronic Monitoring: Hopes and Fears. In: Mayer, M., Haverkamp, R., Levy, R. (eds.): Will Electronic Monitoring Have a Future in Europe? Freiburg 2003, pp. 13-35; Nellis, M.: Electronic Monitoring and Social Work in England. In: Mayer, M., Haverkamp, R., Levy, R. (eds.): Will Electronic Monitoring Have a Future in Europe? Freiburg 2003, pp. 211-225.

³ Feltes, Th.: Technologie, Moral und Kriminalpolitik. *Bewährungshilfe* 1990, pp. 324-334.

⁴ Lilly, R. J.: Review Essay. Selling Justice: Electronic Monitoring and the Security Industry. *Justice Quarterly* 9(1992), pp. 493-503; Lindenberg, M.: Bestrafungs-Industrie. *Neue Kriminalpolitik* 9(1997), pp. 8-10;

⁵ Garland, D., Sparks, R.: Criminology, Social Theory and the Challenge of Our Times. In: Garland, D., Sparks, R. (Eds.): *Criminology and Social Theory*. Oxford 2000, pp. 1-22; Gehm, J. R.: The new moral entrepreneur & the culture of control: Surveillance advertising in the justice industry. *Notre Dame* 1990.

⁶ Pratt, J.: The Return of the Wheelbarrow Men; or, the Arrival of Postmodern Penalty? *BritJCrIm* 40(2000), pp. 127-145.

technological advances and the move into postmodern societies⁷. Doubts did arise from the problem whether suitable groups of offenders can be identified⁸. Methodological criticism has been voiced as regards accounts of the outcome of electronic monitoring in terms of cost-benefit calculations, a comical situation indeed, as the strongest criticism in this respect came from such professions which – at least in Europe - were never subject to the standards evaluation (for example probation services). Attention has been paid to the role of technology and commerce in proliferating criminal sanctions such as electronic monitoring. The momentum of electronic monitoring obviously was due to the heavy concern for costs in the criminal justice systems as well as to its potential to symbolize cost-benefit consciousness and modernity on the one hand as well as its potential to symbolize the crime politicians concern for tough control, strict supervision and credibility of the system.

The developments so far visible in Europe point to acceptance and integration of electronic monitoring into the systems of criminal sanctions⁹. When, at the beginning of the nineties, electronic monitoring entered the European crime policy arena, England/Wales¹⁰, Sweden¹¹ and The Netherlands¹² were the first countries to introduce electronic monitoring as a main penalty, as a post sentencing and early release from prison device and/or as an alternative for pretrial detention. Portugal, France, Belgium, Italy and Scotland introduced electronic monitoring around 2000¹³ while Switzerland is willing to introduce a national scheme of electronic tagging with the new criminal code book due to be in force in 2007; Denmark will most probably enter a proposal of introducing electronic monitoring in Parliament in July 2005. In Spain a local experiment has been carried out¹⁴. In Germany the state of Hesse introduced electronic monitoring in 2000 on a project basis¹⁵ and continues gradually expand its outreach¹⁶. The federal level in Germany as well as other German states are not currently considering introduction of electronic monitoring. Recent proposals for reforming the system

⁷ See Fabelo, T.: "Technocorrections": The Promises, the Uncertain Threats. Sentencing and Correction. Issues for the 21st Century. No. 5, Washington May 2000, taking as examples electronic monitoring, the Humane Genom Project as well as pharmacology.

⁸ Abschlußbericht der Kommission zur Reform des strafrechtlichen Sanktionensystems. Bonn 2000, pp. 165-181.

⁹ Bishop, N.: Le controle intensif par surveillance electronique: un substitut suedois a l' emprisonnement. Bulletin d' information penologique 19/20(1995), pp. 8-9 1996, arguing that eg. the Swedish system of electronic tagging complies fully with rules 31 and 55 of the European Rules on Community Sanctions and Measures; see also Bishop, N., Schneider, U.: Improving the Implementation of the European Rules on Community Sanctions and Mesures: Introduction to a New Council of Europe Recommendation. European Journal of Crime, Criminal Law and Criminal Justice 9(2001), pp. 180-192, p. 184.

¹⁰ Mortimer, E., May, Ch.: Electronic monitoring in practice: the second year of the trials of curfew orders. London: Home Office 1997.

¹¹ Bishop, N.: Le controle intensif par surveillance electronique: un substitut suedois a l' emprisonnement. Bulletin d' information penologique 19/20(1995), pp. 8-9.

¹² Ministry of Justice: Electronic Monitoring. The Hague 1996.

¹³ For a summary see Haferkamp, R.: Elektronisch überwachter Hausarrest - Europa und die Schweiz. Neue Kriminalpolitik 1999, pp. 4-6; Mayer, M., Haverkamp, R., Levy, R. (eds.): Will Electronic Monitoring Have a Future in Europe? Freiburg 2003.

¹⁴ Ceron I Riera, M.: The Pilot Project on Electronic Monitoring in Catalonia, Spain. In: Mayer, M., Haverkamp, R., Levy, R. (eds.): Will Electronic Monitoring Have a Future in Europe? Freiburg 2003, pp. 149-154.

¹⁵ Albrecht, H.-J., Arnold, H., Schädler, W.: Der hessische Modellversuch zur Anwendung der „elektronischen Fussfessel“. Zeitschrift für Rechtspolitik 33(2000), pp. 466-469.

¹⁶ Schädler, W.: The Pilot Project on Electronic Monitoring in Frankfurt, Germany. In: Mayer, M., Haverkamp, R., Levy, R. (eds.): Will Electronic Monitoring Have a Future in Europe? Freiburg 2003, pp. 163-168; Mayer, M.: Modellprojekt Elektronische Fußfessel. Wissenschaftliche Befunde zur Modellphase des hessischen Projekts. Freiburg 2004, p. 17.

of sanctions did not include electronic monitoring but were restricted to modest developments within the current system that is based on the day fine as well as immediate and suspended prison sentences¹⁷. In Italy and in parts of Spain legislation is in place which allows for the use of electronic monitoring as an alternative to imprisonment¹⁸. The process of introducing electronic monitoring is still a process confined to the west of Europe and has not yet travelled to central and eastern European countries. In the Green Paper on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union of April 2004¹⁹ electronic tagging has been covered and evidently has been understood as a criminal sanction that is part of European standards. Also in a Report submitted to the Committee on Legal Affairs and Human Rights of the Council of Europe on the Situation of European Prisons and Pre-Trial Detention Centres published in 2004²⁰ electronic monitoring is presented together with community service, suspended sentences and the like as a promising alternative to imprisonment and as a strategy to reduce costs linked to deteriorating prison conditions and the heavy burden of overcrowded prisons in Europe.

