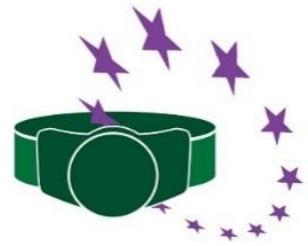


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Electronic Monitoring in Germany

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Section 1: Legal and organisational context

1.1 EM in the German sanction system

The German sanctions system distinguishes between criminal sanctions based on the guilt of the offender, and measures for rehabilitation and security based on the dangerousness of the offender on the other. In Germany, electronic monitoring (EM) is not an independent criminal sanction or measure by these means. Nevertheless, there are several legal bases in the German sanctions system for the use of EM:

- As a directive for dangerous offenders in the context of the measure of supervision of conduct (“*Führungsaufsicht*”) (see s. 68b (1) No. 12 Criminal Code)
- As a directive in combination with a suspended sentence (s. 56c Criminal Code)
- As a directive for offenders who are released early (s. 57, 57a Criminal Code)
- As a directive for an accused to avoid pre-trial detention (s. 116 Criminal Procedure Act)
- During the execution of prison sentences for preparing release from prison by so-called relaxations of the prison regime (“*Vollzugslockerungen*”, prison leaves) or as an alternative form of the execution of prison sentences for fine defaulters. The legislative competence for prison law is held by the sixteen federal states.

Although there are several legal bases for its implementation in federal law the German sanction practice is very reluctant towards EM as an option. First of all, these legal possibilities for the use of EM are highly controversial. Furthermore, the model-projects, in which EM was used as an alternative to imprisonment, in two federal states have been evaluated rather sceptically, especially in regard to “net-widening effects”. While prison overcrowding was a driver for the implementation of EM in some European countries. Prison overcrowding both in the past and currently is not a major issue in Germany. The need for EM became “urgent” with the decision of the European Court of Human Rights (M. vs. Germany, no. 19359/04), which stated that the instrument of preventive detention was a violation of the European Convention on Human Rights, with the consequence that several “dangerous” offenders had to be released from preventive detention.

1.2 Types of electronic monitoring and their popularity

Overall, electronic monitoring of offenders in Germany can be divided into two fields of application:

The only form of EM that is accepted in all German federal states is so-called **electronic location monitoring** (*Elektronische Aufenthaltsüberwachung*, EAÜ). EAÜ comes into play as a directive in the context of the measure of supervision of conduct. The purpose of EAÜ is to minimise the risk that offenders, who have committed serious sexual or violent offences (dangerous offenders), reoffend after their release from prison or from a forensic institution. EAÜ uses *GPS-technology* and thus allows the location of the person under EM to be continuously monitored. The following two tables serve to depict the role that EAÜ-EM plays in Germany (totals for 2013 and fixed date).

Table 1 Electronic location monitoring (EAU) cases in federal states in 2013								
Federal state	Probands			Offender group			Offence	
	New	Completed	Revoked	Time served in full	Released	Both	Sexual offences	Violent offences
Baden-Württemberg	3	0	1	2	0	1	2	1
Bavaria	14	4	8	19	7	4	24	6
Berlin	5	0	1	3	1	1	0	5
Hamburg	1	1	0	2	0	0	2	0
Hesse	6	0	0	5	0	2	5	2
Mecklenburg-Vorpommern	1	1	2	6	0	1	6	1
Lower Saxony	1	0	0	2	0	0	2	0
North Rhine-Westphalia	5	0	2	6	0	1	5	2
Rhineland-Palatinate	0	0	1	1	0	0	1	0
Saarland	1	0	0	1	0	0	1	0
Saxony	1	0	1	1	0	0	1	0
Saxony-Anhalt	0	0	0	1	0	0	1	0
Schleswig-Holstein	0	1	1	2	0	0	1	1
Thuringia	3	0	0	4	0	1	5	0
Brandenburg	0	0	0	0	0	0	0	0
Bremen	0	0	0	0	0	0	0	0
Total	41	7	17	55	8	11	56	18

*There were no new or completed cases on 15th March 2014.

The figures show that there are wide discrepancies in the use of EAÜ-EM in the dif-

Federal state	Probands	Offender group			Offence	
	Revoked	Time served in full	Released	Both	Sexual offences	Violent offences
Baden-Württemberg	2	2	0	1	2	1
Bavaria	9	16	6	4	21	5
Berlin	1	2	1	1	0	4
Hamburg	0	1	0	0	1	0
Hesse	0	5	0	2	5	2
Mecklenburg-Vorpommern	1	5	0	1	5	1
Lower Saxony	1	2	0	0	2	0
North Rhine-Westphalia	2	6	0	1	5	2
Rhineland-Palatinate	1	1	0	0	1	0
Saarland	0	1	0	0	1	0
Saxony	1	1	0	0	1	0
Saxony-Anhalt	0	1	0	0	1	0
Schleswig-Holstein	1	1	0	0	1	0
Thuringia	0	5	0	1	6	0
Brandenburg	0	0	0	0	0	0
Bremen	0	0	0	0	0	0
Total	19	49	7	11	52	15

ferent federal states. More than one third of all EAÜ-persons came from Bavaria alone. When the total population is taken into account, the highest rate of EAÜ-monitored persons can be found in Mecklenburg-Western Pomerania. In other federal states with similar population sizes, like Baden-Württemberg and Lower Saxony, the use of EAÜ is limited to only a small handful of cases.

EAÜ is primarily used with offenders who are released from prison after having served their full sentence. Around 75 per cent are sexual offenders, while the remaining 25% are persons who had been sentenced for violent offences. According to our interview partners, EAÜ has only once been applied in a case involving a female offender. Overall, notwithstanding the observed variations between the different federal states, it is apparent that the EAÜ-EM directive is used only in select cases in which the offender poses a significant risk. While the EM-directive, applicable in the context of the measure of supervision of conduct, is the only field of application of EM that is explicitly

foreseen as an option in federal law, with fewer than 100 cases nationwide, EAÜ plays only a peripheral role in German sentencing practice.

EAÜ is not the only manifestation of EM in Germany. In the federal state of Hessen, a pilot project has been underway since the year 2000 involving so-called **electronic presence monitoring** (*Elektronische Präsenzkontrolle*, EPK). EAÜ and EPK are vastly different from one another, as shall be discussed in closer detail in the course of this report. Unlike EAÜ, the use of EPK in this pilot is not limited to one particular field of application (EAÜ: as a directive attached to supervision of conduct). Instead, EPK can be applied in a number of different contexts and thus latches onto a number of different statutory provisions. Specifically, EM can be used as a directive in combination with a suspended sentence (probation support), as a means for avoiding pre-trial detention/custodial remands, as a directive in combination with a pardon or as a directive in the context of prison-regime “relaxations” used as means for release preparation.

EPK thus primarily serves as a means for keeping people out of detention and imprisonment. In contrast to EAÜ, the target group that EPK caters to is not restricted to serious violent and sexual offenders who have been released from prison after having served their sentence in full. Instead, EPK focuses on offenders who are on the threshold between custody and probation (or between pre-trial detention and alternative (non-)remand options), and who also show a lack of discipline. The EM-directive is intended to monitor the offender’s compliance with any court orders, conditions and directives to which he/she has been subjected, thus supporting him/her in finding and adhering to structured daily routines.

This form of EM uses *radio frequency technology* to monitor whether or not the monitored person is at home. Unlike EAÜ, EPK does not allow for the location of the offender to be precisely pinpointed at any time.

On 3rd April 2013 a total of 83 persons were subject to EPK-EM – 41 in the context of probationary directives, the remaining 42 under directives for avoiding pre-trial detention. From the initiation of the pilot project up until that date, EPK was applied in a total of 1,141 cases (up until 31st March 2015: 1,310). That amounts to an average of roughly 80-90 cases per year. In comparison with the total number of 15,977 probationers in Hessen for the year 2014 the practical significance of this instrument becomes clear (even more clearly in comparison with the total number of about 180,000 probationers in whole of Germany). The supervising authorities have reported a significant reduction in the use of EPK in practice over last two years in particular, with a current caseload of only 48. About two thirds of these cases involved directives made in the context of probation or conditional release, while one third were directives for avoiding pre-trial detention. The law also allows for radio frequency monitoring to be applied as a means of “sentence relaxation” in prisons, especially youth prisons. This alternative has not been met with much approval from prison administrators, and accordingly there have only ever been two such cases.

Table 3 People under EM in Hesse on 3rd April 2013							
Region	Active	Suspended sentence/early release	Pre-trial	In total (since 2000)	Suspended sentence/early release	Supervision of conduct	Pre-trial
Darmstadt.	34	6	28	335	113	1	221
Frankfurt/M.	13	12	1	414	349	0	65
Fulda	2	0	2	59	45	0	14
Gießen	15	13	2	127	102	0	25
Hanau	4	2	2	66	46	0	20
Kassel	1	0	1	26	24	0	2
Limburg	5	5	0	36	29	0	7
Marburg	3	2	1	31	18	1	12
Wiesbaden	6	1	5	47	26	0	21
Total	83	41	42	1141	752	2	387

*There were no supervision of conduct cases on 3rd April 2013

Table 4 illustrates Germany's EM caseload over time between 2003 and 2015. On average there were 54 new EM cases made each year. The average duration of an EM order was 121 days.

Table 4 Active EM cases on 11th August 2015	
EAÜ	EPK
73	43

Since EAÜ is limited to serious sexual and violent offenders who have served their sentence in full and are subsequently released, and since EPK is available only on a pilot basis in one of the 16 federal states of Germany, EM plays only a peripheral, subordinate role in German sentencing decision-making. Due to their differing objectives and fields of application, both forms of EM shall be examined individually in subsequent sections.

Table 5 Annual EM caseload over time including average duration and number of new orders

Year	Offenders under EM	Average duration of EM-order in days	New EM-orders
2003	55	102	15
2004	71	118	23
2005	95	98	26
2006	121	120	40
2007	150	118	48
2008	177	113	55
2009	181	136	68
2010	206	131	74
2011	235	153	99
2012	242	127	85
2013	191	141	74
2014	148	131	53
2015	70	83	48

1.3 Legal frameworks

EAÜ-EM EAÜ is the only field of application of EM that has been expressly codified in the law, in s. 68b (1) No. 12 Criminal Code (It should be noted that beside this, the Hessian Prison Code explicitly mentions EM. This form of EM nonetheless is of no practical relevance. See below). EAÜ in this context comes into play as a directive that can be appended to the measure of supervision of conduct. EAÜ is intended to provide support in the successful fulfilment of the measure as well as of any other directives that have been attached to said measure. Being a penal measure, the powers for legislating for supervision of conduct are located at the federal level. The respective provisions can thus be found in s. 68 – s. 68g Criminal Code.

The work of the administrative bodies in the context of EM, most prominently the “agencies for supervision of conduct” (German: Führungsaufsichtsstellen, ASC) and the HZD, is hierarchically structured through guidelines and administrative rules, both within and between agencies. The GÜL’s responsibility for the technical surveillance and monitoring of all EAÜ-probands in all federal states was so codified in an inter-state treaty.

The EU rules and recommendations on electronic monitoring (CM/Rec(2014)4) are in fact hardly known among practitioners. People in senior executive positions seem to be aware of these rules and recommendations, but do not attribute any influence to them. This may indeed be a consequence of these recommendations being still rather new. It was often emphasised that the German law already provides stricter principles in terms of data-protection than the EU-recommendations:

We did study [the recommendations] at that time ... They were mainly shaped by a data protection point of view; with the right of informal self-determination. But I think many of those normative-ethical requirements for the implementation of this measure were already realised. (Interview 11 – Manager of the central probation service coordination office)

EPK-EM The key fields of application of EM in the Hessian model (preventing pre-trial detention, directive of probation) are *supported* by federal law. The respective norms in the Criminal Code and Criminal Procedure Code do not explicitly state EM as such, but rather contain catalogues of directives. In this context, EM is allocated to the so-called “directives concerning reporting and whereabouts” (in German: Melde- und Aufenthaltsweisungen). The legitimisation of this approach is also founded in the fact that EM can only be ordered if the monitored person consents to it. The lack of a clear statutory basis is stated as one of the key grounds why the Hessian model has not been expanded to other German federal states.

Fields of law that lie in the legislative competency of the individual federal state (rather than at the federal level) (in Hessian Penitentiary Law or in the Hessian law on pardons) do foresee EM. However, in practice, they play only a subordinated role.

1.4 Organisation of electronic monitoring

1.4.1 Actors

Actors in the decision-making-process:

EAÜ-EM The actual monitoring process is preceded by a decision-making process that involves numerous actors.

The first actor to be mentioned is the *state prosecution service* (SPS). The SPS convenes case meetings at which the different parties involved can give a recommendation with regard to whether or not an EAÜ-directive should be issued in that specific case. These parties include the so-called *agency for the supervision of conduct* (ASC), the *police*, *probation workers* or other parties that have observed the monitored person’s development in the course of him/her serving sentence. The main role of the police in this part is to propose individualised exclusion zones and home zones for each proband. If the parties are in favour of subjecting the offender to EAÜ, then the SPS files a recommendation to that effect with the competent court.

The most significant recommendation in this regard is that made by the *custodial or forensic institution* from which the offender shall be released. In some federal states (for instance Mecklenburg-Western Pomerania), the main case meeting is preceded by a “small case meeting” (in German: kleine Fallkonferenz) at which the prison administration independently obtains recommendations from the parties that have been involved with the offender either prior to or during his/her imprisonment/placement.

Supervision of conduct is ordered by the competent court shortly before the offender has served full sentence. This is usually the *Court for the Enforcement of Punishment* (German: Strafvollstreckungskammer) of the regional court district in which the prison sentence or the secure measure of rehabilitation and security is being enforced. EM

can be applied in this context as an ancillary directive attached to the measure of supervision of conduct.

Agency for supervision of conduct:

EAÜ-EM Where supervision of conduct is ordered with an ancillary EAÜ-directive, in accordance with s. 68a (3) Criminal Code, the so-called agency for supervision of conduct (German: Führungsaufsichtsstelle, ASC) monitors the convict's behaviour and adherence to the directives to which he/she has been subjected, in agreement with the court and with support from the responsible probation worker. In accordance with s. 68a (6) Criminal Code, the court can issue the ASC and the probation service with instructions for their activities. The ASC is the central agency for the monitoring of EAÜ-probands subject to measures of supervision of conduct.

