KU Leuven
Faculty of Law

PENAL POLICY TRANSFER

Danique GUDDERS

Supervisor:
Prof. Dr. Tom DAEMS (KU Leuven)

Co-supervisor:
Prof. Dr. Tom VANDER BEKEN (UGent)

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Acknowledgments

'It always seems impossible until it's done'

Nelson Mandela

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Abstract

It is nowadays widely accepted that reformers and policy makers are crossing the borders of the nation-state to search for ideas which could be useful in the development of domestic penal policies and politics. One consequence of this development has been a growing interest in the idea of 'policy transfer' (Jones & Newburn, 2002a: 97). The origins of academic research and debate on policy transfer go back to the 1960s when it became part of comparative policy analysis. The major upshot of interest from the late 1990s onwards, however, owes a great deal to the stocktaking and agenda-setting work of a number of political scientists, in particular David Dolowitz and David Marsh (see Dolowitz & Marsh 1996, 2000; Dolowitz 2000). The notion policy transfer has been used in political science literature to refer to '… the process by which knowledge of policies, administrative arrangements, institutions and ideas in one political system (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political system' (Dolowitz & Marsh, 2000: 3). While the work on policy transfer is often associated with political science it has increasingly attracted the attention of scholars across a wide range of academic disciplines (Dolowitz, 2000b: 1), including criminology. However, notwithstanding a growing interest in the global travels of penal policy we know very little about the role policy transfer plays in initiating change in criminal justice policies. To date there have been only a few detailed empirical studies of criminal justice policy-making focusing on how changes in criminal justice policy comes about and the role that policy transfer plays in this process (Jones & Newburn, 2002a: 108). This dissertation attempts to a certain degree to fill this scientific gap and contribute to a better understanding of developments in penal policy and the role of policy transfer herein by conducting an empirical research on the role of penal policy transfer in Belgium.

The main objectives of the dissertation are two-fold. First, we aim to contribute to theory transfer and elaboration by incorporating the latest discussions on policy transfer into mainstream criminology and by participating in the theoretical discussions within political science and public policy analysis on the basis of the findings coming from the research project. Second, we carry out an empirical research on policy transfer to Belgium which will include two case studies, that is, (1) electronic monitoring (EM) and (2) restorative justice (RJ).

In order to answer this main research question, a qualitative research design is used. The general conclusions of our research derive from a literature review, a documentary analysis and interviews with key actors who either were closely involved in different aspects of policy making or have observed various policy processes within these penal domains.

Out of our study it became clear that both in the area of EM and RJ the search for lessons abroad was rather limited in the initial phase. Indeed, academic experts and policy

entrepreneurs initially did not visit RJ projects or EM schemes abroad: access to knowledge about RJ and EM was mainly limited to reading the information that had been gathered over time and that had been circulating through academic and policy channels. It was only after Belgium had initiated its own EM pilot scheme and the decision had been taken to set up a research project on VOM that the search for lessons abroad started. However, we found no evidence of 'hard transfer', that is, the transfer of programmes or policies. Indeed, it were mainly shared ideas, ideologies, attitudes and discourse that were being exchanged, that is, so-called 'soft transfers'. Moreover, we found no evidence of direct copying, hybridisation, emulation and synthesis regarding the development of mediation and EM in Belgium (this seems to be different in the development of FGC where New Zealand indeed offered direct inspiration to design a FGC policy in Belgium). We identified five categories of actors ((former) policy entrepreneurs, academic experts, politicians, (former) criminal justice professionals and commercial companies) who have been particularly important in initiating, implementing and further developing EM in Belgium. In the development of RJ in Belgium it were academic experts, practitioners, (former) key professionals of the criminal justice system and politicians who have been most important. Interestingly, in both areas of EM and RJ we found strong evidence for the role of elite networking and the development of transnational policy networks involving a number of actors. These networks have been crucial in spreading policy ideas and principles about RJ and EM throughout Europe and the world. These interactions were, however, merely inspirational in nature as the way in which mediation and EM came to be designed in Belgium has been peculiar and different from mediation practices and EM schemes in other countries. As the development of RJ and EM differed somehow from developments in other countries the Belgian practice attracted foreign interest which resulted in multiple visits to Belgium.

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List of abbreviations

IMF: International Monetary Fund

WB: World Bank

EM: Electronic monitoring

RJ: Restorative justice

US: United States

UK: United Kingdom

GDP: Gross domestic product

OECD: Organisation for Economic Co-operation and Development

UN: United Nations

EU: European Union

ECJ: European Court of Justice

NGO: Non-governmental organisation

PMC: Peacemaking circles

CPT: Committee for the Prevention of Torture

LINC: Leuven Institute of Criminology

FWO: Research Foundation Flanders

GPS: Global positioning system

SPACE: Statistiques Pénales Annuelles du Conseil de l'Europe

OTA: Offenders Tag Association

RF: Radio frequency

ISEM: Intensive supervision with electronic monitoring

RAM: Remote Alcohol Monitoring

CDCP: Council of Europe’s Committee on Crime Problems

PC-CP: Council of Europe’s Council for Penological Cooperation

BEF: Belgische frank

NCEM: National Centre for Electronic Monitoring

KU Leuven: Catholic University Leuven

VLD: Flemish Liberal Democratic Party

MP: Member of Parliament

UCL: Université Catholique de Louvain

VUB: Vrije Universiteit Brussel

SIC: Sentence Implementation Court

NICC: National Institute of Criminalistics and Criminology

DG: Directorate-General

VOM: Victimo-offender mediation

FGC: Family group conferencing

VORP: Victim-Offender Reconciliation Programme

RISE: Reintegrative Shaming Experiments

EFRJ: European Forum for Restorative Justice

INRRJJ: International Network for Research on Restorative Justice for Juveniles

CoE: Council of Europe

ECOSOC: Economic and Social Council of the United Nations

BAL: Bemiddelingsdienst Arrondissement Leuven

GACEP: La Guidance d'Actions Compensatrices Educatives ou Probatoires

ULB: Université Libre de Bruxelles

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General introduction

Reformers and policymakers have since long travelled the world to learn from the successes and failures of others. This also includes penal policy. One of the nicest illustrations in the history of punishment are the eighteenth century travels of prison reformer John Howard (see Vander Beken, 2016) who visited prisons across Europe, and the early nineteenth century journeys of Alexis de Tocqueville and Gustave de Beaumont to the USA where they studied and learnt from its prison regimes. Such travellings have had a major impact on European debate and practice – including in Belgium, where Edouard Ducpétiaux was able to build penitentiaries and to model prison life after the Pennsylvanian system of solitary confinement and, subsequently, attracted foreign visitors to learn from the Belgian experiences. Crossing borders is, therefore, not new. Nonetheless, we seem to be living in times where such travels and related processes of exchange that have been taking place on a global scale, have become intensified, accelerated and modified (Newburn & Sparks, 2004; Melossi et al., 2011; Karstedt, 2002). In an increasingly globalised world where multiple nation states are being confronted by similar problems and obstacles across many different fields, it becomes more common for policies, policy programmes, policy innovations, ideologies, or information to spread from one entity to another (Newmark, 2002: 152). A number of factors have contributed to an acceleration of these processes, including an increasingly globalised world economic system, rapid developments in communications technology, and the growing influence of international and supranational institutions. It is now an established fact that in view of a number of transformations – variously grouped together under headings like globalization, Europeanisation, Americanisation, internationalization, McDonaldization, cosmopolitanization, etc. - nation-states can no longer be treated as if they are closed, autonomous and self-contained units. However, this does not imply we can do away with the enduring influence of the nation state: in particular in the area of punishment sovereign states are still (literally) a powerful force to reckon with (Loader & Walker 2007). Rather, it means that we are confronted with a more complex situation that asks for different analytic tools and methods in order to understand the intricate processes of penal policymaking in times of 'glocalization', that is, '…the simultaneity – the co-presence – of both universalizing and particularizing tendencies' (Robertson, 1997: 221).