2. The Legal Framework and Aspects of Implementation of Electronic Monitoring

When looking at the legal framework as it has unfolded over the last years the first issue to be discussed should be

(1) The place of electronic monitoring within the systems of criminal sanctions

We find electronic monitoring in pretrial criminal proceedings²¹ either as an alternative to regular bail or as an instrument which is launched with the aim to reduce the risk of absconding and thus allows for suspending an arrest warrant that would have placed a suspect in pretrial detention²².

Then, electronic monitoring was introduced as a main or sole sanction in some systems, normally labelled front door electronic monitoring. This has been the case in England/Wales and in The Netherlands.

Some systems add electronically monitored house arrest to conditions attached to suspended prison sentences or as an element in the imposition of community sanctions tailored to the needs of an offender.

¹⁷ See Abschlußbericht der Kommission zur Reform des strafrechtlichen Sanktionensystems. Bonn 2000, pp. 165-181 displaying a rather poor assessment of electronic monitoring and evidently completely misled view on electronic monitoring in Europe and elsewhere; Gesetzentwurf der Bundesregierung, Entwurf eines Gesetzes zur Reform des Sanktionenrechts. Deutscher Bundestag Drucksache 15/2725, 17. 03. 2004.

¹⁸ Mayer, M., Haferkamp, R., Levy, R. (Eds.): Will Electronic Monitoring Have a Future in Europe? Freiburg 2003.

¹⁹ Commission of the European Communities: Green Paper on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union. Brussels, 30.04.2004, COM(2004)334 final, p. 74.

²⁰ Report, Committee on Legal Affairs and Human Rights of the Council of Europe on the Situation of European prisons and pre-trial detention centres. Doc. 10097, 19 February 2004.

²¹ In Portugal electronic monitoring is restricted to the function to serve as an alternative to pretrial detention, see Nunes, J.R.: The Portuguese Pilot Project on Electronic Monitoring. In: Mayer, M., Haferkamp, R., Levy, R. (Eds.): Will Electronic Monitoring Have a Future in Europe? Freiburg 2003, pp. 155-158.

²² See Albrecht, H.-J.: The Place of Electronic Monitoring in the Development of Criminal Punishment and Systems of sanction. In: Mayer, M., Haferkamp, R., Levy, R. (Eds.): Will Electronic Monitoring Have a Future in Europe? Freiburg 2003, pp. 249-264.

Post sentencing replacement of prison sentences by electronic monitoring has been chosen by Sweden while in other systems electronic monitoring has found its place as a modification of imprisonment (and thus as contributed to diversify further prison regimes).

Finally electronic monitoring may be inserted into correctional programmes with adding it as a condition of earlier than regular release from prison in terms of a condition attached to parole. In this perspective electronic monitoring is introduced also to ease the transition from prison to liberty.

Therefore, electronic monitoring may come as a sole sanction which is then related to house arrest and the concept of confinement and/or supervision and monitoring of physical freedom within a concept of restrictions put on liberty.

Electronic monitoring may come as an element of community sanctions in terms of an add on if community sanctions are constructed along the goal of individualization of punishment. In England/Wales for example various community sanctions are put at the disposition of criminal courts that can be combined and adjusted to the needs of the offender, the victim and society. Electronic monitoring then is part of a programme of sentencing which enhances the capacity of community sanctions to deliver credible and efficient punishment.

Some countries, for example The Netherlands, have opted for introducing both, front and back door models of electronic monitoring²³. Electronically monitored house-arrest in The Netherlands may be imposed as a sole sanction instead of a prison sentence of not more than 6 months. Electronic monitoring may be combined with a suspended prison sentence as well as with community service²⁴. Then, a modification of serving a prison sentence was introduced which entitled a prisoner after having served half of the prison sentence (but at least a minimum of one year) to apply to serve the rest in the form of electronically monitored house arrest. Here, electronic monitoring is part of a correctional programme which lies at the discretion of prison administration and can range between 6 weeks and one year. Electronic monitoring thus adopts the function of low security detention facilities and of a precursor to full parole. The programme provides for participation of the prisoner at measures of rehabilitation for a minimum of 26 hours a week²⁵. Voluntary participation is required as is consent of adult members of the household where house-arrest is to be served. Sweden has opted for a back-end model of electronic monitoring which covers prison sentences of up to three months²⁶. Here too, consent of the convicted person as well as of the adult members of the household is a condition for electronically monitored house arrest. The experiment currently implemented in parts of Switzerland is based on the Swedish model²⁷. The prison administration is the competent body to decide on whether and how electronically monitored house-arrest is to be served instead of a prison sentence. However, different models have been implemented during the experiments in the Cantons participating in the experiments. While in some Cantons electronic monitoring can be combined with community service, in others

²³ Boelens, R.: Electronic Monitoring in The Netherlands. In: Mayer, M., Haverkamp, R., Levy, R.: (eds): Will Electronic Monitoring Have a Future in Europe?. Freiburg 2002, pp. 81-88.

²⁴ See Spaans, E.: Electronic Monitoring: The Dutch Experiment. CEP-Bulletin June 1998, pp. 6-8.

²⁵ Van Kalmthout, A., Tak, P.: New Sanctions Proliferating in The Netherlands. Overcrowded Times 11(1999), pp. 1, 20-23.

²⁶ Haferkamp, R.: Intensivüberwachung mit elektronischer Kontrolle - das schwedische Modell, seine Bedingungen und Ergebnisse. Bewährungshilfe 1999, pp. 51-67.

²⁷ Haferkamp, R.: opus cited, 1999, pp. 4-6.

community service is strictly separated from electronic monitoring²⁸. The French model is also focused on replacing sentences of immediate imprisonment, however, it is extended to serve as an alternative to remand prison²⁹. It is aimed at convicted persons whose sentence does not exceed one year imprisonment as well as at prisoners who have to serve not more than 1 year of their original prison sentence. As in the Dutch and Swedish models consent is required which, furthermore, in France has to be declared in the presence of a defence council. Either the convicted person or the public prosecutor can apply for substituting imprisonment through electronic monitoring while the correctional judge (*juge d'application des peines*) makes the final decision. Electronic monitoring should not exceed four months and should be embedded in a programme of rehabilitative measures. In England/Wales electronic monitoring was introduced through the Criminal Justice Act 1991 after a series of experiments³⁰. The courts may impose electronically monitored house-arrest in all cases where the law does not prescribe the penalty as imprisonment. However, a back-end model of electronic monitoring has been added which allows for reducing prison sentences of not more than 4 years to be reduced by two months³¹. Scotland has introduced "Restriction of Liberty Orders" by Section 5 of the Crime and Punishment (Scotland) Act 1997. This legislation also provides for the use of electronic tagging to monitor offenders' compliance with conditions of the order. A Restriction of Liberty Order requires an offender to be restricted to a specific place for a maximum period of 12 hours per day up to a maximum of 12 months, and/or from a specified place or places for up to 12 months. Offenders will be aged 16 or over. The offender must consent to the Order. Electronic tagging is imposed concurrently with a probation order. Therefore, a breach of the probation order is not a breach of the restriction of liberty order and vice versa.