The majority of federal states have established ASCs at their regional courts (about 200 districts nationwide). In Mecklenburg-Western Pomerania, by contrast, responsibility for supervision of conduct is centralised, in the hands of the so-called "Landesamt für Ambulante Straffälligenarbeit".

In Bavaria – the federal state with the highest EAÜ-caseloads – a "central probation service coordination office" (German: Zentrale Koordinierungsstelle Bewährungshilfe) has been set up, serving as a superordinate agency that coordinates inter-agency communication and collaboration in Bavaria, including the context of EAÜ.

Monitoring Centre (GÜL):

EAÜ-EM In contrast to the issuance of EAÜ-directives and their monitoring/supervision by the ASCs, the actual technical tracking of offenders is performed uniformly by the same single agency in all federal states. The federal states had previously agreed in an inter-state treaty to establish such a shared agency. The monitoring centre is responsible for providing 24-hour GPS data tracking and is the "first responder" in cases of potential violations by the person under EM.

EPK-EM The tasks with which the GÜL is entrusted in the context of EPK correspond to those with which it is tasked in the context of EAÜ. Outside of the regular office hours of the probation service, the GÜL assumes the role of the probation service, including the services' social/community oriented tasks, and forwards all recorded data and information to the probation service on the next day.

HZD and Securitas:

EAÜ-EM Another agency that is active beyond federal state boundaries is the so-called "Hessian Centre for Data Processing" (German: Hessische Zentrale für Datenverarbeitung, HZD). While the HZD is a subdivision of and thus subordinated to the Hessian Ministry of Justice, it nonetheless also acts on behalf of other federal states in the context of EAÜ. Like the GÜL, the HZD, too, is responsible for technical monitoring aspects. Where so required, the HZD sets up individualised exclusion zones or presence zones (zones in which the monitored person is obliged to be located). HZD is furthermore responsible for providing GPS-tracker maintenance and monitors technical details, like charge characteristics and whether or not the tracker is in motion. In

doing so, the HZD has no access to information pertaining to the EAÜ-proband's precise whereabouts. The HZD is also tasked with installing and uninstalling the GPS-trackers. For this purpose, the private organisation *Securitas* acts on behalf of HZD as a subcontractor (with offices in Berlin, Hamburg, Munich and Offenbach).

EPK-EM The HZD is responsible for the proper technical implementation of the monitoring process, and in some cases also assumes the task of actually attaching/installing the tag. The private company *Securitas* (on-site service) is tasked with attaching/installing, removing/deinstalling and exchanging/replacing tags in all of Germany. As is already the case with EAÜ, the private company 3M provides the technology used in the context of EPK as well.

Probation service:

EAÜ-EM In accordance with s. 68a (1) Criminal Code, offenders who are subject to the measure of supervision of conduct are assigned a probation worker. The probation worker maintains personal contact with the monitored person and, in doing so, assumes a dual role as both supporter of the rehabilitation and reintegration process, and as an agent of supervision and control. Probation workers are thus more independent from the actual monitoring process than the other actors involved in the EAÜ-directive.

EPK-EM The probation service plays a pivotal role in the context of EPK. The service is tasked with providing the proband with social assistance and support, communicating with the judge, and communicating and interacting with the other agencies involved in the process. EPK is usually ordered upon the probation service's advice.

Judge:

EPK-EM The judge is primarily tasked with making rulings/judgements and ordering measures/sanctions. In cases in which EPK serves as a means of preventing pre-trial detention, the respective pre-trial detention judge (German: *Untersuchungshaftrichter*) is competent. In all other fields of application, competency lies with the judge of the sentencing court. Beyond the aforementioned functions, the judge also fulfils supervisory, supportive functions to a certain degree, as he/she issues instructions for the probationary period and oversees compliance with them.

Prison administration:

EPK-EM The prison administration only becomes involved in EPK in the context of using EM as a "relaxation" of the prison regime (*ELAST*), which can also be ordered by the administration itself. However, in practice, the use of electronic tagging in the field of prison regime relaxations has proven to be not particularly popular.

Other:

A closer look at the agencies that become active when a directive is breached (state prosecution service, Court for the Enforcement of Punishment etc.) is provided separately in Chapter 6.2.

One agency that is worthy of brief mention is the police, who only become active when the GÜL regards a violation of directives as so severe that other persons are at risk of harm.

Section 2: Methodology and research process

The research was subdivided into two segments. From December 2014 to March 2015 its primary focus laid on EAÜ-EM and in the following months on the Hessian approach. During this two research segments 11 days of observation and 30 interviews were collected.

2.1 Observations

Table 6 Observations conducted during fieldwork				
Actor	Observation period	Days	Respondents	Activities
GÜL	15.12.14- 19.12.14	5	1 manager 7 social workers 7 civil servant of (intermediate rank)	-Monitoring centre (operation, organisation, use of monitoring software) -Communication with involved agencies -Communication with proband -First reaction on possible violations
Central probation service coordination office	11.3.15- 12.3.15	2	1 judge in an managing position	-Communication between the several ASCs and the agencies on a federal level -Legal reaction on breaches -Changes of circumstances
Central agency for probation and supervision of conduct work	23.3.15	1	1 manager 1 EM-specialised probation worker 1 psychiatrist	-Probation work with the proband -ASC's reaction on breaches
HZD	18.05.15- 19.05.15	2	1 manager 3 organisation staff 3 technical-monitoring staff 2 technicians	-Installation and deinstallation of tracker -GPS-tracker maintenance -Monitoring of technical details -EAÜ and EPK-EM
Hessian Ministry of Justice	20.05.15	1	1 head of criminal law department 2 probation workers in higher positions	-Political background -Frameworks for EPK-EM

2.2 Interviews

Table 7 Interviews conducted during fieldwork			
	Male	Female	Total
GÜL (Bad Vilbel, Hesse)			
Head of the Monitoring Centre	1	0	1
Social workers	2	3	5
Civil servants	1	3	4
Central probation service coordination office (Munich)			
Manager/judge	1	0	1
Central agency for probation and supervision of conduct work (Rostock)			
Manager	1	0	1
EM-specialised probation worker	0	1	1
Psychiatrist	0	1	1
HZD (Hünfeld, Hesse)			
Head	0	1	1
Organisation staff	3	0	3
Technician	1	0	1
Technical-monitoring staff	1	0	1
Hessian Ministry of Justice (Wiesbaden)			
Probation worker in higher position	1	1	2
Judges (Mecklenburg-W. Pomerania)			
Executive director of the professional association of probation workers	1	0	1
Police (Mecklenburg-W. Pomerania)			
Academics (Criminal law experts)	2	0	2
Total	20	10	30

Section 3: Application of electronic monitoring

3.1 Objectives

EAÜ-EM The primary objective of EAÜ is to generate preventive effects on the monitored person through control and supervision. This goes hand in hand with notions of protecting the public and victims. EAÜ aims to minimise recidivism risk in offenders who have committed serious sexual and/or violent offences and who are released from prison or a forensic institution. Parallel supervision and support by the probation service provides elements of positive special prevention, albeit subordinately.

It needs to be considered, that the implementation of this instrument takes an amount of facilities and personnel resources. In regard to this, for me it seems to make sense, to use this measure as we do it now: For high risk violent and sex

offenders after an intensive consulting in a case meeting. In this respect I do not think that an expansion to new fields of application is worth striving for, at this moment. (Interview 11 – Judge)

EPK-EM The aims of EPK are manifold. On the one hand, EPK serves as a means of preventing or avoiding incarceration, but in fact the true aims lie in safeguarding employment and family relationships. On the other hand, EPK is intended to support and involve persons subjected to EM in the development of daily routines and structure. The parties and agencies involved often refer to EPK as the monitored person's "last chance".

For once, EPK-EM is of great benefit [as an alternative], when a withdrawal of a suspended sentence is considered, for example in cases where a proband does not fulfil the community service he/she was sentenced to do. It helps to work out a daily routine, starting with waking him/her in the morning. Moreover, we can create an everyday routine in the first place. ... Another benefit – especially for young people – is that the probands can be kept away from their homes [within certain time periods]. They have to do something constructive [during such times]. (Interview 23 – Probation worker in a higher position)

From the aims and objectives that have been set, one can also deduce the offender groups that, in the opinion of the parties and agencies involved, are most appropriate and suitable for EPK. These include juveniles in particular (but also young adults and adults), who need support both with structuring their every-day lives as well as with adhering to that structure and the routines that it entails. In principle, EPK is also a suitable method for dealing with people with addiction problems who are willing to address and actively work towards overcoming their addiction. However, the line needs to be drawn at people who acutely suffer from addiction or people with mental health problems who are not being treated with medication and for whom attempts of developing and maintaining firm daily routines and structures would be either insufficient or not possible at all. EPK is difficult to implement for offenders whose crimes were committed "in the heat of the moment" (in particular aggravated assault or grievous bodily harm and above) and for offenders who have committed fraud (at least for those who come from a structured background/environment).

3.2 Advantages

EAÜ-EM At first glance, EAÜ bears the obvious advantage of cost-savings compared to 24-hour police surveillance, however without actually effecting reductions in the prison population. At the same time, EAÜ can aid in clearing up and proving offences retrospectively, and can serve as a means for exonerating or exculpating the person subject to EAÜ (i.e. proving their innocence). Finally, EAÜ serves its primary purpose of assuring that security and safety aspects are fulfilled, without stigmatising the monitored person by subjecting him/her to 24 hours police surveillance.

EPK-EM One positive aspect of this model of EM is that the monitored person can remain in the context, surroundings and circumstances to which he/she is accustomed (family, friends, but also employment). Furthermore, the creation of and support in adhering to a daily structure and routine are also noteworthy advantages. Some respondents also highlighted that the fact that the proband receives double the level of

social support and supervision/care (from the probation service on the one hand and the social service of the GÜL on the other) as an advantageous aspect. The probation service emphasised in particular that using the tag in conjunction with the development of a daily timetable provides better access to probands, and that this allows the probation service to learn more about its clients than usual. Finally, EPK serves not only to assure that probands subjected to it remain at home at certain times and that their adherence to that requirement can be monitored. It also forces probands to leave their home at certain times of the day to participate in meaningful work.

3.3 Disadvantages

EAÜ-EM With the low case numbers in mind, one disadvantage of EAÜ can be seen in the high costs that GPS and LBS monitoring entail. Moreover, the stigmatising effects and consequences that wearing the tag can have for its carrier in terms of his/her prospects for successful reintegration are of pivotal importance. At this point, it should be pointed out that the different advantages and disadvantages shall be highlighted in the subchapters that follow, where they are supplemented with further, perhaps less obvious aspects and details.

EPK-EM The greatest problem that EPK can bring with it is the danger of net-widening effects, a problem that was recognised as such both by judges and by employees of the probation service.

In some cases I noticed the dangers of “net-widening”. Sometimes there were probands subjected to EM, who normally would not need monitoring besides the “usual” probation work. Or EM was just used as a measure [of control] in addition to other conditions of probation. This danger always occurs. (Interview 23 – Probation worker in a higher position)

In this regard, the Hessian Ministry of Justice in particular was aware of the report on net-widening effects (which identified such tendencies) that formed part of the first evaluation of the Hessian project (*Mayer 2004*, with a particular focus on EPK as a means of preventing pre-trial detention). In practice, however, this problem is regarded as being of only minor practical relevance.

Fears were also voiced, predominantly by the monitoring agencies, that the probands’ conversations and talks with their probation workers would be reduced to the tag, rather than other, more socially or community oriented issues. The probation service, by contrast, sought to defuse these fears. Furthermore, the perception of the electronic tag by the general public and in particular the public’s inability to differentiate between EAÜ and EPK were stated as problematic or disadvantageous issues, not least because EPK-probands could be stigmatised as being serious sexual or violent offenders. Another possible problem could be that EPK could in fact promote family conflicts, for instance if the family is not used to being in such close contact with or proximity to the proband. Finally, EPK has not yet been associated with positive effects on reducing the prison population.

3.4 Consent

EAÜ-EM EAÜ is a directive that is attached to a criminal measure, subject to punishment under law in case of non-compliance and linked to the dangerousness of the offender. Accordingly, persons need not consent to being subjected to EAÜ.

EPK-EM Clear differences between EPK and EAÜ also become apparent when it comes to the need for consent. While EAÜ does not require the consent of the person subjected to it (see above), for EPK, his/her consent is a fundamental legal requirement that must be given before the competent court. The need for consent in the context of EPK is understandable and logical, not least because this form of EM entails the development of daily structure and routine that requires the active participation and involvement of the proband. Notwithstanding, it needs to be borne in mind that such consent is given against the backdrop of otherwise being sent to prison or placed in pre-trial detention. The degree to which such consent can be regarded as truly sincere and voluntary, with EPK being the “lesser of two evils”, can thus indeed be questioned.

Acquiring the proband’s consent also serves another purpose. The aforementioned fields of application of EPK, or rather the statutory instruments that govern them, do not make explicit mention of EM. Using EM in those fields is thus contestable. The proband’s consent is thus also meant to secure the legality of the project.

Moreover, the consent of all (adult) persons living in the same household as the proband is also acquired. In this regard, some probation workers and social workers indicated that such persons often make use of this practice (giving their consent) so as to exert informal pressure on the proband.

Section 4: Equipment and technology: operational processes

4.1 Description of the equipment

4.1.1 Type of equipment

EAÜ-EM Both the GPS-tracker and the monitoring software (“3M Offender Management”) used in the context of EAÜ are technologies provided by the private company 3M. The tracker (1-Track-System) is leased. The unit has a charging time of two hours. One charge lasts for up to 17 hours depending of movement behaviour and charge characteristics. The tracker weighs 260g, the charging cable is roughly 2m long. Tracker maintenance is provided by the HZD in Hünfeld, where they are also stored and from where they are dispatched to Securitas’ branch offices when required. 3M provides a replacement unit whenever a tracker becomes entirely defective.

One hour prior to battery depletion, the tag emits a vibration warning to alarm its carrier to this circumstance. The GÜL is informed thereof 29 minutes prior, and then acts in accordance with the ASC’s instructions. A notification is also sent to the GÜL if the fastening cords of the tracker are tampered with or subjected to manipulation. Deliberately letting the battery drain and deliberately tampering with or damaging the unit constitute breaches of the EAÜ-directive. For the consequences of breaches, see Chapter 6.