Problem statement

In recent years criminology has, in fact, gone a long way to coming to grips with this new reality. Various pleas for, and attempts to, developing comparative, global and even cosmopolitan criminology have been launched. In this regard, a number of scholars have reflected on the

dynamics of development in practices of punishment and offered explanations for changes in penal policies. One group of scholars focuses on similar broader structural, economic, social and cultural shifts that have taken place in contemporary societies in order to explain similarities and processes of convergence between different Western societies (e.g. Christie, 2000; Garland, 2001; Pratt, 2002, 2007; Wacquant, 1999, 2006). Another group of scholars points at the continuing strong influence of national political institutions, cultures and historical traditions in order to emphasise differences and divergences in penal policy between different countries (e.g. Whitman, 2003; Melossi, 2004; Cavadino & Dignan, 2006; Green, 2008; Lacey, 2008). It is nowadays widely accepted that reformers and policy makers are crossing the borders of the nation-state to search for ideas which could be useful in the development of domestic penal policies and politics. One consequence of this development has been a growing interest in the idea of 'policy transfer' (Jones & Newburn, 2002a: 97). The origins of academic research and debate on policy transfer go back to the 1960s when it became part of comparative policy analysis. The major upshot of interest from the late 1990s onwards, however, owes a great deal to the stocktaking and agenda-setting work of a number of political scientists, in particular David Dolowitz and David Marsh (see Dolowitz & Marsh 1996, 2000; Dolowitz 2000). The notion policy transfer has been used in political science literature to refer to '… the process by which knowledge of policies, administrative arrangements, institutions and ideas in one political system (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political system' (Dolowitz & Marsh, 2000: 3). Various scholars have been studying these processes, that is, the extent to which, and the ways in which, public policies appear to travel across (national) boundaries, and with what consequences. Since the late 1990s research into policy transfer has grown exponentially and, as Benson and Jordan (2011) note in an extensive review of the literature, it is now in 'a more mature phase': '…instead of a discrete area of research, nowadays policy transfer is commonly employed in the analysis of broader phenomena such as Europeanisation, globalisation and policy innovation' (Benson & Jordan 2011: 366).

While the work on policy transfer is often associated with political science it has increasingly attracted the attention of scholars across a wide range of academic disciplines (Dolowitz, 2000b: 1), including criminology. A number of criminologists have emphasised the importance of policy transfer as a key feature of contemporary penal policy making. Often dealing with an increasingly complex and quickly changing policy environment, it seems obvious that also in crime control policies, practices, ideas and ideologies flow within and between nation-states when looking for ready-made policy solutions (Newburn & Sparks, 2004: 1). Policy transfer in the area of crime control can come from various, sometimes quite unexpected directions. Criminal justice policies do not solely take a one way road, from the hegemonic centre to the

periphery, but also vice versa. RJ is the most prominent example of a policy development that took up peripheral concepts and values, and transported them back to the centre. Indeed, the RJ movement finds part of its origins in indigenous practices of conflict resolution and reconciliation, but nonetheless has succeeded in offering inspiration for policy innovation in a number of Western societies. According to Karstedt (2002: 117), the travel mode of 'indigenisation' of crime policies (Karstedt, 2001: 295), which implies that '… concepts are adapted and blended into the existing culture of control on the one hand, and that indigenous concepts or "blended ones" travel from the periphery to the centre on the other hand', seems to become increasingly important. In addition, whereas crime policies do not only take single routes from country to country, or from culture to culture in the global exchange, the transnational and global institutional context is equally important (Karstedt, 2002: 114). International organisations such as the International Monetary Fund (IMF) and the World Bank (WB), for example, encourage, and at times force, different nation states to adopt similar policies (Dolowitz & Marsh, 2000: 6). Homogenisation of criminal justice policies at the European level is also being promoted, and at times enforced, by policy makers within the European Union and the Council of Europe (Daems et al., 2013; Daems & Robert, 2017).

However, notwithstanding a growing interest in the global travels of penal policy and despite the fact that the importance to study such processes has been repeatedly emphasised (see e.g. Tonry, 2015a&b), our understanding of penal variation or convergence across time and space remains rather scarce and underdeveloped (Newburn & Sparks, 2004: 10; Jones & Newburn, 2002a: 108). Moreover, and in particular, we know very little about the role policy transfer plays in initiating change in criminal justice policies. According to McFarlane & Canton (2014: 7), a great deal of the literature on criminal justice policy transfer has been relatively theoretical which is why insights into the details and processes of how transfer takes place in practice are rather limited. To date there have been only a few detailed empirical studies of criminal justice policy-making focusing on how changes in criminal justice policy comes about and the role that policy transfer plays in this process (Jones & Newburn, 2002a: 108). As Lacey (2003: 68) suggests '… the salience and politicisation of criminal justice vary from country to country' and it is therefore an important task for criminology to gain insight in these penal developments (see also Lacey et al., 2018; Newburn et al., 2018). This dissertation attempts to a certain degree to fill this scientific gap and contribute to a better understanding of developments in penal policy and the role of policy transfer herein by conducting an empirical research on the role of penal policy transfer in Belgium.

Research questions and objectives of the study

As indicated in the problem statement, the dissertation aims to contribute to the emerging stream of research on policy transfer within criminology. The main objectives of the dissertation are two-fold. First, we aim to contribute to theory transfer and elaboration by incorporating the latest discussions on policy transfer into mainstream criminology and by participating in the theoretical discussions within political science and public policy analysis on the basis of the findings coming from the research project. As we mentioned above, processes of policy transfer in criminal justice have recently come to be studied in more detail within criminology. The pioneering work of Jones and Newburn (2007) in particular has been tremendously important: it 'transferred' concepts and ideas on policy transfer from political science and public policy analysis to criminology and it offered the first large-scale empirical study devoted to crime control policy. But also others such as Punch (2006), Canton (2006, 2009), Steinberg (2011), Durnescu & Haines (2012), McFarlane & Canton (2014), Bewley-Taylor (2014), Ogg (2015) and Blaustein (2015) have contributed to a further development of policy transfer research within criminology. Nonetheless, with the benefit of hindsight one can also identify a number of weaknesses within the existing research. More specifically, there are two areas where significant scientific progress can be made. First, most of the studies on policy transfer in criminology are a typical illustration of what has been referred to as 'peer-to-peer transfer' (Benson & Jordan, 2011: 371), that is, policy transfer between two sets of jurisdictions. The research of Newburn and Jones (2007), for example, provides an analysis of policy transfer in criminal justice between the USA and the UK. However, in the meantime the academic literature on policy transfer and lesson drawing has further developed and matured. The traditional somewhat narrow state-centric focus now also encompasses other actors and venues, including international and supranational organisations, such as the EU, as well as pressure groups and transnational advocacy groups. As a result, policy transfer research has increasingly become assimilated into wider debates on globalisation, Europeanisation and policy innovation (Benson & Jordan, 2011). In addition, whereas the focus in earlier research was often unidirectional (from state A to state B) and, moreove, often inspired by the 'Americanisation' -debate (which suggests that policies mainly travel from the US to elsewhere), this has changed more recently. Indeed, it has been suggested that policy transfer in the area of crime control can also come from other, sometimes quite unexpected directions. One of our two case studies will illustrate this: the RJ movement finds part of its origins in indigenous (pre-modern) practices of conflict resolution and reconciliation but nonetheless has succeeded in offering inspiration for policy innovation in a number of Western late modern societies (Karstedt, 2002; Daems, 2008). The first objective of the study, therefore, is to connect with these latest developments and introduce them into the criminological debate.

Even though criminologists increasingly seem to agree that we should be sensitive to the transnational dimension of policy formation, it is striking how little thorough empirical research has been undertaken over the past decade. Indeed, it is much easier to come across pleas about the importance of and need for such studies than to lay hands on empirical research that puts this into practice and that goes beyond ad hoc policy commentary or anecdote. This is even more so for studies on continental European jurisdictions. Notwithstanding some recent comparative interest in the penal climate in the Nordic countries (Green, 2008; Pratt & Eriksson, 2013), Eastern Europe (Durnescu & Haines, 2012; Canton, 2006), The Netherlands (Punch, 2006) and Turkey (McFarlane & Canton, 2014) available comparative research mostly focuses on Anglophone countries. As a result our knowledge-base on the role of transnational processes in continental European countries remains weak at best or at worse gets distorted by assertions how easily American penal strategies travel the globe and penetrate continental Europe (see e.g. Wacquant, 1999; for a critique: Daems, 2008: 211-215, Gudders & Daems, 2018). The second objective of this dissertation, therefore, is to carry out an empirical research on policy transfer to Belgium which will include two case studies, that is, (1) electronic monitoring (EM) and (2) restorative justice (RJ). These two cases are further described in the research design section of this dissertation. Important to note is that next to selecting one of the cases of Jones and Newburn (that is, EM), which will be fruitful for comparative purposes, the study includes one other case that has, thus far, not been addressed in the policy transfer debate within criminology. The case on RJ will aim to address in a direct and empirically-grounded manner the two weaknesses that we identified earlier in this section.