(2) Decision making

Decision-making with regard to electronic monitoring refers to the question of what agency is entrusted the decision on whether to apply electronic monitoring as well as to the question of what criteria should play a role when making a decision on electronic monitoring. As regards the question of what agencies are involved in decision-making on electronic monitoring this is of course dependent on where electronic monitoring is applied in criminal proceedings. In cases where electronic monitoring replaces pretrial detention, the decision is entrusted to the court that decides on pretrial detention, it is then this court that makes a decision on whether detention shall be replaced by electronic monitoring. If electronic monitoring comes as a sole sanction then it is the sentencing court that has authority. Post sentencing decisions fall within the jurisdiction of prison authorities or parole commissions.

Probation services are involved in decision making as they are regularly entrusted the task to provide for information as regards the suitability of a case for electronic monitoring³².

²⁸ Entwicklung & evaluation: interkantonaler Modellversuch Elektronisch überwachter Strafvollzug (Electronic Monitoring / EM) für Kurz- und Langstrafen 1. September 1999 - 31. August 2002. Evaluations-Schlussbericht e&e, Zürich, 30. Juni 2003, p. 8.

²⁹ See www.justice.gouv.fr/chancell/cc49inia.htm for an overview on aims and the scope of application; for a full description of the French scheme of electronic monitoring see Kensey, A., Pitoun, A., Lévy, R., Tournier, P.V.: *Sous surveillance électronique. La mise en place du "bracelet électronique" en France*. Paris 2003.

³⁰ Whitfield, R.G.: *Electronic Monitoring - Erfahrungen aus den USA und Europa*. *Bewährungshilfe* 1999, pp. 44-50.

³¹ See for a summary Whitfield, D.: *Tackling the Tag. The Electronic Monitoring of Offenders*. Winchester 1997.

³² Nunes, J.R.: *The Portuguese Pilot Project on Electronic Monitoring*. In: Mayer, M., Haferkamp, R., Levy, R. (Eds.): *Will Electronic Monitoring Have a Future in Europe?* Freiburg 2003, pp. 155-158.

As regards criteria of decision making there exist several basic factors that can be taken as a point of departure: seriousness of the crime, risk, need for rehabilitation and finally individualization.

Seriousness of crime is always taken into account as all systems provide for general limits within which electronic monitoring may be applied. This is done either through establishing which prison sentences may be replaced by electronic monitoring or which amount of time may be deducted from a prison sentence (which is served) through parole. In Europe, it is mostly prison sentences of up to 1 year which may be substituted by electronic monitoring. Insofar, electronic monitoring responds to medium serious crime and applies in general in those areas of crime where also other community sanctions can be imposed.

Criteria of risk evidently are of paramount importance in pretrial electronic monitoring. When deciding on electronic monitoring replacing pretrial detention it has to be determined whether electronic monitoring will be effective in preventing that the suspect will abscond.

Also with respect to electronic monitoring as a main sanction or as a post adjudication and post sentence device risk assessments are taken into account³³. So, eg. in Hesse/Germany the judge will determine whether electronic monitoring added as a condition to a suspended prison sentence will reduce risk of recidivism to an extent that suspension of imprisonment is justified. Moreover, most systems demand for conditions of electronic monitoring which launch a process of selecting good risks. The question whether an offender is suited to electronic monitoring is made dependent on employment, permanent place of residence, consent of family members etc.³⁴.

Rehabilitation in most systems is made an essential part of electronic monitoring schemes. This complies with the Council of Europes Minimum Standards of Community Sanctions which in particular in rule 55 demand that community sanctions should be geared towards the goal of reintegration and personal development of an offender.

Finally, electronic monitoring is used also to individualize punishment when inserted into community sanctions as an element to adjust the sanction to seriousness of crime, victims needs, rehabilitation and risk.

(3) Electronic Monitoring and Juvenile Offenders

As regards the question of whether electronic monitoring should be extended to juveniles and young offenders it seems that electronic monitoring does not figure prominently in juvenile justice systems. With the exception of England/Wales³⁵ electronic monitoring is restricted to

³³ Dodgson, K., Goodwin, P., Howard, P., Llewellyn-Thomas, S., Mortimer, E., Russell, N., Weiner, M.: opus cited, 2001, p. 8.

³⁴ Lehner, D.: Electronic Monitoring as an Alternative Penal Sanction in Switzerland. In: Mayer, M., Haverkamp, R., Levy, R. (eds.): Will Electronic Monitoring Have a Future in Europe? Freiburg 2003, pp. 115-120, p. 116; Haverkamp, R., Mayer, M., Levy, R.: Will Electronic Monitoring Have a Future in Europe? In: Mayer, M., Haverkamp, R., Levy, R. (eds.): Will Electronic Monitoring Have a Future in Europe? Freiburg 2003, pp. 1-12, p. 5.

³⁵ Section 43 of the Crime (Sentences) Act 1997 amended the Criminal Justice Act 1991 and extended the use of electronically monitoring to curfew orders imposed on young offenders aged 10 to 15 years¹⁶; see also Elliott, R., Airs, J., Easton, C., Lewis, R.: Electronically monitored curfew for 10- to 15-year-olds – report of the pilot. Research, Development and Statistics Directorate Home Office London 2000.

adult criminal justice systems. An explanation may be found in the more differentiated and separate systems of juvenile sanctions, in education serving as the main goal of juvenile sanctions³⁶ and finally also in less pressure coming from juvenile prisons which are less overburdened than their adult counterparts.

(4) Tagging and Tracking

The technology implemented is restricted in most European systems to tagging that allows to control whether the convicted offender complies with the conditions as regards house arrest and the daily schedule that has been made part of the sanction. The radio frequency technology that is used in electronic monitoring is, however, unable to determine an offenders' whereabouts during the absence from their residence. In contrast, Global Positioning Satellite system electronic monitoring continuously tracks movements at home and in the community on the basis of uniquely defined inclusion and exclusion zones. Violations of this (active) monitoring system are immediately sent to an on-call officer in the circuit for resolution. Another GPS technology used with less frequency is "passive" GPS. Here, the offender is tracked 24 hours a day, but this information is reported only once a day instead of being continuously transferred to an officer. This tool for offender supervision is of course less expensive than the active GPS system, but is unable to immediately notify of non compliance.