Besides wearing the tracker around his/her ankle, the proband can have his/her place of residence outfitted with a home-unit. This unit transmits the proband's mere presence at home (yes/no) to the competent monitoring agencies, which serves to reduce battery drain while at the same time maintaining the proband's privacy of movement within his/her own home to a certain degree.

Probands are also provided with, and required to carry at all times, a special mobile phone, so as to enable them to be in contact and contactable around the clock.

EPK-EM The first piece of equipment standardly used in the context of EPK is the transmitter, which is attached to the proband's leg. The transmitter has a run-time of three years and comes with an incorporated temperature sensor that monitors whether the proband is wearing it. Furthermore, the synthetic strap has an integrated metal inlay that immediately informs the HZD of any registered tampering or manipulations of the strap. Furthermore, a receiver is set up in the proband's place of residence. It comes with an integrated SIM card, thus allowing the proband to use it to contact the probation service or the GÜL (the latter 24 hours a day, 7 days a week).

Alcohol monitoring The prohibition to drink alcohol can be one among other directives in combination with supervision of conduct. In this respect, similarities to EAÜ appear. In order to monitor the compliance, it is possible to install a breath analyser for alcohol at the offender's home (MEMS 3000 by Elmo-Tech/3M). The offender is ordered to use the analyser every time the ASC instructs him to do so. The frequency of tests is determined by the ASC as well. An excessive use is not allowed; usually it is intended, that test should take place once a week. The device takes a photo of the offender's face and transmits (via a RF-system) the breath alcohol concentration and the photo to the monitoring centre (GÜL), which checks the data and reports violations. A violation of the prohibition to drink alcohol can be a stand-alone offense, see s. 145a Criminal Code.

Yet, this instrument is hardly ever used. At late 2014 the staff at the GÜL reported that there only had been one case. For most interviewees this is mainly due to the fact, that the proband can foresee the tests and thus easily mislead. Another argument against this field of application is that it can only report an alcohol relapse from a legal point of view; while addiction therapists emphasise that alcohol withdrawal needs to be seen as a process that implies recidivism.

4.1.2 Strengths

EAÜ-EM The possibility to provide around-the-clock surveillance, that nonetheless (theoretically) allows the authorities to swiftly intervene in the case of a violation, is stated as one of the key advantages of EAÜ-monitoring. Staff members in particular who are entrusted with tasks relating to the actual technical monitoring of probands highlight the possibility of retrogressively tracking and tracing the proband's movements, which in turn can serve as evidence (either for or against the proband) in other cases of offending.

EPK-EM Compared to EAÜ, various strengths of the EPK strategy as it is applied in Hessen can be highlighted, at least from a technical perspective. The transmitter used in EPK has a battery life of three years and does not need to be recharged. Moreover,

the transmitter is considerably smaller and lighter than the EAÜ-tracker, and is thus less prone to having stigmatising effects for its carrier.

4.1.3 Problems

EAÜ-EM Overall, the vast majority of problems arising in the context of EAÜ-EM are said to stand in connection with technological deficiencies for which improvements are demanded.

On the one hand, this concerns the tracker itself, which is described as being too heavy and cumbersome for its carriers. The stigmatising effect of wearing the tag in public is another problematic issue that is frequently pointed out. Short battery life and slow recharge speeds are likewise problematic, as is the fact that maximum battery charge levels decrease with increased use. The tracker's functionality is dependent on the carrier's movement and recharging behaviour and can thus be manipulated. A two-hour recharge time (at least every 17 hours) coupled with a loading cable of only 2m length is a further restriction of the carrier's freedom of movement, and can be particularly problematic at night times (not least because the interviewed practitioners repeatedly addressed that the charging cables are very prone to damage). These technical deficiencies frequently result in false alarms. The manufacturer's newer models provide the ability to switch batteries, which serves to increase flexibility and freedom of movement. However, it is deemed highly unlikely that these new units will be used in practice in the near future due to the increased costs that doing so would entail.

The software provided by 3M contains maps that are too inaccurate in the eyes of the monitoring centre and the technical service providers. For example, road names are sometimes missing, or the maps have trouble loading properly. The HZD defines exclusion, presence and warning zones individually for each proband. However, in practice, such zones can only be defined very crudely (as rectangles or circles), which can result in false alarms for false zone transgressions. Accurately defining larger zones (for instance entire city districts) is barely possible. In 2014, a firmware installation error on behalf of 3M resulted in all active GPS-trackers being shut off simultaneously. As a consequence, all active EAÜ trackers had to be replaced over a period of only a few days. Criticism has also been voiced with regard to difficulties in communicating with the manufacturer 3M, the cause for which is seen in the fact that 3M has outsourced its customer services. The technical services thus wish for a swift detachment from 3M.

The most commonly arising practical issue is the fact that the proband can only be inaccurately located or pinpointed. Where GPS reception or transmission capabilities are compromised (which occurs quite commonly inside houses or other closed structures), tracking via LBS-positioning must be resorted to. LBS-positioning uses radio waves, making it greatly dependent on the available local infrastructure. At the same time, LBS-positioning does not allow the whereabouts of the proband to be precisely pinpointed. Only rough calculations or estimates are possible. Being inside a car, a train or a building with a metal roof can cause both monitoring signals to be lost, which automatically triggers an alarm. Such tracking-outages are also negative from an economic perspective, since new costs arise with each new connection to the GPS or LBS networks.

EPK-EM Technical problems with EPK that were repeatedly stated by the respondents primarily concerned unfounded error or alarm notifications. Such technical problems are particularly critical for both the probation worker and the proband him/herself. First off, they cost probation workers additional time and effort. Much more importantly, though, probands can lose the trust that they have (sought to) built up with their probation worker if the latter believes the technology more than he/she does the proband's words. Additionally, the problems with 3M described above in the context of EAÜ also apply to EPK.

4.1.4 Suggestions

EAÜ-EM Overall, the field of monitoring and surveillance technology is regarded as being continuously in need of improvement. Concrete suggestions for improvement include an increased use of (additional) voice verification technology and improving the precision of positioning with GPS by drawing on additional network services.

Regarding the monitoring/surveillance software and cartographical materials that are used, a shift away from the current 3M software to Google-maps technology is planned for 2015. However, this change is by no means straight-forward or without problems of its own. While it is the case that only coordinates will be forwarded to *Google* due to data protection constraints, regularly requested coordinates can shed light on or allow the deduction of substantial private information, for instance the proband's place of residence, work or other regularly visited locations linked to the proband's private behaviour.

EPK-EM Among the respondents, the suggestion was repeatedly voiced that GPS tracking should also be used in the monitoring of persons who are subjected to EPK as a means for avoiding pre-trial detention, since in that context, the focus is more on surveillance and control than on reintegration and rehabilitation. As has already been stated for EAÜ, in the context of EPK, too, there have been calls for drawing on additional network services so as to facilitate more accurate tracking and positioning. Moreover, mention was also repeatedly made of there being a need to improve the distance-settings between the transmitter and the receiver (range of reception). While the EPK-transmitter is smaller than the EAÜ-trackers, it remains too large and impractical – in light of the pace of technological advances in this field, smaller, more practical and less conspicuous transmitters need to be developed.

4.2 Installation and deinstallation of equipment

EAÜ-EM The responsibility for installing the necessary equipment is in the hands of the HZD in cooperation with its sub-contractor Securitas. The HZD manually defines and programmes exclusion zones, presence zones and warning zones (when the tag is within a warning zone, it vibrates and alerts its carrier to the fact that he/she is nearing the boundary of an exclusion/presence zone). The HZD is also responsible for installing the software for all relevant equipment and for programming the mobile phone with which the monitored person is provided. Securitas, the HZD's subcontractor, has four branch offices in Berlin, Munich, Hamburg and Offenbach that provide nationwide coverage. In the majority of cases, it is Securitas who is entrusted with the task of attaching or removing the electronic tag (as well as home units, where applicable), however, a public authority must be present when the proband is cautioned

about the tag. In practice, it is not seldom the case that the trackers are attached at the precise moment of release from prison or from a forensic institution. In this context, the HZD and Securitas are only responsible for providing monitored persons with technical information. Data protection briefings as well as briefings and explanations concerning the proband's duties, the different zones and in particular the consequences of breaching those zones are performed by the public authority. Overall, the proband can approach the GÜL or his/her probation worker with any questions he/she has regarding the installation and deinstallation process. The HZD and Securitas are also responsible for cases in which the used equipment is defective. In such cases, at least two employees are dispatched to the proband.

Having an electricity socket for the tracker's charging cable is the only technical precondition that a proband must be able to fulfil in order to be able to use the electronic tag. It does not constitute a violation/breach if it is not possible to locate the person subjected to EM due to technical difficulties beyond his/her control.

In the context of installing the tag, the most prominent practical obstacle that can arise is human error. During installation, establishing a GPS/LBS network connection can sometimes take too long.

The tracker is removed by the HZD or Securitas either at the proband's home, at his/her probation worker's office, a police station or on the premises of another public agency (the latter either being instructed by the ASC or chosen by the proband him/herself).

EPK-EM The justice authorities inform the HZD either via telephone or in writing of any new transmitters that are to be installed. The HZD then assigns an offender ID number, and hardware is allocated to the proband. The on-site services then set up the equipment by connecting the receiver to the power mains, installing the necessary software and then activating the transmitter with an electronic/digital key. The transmitter is then attached to the proband and a suitable spot is determined for the receiver that is as free of sources of disturbance as possible. The on-site services subsequently test the range of the receiver, explain the telephone function of the receiver to the proband and ask for information about his/her weekly timetable so as to be able to make the appropriate settings in the equipment. In contrast to EAÜ, in the context of EPK, the HZD has both the address and the name of the proband and can forward said information to Securitas if need be. In EAÜ cases, these data can only be made available to Securitas when the latter makes a respective request. Once the equipment has been installed and the completion of the task has been confirmed, all documents that could serve to identify the proband are destroyed.

For the de-installation of the equipment, the same applies as already described in the context of EAÜ above.

Section 5: Monitoring processes

5.1 Duration of electronic monitoring

EAÜ-EM Overall, according to s. 68b (1) 1 No. 12, 68c (1) 1 Criminal Code, the measure of supervision of conduct shall be ordered for a period of no less than two and no more than five years. These same limits generally apply to the measure when an EM

directive is attached to it. However, there are different possibilities for shortening or prolonging the duration of the measure (Kindhäuser/Neumann/Paeffgen-Osterdorf 2013 s. 68c StGB Rn. 2 f.).

- Acc. to s. 68c (1) 2 Criminal Code: shortening of the maximum duration by the sentencing court
- Acc. to s 68d, 68e (1), (2) 2, 68f (2), 68g (3) Criminal Code: later shortening of the statutory or otherwise determined maximum duration, or early termination
- Acc. to 68g (1) 2 Criminal Code: exceeding the maximum duration when combined with a longer probationary period
- Acc. to 68c (4) 2, 68g (2) 1 Criminal Code: delay of expiry beyond five years when certain periods are not taken into consideration, or if supervision of conduct is intermittently put on hold
- Acc. to s. 68c (3) Criminal Code: indefinite extension beyond the maximum period by the court
- Acc. to 68c (2) Criminal Code: issuance by the court of an indefinite measure of supervision of conduct that exceeds the maximum duration/period.

In practise, in almost all cases of GPS-EM supervision of conduct is ordered for five years.

EAÜ-EM The duration of electronic monitoring is dependent on the judge's ruling. EM usually lasts for about six months, while the maximum eligible period is fixed at two years. In this regard, respondents drew attention to the fact that the period of six months that is most commonly ordered in practice is based on experiences from abroad (France).

5.2 Procedure – keeping track

EAÜ-EM The directive (in acc. with s. 68b (1) 1 no. 12 Criminal Code) to ensure that the technical equipment necessary for the electronic monitoring of one's location be on the person, in fully functional condition and not be tampered with so as to alter its functionality shall be subject to review no later than within two years. Such review serves the purpose of ascertaining whether the directive is still necessary or appropriate, i.e. whether said directive should be revoked (in acc. with s. 68d (2) 2 Criminal Code).

As a general rule, probands subject to an EAÜ-directive shall be monitored 24 hours a day, seven days a week, by the HZD (as well as Securitas) and the GÜL via GPS-tracking technology. The GÜL is always manned by two members of staff – one civil servant of intermediate rank and one social worker – who work 12 hour shifts. It can so occur (currently only one case) that a case requires time-specific rather than 24/7 monitoring and surveillance (for example, when a proband is forbidden from leaving his/her apartment or place of residence during night times), however it should be noted that home electronically monitored 24 hours home detention curfews are possible.

Technical monitoring is conducted by the HZD, who is responsible for setting up individualised exclusion zones and home zones for each proband. From a technical standpoint, monitoring occurs on three levels:

- 1.) GPS-positioning
- 2.) LBS-positioning
- 3.) SIM-card in the electronic tag

GPS is the primary monitoring method applied. Where GPS fails, it is replaced by LBS-signal monitoring. If the tag cannot be located by either GPS or LBS, the last resort is paging the SIM card in the tag, albeit without the possibility of drawing on geodata – paging the SIM card merely provides information as to whether or not the tag is still turned on. In addition, a unit for measuring alcohol levels can be installed in the proband's home. The frequency with which alcohol tests are to be carried out is determined by the ASC. In practice, the GÜL contacts the proband and informs him/her that an alcohol test has to be undertaken. The unit verifies the proband's face and subsequently transmits both the fact that it is the correct person as well as the measured alcohol levels to the GÜL.

How the GÜL reacts to certain event notifications depends on the instructions issued by the ASC for the individual case. Event notifications are generally categorised into zonal transgressions, battery notifications, and movement and GPS/LBS notifications. Purely technical notifications (f. ex. "tracker not in motion", "tracker in motion", "no GPS") are filtered out beforehand by the HZD. Event notifications are visualised on numerous monitors on the GÜL-premises in combination with the respective proband's identification number. The GÜL is issued specific instructions for each proband on how to act when the system gives notification of an event. It is common procedure that the respective proband be contacted by phone (sometimes buffer times are in place). Such phone calls are not conducted along standardised lines. Rather, the GÜL staff personally tailor the calls to each individual proband. These phone calls are generally conducted by the social worker, but can also be handed over to the civil servant of intermediate rank. The purpose of contacting the proband is to receive an explanation for/of the situation and to validate the event notification.