The problem definition and goals set for the study lead to one main research question, which is: "*What has been the contribution of policy transfer to penal policy making in the two selected areas of study, that is, electronic monitoring and restorative justice?"* In order to examine policy transfer's contribution to policy making the dissertation's focus will be on two case studies within criminal justice, that is, EM and RJ (see infra). For each of the two cases the general research question will fall apart in a number of sub-questions (N=6) which will be addressed throughout the research. These sub-questions are inspired by Newburn and Sparks (2004: 4-7) but they have been slightly adapted for the purposes of this study. These sub-questions have, in fact, been at the centre of research agendas on policy transfer within political science and public policy analysis over the past fifteen years (see e.g. Dolowitz & Marsh, 1996: 345-354; Benson & Jordan, 2011: 368-373). They go as follows:

RQ1.1.Why are policies, practices or ideas being transferred?

RQ1.2. Who is involved in the transfer of policies, practices and ideas?

RQ1.3. What is being transferred?

RQ1.4. Are there different degrees of policy transfer?

RQ1.5. From where are policies, practices and ideas being transferred?

RQ1.6. What are the constraints on the transfer of policies, practices and ideas?

In order to answer the research questions above, a qualitative research design is used. For each of the two case studies a detailed documentary analysis was conducted. In addition, penal policy makers and close observers of the various policy processes within Belgian penal policy were interviewed.

Why study the role of policy transfer in penal policy making in Belgium?

One might wonder why it is interesting to study changes in penal policy developments or penal policy making. What can a study about penal policy making tell us? What can a study about recent changes in penal development and penal thinking contribute to criminology? And more specifically, why should a dissertation that focuses on understanding the role of policy transfer in recent penal development and change in Belgium be important? We can think of two valuable reasons why our study could be relevant and deserves to be read widely. The first reason relates to the role this dissertation can play in academic discourse. In this increasingly globalised world, penal ideas and practices are rapidly developing around the globe. This is partly because of an increased mobility and rapid developments in communication technology which constantly connect people to each other and which facilitate an intense exchange of information and ideas. In addition, also the increased activity of various multinational agencies on the penal market, such as inter alia intergovernmental bodies, think tanks, NGO's or large capitalist corporations is playing a role in the accelerating exchange of penal practices and ideas (Cavadino & Dignan, 2006: 3). We seem to be living in times where governments have become interested in learning not only about the '… religious beliefs, political systems, arts, foods and fashions of others', but also about the transnational character of crime and crime control (McFarlane & Canton, 2014: 2). In a number of different areas in public policy, for example, knowledge and experiences are being shared through academic and professional conferences, international publication correspondence and study visits (McFarlane & Canton, 2014: 2). By studying new processes or developments in criminal justice in other societies governments might think differently about their own traditions, customs and systems, and understand them in a rather distinctive way. In recent times, governments are very willing to search for and even transfer penal policies and practices (Cavadino & Dignan, 2006: 10).

When governments are convinced about the positive aspects of a particular idea or practice they might consider importing it in order to adjust domestic penal policies. Because we believe that this process of transferring policies is an important feature of contemporary penal policy-making, we argue that a study that focuses on studying the role of policy transfer in penal policy can contribute a great deal to the ongoing debate on making sense of recent penal change. Furthermore, it remains very relevant for policy makers, politicians, civil servants, non-governmental institutions, etc. to know and understand how things in criminal justice are being done elsewhere and what outcomes different penal policies have. Even if only for the purpose of participating in domestic debate about whether the government should follow some foreign policies or even transfer them (Cavadino & Dignan, 2006: 3-4). A sufficient understanding of penal policy changes also calls for a more detailed understanding of the deliberate actions of key agents within the policy process, and the restraints and opportunities provided by the political systems within which they function. Although some important work has begun to address this gap (Rutherford, 1996; Nellis, 2000; Jones & Newburn, 2002a, 2002b), to date is has not sufficiently been linked to the broader structural constraints that shape the frameworks, agendas and decisions of policy-makers. As Richard Sparks (2001: 172) has observed, '… much criminology and penology only gestures at the political'. The two approaches primarily reflect the 'unavoidable tension between broad generalisation and the specification of empirical particulars' (Garland, 2001, vi). However, it is feasible to link the two approaches. Studies that unpick particular 'policies' and examine the essentially political processes that shape them can help us to explore the ways in which the tensions between globalising and localising trends play themselves out in the agendas and decisions of key players (Jones & Newburn, 2005: 59).

A second reason relates to one of the central claims in penological research, that is, that we can learn a great deal about ourselves and the society we live in when we study processes of punishment (see e.g. Garland, 1990; Spierenburg, 2004; Daems, 2017). Throughout history, punishment has at times become an important element in the identity politics of nation states (Daems, 2013b: 45). As Garland (1990: 276) argues in his book *Punishment and Modern Society*: '… in designing penal policy we are defining ourselves and our society in ways which may be quite central to our cultural and political identity'. Therefore, according to Spierenburg (2004: 632), '… a study about the development of executions and incarceration will increase our understanding of society, its inhabitants and their social relations, and the nature of "civilising" processes'. More recently, Tonry (2015b: 506) stated that '… knowing how things are done or understood differently in other places can provide useful frames of reference for understanding one's own'. Whereas the ways in which we approach penal questions and deal with them tells us a lot about our own identity as a society and '… projects a sense of what

society actually is' (Garland, 1990: 273), it seems fruitful to explore '… in what way changes in punishment reflect broader, long-term developments in society; to learn, through the study of punishment, how these developments are interrelated; to find out if all this may enhance our insight into the structure of our own society and ourselves' (Spierenburg, 2004: 625). So if we assume that '… the ways in which we punish, and the ways in which we represent action to ourselves, makes a difference to the way we are' (Garland, 1990: 276), then, what do the ways in which the Belgian policy makers design, implement or fail to implement penal policy reveal about Belgium as a society? Or if the ways in which we punish define ourselves and differentiate us from how others punish, what then does punishment say about ourselves? About Belgium as a punitive actor? (on this, see also Geltner, 2014). Indeed, as James Whitman (2003: 24) states: '… it is wrong to analyse punishment solely by considering its effect on the person punished; acts of punishment can also profoundly affect the person, or the society, doing the punishing'.

Outline of the chapters

This dissertation consists of five chapters. The first chapter discusses the theoretical foundations of the dissertation. This chapter introduces the reader to the concept of policy transfer, identifies its history and further theoretical and empirical development, and discusses the usage of this concept within criminological research. The second chapter presents the methodological design of the study. It explains in more detail the background of the case selection, the way in which the participants for the study were selected and recruited, and how the data were collected and analysed. In chapter three and four the results of the empirical study are presented and discussed. Chapter three summarizes the results of both the documentary analysis and the interviews regarding the case study on EM. In chapter four the same is done for the case study on RJ. The final chapter of this dissertation is a concluding chapter in which the research questions are answered and a general conclusion is presented.

Chapter one

Policy transfer as a conceptual tool for understanding developments in penal policy

1.1 Introduction

In the introduction to this dissertation we highlighted briefly that in recent years various scholars have been studying developments in criminal justice practices as in order to identify and understand convergences and divergences in penal policies. Some criminologists have become interested in the use of policy transfer as a conceptual tool for better understanding the process of exchange and transfer of policies between jurisdictions. This chapter will provide further details on policy transfer and its uses in research in order to enhance our understanding of the concept and the usage of this concept as a conceptual framework for our study. In this chapter we will first elaborate on the criminological debate on the determinants of penal policies in which various scholars have explored (historically) the dynamics of development in practices of punishment. Secondly, we will discuss the theoretical development of the concept of policy transfer in policy making. Furthermore, we will provide an overview of the use of policy transfer in criminological research. Fourthly, we will discuss the most important critiques that have been formulated towards the policy transfer framework. The chapter ends with some concluding remarks.