GPS tracking might become in England/Wales part of an exclusion order that shall prevent an offender to access an area as specified in a judicial order. The Criminal Justice and Court Services Act 2000 allows the tracking of offenders released on license, to monitor their whereabouts, or their compliance with other license conditions. This act introduces the community sentence of an exclusion order. The final decision on whether GPS tracking will be introduced will be made after a trial period (that has started on September 2, 2004) has been completed in the second half of 2005 and on the condition that evaluation results are positive. Electronic tracking is already used in Florida (as well as other parts of the United States). In Florida, electronic tracking will, in future, be used for monitoring sex offenders. The Florida Senate in April 2005 passed a bill that will require sex offenders who have been sentenced for sexual abuse of children under the age of 12 after expiration of a mandatory prison term of at least 25 years to wear GPS tracking devices for life. The measure is estimated to cost some 10 million US\$ per year and was triggered by the murder of two young girls by sex offenders who managed to escape obligations based on sex offender community notification laws. Estimates put the number of registered sex offenders whose tracks were lost in Florida at some 1800³⁷.

(5) The private sectors role

The private sectors role in the implementation of electronic monitoring is limited in most systems. Its role is confined to selling and maintaining the technology³⁸. However, England/Wales and Florida have chosen to entrust to private companies beyond maintenance the whole process of enforcing electronic monitoring. It seems that the private sectors role in proliferating electronic monitoring has been exaggerated as much as the role of the private

³⁶ Abschlußbericht der Kommission zur Reform des strafrechtlichen Sanktionensystems. Bonn 2000, pp. 165-181.

³⁷ The New York Times, April 22, 2005.

³⁸ Haverkamp, R., Mayer, M., Levy, R.: Will Electronic Monitoring Have a Future in Europe? In: Mayer, M., Haverkamp, R., Levy, R. (eds.): Will Electronic Monitoring Have a Future in Europe? Freiburg 2003, pp. 1-12, p. 5.

prison industry in driving the use of imprisonment. When looking at the process of creating policies of electronic monitoring and legislation to introduce it as an additional instrument in the system of sanctions or expanding its outreach it is clear that commercial interests have not been of importance. It is rather a traditional mix of cost reducing policies and policies promising added surveillance and security that have driven introduction and expansion of electronic monitoring so far.

(6) Financial contributions of the offender

Contributions by the offender are rather the exception than the rule. In Florida, Switzerland and Sweden offenders contribute to enforcement of electronic monitoring by an amount that ranges from 2 to 20 € per day ³⁹.

(7) Differences and similarities

The various models of electronic monitoring that are operative in Europe have the following in common:

Electronic monitoring is a technology which is used either to intensify (probation) supervision or to enforce restriction of liberty (or house arrest).

Electronic monitoring is applied in an area of medium serious crime and replaces prison sentences of up to 1 year.

A precise structure of the time budget of the sentenced person is evidently the core of electronic monitoring. This schedule is consented upon and introduces a relatively strict regulation of daily life. It is this schedule which introduces not only an element of supervision and discipline but also rehabilitation and treatment ⁴⁰.

Consent of the convicted person as well as adult members of the household where electronically monitored house-arrest is to be served is required.

Electronically monitored house-arrest is embedded in a structure of rehabilitative and educative measures (although punishment goals may vary).

Programmes are implemented through probation services.

There exist differences as regards:

The place of electronic monitoring in the system of criminal sanctions and their enforcement,

The focal groups (in terms of offences and offenders),

The goals of electronic monitoring which may put the emphasis on surveillance and control or on rehabilitation or on increasing the punitiveness or on individualization of community sanctions.

³⁹ Entwicklung & evaluation: interkantonaler Modellversuch Elektronisch überwachter Strafvollzug (Electronic Monitoring / EM) für Kurz- und Langstrafen 1. September 1999 - 31. August 2002. Evaluations-Schlussbericht e&e, Zürich, 30. Juni 2003, p. 8, 20 SF per day;

⁴⁰ Mayer, M.: Modellprojekt Elektronische Fußfessel. Wissenschaftliche Befunde zur Modellphase. des hessischen Projekts. Freiburg 2004, pp. 9.

The goals pursued with electronically monitored house-arrest point to flexibilization and individualization of community sanctions⁴¹, replacement of imprisonment and the reduction of negative impacts of imprisonment⁴² as well as reductions of costs of criminal corrections. Electronic monitoring shall then contribute to stabilizing self control mechanisms and with that to a reduction in recidivism⁴³. A particular focus, however, has been laid on replacement of imprisonment in face of increasing prisoner rates in Europe during the last decade⁴⁴.

Although, there are differences in the normative framework and in implementing electronic monitoring such differences do not go beyond differences that are known with respect to other criminal sanctions in Europe. Systems of criminal sanctions differ in many aspects; insofar it can be expected that electronic monitoring displays differences, too. Electronic monitoring is integrated into systems of sanctions and with that it adopts characteristics of the specific system of criminal sanctions.

3. Evaluation of electronic monitoring

Evaluation research is now available from all systems that have introduced electronic monitoring⁴⁵. Evaluation research, however, is not different from evaluation research carried out in the field of community sanctions in general. Although, community sanctions had been justified with avoiding negative impacts of imprisonment and the European Rules on

⁴¹ Morris, N., Tonry, M.: *Between Prison and Probation. Intermediate Punishments in a Rational Sentencing System*. New York, Oxford 1990, in particular chapter 7: Control and Treatment in the Community.

⁴² See Märkert, W., Heinz, S.: *Der elektronisch überwachte Hausarrest – hilfloser Aktionismus oder sinnvolle Ergänzung*. *Der Kriminalist* 1999, pp. 345.

⁴³ See Schädler, W., Wulf, R.: *Thesen zur Erprobung der elektronischen Überwachung als Weisung und elektronischer Hausarrest*. *Bewährungshilfe* 1999, pp. 3-10.

⁴⁴ See Kuhn, A., Madignier, B.: *Surveillance Electronique: la France dans une perspective internationale*. *Revue de sciences criminelles* 1998, pp. 671-686, p. 676.