A social worker at the GÜL described his work as such:

Our role at the [GÜL] is to register the several event notifications. The social workers, who are working in cooperation with the civil servants, then classify those notifications. Due to this classification we can determine the next steps that need to be made. (Interview 3 - Social worker at the GÜL)

EPK-EM RF-technology does not provide total surveillance: it merely serves to detect and register whether or not the proband is at home (or other assigned premises). Monitoring is performed by the same agencies as stated in the context of EAÜ above. Furthermore, the same monitoring software (*3M Offender Management*) is used, albeit without the possibility of retrieving geodata. It is not the proband's compliance with exclusion and presence zones that is being monitored: the focus is on monitoring whether or not the proband is complying with the timetable drafted by the probation service and the judge. In this context, electronic monitoring should not be equated with

home detention curfew, because the proband also has to be able to prove that he/she was *not* at home (for instance during working hours). Where irregularities arise, the GÜL informs the responsible probation worker, who in turn contacts the proband. The GÜL itself contacts the proband if the irregularities arise outside of the regular office hours of the probation service.

5.3 Risk

5.3.1 Risk assessment and emergency procedures

EAÜ-EM No specific risk management strategies are in place for the on-site services and/or the HZD for emergency and risk situations that arise in the context of installing/attaching the tracker. Employees of these agencies/parties follow the strategy of withdrawing from the situation and informing the police, the ASC and where applicable the probation worker. It can be regarded as problematic that attaching/installing the trackers is sometimes performed only by employees of *Securitas* who are not specifically trained in social issues and who could thus not be sensitive to the special circumstances that such cases can entail.

The probation service by contrast is specially trained for its tasks in the context of EAÜ and in working with serious sexual and violent offenders. However, beyond their training no emergency or contingency plans are in place. However, as a matter of principle, the probation service strives to approach problematic situations in an arbitrating and calming fashion. Only few probation workers are additionally trained in self-defence.

X: Are you specially informed about proband-related risks?

Y: No, one could say [risks] are just a part of my profession.

X: What risk management strategies are in place to deal with emergencies?

Y: What do you mean by “emergency”?

X: For example, if a proband acts aggressive, or even violent?

Y: No ... Well I do not think we have a special strategy for such cases ... and thank God, I did not experience that. There were situations in which probands [verbally] freaked out. In such cases it is our strategy to avoid arguing with him/her. We are trying to protect ourselves by not being entirely alone and having colleagues nearby. If the situation becomes serious we kindly ask the proband to leave the room. (Interview 14 – EM-specialised probation worker)

The GÜL is equipped with replacement laptops and emergency power sources should there be a server outage or a similar technical emergency. Should such a situation arise, in organising the replacement of trackers/tags and the forwarding of information to the police, GÜL staff are obliged to adhere to a priority list that is sorted according to degrees of dangerousness. The police itself have no specific strategy in case of emergency then their normal way of acting.

The HZD, too, is equipped with backup laptops and is thus prepared and able to maintain security in the event of technical difficulties or server outages. Likewise, the HZD

guarantees, drawing on its subcontractor *Securitas*, that it can reach any proband within four hours, for example in order to exchange or replace an electronic tag.

EPK-EM In contrast to EAÜ, persons subjected to EPK are not classified as high-risk offenders. This has the immediate effect that direct contact between probation workers/technical personnel and persons under EM is deemed less risky and generally more relaxed. Accordingly, there is regularly no need to inform on-site staff/field workers of Securitas of specific dangers or risks as there usually are none. The persons and parties involved regard a non-confrontational, arbitrating approach to dealing with and treating the monitored person they work with as a means of risk management. Where a conflict situation arises, probation workers and/or Securitas employees never seek to attach the transmitter under coercion. In such cases, recourse is made to the criminal justice agencies.

5.3.2 Discretion of field workers

EAÜ-EM The on-site field workers have discretion to decide when they wish to withdraw from a situation. They subsequently inform the police of what has occurred. The probation service, too, is free to decide when to abort its meeting with the proband. In most cases, probation service and proband agree on a new appointment for a meeting to be held within the following few days.

EPK-EM What results from this strategic approach for EPK is that – as is also the case with EAÜ – it is at the discretion of the person who is in contact with the person under EM to undertake his/her own assessments of risk and, based on said assessments, to leave the premises or location in the case of an emergency.

5.4 Supervision

EAÜ-EM In principle, the role of EAÜ is more a preventive-supervisory one. At the same time, offenders subject to supervision of conduct receive social/community support and guidance from the probation service.

Employees of the probation service who shall be involved in EAÜ-cases receive special appropriate training so as to prepare them for the criminal background of the clientele to which they cater in that context (serious violent and sexual offences). In general, due to the small EAÜ-caseloads in the individual federal states, the number of EAÜ-cases per probation worker is rather small. However, it should be borne in mind that, at the same time, probation workers are also assigned to supervise offenders who are not subject to EAÜ. The intensity of supervision (measurable in the frequency of contacts between probation worker and EAÜ-proband) is dependent on what the court has ordered. In practice, contacts usually take place every one to two weeks.

It is most commonly the case that an EAÜ-directive is flanked by further directives. On the one hand, EAÜ serves as a means to ensure that the person under EM adheres to and fulfils any other issued directives that he/she is present at certain places at certain times and/or that he/she refrains from visiting certain places or locations in the context of victim protection (for instance kindergartens, schools etc.). On the other

hand, EAÜ can also be issued alongside positive, constructive measures, like addiction counselling, anger management training, social skills training, therapeutic or medical measures etc.

There was wide consensus among respondents that EAÜ as a stand-alone measure without additional constructive, positive programmes would be both ineffective and inappropriate.

X: How important do you think is the link between the aspects of surveillance with other positive aspects, such as drug treatment?

Y: Extremely important. In my opinion a stand-alone surveillance makes no sense. In my view, EM is inappropriate without social work – possibly with a therapeutic directive –, without a dense network of measures, such as work duties, securing a permanent residence and further social aspects. (Interview 3 – Social worker at the monitoring centre)

Only the two respondents from the police had a tendency to reduce positive programmes and to emphasise only the controlling aspects of supervision.

EPK-EM Compared to EAÜ, probands subjected to EPK receive much more positive support. The probation service is the key player in this regard. The different level of supervision compared to EAÜ is primarily a result of EPK's stronger focus on providing a primarily special preventive influence on the persons subjected to it. One of the most decisive roles of the probation service is to develop – together with the proband and after consulting the courts, and in line with the judge's instructions – an individualised weekly timetable for the proband. This timetable usually includes fixed times at which the proband is required to partake in meaningful work and/or work for the benefit of the community.

5.5 Changes in circumstances

5.5.1 Procedure

EAÜ-EM As already stated above, EAÜ-directives appended to the measure of supervision of conduct shall be subject to review within no more than two years of coming into force. One central reason for this safeguard is the fact that the directive can indeed be revoked/withdrawn by the legally competent Court for the Enforcement of Punishment (albeit a rare occurrence in practice). Organisational responsibility for such cases lies with the ASC.

In the course of reviewing issued supervision of conduct measures as well as any ancillary directives, it can so arise that changes become necessary that also need to be implemented technically. Besides regular changes in circumstances, the Court for the Enforcement of Punishment can also issue exceptional approvals in individual cases. In order to warrant such exceptional approvals, it is the task of the ASCs to inform both the GÜL and the HZD thereof. While the HZD requires an advance notice of 24 hours to technically implement such changes, the GÜL is merely informed thereof in writing. This covers changes to zones and timetables in particular, that can also constitute "one-off" events or short-term changes (f. ex. hospital visits, changes of residence etc.), and thus not necessarily permanent changes.

Due to the number of different agencies involved, and due to the fact that these parties, due to data protection provisions, are each entitled to save/retain and share differing volumes and constellations of information pertaining to the proband, the communication procedures between them are strongly bureaucratised. Accordingly, the practical implementation even of only minor changes in circumstances (for example setting up a corridor so as to enable a proband to visit the hospital) can be highly laborious.

EPK-EM As a matter of principle, EPK is only an ancillary measure. EPK is not located on the same level as personal supervision by the probation worker, but rather should serve to support his/her work by adding an element of control. Thus, the procedure followed when there are changes in circumstances is a highly individualised one that occurs in the course regular personal support and supervision by the probation service.

5.5.2 Discretion

EAÜ-EM The difficulties stemming from the arduous and laborious bureaucratic hurdles described above also apply for short-term changes in circumstances (change of place of residence, doctor's appointments etc.). Procedural deviations require prior approval from the Court for the Enforcement of Punishment. The process is thus strongly characterised by strict formal criteria and guidelines that leave only little room for discretion.

In order to allow for adaptations to changes in circumstances at least to a certain degree, s. 68 (1), (2) Criminal Code foresees that, at least two years prior to the end of the supervision of conduct measure, the Court for the Enforcement of Prison Sentences subject the conditions of the measure of supervision of conduct as originally ordered to subsequent review. In this context, directives can be adapted or revoked. Accordingly, EM-directives could thus also be shortened (in terms of their duration) or even revoked entirely. However, this appears to be of no relevance for actual practice.

EPK-EAÜ The probation worker plays a pivotal role in the EPK process. From a purely legal perspective, any deviations from the court-ordered weekly timetable theoretically need to be reapproved by the judge. However, in practice, competency for discretionary decision-making is often devolved to the probation worker to a certain degree.

5.6 The end of electronic monitoring

EAÜ-EM As a general rule, electronic monitoring ends simultaneously with the measure of supervision of conduct to which it is appended as a directive (in practice, this is usually five years). Breach of a directive can result in reincarceration as such a breach is itself punishable with imprisonment. In such instances, the measure of supervision of conduct is put "on hold" for the duration of the proband's reincarceration for the new offence.

Moreover, the Court for the Enforcement of Punishment reviews the measure of supervision of conduct after two years. In this context, it is possible that the measure itself and/or the EAÜ-directive are revoked. However, in practice it does not so occur that the EAÜ-directive ends before the supervision of conduct measure to which it has been attached.

EPK-EM The duration of EPK is generally determined by the court and can differ from the length of the probationary period (some in the probation services regard a continuation of probation service support beyond expiry of the EPK-period as both sensible and necessary). In the majority of cases, the period of EPK is well below the maximum duration of two years, with monitoring periods of six months being the norm.

Section 6: Compliance and breach procedure

6.1 Violations

EAÜ-EM Event notifications can be roughly broken down into five groups: zonal transgressions, battery notifications, movement and GPS/LBS notifications, home unit notifications and “other notifications”. Zonal transgressions relate to the zones that have been defined by the ASC and the case meeting (described above) for the individual case. Usually, so-called “buffer zones” are also defined. Event notifications in this group include “violation of curfew” and “violation of presence zone”. Both of these notifications have their basis in a proband leaving a zone in which he/she is obliged to be present (the former in cases in which the offender is obliged to comply with a particular timetable). One further notification in this category is so-called “violation of exclusion zone”, which implies that the proband has entered a zone that the ASC has forbidden him/her from entering.

The second category covers so-called battery notifications. In principal, we can differ between the one-track and two-track systems. In Germany, for reasons of practicability, only the one-track system is used. Relevant notifications in this regard are “tracker battery low”, “battery charging” and “Tracker power connection/tracker power interrupted”. The latter two notifications allow conclusions to be drawn on the proband’s recharging behaviour, while the first notification requires the proband to (not) behave in a certain way.

Movement and LBS/GPS notifications constitute the third category, and provide information as to the mode of technical tracking in use and the behaviour of the tracking device in terms of (non)movement. The GÜL can receive the following notifications from this category: “No GPS”, “LBS activated”, “No GPS, No LBS” and “Tracker stationary”. If the latter notification persists for four hours, the HZD follows it up with a plausibility check.

The fourth group is only of very minor practical significance as it only concerns those probands who have a home unit installed in their place of residence in addition to the standard tag/tracker. The GÜL receives the notification “GER Manipulation” if the home unit is disconnected from the power supply and/or if the unit is moved. If such manipulation occurs, standard LBS/GPS tracking is reactivated (i. e. the benefits of the home unit as a means of protecting the proband’s privacy whilst in his/her own home are deactivated).

The final group of notifications contains the so-called “other notifications”. The most noteworthy notifications in this group are “Tracker TY-fastening strap tampering”, “Tracker casing opened” and “Tracker missed call”. “Tracker missed call” is generally

transmitted in connection with other notifications like “no GPS” etc. and basically indicates that no connection could be established with the GPS-tracker for the last 15 minutes.

The most common notification is “tracker battery low”, the precursor to the most commonly arising ground for breach – “battery depleted”. Low batteries alone do not constitute a breach.

EPK-EM In principle, there are three possible grounds for breach: 1.) manipulating/tampering with the equipment, 2.) absconding and 3.) non-compliance with the weekly timetable. In actual fact, instances of belatedness on behalf of the proband are the only grounds for breach that are truly of practical relevance (i. e. breaches for non-compliance).

6.2 Breach procedure

EAÜ-EM The following agencies are involved in cases of breaches of directives in acc. with s. 145a Criminal Code: the HZD, the GÜL, the assigned probation worker, if applicable the police and the competent court. Relevant notifications are filtered out via the HZD’s servers and either automatically or manually forwarded to the GÜL, depending on the type of breach. The GÜL then acts in compliance with the instructions it has received prior from the ASC, which usually also entail contacting the proband in question directly in order to get an impression of the situation. Alternatively or additionally, the GÜL can inform the assigned probation worker, the ASC and/or the competent police station. In any case, the ASC is informed, which in turn decides whether or not to file criminal charges for the breach. If so, the state prosecution service becomes active and initiates criminal proceedings for the breach. Ultimately, the Court for the Enforcement of Punishment then renders its decision on the charge. Breach of a directive constitutes an independent criminal offence under s. 145a Criminal Code.

As a general rule, the registering agencies have no room for discretion. Notwithstanding, the ASC has pointed out that the strictness with which the offence criterion “jeopardising the purpose of the measure” is interpreted is subject to strong regional variation, as is also exemplified in a comparison between the different federal states.

The criminal procedure against the proband is subject to the general provisions and principles of criminal procedure. First, the state prosecution service presents all necessary information to the Court for the Enforcement of Punishment. This information will previously have been collected by the police by contacting the GÜL and the HZD with a respective request. Where there is a reasonable suspicion against the proband, the GÜL or the police, with formal approval from the judge, can request that relevant geodata (usually movement data) be made available to them by the HZD and be subsequently “frozen”, i. e. put on hold so that they are not automatically deleted.