1.2 Criminological debate on the determinants of penal policies

The American penal scholar Michael Tonry (2007: 16) once argued that: '… the more closely we look at something, the more complex we usually realise it is'. According to Tonry this also applies to questions of punishment and penal change. In recent decades, the question of how to make sense of penal developments has attracted a great deal of scholarly attention. Earlier discussions about why countries adopt different crime control policies tended to be influenced by the so-called 'legal syllogism' (Melossi, 1989), that is, the idea that crime rates as such are crucial in explaining crime control developments. Indeed, as Melossi explains, this 'legal syllogism' is

> *'…the commonsensical idea, originating in the classical school of criminal law, that punishment is simply the consequence of crime and that, therefore, if there is a need for sociological explanation, such explanation concerns criminal behavior and not the punishment of this behavior. In this view, in fact, the latter was not conceivable independently of crime: social structure explains crime and crime explains punishment. This is the way lawyers and judges and most of those who are in contact with the criminal justice system, tend to think. This is the way the general public tends to think too'* (Melossi, 1989: 311)

From such as perspective the explanation for the sharp rise in the American prison population and the increasingly severe policies adopted by policy makers seems clear-cut: when crime rates rose the public requested action and policy makers and practitioners responded accordingly (Tonry, 2007: 16). However, when in the late 1970s penal policies changed in manifold and unpredictable ways it became apparent that such an explanation was too simple or, indeed, plainly wrong and misguided (Daems, 2008). Indeed, many Western countries seemed to punish differently since the late 1970s which provoked scholars to closely observe these new social and penal realities (Daems, 2009a: 19). A new literature has therefore begun to develop since the mid-1990s. In its explanation of recent penal change, this literature rejects the legal syllogism. Crime control developments are not solely or dominantly explained by crime rates; rather attention is drawn to direct social transformations or indirect ones which are mediated through the particulars of policy formation, local political struggles, institutional arrangements, national cultures, and so forth (Daems, 2008: 2). In recent years two major streams of literature have developed in international penological research (see infra). One group of scholars argues that similarities and processes of convergence between different Western societies can be explained against the background of similar broader structural, economic, social and cultural shifts that have taken place in contemporary societies (see section 1.2.1). Another group of authors tends to reject this claim of 'penal convergence' and points at enduring differences in penal policy between various countries. Such divergences, so they argue, are the product of a continuing strong influence of national political institutions, cultures and historical traditions (see section 1.2.2).

1.2.1 Broader structural explanations for developments in penal policy

One body of work explains developments in penal policies across different Western countries with reference to similar social, political and cultural trends (Christie, 2000; Garland, 2001; Pratt, 2002, 2007; Wacquant, 1999, 2006). In his book *Crime Control as Industry*, Nils Christie (1993: 177; 2000) argues that the prison rates which many Western nations have been

experiencing (in particular in the United States (US)), are a '… natural outgrowth of our type of society, not an exception to it'. Christie states that these developments in penal policy can be understood through changes in capitalist societies in which weakened informal social contacts and a greater tendency to 'criminalise' incidents by reporting them to the authorities have produced a greater 'supply' of criminal acts. In addition, because the public experiences a more generalised sense of insecurity it demands simultaneously harsher punishments. Furthermore, Christie argues that developments in penal policy have increasingly been shaped by a transnational alliance of international commercial interests, the so-called 'prison-industrial complex'. Indeed, Christie indicates that in recent decades commercial companies have become highly interested in crime control issues and this, so he argues, offers an explanation for penal expansionism in Western societies. This idea of corporations being involved in criminal justice has further been developed in the thesis of neo-liberal penality. According to this thesis, the emergence of neoliberalism, which is '… a political project designed and developed by an increasingly transnational elite that has radically transformed the character of the state in the spheres of economic, social and penal interventions', has resulted in a global increase of punitiveness (Carrington, Hogg & Sozzo, 2016: 13). Wacquant (1999), who is a strong advocate of this thesis states for example that criminal justice policies that came into existence in the US (such as zero tolerance policing) spread across the world as a neoliberal political project (see infra).

The idea that policy convergence can be understood by identifying and analysing more fundamental and deeper developments in society is echoed in the work of David Garland (2000, 2001). In *The Culture of Control*, Garland (2001) focuses on identifying and explaining convergence and similarity in patterns of penal problems and policies in the US and the United Kingdom (UK). According to Garland one can detect striking similarities in the nature of the problems faced by policy actors, and the style and substance of the responses adopted in both the US and the UK. Interestingly, Garland argues that these similarities have not been the result of political imitation or policy transfer, but of similar processes of social, economic and cultural changes within late modern capitalist societies. These similar broader structural processes of social, economic and cultural change have, since the early 1970s, resulted inter alia in more opportunities to commit crime (Garland speaks of 'high crime societies') and shifts in political thinking about crime control. To overcome these complex circumstances (in particular, the failure of the modern state to respond adequately to the new predicament of having to cope with high crime rates and fear of crime) two kinds of contrasting strategies (adaptation versus denial and acting out) have been introduced both in the US and the UK. Both sets of strategies are accompanied by different criminologies. Garland (2001: 137) denotes criminology as being 'schizoid': split between the twin pillars of the 'new criminologies

of everyday life' and a 'criminology of the other'. The former criminologies assume that offenders are rational and calculating human beings. Offenders are no longer seen as the product of social influence or psychological inadequacy but as rational calculators who can be priced out of criminal activity through manipulation of (dis)incentives. Garland also speaks of 'criminologies of the self' because in a significant way they are like us all. The criminology of 'the other' depicts the criminal as the threatening outcast, the fearsome stranger, the excluded and the embittered, and his conduct is seen to escape all human understanding. The 'criminologies of the self' align themselves with the first set of strategies, that is, the strategies of adaptation. From this perspective, policy makers tend to accept the limits of the sovereign state to deliver crime control on its own and they have therefore implemented pragmatic strategies to cope with the current predicament (Garland, 2001: 113). These include the rationalisation of criminal justice and the withdrawal of police from the community; privatisation of security and contracting out; diversion and defining deviance down; and the active 'responsibilisation' for the control of crime of non-state organisations (the private sector, the 'community') and individuals. Second, the criminology of the other associates itself with the second set of strategies, that is, the strategies of denial and acting out. In this regard, governments introduce tough law enforcement and sentencing policies which have as primary focus to express outrage over crime and to reassure the public, rather than scaling down the levels of crime. Garland (2001: 139) thus argues that these new politics and strategies of crime control are the result of '… shifts in social practice and cultural sensibility'. They are both rooted in the collective consciousness of 'late modernity' (Garland, 2001: 165).

In another influential account of recent penal change, inspired by the civilising theory of Norbert Elias, John Pratt (2005: 3) argues that formerly 'intolerable' and 'implausible' characteristics of punishment have, again, become 'tolerable' and 'plausible'. Pratt has touched upon this question in a number of publications in which he elaborates on how punishment, over the course of two centuries, became 'civilised' and how a breakdown in these 'civilised' penal arrangements came to be set in place from the 1970s onwards resulting in a 'decivilisation' of punishment (Pratt, 1998; Pratt, 1999; Pratt, 2000). According to Pratt (2005: 145) this 'breakdown in civilisation' started in the 1960s and 1970s. It became clear that 'the boundaries of punishment in the civilised world' came to be pushed into 'new, uncharted regions' (Pratt, 2005: 166; Daems, 2008: 69). This has, so Pratt (2005: 161-163) argues, happened because the public's indifference about penal development shifted towards a public's anxiety about the increasing evidence of the state's failure to address crime problems. As the public's mood changed from indifference to anxiety people became more intolerant and dissatisfied with the way in which the 'axis of penal power' was then operating (Pratt, 2005: 162-163). The authority of the state increasingly weakened which resulted in a shift towards 'a new axis of penal power'

in which the public's common sense progressively became more important. As Pratt explains '… the state prefers to implement penal policies that reflect the public's common sense, rather than taking into account the scientific rationalities of its own experts' (Pratt, 2005: 185).