⁴⁵ *Brottsförebyggande radet: Intensivövervakning med elektronisk kontroll. Et utvärdering av 1997 och 1998 års riksomfattande försöksverksamhet*. Stockholm 1999; Swedish National Council on Crime Prevention: *Electronic Tagging in Sweden*. Report 2005: 8; Spaans, E.: *Electronic Monitoring: The Dutch Experiment*. CEP-Bulletin Juni 1998, S. 6-8; Mortimer, E., May, Ch.: *Electronic Monitoring in Practice: The Second Year of the Trials of Curfew Orders*. London 1998; Villettaz, P., Killias, M.: *Les arrêts domiciliaires sous surveillance électronique dans les cantons de Genève, du Tessin et de Vaud*. Rapport final à L'Office fédéral de la justice. Lausanne 2003; *entwicklung & evaluation: interkantonaler Modellversuch Elektronisch überwachter Strafvollzug (Electronic Monitoring / EM) für Kurz- und Langstrafen 1. September 1999 - 31. August 2002*. Evaluations-Schlussbericht e&e, Zürich, 30. Juni 2003; National Council for Crime Prevention (BRÅ): *Intensive supervision with electronic monitoring*. BRÅ-report: Stockholm 1999; Loble, D., Smith, D.: *An Evaluation of Electronically Monitored Restriction of Liberty Orders*. Crime and Criminal Justice Research Findings No. 47 Lancaster University; Home Office Research Study 222, London 2000; Dodgson, K., Goodwin, P., Howard, P., Llewellyn-Thomas, S., Mortimer, E., Russell, N., Weiner, M.: *Electronic monitoring of released prisoners: an evaluation of the Home Detention Curfew scheme* Home Office Research, Development and Statistics Directorate, London March 2001; Schaap, R.A.: *Results of the Evaluation of the Netherland Project on Electronic Monitoring*. In: Mayer, M., Haverkamp, R., Levy, R. (eds.): *Will Electronic Monitoring Have a Future in Europe?* Freiburg 2003, pp. 89-92; Elliott, R., Airs, J., Easton, C., Lewis, R.: *Electronically monitored curfew for 10- to 15-year-olds – report of the pilot*. Research, Development and Statistics Directorate Home Office London 2000; Kensey, A., Pitoun, A., Lévy, R., Tournier, P.V.: *Sous surveillance électronique. La mise en place du "bracelet électronique" en France*. Paris 2003; Penedo, C.: *Evaluation of the Portuguese Electronic Monitoring Programme*. In: Mayer, M., Haverkamp, R., Levy, R. (eds.): *Will Electronic Monitoring Have a Future in Europe?* Freiburg 2003, pp. 159-161; Mayer, M.: *Modellprojekt elektronische Fussfessel*. Studien zur Erprobung einer umstrittenen Maßnahme. Freiburg 2004; Mayer, M.: *Modellprojekt Elektronische Fußfessel*. Wissenschaftliche Befunde zur Modellphase des hessischen Projekts. Freiburg 2004.

Community Sanctions and Measures demand for proper research on and evaluation of community sanctions ⁴⁶ research complying fully with evaluation standards has rarely been carried out in Europe. In particular, controlled experiments until now have not been used in evaluating implementation and outcomes of electronic monitoring ⁴⁷, with the exception of a Swiss evaluation study that adopted randomized assignment to electronic monitoring and to community service (as alternatives to imprisonment) ⁴⁸. Indeed, in an attempt to identify cost benefit research on various sentencing options for a review of the state of research McDougall et al were able to find 9 studies satisfying criteria for inclusion ⁴⁹. Out of these, only two dealt with a comparison between secure institutions and community sanctions ⁵⁰. But, none of these studies which comply with standards of evaluation has addressed electronic monitoring. Some studies make use of control groups that have been either matched with experimental cases subject to electronic monitoring or have been taken from cases where imprisonment had been imposed prior to introducing electronic monitoring but which would have been eligible for electronic monitoring ⁵¹. The limitations of evaluation research addressing electronic monitoring in Europe reflects legal restrictions as regards implementation of controlled experiments and random assignment of cases to controls and exposure to electronic monitoring. Moreover, there are problems in trying to find a point where randomization can be launched on the basis of theoretically meaningful criteria. Then, the problem arises to isolate effects of electronic monitoring (which is always in a certain way contaminated by various other elements of the programme which comes with electronic monitoring).

European evaluation studies on electronic monitoring are characterized by a strong qualitative element. The focus of many studies is on the implementation process and with that on questions where a control group is not needed. The studies conducted so far are in general based on small case numbers.

Goals of evaluation studies concern first of all identification of problems in implementing electronic monitoring. A second goal then deals with possible net-widening effects of introducing electronic monitoring. This goal can be subdivided into the goal of finding out whether electronic monitoring in fact reduces the burden of the prison system and how on the micro level electronic monitoring cases compare with either imprisonment or other community sanctions as regards costs and benefits. Net-widening related research then deals with questions of whether punishment is intensified ⁵² and whether the net of criminal justice is expanded through creating new enforcement organizations ⁵³. Success (and failure) is

⁴⁶ Bishop, N., Schneider, U.: Improving the Implementation of the European Rules on Community Sanctions and Measures: Introduction to a New Council of Europe Recommendation. *European Journal of Crime, Criminal Law and Criminal Justice* 9(2001), pp. 180-192, pp. 190.

⁴⁷ Bremer Institut für Kriminalpolitik (Hrsg.): Experimente im Strafrecht – Wie genau können Erfolgskontrollen von kriminalpräventiven Maßnahmen sein? Bremen 2000.

⁴⁸ Villettaz, P., Killias, M.: Les arrêts domiciliaires sous surveillance électronique dans les cantons de Genève, du Tessin et de Vaud. Rapport final à L'Office fédéral de la justice. Lausanne 2003, pp. 16-18.

⁴⁹ McDougall, C., Cohen, M.A., Swaray, R., Perry, A.: The Costs and Benefits of Sentencing: A Systematic Review. *The Annals of the American Academy of Political and Social Sciences* 587(2003), pp. 160-177.

⁵⁰ McDougall, C. et al: opus cited 2003, p. 167.

⁵¹ Dodgson, K., Goodwin, P., Howard, P., Llewellyn-Thomas, S., Mortimer, E., Russell, N., Weiner, M.: Electronic monitoring of released prisoners: an evaluation of the Home Detention Curfew scheme. Home Office Research Study 222, Home Office Research, Development and Statistics Directorate, March 2001, p. 51.

⁵² March, B. L. Prison crowding and alternatives to incarceration: A diffusion study of acceptance in the state of Missouri. Columbia 1993.