As already repeatedly stated, the different ways in which the GÜL can react to breaches or event notifications in an individual case depend on the instructions that have been provided for the case by the ASC. Accordingly, in the majority of cases, the first course of action is to contact the proband so as to clarify the state of affairs and the facts. The next step would be to involve the police where such course of action is

deemed necessary by the circumstances. It is seldom the case in practice that probands render themselves criminally punishable for breaching their EM-directives. Serious notifications, for instance manipulations of or tampering with equipment, play a very minor role in practice and the majority of notifications relating to zonal transgressions are in fact caused by the technical difficulties and problem described above.

EPK-EM The agencies involved in the case of breaches are the HZD, the GÜL, the probation worker, the police and either the sentencing court or the investigating judge (the latter when EPK is being used in the context of avoiding pre-trial detention). The initiating procedure corresponds to that applied for EAÜ breaches, with the difference that the GÜL informs the probation service immediately during regular office times, and that the ASC is not involved.

As soon as there has been a breach, the GÜL registers it and informs the assigned probation worker during his/her regular office hours. Outside of the regular office hours of the probation service, the GÜL takes action itself and forwards the incident to the probation worker the next day. The probation worker then informs the judge who in turn decides on what the consequences of the breach should be. According to s. 56d (3) 3 Criminal Code, the probation service is instructed to inform the court of serious or persistent breaches of directives and measures. In practice, in the vast majority of cases, the judge (not least as a means of managing his/her own workload) leaves the probation service much room for discretion in deciding whether a breach is serious enough to warrant reporting it to the court. Overall, the procedure that a breach sets into motion is characterised by a strong degree of individualisation. How much discretion the probation service has depends on the judge in each individual case. In accordance with the very individual support and supervision that the proband receives, judges and probation workers also have responses at their disposal that can likewise be tailored to the circumstances of the case. The task of the probation service, in seeking a suitable response to the breach, is to present the state of affairs, on the basis of which the judge then makes his/her decision. In practice, the wide degree of discretion that the probation service has allows it to make many decisions independently, for instance if the proband is repeatedly late within a short period of time and/or can present plausible and believable grounds.

6.3 Problems and potential improvements

Staff members working for agencies entrusted with technical and monitoring tasks barely voiced any significant problems or concerns. However, it must be borne in mind that these agencies, once they have reported a breach up or down the chain, usually have no knowledge of the further course of the procedure resulting from the breach. ASC staff members stated that swifter reactions on behalf of judges and the courts would be advisable and sensible.

In my opinion, the reactions sometimes are not quick and consistently enough. It sometimes takes quite a while, especially when it comes to a violation of the prohibition to consume alcohol. ... Of course this is always a legal issue, too. I do see a certain potential of [interdisciplinary] conflicts. But from a strictly psychological and prognostic view: When I look at somebody, who lives in a highly risky social environment, I would like to separate him/her from that environment immediately. (Interview 13 – Psychiatrist)

Some rather boldly demand that reactions to breaches of EAÜ-directives should be stricter or tougher.

EPK-EM The central problems with EPK strongly mirrored those encountered in the context of EAÜ. In particular, communication between judges and probation workers is felt to be too inconvenient and cumbersome due to clashing time management strategies – changes are called for that speed up communication between the involved agencies. The probation service in particular needs means at its disposal that allow swift responses and that improve its flexibility.

Section 7: Diversity

There is no statistical data on ethnicity or age, neither of EAÜ nor EPK-probands. The fact that Securitas does not employ any female staff in this particular field of work has given rise to questions in terms of how the installation of the equipment should be performed with female probands. However, due to the low number of cases in which this could potentially become an issue (about 10 per cent of all EPKs ordered), up to now, installation in such cases has been undertaken by a female civil servant of the HZD in the federal state of Hesse. EAÜ has only once been applied in a case involving a female offender.

Section 8: Information exchange and multi-agency working

8.1 Type of information

EAÜ-EM The following key data are collected in the context of GPS-EAÜ: personal data of the monitored person (first and last name, address, phone number, date of birth, nationality, family status, willingness to cooperate, command of the German language); offender group (divided into “sentence served in full” and “released from a forensic institution” – as well as duration of stay/length of sentence); the conviction on which the stay in prison or a forensic institution was based, including descriptions of the offence and the offender’s personality; relevant previous convictions; supervision directives; where appropriate information about victims; contact details of all involved actors and agencies; possible additional information (abuse of addictive substances, mental health problems/mental disease, other circumstances that are relevant for determining/assessing dangerousness).

In addition, the EAÜ-proband’s geodata are also gathered and recorded, i. e. his/her location and movement patterns. However, geodata can only be accessed if a violation is reported. Furthermore, data on incident reports and breaches are also collected.

EPK-EAÜ Like with EAÜ, in the context of EPK, personal data pertaining to the proband are exchanged between the agencies involved in the process, at least to a certain degree. One key difference to EAÜ, however, is that no geodata are recorded, since EPK uses RF rather than GPS. In the context of EPK, the focus lies on determining/monitoring whether the proband is at home or away from home at the times fixed in his/her timetable. One result of this different focus is that the process is subject to less stringent or strict data protection rules.

8.2 Official actors

EAÜ-EM The agencies that are decisively involved before and during the monitoring process and that in part come into contact with each other before or during that process are: the ASC, the GÜL, the HZD and Securitas as a subcontractor to the HZD, the police, the state prosecution service, and the probation service. In accordance with the different phases of the monitoring process, not all of these agencies communicate directly with each other, nor do they all receive all data and information that is available on the monitored person. In order to ensure their own compliance with the extensive data protection provisions that are in place in Germany, the involved agencies are very cautious and thus highly reluctant to share or forward on any data or information they have on the person under EM.

8.2.1 Agency for supervision of conduct

EAÜ-EM The first task of the ASC is to instruct the GÜL and the HZD to take action. To do so, the ASC assigns an identification number to each EAÜ-proband (OID), which is then transferred to the GÜL. Subsequently, the ASC then forwards information relating to the date of initiation of electronic monitoring, the data sheet containing all necessary personal information pertaining to the person under EM, a form stating necessary courses of action to be taken in cases of breach or event notifications, as well as the judicial supervision order. During the course of the monitoring process, the ASC is obliged to inform the GÜL of any changes in competence/responsibility, i. e. if competency for a case is transferred from one ASC to another. Furthermore, the ASC can file a request to be granted access to an EAÜ-proband's saved geodata.

8.2.2 Monitoring centre (GÜL)

EAÜ-EM The so-called "joint monitoring centre of the federal states" (Gemeinsame Überwachungsstelle der Länder, GÜL) serves as the "extended arm" of the ASC, and is thus essential for the exchange of information between the different agencies involved. It is responsible for monitoring the EAÜ-proband's compliance with the court orders. The GÜL compiles the system notifications it receives from the HZD and assesses them to determine whether or not there has been a breach of directive in accordance with s. 68b Criminal Code. Furthermore, the GÜL can contact monitored persons by phone so as to clarify the grounds for event notifications and, where the ASC has given respective instruction, inform the ASC as well as the probation officer thereof, as well as the police if there is imminent risk of significant harm. The GÜL assumes a central coordinating role in the forwarding of geodata. In this regard, firstly, the ASC and/or law enforcement agencies have to file a request for transmission of the geodata with the GÜL. The GÜL in turn then requests the respective geodata from the HZD and subsequently forwards them on to the agency that made the initial request. The GÜL is also responsible for coordinating the exchange/replacement of equipment in the field by the HZD or its subcontractor Securitas. Finally, the GÜL is also the primary point of contact for EAÜ-probands who have questions or inquiries regarding the technical equipment being used in their case.

8.2.3 HZD

EAÜ-EM In the course of the monitoring process, the HZD transfers all data to the GÜL and is also responsible – with *Securitas* acting as sub-contractor – for attaching, removing and replacing the electronic tags (trackers). Furthermore, the HZD programmes the mobile phones with which monitored persons are provided and installs all necessary software for both phone and tracker. The HZD is also responsible for installing units for measuring alcohol levels in the EAÜ-proband's home where such an additional directive has been issued by the court. The police contacts the HZD in case of technical problems.

8.2.4 Probation service

EAÜ-EM Where the ASC gives such instruction, the probation service shall be informed by the GÜL of any breaches or other incident reports/event notifications. The probation service can then contact the monitored person if it deems it necessary to do so.

EPK-EM As has been repeatedly emphasised thus far, the most important actor in the EPK process is the probation service, which is responsible for coordinating the measure and for providing the proband with educational care and support. The probation service works in close collaboration with the HZD, the GÜL and the courts. The probation service and the GÜL have all information pertaining to the proband at their disposal, while the HZD, by contrast, is only provided with an anonymised OID. The judge is only provided with the relevant information as agreed with the probation worker.

8.2.5 Other

EAÜ-EM One other main actor in the field of electronic monitoring is the police. Each proband is allocated to a competent authority which knows just about his existence in their competence area. In case of emergency the GÜL is authorised to inform the police about the necessary information of the proband. Where the circumstances require it (i. e. upon instruction from the ASC or when there is an imminent risk of significant harm), the police and law enforcement agencies can receive an EAÜ-proband's geodata from the GÜL either at the initiative of the latter or upon filing a respective request. In the case of breach, the SPS is informed thereof by the probation service if the latter considers the preconditions of s. 145a Criminal Code to be fulfilled. The state prosecution service can then subsequently file a charge.

8.3 Other actors

EAÜ-EM At the beginning of the monitoring process, the monitored person is issued a mobile phone with which he/she can contact the GÜL, *vice versa*. Otherwise, the person under EM is in direct contact only with his/her probation worker, who assumes a special position in the monitoring process due to his/her proximity to the offender.

There is usually no contact with the monitored person's family, other residents and other affected parties (f. ex. employers), unless such course of action has been explicitly instructed by the ASC in response to a violation. Nor is there any requirement to contact the victim. However, here, too, the ASC has the power to inform the GÜL of the victim's places of residence and work (which usually constitute exclusion zones).

Consequently, where there is an imminent danger of significant harm, the GÜL can notify the police and provide them with these addresses without delay.

EPK-EM No standardised processes are in place that foresee the sharing of information with other actors involved in the process. One possible explanation why victims are not routinely provided with information could be that the number of cases in which offenders are subjected to EPK for bodily harm or assault is very low – the majority of cases involve property offences. The information and processes that are shared with other persons living in the same household as the proband depends on the individual case at hand, but generally, doing so is not a precondition for EPK to be permissible. However, it seems logical to assume that persons with an obvious stake in the case (for instance family members) are involved at least to a certain degree in the drafting of the weekly timetable. Finally, as with EAÜ, in cases of emergencies, the necessary information can be forwarded to the police so as to enable them to take action if warranted.

8.4 Protection of privacy

EAÜ-EM Not least due to the strict data protection requirements that are in place, personal information relating to the monitored person is used only very reluctantly. Insofar as is necessary in each individual case, the ASC forwards all information known to it to the GÜL and to the assigned probation worker. In the course of the monitoring process, access to the EM-proband's personal data is restricted to only these three agencies. All involved agencies and parties are only provided with the information that they require to be able to properly perform their tasks within the monitoring process. Sex offenders are the exception to this rule, as they are additionally registered in a special database in several federal states (for example the so-called *HEADS-database* in Bavaria) – however, sex offenders compose the vast majority of probands subjected to EAÜ.

Geodata can only be retrieved when there has been a potential violation, and can only be forwarded to the police and SPS without prior approval from the ASC or the court if there is imminent danger. In this context, the data are intended to serve law enforcement purposes, as evidence. In principle, movement data have to be automatically deleted within **two months**. In exceptional cases, the ASC can request that the data be frozen, i.e. retained beyond the two month period, as long as there is reasonable suspicion that a criminal offence has been committed (breaches of directives in particular).

All data concerning persons who are subjected to EAÜ-GPS are deleted **one year** after the monitoring process has ended.

EPK-EM Data protection and the protection of privacy in the context of EPK are not entirely unimportant, but as has already been stated, compared to EAÜ they play a far less pivotal role. This is primarily due to the fact that no geodata are collated, and that EPK is thus a far less intrusive measure than EAÜ can be regarded as being. Data protection is subject to the control and supervision of the Hessian data protection commissioner.

8.5 Problems in communication

EAÜ-EM Interviews with representatives from the different involved agencies revealed that, overall, communication between the ASCs, the GÜL and the HZD is effective. Nonetheless, due to the large number of parties and agencies involved in the strongly bureaucratised monitoring process, communication difficulties do still arise. Difficulties appear to arise most frequently when communicating/collaborating with the ASCs that have little to no prior experience with EAÜ-GPS and that in turn can be overwhelmed by the standardised procedures. In order to counter this problem and to simplify communication processes, Bavaria has established a centralised coordinating office (the only federal state to do so to date), a step that has been received positively by most involved parties and agencies.

In some federal states, communication with the police is stated as a further problem. One issue that was emphasised in particular was that the police tended to request more information than necessary, and in fact than is actually permissible according to data protection provisions. But quite recently the HZD gives training especially concerning the technical information for the police.

EPK-EM Overall, all respondents voiced the opinion that the communication processes are satisfactory and effective. This applies to the technical service providers (HZD, GÜL) on the one hand, and to the close collaboration between judges and probation workers prior to EM being ordered on the other. One point of criticism that was voiced by the probation service was that, in the time after EPK has been ordered, only delayed communication (i.e. no immediate direct communication) with the judge is possible.

8.6 Discretion

EAÜ-EM As a matter of principle, all agencies and parties involved in the monitoring process move and act within clearly defined boundaries. Only the ASCs and the GÜL have some room for discretion. Discretionary situations can arise in cases in which the ASCs instructions to the GÜL are not adequately tailored to the individual case due to the standardised nature of the documentation involved. Likewise, the ASC has some discretion in deciding whether a violation should be immediately reported to the state prosecution service. The few scenarios that can potentially arise are addressed in brief in Chapter 6.

EPK-EM Overall, inter-agency collaboration is far less formal in the context of EPK than is the case with EAÜ. The probation workers and the GÜL in particular have much more room for discretion.

Section 9: Effectiveness and impact of electronic monitoring

9.1 Goals

EAÜ-EM EAÜ is to be primarily regarded as a preventive measure for securing and monitoring probands who are subjected to it. To a certain degree, EAÜ can also be understood as a rehabilitative measure that serves to provide probands with structure and social/community support. In this regard, all persons involved felt that social support and supervision is a necessary facet of EAÜ. Some occasional voices on behalf

of the agencies providing technical services regard GPS-monitoring as also serving a retributive function. In some instances economic or financial issues were also mentioned. Particular emphasis was placed by many on the fact that GPS-monitoring and the movement data that such monitoring provides can aid in clarifying suspicions for other offences, in particular in order to prove a proband's non-involvement in such offences.