Pratt's views on changes in the public mood and temper and the new axis of penal power are to some extent inspired by Anthony Bottoms' ideas on 'populist punitiveness' (see Pratt, 2007). According to Bottoms (1995: 40), 'populist punitiveness' is '… intended to convey the notion of politicians tapping into, and using for their own purposes, what they believe to be the public's generally punitive stance'. It often happens that politicians generate penal policies solely to win votes, rather than to reduce crime or to promote justice. Pratt tends to agree with Bottoms when he argues that governments have been relying less on the expertise of civil servants and academics, but have increasingly allowed penal populism to impact on policy development. Penal populism, according to Pratt (2007: 60), is the product of deep social and cultural changes that have been taken place in modern society from the 1970s onwards: the decline of deference, the collapse of trust in politicians and political processes, the growth of ontological insecurity (Pratt, 2007: 60), and new media and information technologies helping to spread it (Pratt, 2007: 36). These changes have enabled various individuals, groups and organisations to become involved in the development of penal policy, all of them declaring to speak on behalf of 'the people'. As a result established advisors to the state had to share the previously exclusive role they enjoyed with these new players on the market (Pratt, 2007: 3). According to Pratt (2007: 3), the effects of penal populism are thus more extensive than the public mood being used by politicians as and when it suits them.

From a very different (Durkheimian) angle, Dutch criminologist Hans Boutellier (2000; 2004) addresses the development of contemporary penal policies from a moral perspective. According to Boutellier contemporary developments in penal policy are to be understood against the background of changes in public morality. In his study *Crime and Morality* Boutellier (2000) argues that processes of secularisation and individualisation have resulted in a '… gradual dismantling of the collective consciousness' (Boutellier, 2000: 9) and a fragmentation of today's morality. According to Boutellier Durkheim's organic solidarity has dissolved into a 'victimalised' solidarity. He argues that the victim of crime has come to play a dynamic and functional role in our fragmented and individualised society, that is, the victim has become the '…common point of reference' in the construction of morality (Boutellier, 2000: 16). Boutellier (2000: 16) refers to this as the 'victimalisation' of today's morality. This 'victimalisation' of morality had far-reaching consequences, as regards to '… how we contemplate humanity and culture' (Boutellier, 2000: 16) and resulted in various changes in the penal system. A series of new moral practices appeared within society, such as community service, compensation, victim assistance and support, neighbourhood mediation projects,

victim-offender mediation, etc. Based on his discussion of the fragmentation of today's morality and its 'victimalisation', Boutellier tends to underline the importance of deeper processes of social change to understand changes in punishment and penal policy.

Another influential approach toward understanding penal change has been inspired by the political economy of punishment. Indeed, as was stated above, some authors argue that a global spread of the 'neoliberal revolution' is being responsible for deep changes in social and penal policy. The French sociologist Loïc Wacquant is a strong advocate of the thesis of the rise of 'neoliberal penality'. On the basis of his research on urban marginality and poverty, Wacquant argues that changes in punishment and penal policy cannot be explained as a straight-forward governmental response to rising crime rates. For Wacquant (2004) the social state has come to be replaced by a penal state. Interestingly, for our discussion on policy transfer (see further), in the view of Wacquant (1999) this neoliberal revolution has first started in the US from where then a number of ready-made products have been exported to multiple places around the globe. The widespread diffusion of US-style penal policies therefore needs to be explained in terms of the rise and global spread of neoliberalism.

1.2.2 Distinctive national political institutions, cultures and historical traditions

In recent years a number of authors (Whitman, 2003; Melossi, 2004; Cavadino & Dignan, 2006; Green, 2008; Lacey, 2008) have developed a different understanding of penal change taking penal variation, rather than penal convergence, as a starting point. In their view, a focus on broader social transformations will help to identify and understand broader globalising tendencies, but it tends to downplay the persistent variations in national and local penal practices and policies (Newburn & Sparks, 2004: 10; Newburn et al., 2018: 3). These authors argue that in order to understand contemporary developments in penal policy the 'deep structures' and specifics of political decision-making need to be explored in detail (Jones & Newburn, 2005: 58). Indeed, particular socioeconomic, cultural and political contexts formulate and construct policy ideas in various ways (Newburn & Sparks, 2004: 10). As Tapio Lappi-Seppälä (2012: 35) argues '… things have not happened in the same way everywhere. Alongside general growth in cultures of control, there are divergent trends and country-specific deviations'. David Garland's *The Culture of Control* has often been criticised for this reason. According to Whitman (2005: 394), Garland's exclusive focus on explaining similarities between the American and the British penal system made him '… poorly equipped to explain variation' in punishment and for the sharp differences between jurisdictions. Most of Garland's critics question to what extent the US and the UK are similar, and to what extent his analysis is also applicable in other late modern societies. Indeed, the US differs in important ways from

the UK. As Daems (2008: 45) explains, the US contrasts with the UK '… not only in terms of crime and punishment (such as its rates of (lethal) violence, the death penalty, the extremely high imprisonment rates, and racialised aspects of penal control), but also with respect to social, economic and cultural conditions (such as high levels of social inequality, the predominance of the free market, the cultural idea of the American Dream, a history of racial segregation, the gun culture, its poor welfare state tradition, and so forth)'. Some authors even refer to American 'exceptionalism' when discussing crime and punishment in the US (see for example Tonry, 1999). Garland refutes the critique on his similarities-approach by stating that he is well aware that there are differences between the US and the UK, but these differences are so 'big' that they can be excluded from the generalised 'bigger picture' he tries to paint. In his book *Harsh Justice* (2003), James Whitman criticises sociologists of punishment, such as Garland, for providing a too generalised understanding of penal development. For Whitman (2003: 6) harsh punishment in the US is the result of something which can be found in American culture. This implies, so he argues, that understanding processes of punishment requires a more detailed and historical understanding of criminal punishment.

Against this background, a number of authors have examined particular aspects of penal systems and have highlighted the different trajectories of penal policy development. Some authors pay attention to the spread of neo-liberalism in order to understand penal change. Cavadino and Dignan (2006), for example, have conducted a comparative study which includes a wide variety of jurisdictions (England and Wales, France, Germany, Italy, The Netherlands, Sweden, Finland, US, Australia, New Zealand, South Africa and Japan) studying the links between diverging types of political economy (neo-liberal, conservative corporatist, social democratic corporatist and oriental corporatist) and penality. They argue that the level of punishment of a particular country is linked to the state's type of political economy (Cavadino & Dignan, 2006: 339), meaning that neo-liberal political economies have the highest levels of punishment and oriental corporatist political economies the lowest (Cavadino & Dignan, 2006: 337). In her book *The Prisoners' Dilemma: Political Economy and Punishment in Contemporary Democracies* Lacey (2008: xvi) argues that the presence of certain social, political and economic organisational features in society influence the process in which it is decided whether penal tolerance and humanity in society is favoured or inhibited. She states that '… both the capacities that governments possess to develop and implement criminal justice policies, and the constraints under which they do so, are a function not only of perceived crime problems or the cultural norms or macro-economic forces that surround them but also of a cluster of institutional factors distinctive to particular political and economic systems' (Lacey, 2008: xvi). According to Lacey (2008: 115) an analysis of the distinct existing political-economic structures of contemporary societies will be beneficial in order to better understand

the origins of the compelling disparities in punishment between various countries: '… only by analysing this broader environment, and by analysing it in terms of concrete institutions such as welfare states, professional bureaucracies, electoral systems and labour market and training structures, could we move beyond generalisations such as "neo-liberal" polities and come to a genuinely explanatory understanding of the varying dynamics of punishment in the contemporary world'.

Michael Tonry (1999; 2001) argues that distinctive national histories and cultural attitudes are important when trying to explain differences in imprisonment patterns across jurisdictions. At various occasions Tonry (2001: 518; 2007: 2) has insisted that the features that determine the development of penal policies continue to be specifically local. Some of these determinants are structural in nature, for example, whether governments are based on conflictual or consensus political values or whether judges and prosecutors are selected politically or are non-partisan civil servants (Tonry, 2015b: 512). In a similar vein, Melossi (2001: 407) has drawn attention to compelling evidence of variations over time between penal systems in the US and Italy, and claims that '… punishment is deeply embedded in the national/cultural specificity of the environment which produces it'. Furthermore, other authors provide explanations based on reflections of political and national culture. In his book *When Children Kill Children* (2008), David Green shows that the distinct political and legal culture of England and Norway resulted in different reactions of politicians and ordinary citizens towards cases of child-on-child killings in both countries. In the foreword to this book, Tonry (2008: x) therefore indicates that as for Green it is not the existence of late-modernity that induces variations in emotions regarding these cases and in the way they were handled, but the existence of differences in political and national cultures.