⁵³ Mainprize, St.: Electronic monitoring in corrections: Assessing cost effectiveness and the potential for widening the net of social control. *Canadian Journal of Criminology* 34(1992), pp. 161-180; Schumann, K.F.: Widening the Net of Formal Control by Inventing Electronic Monitored Home Confinement as an Additional

measured through crime committed during electronic monitoring and/or after having completed a period of electronically monitored house arrest.

As regards implementation of technology of electronic monitoring it is evident from the evaluation reports that no major problems are encountered⁵⁴. Violations of obligations which come with electronic monitoring are rare⁵⁵. This reflects the selection of good risks. An exception so far represents the Scottish experiment where case recruitment led to more young offenders and offenders with a prior record being placed under electronic monitoring and completion rates of electronic monitoring amounted to 72% (while completion rates in other jurisdictions range well above 90%)⁵⁶. Completion rates are correlated with age, prior record and length of electronic monitoring⁵⁷. Research on the English home curfew programme shows that the most common reason for not completing the curfew period successfully is breach of curfew conditions⁵⁸.

The assessment of net-widening effects is difficult. As none of the evaluation studies conducted so far in Europe has been based on randomized assignment of cases, hard data on replacement of prison sentences by electronic monitoring are not available. Conclusions therefore are made on the basis of qualitative data and perceptions of decision makers as well as perceptions of offenders. In most studies it is cautiously concluded that electronic monitoring replaces prison sentences to a certain extent⁵⁹. In Switzerland, it was concluded that the replacement effect is close to zero and that competition between electronic monitoring on the one hand and community service (which serves also as an alternative to detention in a prison facility) on the other hand results in one alternative replacing the other alternative⁶⁰. But anyway, the number of electronic monitoring cases is rather small in all European countries, except for England/Wales. This prevents of course electronic monitoring from having impacts similar to penalties like eg., day fines, suspended sentences etc. Graph 1 shows absolute numbers of electronic monitoring cases in various jurisdiction for 2004 and

Punishment: Some Issues of Conceptualization and Measurement. In: Mayer, M., Haverkamp, R., Levy, R. (eds.): Will Electronic Monitoring Have a Future in Europe. Freiburg 2003, pp. 187-198.

⁵⁴ Loble, D., Smith, D.: opus cited, 2000, pp. 42.

⁵⁵ Dodgson, K., Goodwin, P., Howard, P., Llewellyn-Thomas, S., Mortimer, E., Russell, N., Weiner, M.: Electronic monitoring of released prisoners: an evaluation of the Home Detention Curfew scheme. Home Office Research Study 222, Home Office Research, Development and Statistics Directorate, March 2001, p. 13; Mayer, M.: Modellprojekt Elektronische Fußfessel. Wissenschaftliche Befunde zur Modellphase. des hessischen Projekts. Freiburg 2004, p. 15; Haverkamp, R., Mayer, M.: Die Zukunft der elektronischen Überwachung in Europa. In: Monatsschrift für Kriminologie und Strafrechtsreform 86 (2003), pp. 217; Villettaz, P., Killias, M.: Les arrêts domiciliaires sous surveillance électronique dans les cantons de Genève, du Tessin et de Vaud. Rapport final à L'Office fédéral de la justice. Lausanne 2003, p. 3.

⁵⁶ Loble, D., Smith, D.: Evaluation of Electronically Monitored Restriction of Liberty Orders. The Scottish Executive Central Research Unit 2000

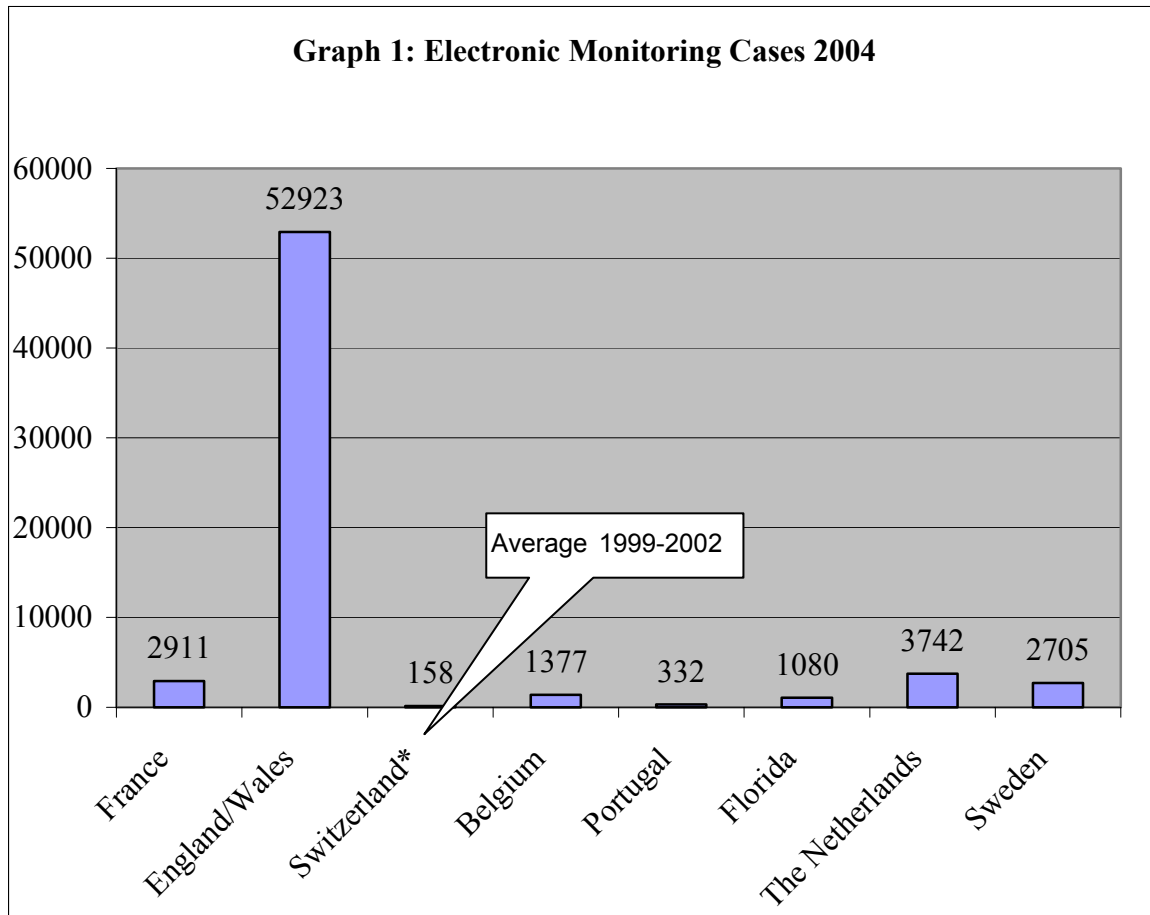
⁵⁷ Dodgson, K., Goodwin, P., Howard, P., Llewellyn-Thomas, S., Mortimer, E., Russell, N., Weiner, M.: opus cited, 2001, p. 20.