EPK-EM Respondents highlighted the reintegrative, rehabilitative aims of the measure, with particular importance being accorded to the creation of daily structure and routine. At the same time, EPK is meant to provide offenders with a "last chance" before custody becomes unavoidable.

... I did enjoy working as a probation officer [in the field of EPK-EM]. It was almost a kind of "Assisted Living". We got through all details of the day-to-day life with the proband, we scheduled his/her weekly routine, we met him/her at least once a week and we were available to the proband almost around the clock. (Interview 24 – Probation worker in a higher position)

Furthermore, some respondents also drew attention to the potential that EPK has as a means of reducing the use of custody and thus helping to curb the prison population. However, due to the low case numbers and the fact that EPK is only practiced on a pilot basis, no success could yet be reported in this regard. Findings of prior research focused on the first-steps of Hessian project have been rather reserved (*Mayer 2004*, with a particular focus on EPK as a means of preventing pre-trial detention). Since 2004 there has been no further empirical research on this matter.

9.2 Influence on compliance

EAÜ-EM Regarding the influence of EAÜ on a proband's compliance with the law (i.e. not re-offending), different perceptions and views were voiced. Overall, however, EAÜ was regarded as having a positive effect. In this regard, staff entrusted with monitoring tasks justified this view with the high risk of being reconvicted as a result of reoffending (i. e. high risk of being apprehended). It is worthy of note that both the monitoring staff as well as the staff members responsible for technical services were reluctant to make definitive statements as they lacked sufficiently close contact and involvement with probands. The probation service were predominantly positive and optimistic, but at the same time pointed out the danger that probands merely temporarily adapt their behaviour in order to successfully complete the EAÜ-directive (rather there being actual long term change in their behaviour). The nature or essence of the measure was often regarded as an additional burden of control and surveillance for the probands who are subjected to it. Some in turn stated that they had perceived no influences or effects on compliance with the criminal law. In particular, there is a lack of corresponding statistical surveys and evaluations.

EPK-EM Based on an internal evaluation from 2011, the Hessian Ministry of Justice assesses that 10 per cent of all EPK-directives are revoked due to breach. Due to a lack of up-to-date statistics, we can only draw on the subjective perceptions of the respondents to this research study. The majority of respondents were (albeit cautiously) optimistic. The probation service provides multiple explanations for this positive assessment. On the one hand, EPK serves to demonstrate to offenders that there

are alternatives to how they had behaved in the past, while on the other, as already repeatedly stated, it helps them develop daily routines and structure in their lives. But again, these are subjective views by some respondents, which are not based on empirical research. At the same time, emphasis was repeatedly placed by the respondents on the essential importance of continued supervision and support after the transmitter has been removed/deinstalled. Also, it was also stated that minor breaches or transgressions could even be interpreted positively, as they provide probation workers with opportunities to address the problems that a proband is facing. They also serve as indicators that a proband is not merely trying to fully comply in order to be rid of the transmitter as soon as possible. The technical services were more reluctant to respond, as they lacked direct contact to the offender and thus had no insight. In the context of recidivism, though, the monitoring agencies, and in part the technical services as well, did point out that wearing the transmitter does generate a sense of being constantly monitored and watched.

9.3 Good and poor practices

EAÜ-EM Overall, no experiences could be drawn from the German system that could be regarded as particularly successful or promising. In this regard, EAÜ and EPK are much alike. The pilot project from Baden-Württemberg was generally mentioned by a few persons in leading senior positions. However, it was not regarded as having had any significant influence on the current state of affairs.

A recurring theme that received much positive mention, both for EAÜ and EPK, was the cooperation between the involved agencies, in particular between the HZD, the GÜL and the Bavarian “central probation service coordination office”.

The above mentioned technical deficiencies were mentioned as being less promising and thus problematic. Technical and monitoring services furthermore criticised that data protection constituted a major hindrance for more effective practice.

EPK-EM Reference should be made to what has been elaborated in the context of EAÜ above. One point that received particular praise as a successful practice was the individualised approach that is adopted in each case. For instance, the proband’s weekly timetable can be adapted on a daily basis so as to be able to accommodate exceptions, for instance if the proband would like to take part in or visit certain events.

One particularly severe and serious problem with EPK when it is used as a means of avoiding pre-trial detention is the fact the time that the proband wears the transmitter is not taken into consideration (or deducted) should the proband be sentenced to imprisonment. There is dire need for immediate action to be taken to alleviate this problem.

Section 10: The future of electronic monitoring

10.1 Policy and practice formation

10.1.1 Policy transfer

EAÜ-EM According to the involved parties and agencies, policy transfer based on exchange of experiences with other countries has not taken place. Experiences and knowledge from abroad have only been drawn on from a purely technical perspective.

Further international exchange of experiences is by all means welcomed, however there are doubts as to whether it would be realistic to assume that any such exchange would have substantial influence on German practice.

EPK-EM International exchange has also taken (and continues to take) place in the context of EPK (Austria, Switzerland, England etc.). However, it predominantly focuses on exchanging knowledge in relation to specific details or issues (for instance the most sensible duration of an EM-directive). Respondents excluded entirely the possibility that German practice is or has been influenced by experiences made abroad.

10.1.2 Private sector

The same private companies (Securitas, 3M and a private company that places workers in the HZD) are involved in both EAÜ and EPK. It was regarded as virtually entirely ruled out that their involvement and stances had had any influence on the development of electronic monitoring in either of these two fields of application. Moreover, the involved parties and agencies could not confirm that the private companies had had any influence on the introduction of tagging in Germany.

However, there were also single voices that attributed private companies a larger significance.

Yes, [private companies] play a major role. Namely the company that builds the GPS-trackers as well as Securitas, the company that installs the devices. One should not underestimate the private companies' influence on practical decisions. (Interview 12 – Head of the central agency for probation and supervision of conduct work)

10.1.3 Other organisations

A key driving force for the introduction of EAÜ had been to compensate for and replace the practice of subjecting high-risk offenders to 24-hours police surveillance that had in turn become necessary following the abolition of subsequent (i. e. ordered later than at the time of sentencing) preventive detention. In this regard, when asked about driving forces behind the formation of policy and practice, some individual respondents named the courts that had ruled subsequent preventive detention to be unlawful (specifically: the German Federal Constitutional Court following case-law from the European Court for Human Rights).

Furthermore, some respondents alluded to the fact that the introduction of EAÜ as an alternative to police surveillance had been suggested and subsequently promoted by certain individuals active in politics and practice (predominantly from the federal state of Hessen).

10.2 Creativity

10.2.1 Full potential

There was almost unanimous consensus among respondents that the potential of EM is far from having been fully tapped in Germany. This can likely be explained by the fact that EPK is only available in one of 16 federal states as a pilot project, and that EAÜ is reserved only for exceptional cases of particularly dangerous offenders. But in general there is a strong and prevailing view not only of academics, but also practitioners that an extension of EM would not be desirable as – apart from the serious cases within the framework of the supervision of conduct order – it would be not justifiable due to Constitutional constraints with regards to the principle of proportionality.

10.2.2 Increasing effectiveness and barriers

When asked why they believe that EM plays only a subordinated, peripheral role in German sentencing, the interview respondents highlighted several different factors.

Beyond EAÜ, which in essence is a measure for truly exceptional cases, there is a clear and fundamental lack of unambiguous statutory regulations and of political acceptance (though the latter is subject to regional variation).

X: Is EM used to its full potential in Germany, not just from a technical, but also from a legal point of view?

Y: The present legal potential is fully used, yes. The law even was changed in order to include the EM-directive after the decision of the ECtHR.

X: How much scope is there for EM to be used more effectively?

Y: If we take a look at the aims we are pursuing at the moment – in regard to EAÜ-EM as was as in regard to EPK-EM – the effectivity, we have archived so far, is sufficient. But then again this always is dependent on political will. Let me put it this way: When a Salafist [under EM] escapes and several ministers in Hesse have to deal with that exclusively, the willingness amongst politicians, to engage oneself with the topic of EM, decreases. If politicians follow up the positive effects EM can reach, this willingness can increase again. That is why the situation is always changing. (Interview 4 – Head of GÜL)

Beside the lack of political will to realise statutory regulations for the use of EM, it was stated, that even in Hesse a large number of judges mistrust EM and do not use the instrument of EPK-EM.

X: Is there a consensus about the purposes of EM, for example amongst the judges, the probation workers etc.?

Y: Well, EPK-EM is only practised in Hesse, where there have been start-up difficulties for a long time and I think there is still no breakthrough that would solve these difficulties. The reasons for this are the judges, who seem to have little trust in this measure. (Interview 15 - Executive director of the professional association of probation workers)

Additionally, public opinion and perceptions of EM are stated to be rather negative. EAÜ and EPK come to be equated with each other without any deeper reflection, and individual cases of breach or abuse of EM-directives are scandalised in the media. There was an incident in 2014 where an extremist Islamist under EPK-EM (pre-trial) could flee to Syria to join the “Islamic State”.

X: To what extent is EM viewed as credible by the public?

Y: ... EM is not known to the general public. From time to time you can read something like “offender under EM commits new crime” in the BILD-Zeitung [German tabloid newspaper], while DER SPIEGEL [German news magazine] reports: “EM prevents crime” at the same time.

X: Would you say that EAÜ-EM und EPK-EM are seen differently?

Y: People do not know the difference at all. [EAÜ and EPK] are lumped together in one category. Most people think that the Salafist, who escaped to Syria, was under EAÜ-EM. (Interview 1 - Civil servant at the GÜL)

This negative atmosphere is supplemented by high, often unrealistic expectations of what EM can achieve. EM cannot prevent offences – it only helps clear them up/resolve them and exerts a certain degree of deterrence.

X: To what extent is EM viewed as credible by the public?

Y: The general public seems to be very, very critical towards EM. First of all, the attitude towards technology is not very positive in Germany. The reason for this is, that you only can read negative press articles [on EM]. There are hardly ever any reports on successful examples, f. e. probands under EM for more than one year, who did not reoffend. In the past there have been incorrect reports on the Salafist, who managed to escape: “Technology has failed” ... Or: “EM cannot prevent anything” (Interview 16 – Manager at the HZD)

Since the 1980s the German Constitutional Court frequently highlights the importance of “informational self-determination”:

... in the context of modern data processing, the protection of the individual against unlimited collection, storage, use and disclosure of his/her personal data is encompassed by the general personal rights of the German Constitution. This basic right warrants in this respect the capacity of the individual to determine in principle the disclosure and use of his/her personal data. Limitations to this informational self-determination are allowed only in case of overriding public interest. (BVerfGE 65, 1).

Due to this high data protection standards are constitutionally binding. This makes the EM practice – especially in regard of the collection and storage of personal (geo-) data (automatic deletion after two month) and in regard of multi-agency communication – a highly elaborate process.

Some respondents from the agencies entrusted with monitoring tasks perceived the data protection as a hindrance to their work.

X: How much scope is there for EM to be used more effectively?

Y: I do not think there is any scope. We just have strict data protection requirements. I do not want to give out a valuation whether this is good or bad. (Interview 20 – Technician at the HZD)

When confronted with the question whether or not loosening data protection provisions was necessary or possible, a degree of disagreement emerged among the respondents. Some leading agencies demanded that, instead, more be done in the different federal states to promote implementation and use of the measure in its current form. Statements such as the following were rather seldom:

EAÜ would be a better instrument if we [the police] would have an easier access to geodata. That is not realistic, I know ... My wish would be that I could turn on my computer and would be able to see the [probands'] movement in the last twelve hours. (Interview 29: EAÜ-specialised police officer)

10.2.3 Suggestions

Besides the calls for improvements in the technical implementation of EM (using GPS-tracking in pre-trial detention related EM), that have already been described, new legal contexts for their application have also been suggested. Two potential fields of application in particular received repeated mention:

On the one hand, using RF-technology and voice verification was deemed a suitable means for enforcing stadium bans that have been imposed on hooligans. On the other hand, thought has been devoted to the prospects of using EM as a means of preventing domestic violence (the victim would also be equipped with a tracker). The monitoring agencies in particular felt that this could indeed serve to improve victim protection. However, domestic violence was far from unanimously regarded as a suitable field of application. Probation workers especially feared that victims would be subjected to severe psychological stress, as wearing the tag would constantly confront them with their past victimisations and the possibility of being victimised again. In the recent past these two fields of EM have been discussed frequently in the media by several politicians. In July 2015 a conference of the Ministers of Justice of all federal states was discussion this question.

10.3 Changes

The prevailing perception among respondents was that an expansion in the use of EM in German sentencing practice is rather unlikely. Only isolated voices from within the technical and monitoring service providers believe that a significant increase in the role and impact of EM is a realistic prediction.

However, all persons interviewed see possibilities for EM to be applied in other fields and contexts. Beyond the new potential fields of application mentioned above, emphasis is often placed on expanding the use of EM as a means of preventing pre-trial detention to other federal states beyond Hessen. At the same time, any such implementation is conditioned i.e. depends on the political will as it stands in each individual federal state. It has also to be considered that the use of pre-trial detention in Germany has become very restrictive and that the numbers of pre-trial detainees have been reduced by half during the last 15 years. Therefore avoiding pre-trial detention is not an issue and (the more serious) cases in pre-trial detention today would probably not be seen as appropriate for EM.

Further technological development and advancement are regarded as being of crucial importance, and should be regarded as a continuous process. Practice must also deal with and consider technological innovation.

International European exchange of experiences is regarded as desirable and is in fact also practiced in part (for instance with Austria). Some interviewees emphasise the importance of common European standards:

You can notice that the EM is gaining in importance in Europe. Everyone is wondering: "What is going on with Germany?" By now we have European Probation Rules, even Electronic Monitoring Rules and Recommendations. There are agreements on the transfer of probationers within different countries. This poses the question: If a person is ordered EM in France, why should he/she not be allowed to wear the EM-device in Germany? Germany is faced with the decision to get involved in this European framework. (Interview 15 - Executive director of the professional association of probation workers)

Implementing a common European monitoring and surveillance strategy, however, is deemed unrealistic and almost impossible, given the different legal systems and traditions in Europe and the strict data protection provisions that are in place in Germany.