In his Sutherland Address for the American Society of Criminology, also David Garland (2013) has emphasised the importance of comparative studies that would add to macro-level analysis. In Garland's view, the problem of much extant inquiry is that it has left us '… with something of a black box when it comes to demonstrating how penal laws and policies are shaped and how penal decisions are made' (2013: 492). Garland argues that the main focus of such studies is on structural biases and institutional dispositions and not on empirical processes and actors' choices. This latter approach is however needed, so Garland argues, to help explain how social forces are translated into penal outcomes. Garland therefore suggests that we need to '… shift our attention—for the time being—away from the broad range of social forces that exert pressure for penal change and instead concentrate more narrowly on the institutional processes that directly produce specific penal outcomes' (Garland, 2013: 483). Whereas we need to recognise, so Garland argues, that changing patterns of punishment cannot be explained by social processes but by state and legal processes we need to concentrate more on the 'state'. In that sense, Garland (2013: 484) introduces the concept

of ‘proximate influences’, which he describes as ‘… specific forms of state action’ that ‘are obvious but … tend to be overlooked in the concern to identify the “prime movers” behind’ penal change. Accordingly, for Garland, ‘… the character of the penal state and the processes whereby it responds to social forces, translating (or not translating) political pressures into specific penal outcomes, are always the proximate causes of penal action and penal change’ (Garland, 2013: 494). Moreover, he adds that ‘… social currents may ebb and flow, but they have no penal consequences unless and until they enlist state actors and influence state action’ (Garland, 2013: 494).

Our brief overview illustrates that criminologists as well as scholars from other related fields have paid considerable attention to the question of how to explain changes in penal policy. On the one hand, there are convergence studies which enhance our overall understanding of how penal policy developments can be explained by structural changes. On the other hand, there are studies that pay attention to regional and national differences to comprehend better which ‘… local political cultures and activities of key political actors serve to set up, adjust, mediate or oppose policy ideas and innovations that travel across jurisdictional boundaries’ (Jones & Newburn, 2007: 7). Most of the scholars in this field, however, acknowledge and accept that it is a complex set of local, national and international factors that will result in the initiation of particular policy outcomes. That is why scholarly attention should be focused on both convergences and divergences between national penal systems. Inevitably, our study leans more towards the latter approach, in that its focus is upon the development of EM and RJ in Belgium.

1.3 The theoretical development of the concept of policy transfer in policy making

Empirical research in criminology often tends to focus on the content and impact of policy rather than its origins. Empirical studies which pay attention to the process of penal policy making are therefore rather scarce. In recent times, as we argued earlier, globalisation, developments in communication technologies and the increasing influence of supra-national institutions (Dolowitz, 2000b) have made it much easier for policies to travel across national boundaries. It has therefore become more common for individuals, institutions and economic forces functioning beyond the borders of nation states to influence domestic public policies (Bernstein & Cashore, 2000). It is against this background that the interest in the concept of policy transfer arose. Studies of policy transfer processes aim to grasp the extent to which and the ways in which, public policies tend to travel across (national) boundaries, and with what consequences. Political scientists, have shown great interest in this concept resulting in a number of empirical studies on the role of policy transfer in the development of policy in

different areas. Notwithstanding some notable exceptions (which will be discussed later in this chapter) criminologists have shown substantially less interest in such processes. Whereas the concept of policy transfer is mostly associated with the field of political science, it is related to a range of affiliated terms and concepts which all direct attention to the cross-national spread of particular forms of public policy. These terms include 'policy learning' and 'lesson drawing' (Rose, 1991) as well as broader ideas of policy 'diffusion' (Walker 1969) and 'convergence' (Bennett, 1991b). In this section, we will outline a framework for the dissertation by providing an overview and critical discussion of the relevant literature on policy transfer.

1.3.1 Policy diffusion and convergence

The concept of policy transfer is often conflated with a number of other terms, including policy diffusion (Walker, 1969; Collier & Messick, 1975; Savage, 1985; Eyestone, 1977, Berry & Berry, 1990; Rogers, 1983; Clarck, 1985), policy convergence (Bennett, 1991b), and policy learning and lesson-drawing (Rose, 1991). However, a distinction should be made among these terms because they point to important differences in how policy change comes about. Many of the policy convergence and diffusion studies focus on analysing the broader structural and cultural shifts associated with globalisation in order to better understand changes in public policy. Therefore, many of these studies pay attention to the macro level and explore variables such as '… the influence of industrialisation, the spread of democratic institutions, and broader social and economic forces that over time work to shape social structures, political processes and public policies in the same mould' (Jones & Newburn, 2007: 24). In this sense, such studies are to some extent similar to studies focusing on penal convergence which discussed in the previous section (see 1.2.1). Policy transfer studies only concern those cases where domestic policy is generated by making use of conscious, external knowledge of a particular policy programme or idea (Newmark, 2002: 152). In other words, it involves cases in which political agents are intentionally drawing upon knowledge and experiences of other jurisdictions in order to develop domestic public policies (Jones & Newburn, 2007: 23). Notwithstanding the fact that both policy diffusion and convergence also recognise the significance of agents as actors in the process they represent more broader concepts transcending the deliberate actions of actors (Newmark, 2002: 170). In this regard, diffusion or convergence in public policy does not necessarily illustrate the existence of policy transfer, but the process of policy transfer always includes diffusion or convergence (Newmark, 2002: 170). Deacon's (1999: 13) analysis on resemblances in welfare policy between the US and the UK, for example, indicates that policy makers in various countries may separately draw the same conclusions without the existence of any calculated process of transfer: '… a convergence of ideas does not necessarily imply that one thinker has influenced the other' (Deacon, 1999: 13).

Policy diffusion has been defined as '… the process by which an innovation is communicated through certain channels over time among members of a social system' (Berry & Berry, 1999: 171). The concept of diffusion refers to '… a trend of successive or sequential adoption of a practice, policy or programme' (Stone, 2012: 484). In the diffusion literature there exist three models which indicate the spread of policy. First, there is organisational diffusion which focuses on people and groups who spread policy through interaction in meetings, conferences, and other networks. Second, there are geographical or regional diffusion models which explore the effect of geography on the adoption of an innovation or policy. Geographical models assume that when nation states are confronted with policy problems it is common for them to look to other states that are dealing with similar policy issues (Walker, 1969). Adopting states are often found clustered geographically which presumes that neighbouring states are more likely to imitate each other. Third, there is the international determinant model which examines the role of political, economic, and social characteristics in order to foresee feasible innovators (Newmark, 2002: 158-159). Scholars have been paying attention to the concept of diffusion from the 1960s onwards with an initial focus on the US Federal system. Since then, the idea of diverse states quickly embracing particular new policies and the aspect of how these policies seemed to circulate across political systems attracted various scholarly attention. The initial focus being on the US Federal system (see e.g. Walker, 1969: 882).

The concept of convergence also came to be introduced in the 1960s when several scholars tried to explain the apparent convergence between the political structures, economic systems and social arrangements of different industrial societies (Bennett, 1991b: 215). Kerr (1983: 3) defines the process of policy convergence as: '… the tendency of societies to grow more alike, to develop similarities in structures, processes and performances'. A number of authors focus on macro-level explanations, the so called 'societal convergence', stating that convergence is associated with a range of social and economic forces produced by processes of modernisation and industrialisation. Many of these studies compare the existence of aggregate macro socio-economic variables across nation states. Wilensky (1975: 12), for example, analyses the percentage of the gross domestic product (GDP) spent on health in order to support or reject the convergence hypothesis. According to Bennett (1991b: 126), scholars who study 'societal convergence' tend to agree on the same general argument suggesting that when societies become more industrialised, they will adjust their existing infrastructures which will result in the activation of definite processes shaping in turn social structures, political processes and public policies in the same form. Kerr's study (1983: 72), for example, shows many similarities between industrial societies based on the 'content of knowledge', 'mobilisation of the factors of production', 'the organisation of production', 'patterns of work', 'patterns of living' and 'the distribution of economic rewards'. Because of this broad focus,

however, the study of societal convergence is criticised for being somewhat vague and unspecific in its formulations (see e.g. Castles & McKinlay, 1979). The fixation on macro-level variables ignores the importance of political and ideological factors which remain distinct in many ways (Bennett, 1991b: 216; Jones & Newburn, 2007: 24). In this regard, in Kerr's study on the future of industrial societies (1983: 72) no significant similarities were to be found with respect to 'economic structures', 'political structures', and 'patterns of belief'. A number of authors, therefore, begun to concentrate on the more precise concept of policy convergence instead of societal convergence stating that '… it is not enough to say that comparable conditions produce comparable problems which produce comparable policies. There are also different political mechanisms through which policies might converge' (Bennett, 1991b: 217).