⁵⁸ Dodgson, K., Goodwin, P., Howard, P., Llewellyn-Thomas, S., Mortimer, E., Russell, N., Weiner, M.: opus cited, 2001, p. 14.

⁵⁹ Dodgson, K., Goodwin, P., Howard, P., Llewellyn-Thomas, S., Mortimer, E., Russell, N., Weiner, M.: Electronic monitoring of released prisoners: an evaluation of the Home Detention Curfew scheme. Home Office Research Study 222, Home Office Research, Development and Statistics Directorate, March 2001, p. 42; Mayer, M.: Modellprojekt Elektronische Fußfessel. Wissenschaftliche Befunde zur Modellphase des hessischen Projekts. Freiburg 2004, p. 23.

⁶⁰ entwicklung & evaluation: interkantonaler Modellversuch Elektronisch überwachter Strafvollzug (Electronic Monitoring / EM) für Kurz- und Langstrafen 1. September 1999 - 31. August 2002. Evaluations-Schlussbericht e&e, Zürich, 30. Juni 2003, p. 30.

reveals that this disposition has become a major instrument in supervising parolees in England/Wales.



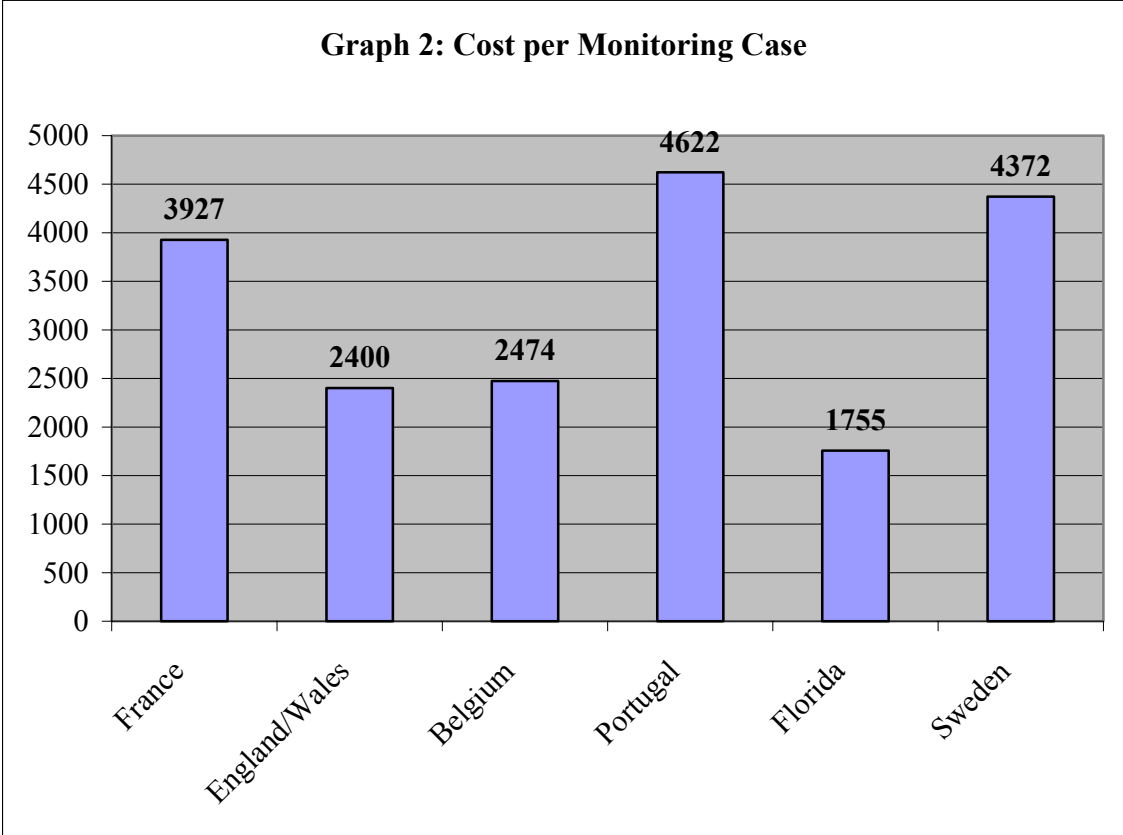
Costs per electronic monitoring were calculated on the basis of information provided in the questionnaires. Three groups can be distinguished. They are on display in graph 2. Differences in per case costs reflect certainly the type of programme which is implemented through electronic monitoring as well as the average length of electronic monitoring.

When looking at costs per day the average seems to oscillate around some 50 €⁶¹. Another perspective can be adopted with trying to estimate the share of funds that go to electronic monitoring. Based on estimates on the budgets of criminal justice at large (including criminal corrections)⁶² the proportion of such budgets vested in electronic monitoring can be calculated for England/Wales, France and Sweden. According to that, out of each 100 € spent in England/Wales for criminal justice some 80 € cents go to electronic monitoring. In Sweden it is approximately 50 Cents and in France 10 Cents. The small share of funds invested into electronic monitoring may be also interpreted as indicating that net-widening effects are limited also as regards creation of new and powerful enforcement agencies.

⁶¹ See Mayer, M.: opus cited 2004, p. 211.

⁶² van Dijk, F., de Waard, J.: Legal infrastructure of the Netherlands in international perspective. Crime control. The Hague, June 2000.

Costs of electronic monitoring are certainly lower than those occurring when implementing prison sentences ⁶³. However, costs of ordinary probation may be below the costs resulting from electronic monitoring due to more investments in supervision and programmes coming with electronic monitoring ⁶⁴.



⁶³ Lobley, D., Smith, D.: opus cited, 2000, pp. 39.

⁶⁴ Lobley, D., Smith, D.: opus cited, 2000, pp. 39.