In individual cases [a European integration] might be useful. On the other hand our legal systems are hardly harmonised. It is difficult to find common statutory bases and common technical equipment for a [common European] implementation of EM. I think, at the present moment this would be extremely difficult (even though it would be desirable). (Interview 26 – Judge)

10.4 Private companies

There is widespread agreement among respondents that private companies will continue to play only a minor role in EM-practice in Germany in future. Moreover, a stronger involvement of private entities is not desired – their economic interests are viewed as being contrary to the aims and objectives of both EAÜ and EPK. The state monopoly on sentencing and punishment is generally accorded particular importance.

X: There are experiences from abroad, where private companies carry out more tasks than they do in Germany, for example the monitoring process. Do you think that is an option for the German EM-practice, as well?

Y: No.

X: What would be the benefits and disadvantages of such a development?

Y: I think EM – like imprisonment – is a massive interference [in a person's constitutional rights], that always has to be under state supervision. (Interview 24 – Judge)

Nevertheless, occasionally respondents worried about an increasing process of privatisation:

X: What do you think is the private sectors' role in the future EM practice?

Y: I hope it does not play a role at all. But I think [private companies] will play a bigger role and that is what worries me.

X: What would be the benefits and disadvantages of such a development?

Y: I only see disadvantages. The sanctioning system needs to be held in public hands. Private companies aim to make profits, which is fully legitimate. But [the pursuit of profit] should not be an element within the sanctioning practice. (Interview 23 – Probation worker in a higher position)

What is noteworthy is that, in Germany, due to the low case numbers, EM does not offer private businesses a particularly large or lucrative market. Senior executives in the various involved agencies have pointed out that the annual caseloads originally anticipated had been about 200, and that *Securitas* is in fact assumed to be making financial losses with its EM involvement.

Section 11: Conclusion

Due to the differing objectives and conceptual frameworks of the two contexts, in which EM can be applied in Germany, making blanket statements or sweeping assessments would not be advisable. Accordingly, remaining in line with the structure applied in this report thus far, here, too, there is need for differentiation:

EAÜ-EM Historically, EAÜ in its current form is primarily to be understood as a consequence of the judgements rendered by the ECtHR and the Federal Constitutional Court, which essentially effected the subsequent (almost total) abolition of subsequent preventive detention in Germany. EAÜ also serves to replace the (unconstitutional) practice of subjecting persons to 24-hour police surveillance, a practice that had come to be used as a means for countering the loss of control that had resulted from the abolition of subsequent preventive detention. EAÜ targets persons who are released from prison and who have been assessed as still being dangerous. It needs to be borne in mind that EAÜ is statutorily linked to the measure of supervision of conduct, and is thus always connected to the said measure. It cannot be applied as a stand-alone measure, and is instead intended to support enforcement of the measure of supervision of conduct. Therefore, EAÜ-EM is thus already rendered an exceptional practice by its statutory conceptualisation, and is restricted to the very few offenders who pose a high risk.

There are, however, different problem areas in this respect. On the one hand, the capabilities and possibilities of technical supervision, surveillance and monitoring should not be overestimated. The assumption that the special preventive, deterrent

effects of EAÜ reduce recidivism is directly linked to the assumption that the offenders who are subjected to EAÜ base their behaviour and decision-making on reason and rational choice. Focus is thus placed on factors relating to structures of criminal opportunity. This is, however, not always the case, especially with regard to the circle of offenders to whom EAÜ is applicable. Justifying EAÜ on the basis of its benefits for clearing up new offences (a view that has been repeatedly stated throughout this report) would be insufficient on its own. Doing so would imply that, at the time of ordering EAÜ, it had already been decided or taken as fact that the offender will reoffend, which would in turn essentially be greatly counterproductive for the offender's rehabilitation and social reintegration.

Implementing EAÜ in practice is a laborious endeavour, both technically and administratively. Practice has to be constantly adapted to developments, advancements and technical difficulties. The strict and elaborate statutory data protection requirements that directly affect and guide EAÜ-practice are constitutionally binding. Accordingly, EM-practice in Germany is greatly bureaucratized and, almost unavoidably, inter-agency collaboration is strictly formalised in this regard.

In summary, the following can be said: EAÜ is currently designed to cater for only a very limited scope of eligible offenders, and is equally as complicated in Germany as it is restricted. There is the danger that the agencies involved – not least due to the effort and resources they have already invested – may seek to expand the application of EAÜ beyond what has been statutorily regulated. On the other hand, it is to be feared that EAÜ is increasingly coming to be regarded or perceived as a stand-alone measure by the actors involved. However, the EAÜ-directive only makes sense when it forms but one element within a network of supportive measures and interventions (see Nr. 8 of the CM/Rec(2014)4). Comparison between the federal states of Germany shows that EM indeed has the potential to become a “political pawn”.

EPK-EM EPK is practiced only in the context of a pilot project in Hessen, and thus plays only a very peripheral, subordinate role in German EM-practice. A wider application of EPK is already inhibited by a lack of a clear statutory basis. Interviews with actors in the process nonetheless revealed that, in contrast to EAÜ, EPK is regarded as being more closely connected to rehabilitative and reintegrative efforts – after all, the purpose of EPK is to ensure that the person subjected to EM successfully adheres to a previously elaborated individualised daily routine/timetable. Probation workers in particular regard the EPK-directive as a possible “compromise” with the judge that offers offenders a “last gasp” alternative to being imprisoned. Using EM alone as a mere means of control, without any accompanying positive support measures, is neither suitable nor recommendable.

Notwithstanding, the danger of *net-widening* effects (as already described in the first evaluation) should not be ignored. This applies in particular to cases in which EM is used as a means of avoiding pre-trial detention/secure remands. There, there have been indications that EM is not used as a promotive, positive instrument, but rather merely as an additional measure of control. The study at hand is unable to close the knowledge gaps that do indeed remain in this field. Thus, it remains to be seen what can be drawn from further empirical research and analyses.

In closing, the described legal frameworks and conditions, practical implementation problems and gaps in scientific knowledge show that EM has been met with only little popularity in the German sanctioning system and sentencing practice, and remains limited to extreme cases of a more exceptional nature.

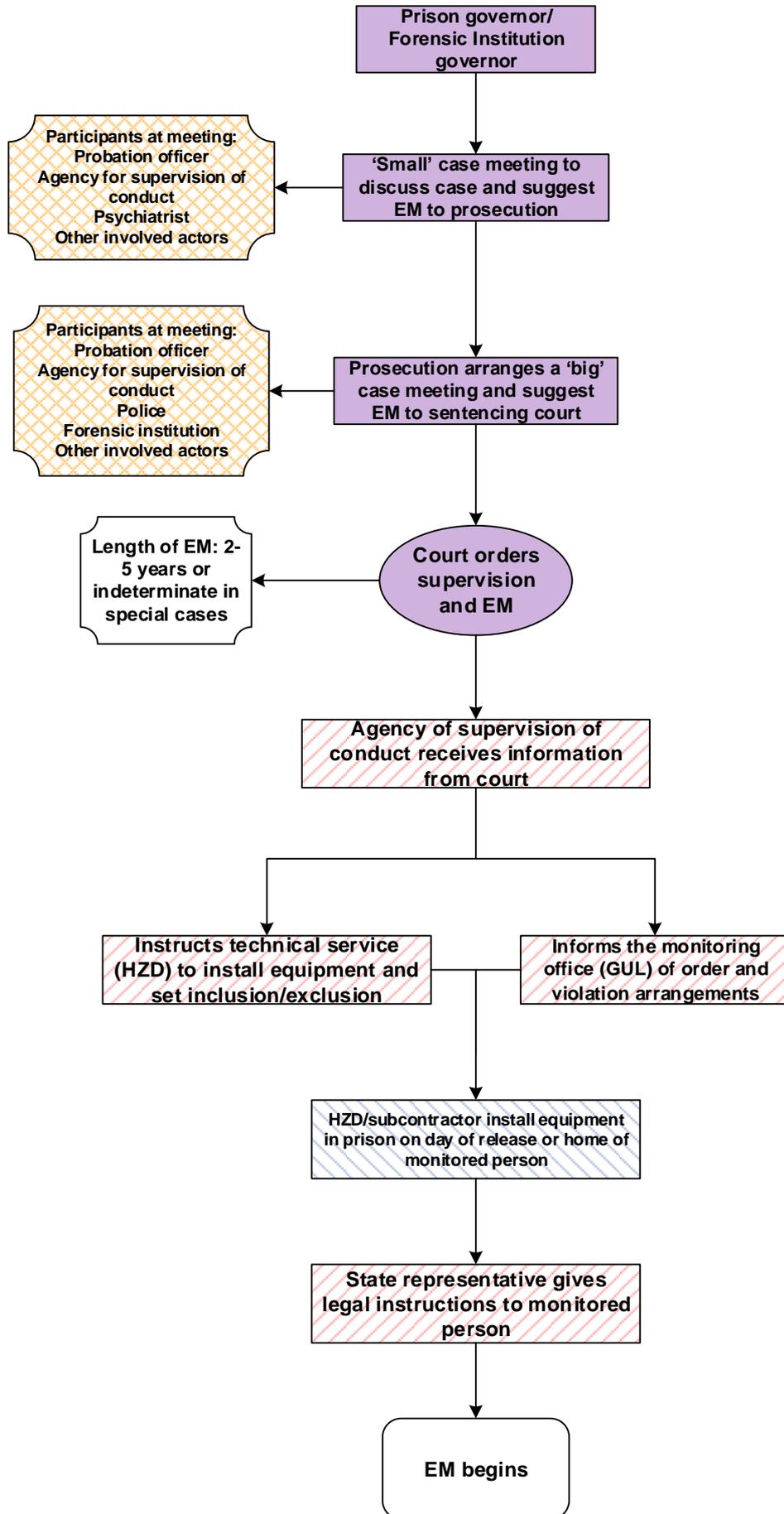
- Statutory conceptualisation of EM as an exceptional instrument
- A lack of further unambiguous statutory regulations
- No clear political will to realise such regulations
- A predominantly negative public opinion, mostly based on negative incidents, that are scandalised by the media
- A rather sceptical judicial perspective on new fields of application
- Technological deficiencies in the present practice
- A lack of empirical research on the effectivity of EM
- A high data-protection standard due to the constitutional right of “informal self-determination”. Resulting in:
 - A major administrative and financial affordability
 - No “urgency” since prison overcrowding is not a bigger issue anymore

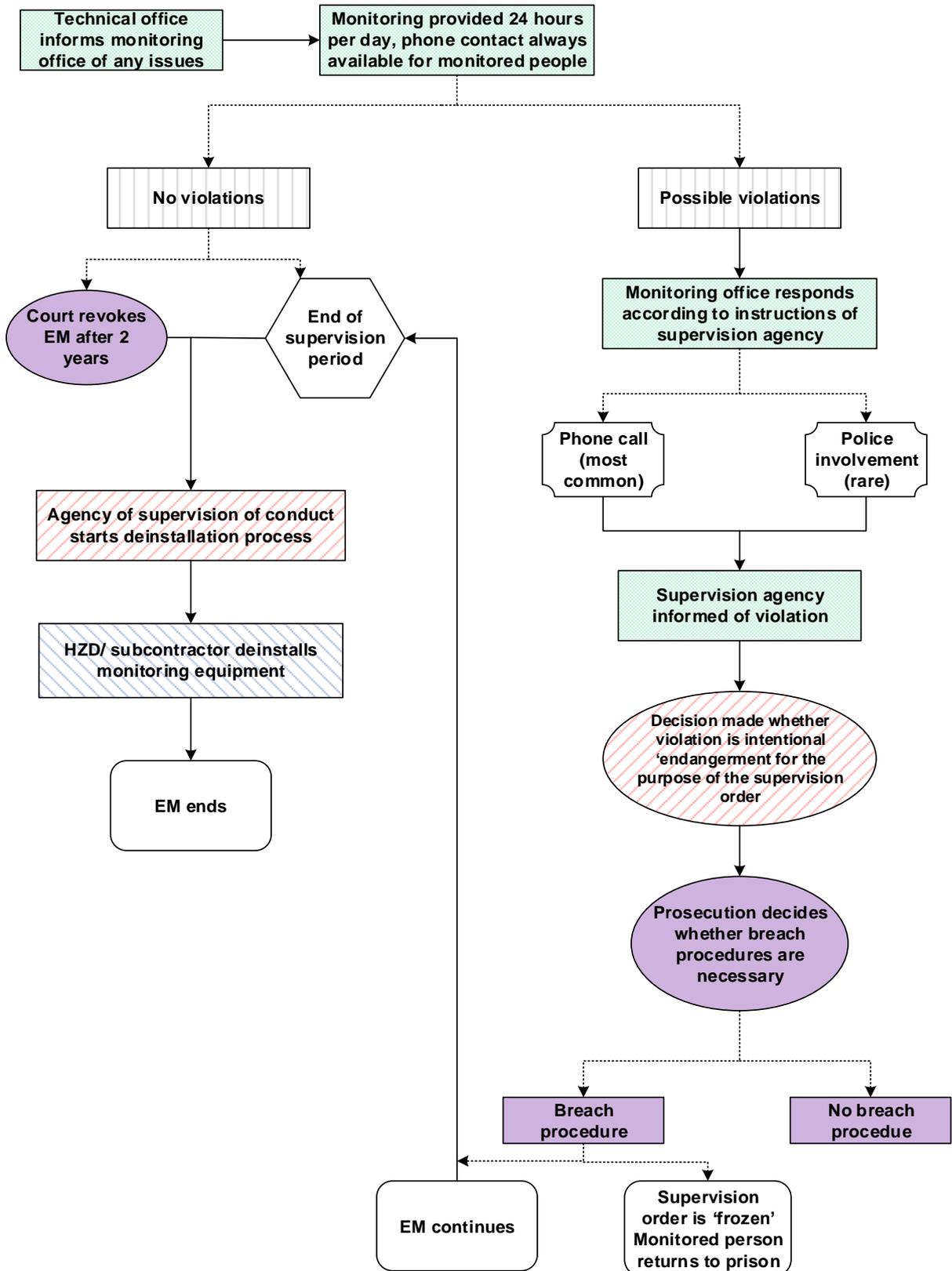
Likewise, based on those empirical findings, it is our insistent advice addressed to the deciding political actors that these factors need to be borne in mind, while discussing new fields of application. EM is a serious encroachment upon basic rights and involves the danger of net-widening effects. Its implementation is not inevitable a cost-effective alternative – as often declared – but linked with major administrative and financial affordability.