The concept of policy convergence has mostly been associated with comparative public policy literature. According to Bennett (1991b: 218) policy convergence refers to one of five things. Firstly, it can refer to a convergence of *policy goals* meaning '… a coming together of intent to deal with common policy problems'. Secondly, it can signify a convergence of *policy content,* defined as '… the more formal manifestations of government policy – statutes, administrative rules, regulations, court decisions and so on'. Thirdly, convergence can occur on *policy instruments*, indicating '… the institutional tools available to administer policy, whether regulatory, administrative or judicial'. Fourthly, convergence may arise on *policy outcomes*, meaning 'impacts or consequences - the results (positive or negative, effective or ineffective) of implementation'. Fifthly, it may represent a convergence of *policy style*, '… a more diffuse notion signifying the process by which policy responses are formulated (consensual or conflictual, incremental or rational, anticipatory or reactive, corporatist or pluralist, etc.)'. However, one cannot not assume these features to be distinct analytical categories. Policy making should be seen as a dynamic process which is constantly changing due to various shifts and interactive processes of feedback that shape policy content rather than a mechanical process consisting of strict linear stages. Policy convergence should therefore also be seen as a process of 'becoming' rather than a condition of 'becoming more alike' (Bennett, 1991b: 219). The idea of convergence refers to 'directions of movement' and not to 'existing conditions at a moment in time' (Kerr, 1983: 3). It is important to note that convergence implies a pattern of development over time, a moving from different positons toward some common point (Bennett, 1991b: 219). Bennett (1991b: 220-229) identifies four routes via which policy convergence may come about: 'emulation', 'elite networking', 'harmonisation', and 'penetration'.

- *Emulation* is a voluntary form of lesson-drawing using empirical evidence about a policy programme or programmes and intentionally drawing a lesson from that experience. In short, to confirm the emulation hypothesis three different conditions need to be fulfilled: a clear exemplar of a state that has adopted a novel viewpoint; evidence of

consciousness imitation of the policy actor and an application of policy evidence from that exemplar; and homogeneity in the policy goals, policy content or policy instruments (Bennett, 1991b: 223). Emulation differs from policy diffusion in the sense that the latter is merely a successive adoption of policy innovations by different states resulting in a spread of the same policy internationally. Policy diffusion involves no evidence for the intentional imitation or copying of policy programmes or drawing lessons from programmes in other countries. Different stages of the policy process may include emulation such as during agenda-setting, policy formation, policy legitimation, policy implementation or policy evaluation (Bennett, 1991b: 223). The process of emulation generates a convergence on some aspects of a country's policy efforts (Bennett, 1991b: 222). It might explain a convergence of policy goals, policy content or policy instruments.

- Convergence through *elite networking* and *policy communities* identifies policy transfers via transnational groups of actors sharing motivation, expertise and information about a common problem (Bennett, 1991b: 224). There exists a mutual concern for the resolution of this common problem. There has been increasing evidence of growth of coherent networks of professionals in different spheres (Jones & Newburn, 2007: 26). Policy communities mostly engage in interaction at the supra-national level, outside of the formal domestic political sphere, developing an international policy culture. If these interactions at the transnational level result in consensus about particular policy interventions, participants actively promote these particular policies in their respective societies and governments (Bennett, 1991b: 225).
- The process of *harmonisation* refers to those cases in which '… policy transfer is driven by formal intergovernmental organisations and structures established as a result of national interdependence' (Jones & Newburn, 2007: 26). Globalisation and an increasing trans-nationalisation of policy problems sensitised governments for the need to harmonise policy in order to facilitate a common response to common problems. Attempts to harmonise policy require decisive steps taken by intergovernmental organisations using pre-existing structures and processes. According to Bennett (1991b: 225), convergence is driven by a recognition of national interdependence, meaning that governments seem to have the need to rely on others for the achievement of specific, complete and successful tasks or to avoid unnecessary discrepancies. Intergovernmental organisations try to deal with short-term problems in an ad hoc manner. The literature also identifies the use of international regimes which is defined as '… sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations' (Krasner, 1983: 2). International regimes contain a more long-term

commitment and eagerness to emphasise the good of the community at the expense of national interests. The formal existence of an international regime within the harmonisation process contrasts with the informal collaboration within an elite network. It also differs from the emulation process because it does not appoint leaders and followers and tries to be more co-operative (Bennett, 1991b: 227). The introduction of the 'Euro' would be an example of harmonisation in policy.

- The final process of *penetration* contrasts with the above three processes of convergence because it includes a coercive element. According to Bennett (1991b: 227), at times states are forced by external actors or structures, or other nation states to conform to particular policy developments happening elsewhere. Key examples include the application of monetarist economic policies to third world countries as a condition of aid or loans from the WB or the IMF, and the terms negotiated by major transnational corporations to secure inward investment in particular areas or countries.

Both policy diffusion and convergence theories have received some criticisms. On the one hand, diffusion studies are often criticised for focusing too strong on the process of diffusion and revealing nothing about the content of new policies. In seeking explanations for the diffusion of ideas or innovations they assume that all states which have common problems will provide a common response, regardless of partisan values or political cultures (Rose, 1991: 9; Clarck, 1985: 63; Jones & Newburn, 2002a: 103-104). Diffusion studies are fascinated with process, not with substance (Clarck, 1985: 63). Furthermore, Stone (2012: 485) argues that they also do not pay attention to how policies or practices alter during processes of adoption. In addition, diffusion studies overlook the importance of political interactions in the policy-making process. On the other hand, convergence studies are criticised for focusing too heavily on the broader or general patterns of convergence between policies adopted by nations. Because of their focus on the overall picture convergence studies diminish the role of individual actors in the process. According to Jones and Newburn (2007: 27) policy convergence's starting point assumes that a '… policy process is a rational process whereby policy-making is seen as a purposive and systematic sequence. Because of that, the policy-making process is not fully open to the impact of chance events, unintended effects and the structural and cultural context'.

1.3.2 Policy transfer and lesson drawing

In order to address the questions ignored by and the criticism formulated toward diffusion and policy convergence studies comparative policy analysts began discussing the concept of policy transfer. Policy transfer refers to '… the process by which knowledge of policies, administrative arrangements, institutions and ideas in one political system (past or present) is used in the

development of policies, administrative arrangements, institutions and ideas in another political system' (Dolowitz & Marsh, 1996, 344; 2000: 3). Policy transfer is often used interchangeably with the concept of lesson-drawing, or what is more commonly termed 'voluntary policy transfer' (Evans, 2006: 482). Lesson-drawing theory addresses the question 'under what circumstances and to what extent a programme that is effective in one place can transfer to another' (Rose, 1991: 3). According to Rose (1991: 7) policy makers draw lessons when they draw '… action-oriented conclusions about a programme or programmes in operation elsewhere'. Their focus is on specific programmes that governments have or may adopt in another city, another state or another nation. A lesson is not simply an evaluation of the programme, but also includes a judgement whether it is possible to do the same. The transferability of a programme is the differentiating feature of lesson-drawing: can a programme that is successful in one setting be transferred to another? Examining the probability or improbability of the transfer is therefore equally important to evaluating its initial effect (Rose, 1991: 7). To examine the probability or improbability programmes are judged across time and space. Programmes are judged by comparison in time by relating them to past performances in anticipation of their future consequences. The effectivity of a programme is also judged across space by comparing it with what is done elsewhere (Rose, 1991: 4). If policy makers in cities, regional governments or nations are thus confronted with a common problem, they can learn from their counterparts how to respond to a certain problem. The theory of lesson-drawing assumes that policy makers have the possibility to draw lessons that will help them deal better with their own problems (Rose, 1991: 4).