Table: Implementation of electronic monitoring in Europe ⁶⁵

	Sweden	England/Wales	The Netherlands	Hesse/Germany	France
Average period (months)	1,3	3,1	3,5	4,6	85% less than 4 months
Recidivism	11%	18%			
% successfully completed	95	82	90	90	95
Age (medium)	37	27	34		Most < 35 years
Violations %	5	11	16		
Drugs %	5	3	20	40	16
Burglary %	2	17	19		
DUI %	51	3	-	10	18
Property crime %	3	30	-	20	35
Violence %	21	12	22	15	15
% male offenders	93	92	90	89	Almost exclusively male
Min-Max months	0,5-2	- 6	1-6	- 6	- 3

Sources: CEP: Electronic Monitoring in Europe. www.cepprobation.org/reports/electronic_monitoring_in_europe.shtml; Brottsförebyggande radet: Intensivövervakning med elektronisk kontroll. Et utvärdering av 1997 och 1998 ars riksomfattande försöksverksamhet. Stockholm 1999; Spaans, E.: Electronic Monitoring: The Dutch Experiment. CEP-Bulletin June 1998, pp. 6-8; Mortimer, E., May, Ch.: Electronic Monitoring in Practice: The Second Year of the Trials of Curfew Orders. London 1998; Max-Planck-Institut für Ausländisches und Internationales Strafrecht: Laboratoire Europeen Associee. Bilanz (1998-2001) und Perspektiven (2002-2006). Freiburg 2002, pp. 28-29; Swedish National Council on Crime Prevention: Electronic Tagging in Sweden. Report 2005: 8, p. 19.

The impact of electronic monitoring seems to be assessed rather positively by family members living in the same household ⁶⁶. Negative impacts of electronic monitoring can be avoided. Family violence and extreme stress – as was sometimes assumed to be a possible consequence of home confinement - have not been reported ⁶⁷. Also offenders view electronic

⁶⁵ CEP: Electronic Monitoring in Europe. www.cepprobation.org/

⁶⁶ Dodgson, K., Goodwin, P., Howard, P., Llewellyn-Thomas, S., Mortimer, E., Russell, N., Weiner, M.: opus cited, 2001, p. 26; Lobley, D., Smith, D.: opus cited 2000, pp. 26; entwicklung & evaluation: interkantonaler Modellversuch Elektronisch überwachter Strafvollzug (Electronic Monitoring / EM) für Kurz- und Langstrafen 1. September 1999 - 31. August 2002. Evaluations-Schlussbericht e&e, Zürich, 30. Juni 2003, pp. 60.

⁶⁷ See Entwicklung & evaluation: interkantonaler Modellversuch Elektronisch überwachter Strafvollzug (Electronic Monitoring / EM) für Kurz- und Langstrafen 1. September 1999 - 31. August 2002. Evaluations-Schlussbericht e&e, Zürich, 30. Juni 2003, p. 95; Dodgson, K., Goodwin, P., Howard, P., Llewellyn-Thomas, S., Mortimer, E., Russell, N., Weiner, M.: opus cited, 2001, p. 32; Mayer, M.: Modellprojekt Elektronische Fußfessel. Wissenschaftliche Befunde zur Modellphase. des hessischen Projekts. Freiburg 2004, p. 25.

monitoring positively⁶⁸, a large majority would opt for this penalty again after having made experiences with electronic monitoring⁶⁹. Disadvantages are less mentioned than the advantages of electronic monitoring, with wearing a tag itself not ranking top on the list of disadvantages mentioned by offenders⁷⁰.

As regards rates of recidivism, rates are rather low after electronic monitoring. However, Swedish evaluation research concludes that recidivism rates after electronic monitoring are not different from those of a group of offenders matched to the electronic monitoring group⁷¹. Low rates of recidivism reflect – as do high completion rates – selection of good risk cases. However, high risk cases seem to do better predicted when on electronic monitoring⁷². This is true also for drug offenders⁷³.

4. Conclusions

A couple of conclusions can be drawn from experiences made over the last years with electronic monitoring in Europe.

Electronic monitoring has been integrated into European systems of sanctions.

The type of integration and the place where electronic monitoring is assigned depend largely on the particulars of national systems of criminal sanctions, sentencing and criminal corrections.

That is why differences are abundant and the question arises therefore whether electronic monitoring should be addressed under a different perspective, eg., imprisonment and different prison regimes, suspended sentences and conditions attached to suspension, community sanctions etc.

However, diversity in the way electronic monitoring is inserted into systems of criminal sanctions is consistent with the general picture European systems of sanctions convey: There are large differences.

Except for England/Wales, private companies play only a marginal role in electronic monitoring (restricted to maintenance once the technology is implemented).

⁶⁸ Villettaz, P., Killias, M.: Les arrêts domiciliaires sous surveillance électronique dans les cantons de Genève, du Tessin et de Vaud. Rapport final à L'Office fédéral de la justice. Lausanne 2003, p. 3.

⁶⁹ Dodgson, K., Goodwin, P., Howard, P., Llewellyn-Thomas, S., Mortimer, E., Russell, N., Weiner, M.: opus cited, 2001, p. 27; Loble, D., Smith, D.: opus cited, 2000, pp. 26.

⁷⁰ Dodgson, K., Goodwin, P., Howard, P., Llewellyn-Thomas, S., Mortimer, E., Russell, N., Weiner, M.: opus cited, 2001, p. 30: 27% of offenders mention the tag as a disadvantage.

⁷¹ Swedish National Council on Crime Prevention: Electronic Tagging in Sweden. Report 2005: 8, p. 19; similar results are reported in Dodgson, K., Goodwin, P., Howard, P., Llewellyn-Thomas, S., Mortimer, E., Russell, N., Weiner, M.: Electronic monitoring of released prisoners: an evaluation of the Home Detention Curfew scheme. Home Office Research Study 222, Home Office Research, Development and Statistics Directorate, March 2001, p. 55.

⁷² Dodgson, K., Goodwin, P., Howard, P., Llewellyn-Thomas, S., Mortimer, E., Russell, N., Weiner, M.: opus cited, 2001, p. 56.

⁷³ Dodgson, K., Goodwin, P., Howard, P., Llewellyn-Thomas, S., Mortimer, E., Russell, N., Weiner, M.: opus cited, 2001, p. 21.

Electronic monitoring is restricted to the adult system of criminal justice and except for England/Wales, there are no signs that electronic monitoring will be extended to the juvenile justice systems.

Experiments with GPS tracking are carried out in England/Wales and GPS tracking is operational in Florida (where GPS tracking devices will, in the near future, be used extensively for certain groups of sex offenders).

Costs entailed with electronic monitoring are in general lower than those linked to imprisonment. As regards other community sanctions, evidence is less conclusive. Costs are largely dependent on the type of programmes that are implemented together with electronic monitoring.

Research on net-widening effects poses various problems. However, there seems to be a consensus that electronic monitoring in fact replaces, to a certain extent, imprisonment while there is also consensus that there is overlapping between electronic monitoring and other forms of community sanctions.