In our view, the reluctant, reserved and cautious approach to EM as a legal instrument – that in fact stands in stark contrast to the models and approaches applied in other countries in Europe – remains vitally necessary.

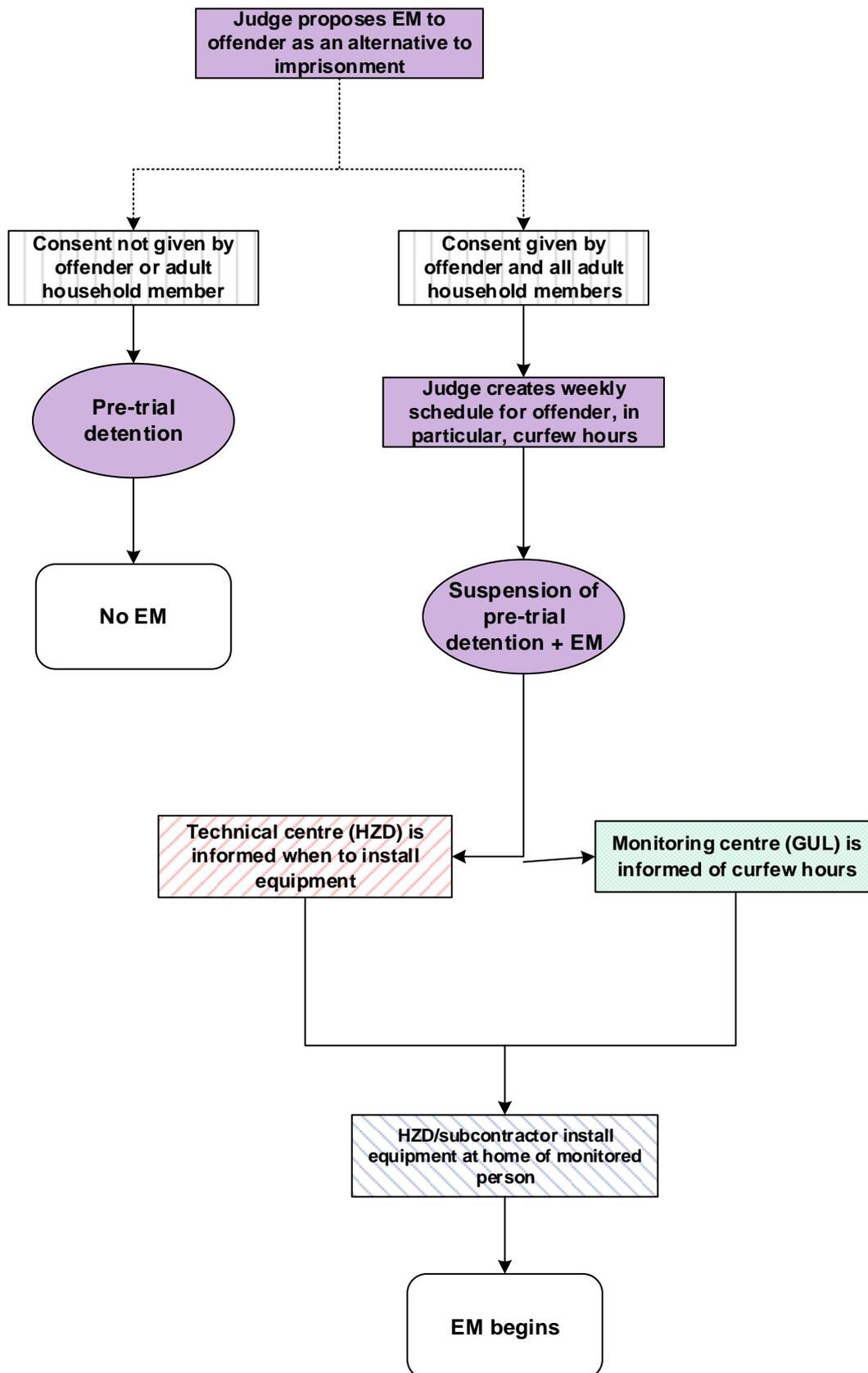
Appendices

Appendix 1 EAU (Federal GPS Scheme)

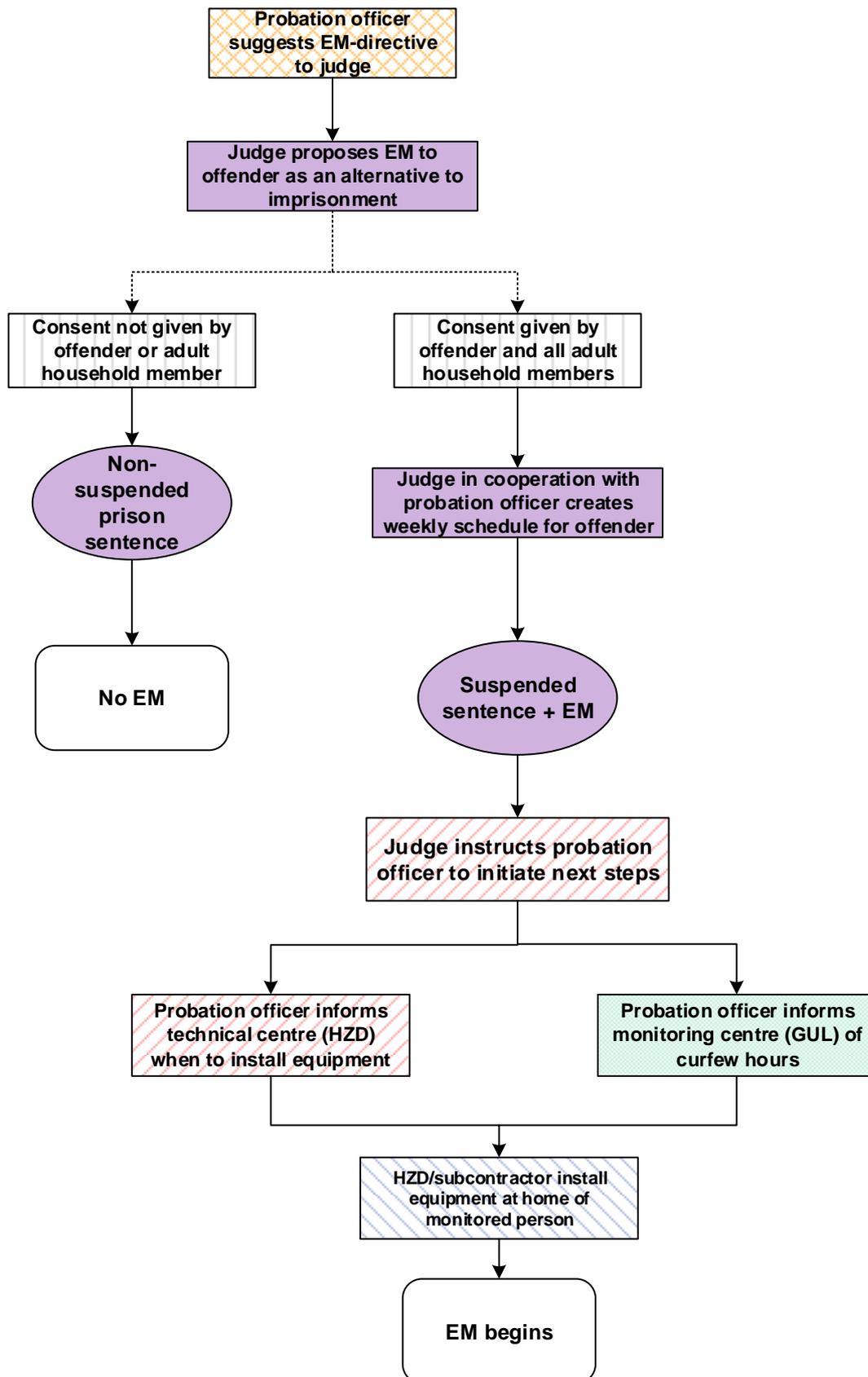




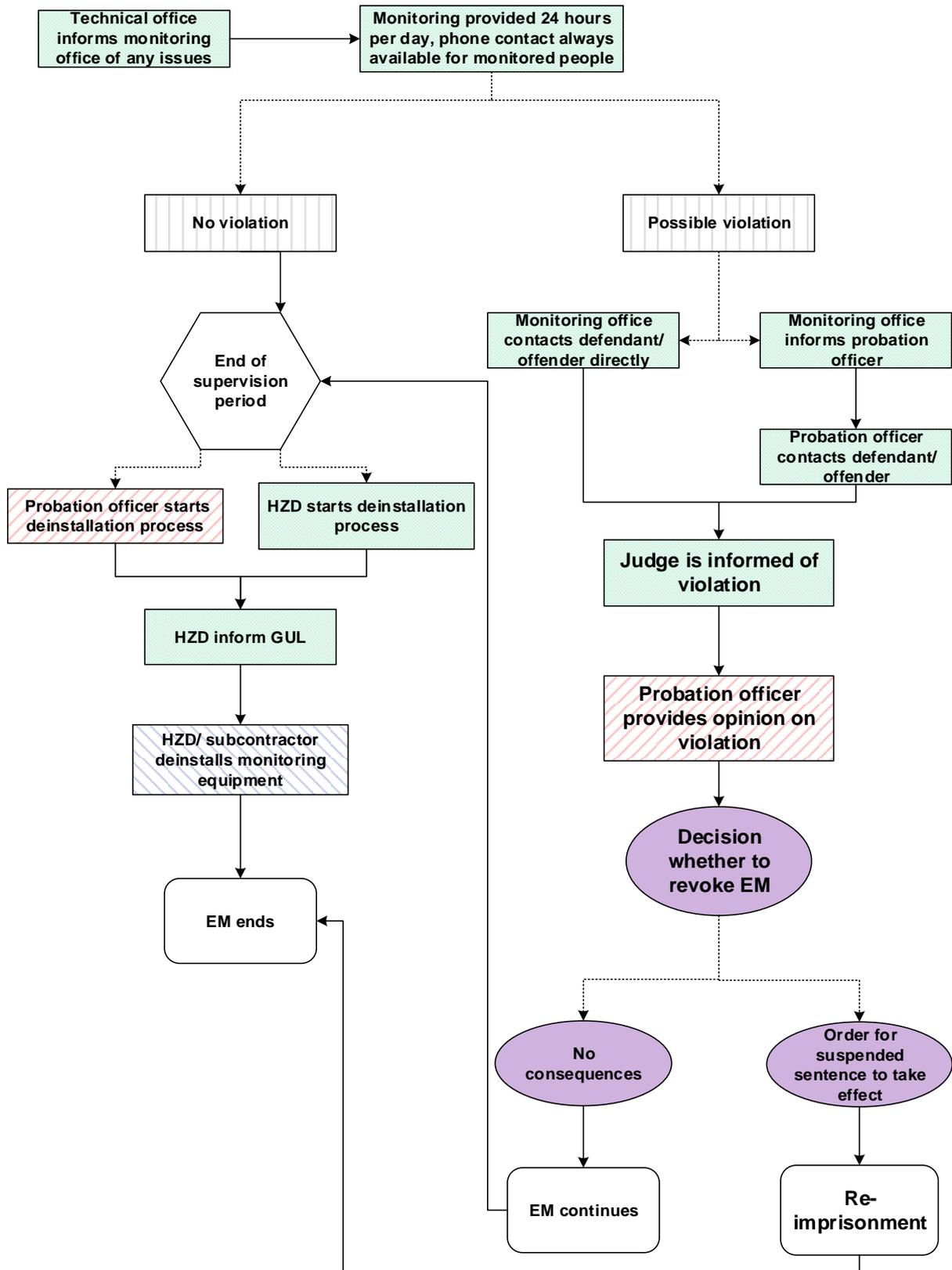
Appendix 2 EPK Pre-trial (Hesse)



Appendix 3 EPK suspended sentence (Hesse)



Appendix 4 EPK monitoring process (Hesse)



References

Criminal Code [Germany] Section 56c. Ch. 3, Title Four: Suspended Execution of Punishment And Probation; Instructions

Criminal Code [Germany] Section 56d. Ch. 3, Title Four: Suspended Execution of Punishment And Probation; Probation Assistance

Criminal Code [Germany] Section 57. Ch. 3, Title Four: Suspended Execution of Punishment And Probation; Suspension of the Remainder of a Fixed Term of Imprisonment

Criminal Code [Germany] Section 57a. Ch. 3, Title Four: Suspended Execution of Punishment And Probation; Suspension of the Remainder of a Punishment of Imprisonment for Life

Criminal Code [Germany] Section 68. Ch. 3, Title Six: Supervision of Conduct; Prerequisites for Supervision of Conduct

Criminal Code [Germany] Section 68a. Ch. 3, Title Six: Supervision of Conduct; Supervisory Agency, Probation Officer

Criminal Code [Germany] Section 68b. Ch. 3, Title Six: Supervision of Conduct; Instructions

Criminal Code [Germany] Section 68c. Ch. 3, Title Six: Supervision of Conduct; Length of Supervision of Conduct

Criminal Code [Germany] Section 68d. Ch. 3, Title Six: Supervision of Conduct; Subsequent Decisions

Criminal Code [Germany] Section 68e. Ch. 3, Title Six: Supervision of Conduct; Termination of Supervision of Conduct

Criminal Code [Germany] Section 68f. Ch. 3, Title Six: Supervision of Conduct; Supervision of Conduct without Suspension of the Remainder of Punishment

Criminal Code [Germany] Section 68g. Ch. 3, Title Six: Supervision of Conduct; Supervision of Conduct, Suspension of Sentence and Probation

Criminal Code [Germany] Section 145a. Ch. 7, Violation of Instructions during Supervision of Conduct

Criminal Procedure Act [Germany] Section 116. Suspension of Execution

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This report is one output from the European project: 'Creativity and effectiveness in the use of electronic monitoring as an alternative to imprisonment in EU member states' by Professors Anthea Hucklesby (University of Leeds, UK), Kristel Beyens (Vrije Universiteit Brussel, Belgium) Miranda Boone Utrecht Universiteit, the Netherlands), Frieder Dünkel (Universität Greifswald, Germany) and Gill McIvor (University of Stirling, Scotland) and Dr Hannah Graham (University of Stirling, Scotland). Further information about the project including briefing papers and full reports from each jurisdiction and a comparative report and briefing paper can be found at: www.emeu.leeds.ac.uk alternatively contact Professor Anthea Hucklesby (A.L.Hucklesby@leeds.ac.uk).