According to Rose (1991: 10) policy makers search for knowledge and learn something they do not already know when they are confronted with political or public dissatisfaction with their existing programmes. Public services like education, health care, social security, or the collection of rubbish are all driven by routine and based on predefined regulations. Policymakers tend to assume that if everything seemed all right the last time they checked doing nothing is the most efficient option to move forward because it requires a minimum of investment or effort. However, when policy makers are confronted with a gap between political and public aspirations on the one hand, and a programme's outcomes or achievements on the other dissatisfaction will appear. This happens when daily routine is disrupted and the programme which produced satisfaction is no longer satisfactory. According to Rose (1991: 12), policy makers may be confronted with dissatisfaction when they become uncertain due to a growing complexity in the relationship between programmes on the one hand and between programmes and society on the other. An increased governmental involvement in a greater variety of programmes generates this uncertainty. Changes in policy environment can also induce dissatisfaction as these influence the effect of a programme negatively although the programme in itself is not modified. European economic policy-making, for example, depends

for its effectiveness upon what is happening in other continents. When changes in the international policy environment occur, European economic policies can become particularly vulnerable to appearing unsatisfactory. Furthermore, developments in political values can create dissatisfaction as they alter the terms of political debate. Electoral competition may institutionalise efforts to manufacture this dissatisfaction. Finally, dissatisfaction is achieved by sanctions. Policy makers will search for fresh knowledge when they are threatened with a continuing decline of their programme and loss of support, or even loss of public office when they fail to do something to remove current obstacles. In that sense, the stimulus for search comes more from the certain threat or pain that will arise if policy makers do nothing than from the uncertain promise of benefits.

Dissatisfaction will force policymakers to search for solutions that will be effective in dispelling dissatisfaction (Rose, 1991: 10). Looking at an organisation's own standard operating procedures is the first solution. Policy makers mostly do not question their own programmes, but try to do more of the same. The second place to search is the organisation's own past. Experiences from the past may externalise programmes that have been effective before. When an organisation's past cannot offer a solution, policy makers have two alternatives. They either speculate about how a novel programme would work in the future or search across space for lessons (Rose, 1991: 13). There is no limit to the distance that might be travelled, but subjective identification with another place or similar political values may influence the direction in which the search is undertaken. This explains why Great Britain will turn to the US and Eastern European countries for most of the post war era considered programmes adopted by Russia. The US has since long attracted the attention of countries which explains why some also prefer to speak about 'Americanisation' (Rose, 1991: 14). Epistemic communities which are defined as '… specific communities of experts sharing a belief in a common set of cause-and-effect relationships as well as common values to which policies governing these relationships will be applied' (Haas, 1989: 384) are often used as informal networks to search for ideas. Intergovernmental institutions may also serve as network opportunities for policy makers (Rose, 1991: 18). Rose (1991: 10) states that dissatisfaction emphasises the wrongfulness of what has been done, but it does not assure policymakers of what they should be doing to make it right. According to Rose (1991: 4), a policy will be transferred if the lesson is positive. If it is negative, policy makers may observe the mistakes of others and learn what not to do. Epistemic communities or intergovernmental institutions can help policy makers to seek for information about programmes elsewhere in order to gain fresh ideas for solving their problem. They may draw attention to the conclusions of programmes which might be applicable across national boundaries. Policy makers do not look for an exact copy of a programme, but want a programme that will be effective in their own country (Rose, 1991: 19-20). Drawing a conceptual model of that new programme

including the elements which are needed to make the programme effective can be an added value in visualising which programme could work best. Policy makers use different models of foreign practice to finally arrive at creating a new programme for adoption at home (Rose, 1991: 21). Rose (1993: 132-134; 1991: 21-22) identified five ways of how policy makers can draw lessons from programmes in effect elsewhere in order to create a novel programme at home: copying, emulation, hybridisation, synthesis, and inspiration.

- *Copying* is the simplest way of lesson-drawing and occurs when a country adopts a more or less intact programme already in use in another jurisdiction without any changes. In real life, however, it is almost unthinkable that programmes transfer from one jurisdiction to another without taking into account the history, culture and institutions of both jurisdictions.
- *Emulation* takes place when a country rejects copying in every detail, but accepts that a particular programme elsewhere provides the best standard for designing policy at home by taking different national circumstances into account. In other words, a programme already in effect elsewhere will be adopted, but with making adjustments for different circumstances.
- *Hybridisation* involves combining elements of programmes found in two different places to develop a policy.
- *Synthesis* combines familiar elements from three or more different programmes to generate a policy that is distinctive and new. A synthesis is justifiable when the object of lesson-drawing is to design a new domestic policy. The potential effectiveness of this new programme is not easy to evaluate because its result is synthetic and has thus no counterpart elsewhere. When a policy maker unfamiliar with foreign countries travels abroad he can transfer familiar problems into an unfamiliar setting and expand new possible ideas.
- Programmes elsewhere can thus be used as an *inspiration* or intellectual stimulus about what to do in the home country. A sole form of inspiration does not demonstrate how the programme actually works. The result is usually a novel programme without any analogue elsewhere whereby the experience of other countries cannot be used to evaluate it. Therefore inspiration is not a form of lesson-drawing but merely a form of speculation.

Although the theory of lesson-drawing provides useful insights in the process of transferring policies, it has shortcomings. According to Evans (2006: 482), lesson-drawing theory pays insufficient attention to the role of exogenous factors in the process of transfer. Furthermore, lesson-drawing theory is often criticised for its implicit assumption that any transfer of policies is both rational and voluntary. It assumes that governments are facing problems which have

counterparts elsewhere and that the borrowing state has a rational and voluntary choice to draw lessons from abroad (Evans, 2006: 482). The focus of lesson-drawing's is therefore exclusively on the voluntary processes of transfer between developed countries, as Evans (2006: 482) states. According to Dolowitz and Marsh (2000), however, most forms of transfer will arise from a mix of coercive and voluntary pressures. They therefore prefer to use the term 'policy transfer' to cover both voluntary forms of transfer (which covers processes that are related to lesson-drawing (Rose, 1991)), and less voluntary or coercive forms (also referred to as 'direct coercive transfer') (Dolowitz & Marsh, 1996: 347). According to Dolowitz and Marsh (2000: 13), a simple distinction between voluntary and coercive transfer results in an oversimplification of the transfer process. It is therefore better to think of a continuum that runs from lesson-drawing under conditions of perfect information and rationality (completely voluntary) to direct imposition of a programme, policy or institutional arrangement on one political system by another (completely coerced) (Dolowitz & Marsh, 2000: 13). Most instances of policy transfer fall between these two extremes of the continuum, including both elements of coercive pressure and voluntary borrowing or lesson-drawing (Dolowitz & Marsh, 2000: 15; Jones & Newburn, 2002a: 103-104). Dolowitz and Marsh also prefer to use the term 'policy transfer' more broadly to designate the structurally shaped processes propagated by terms like 'policy diffusion' and 'policy convergence'. Notwithstanding, as Jones and Newburn (2002a: 103-104) argue, the notions of convergence and diffusion are analytically dissimilar from the notion of transfer. 'Convergence' and 'diffusion' are descriptive concepts, expressing the tendency of societies to grow more alike, or the successive adoption by different jurisdictions of specific policy approaches, whereas policy transfer is '… an action based on the strategic decisions of actors inside and outside of government' (Jones & Newburn, 2002a: 104). Transfer can therefore be an important element in policy convergence processes, but convergence does not necessarily involve transfer.

Dolowitz and Marsh's model of policy transfer is mainly based on the extensive work of Rose (1991, 1993), Bennett, (1991a & b), Robertson (1991) and Wolman (1992). Their general framework of policy transfer consists of a set of concepts based on a critical appreciation of the work of others, including the concepts policy diffusion, policy convergence, policy learning and lesson drawing (Dolowitz & Marsh, 2000: 8; Evans & Davies, 1999: 363). They suggest that all these phenomena can occur and can be organised into one framework as 'dimensions of policy transfer' (Evans & Davies, 1999: 364). The framework is organised around seven questions, namely (1) 'Who are the key actors involved in the policy transfer process?', (2) 'Why do actors engage in policy transfer?', (3) 'What is transferred?', (4) 'What are the different degrees of transfer?', (5) 'From where are lessons drawn?', (6) 'Which factors constrain or

facilitate policy transfer?', and (7) 'How is the process of policy transfer related to the "success" or "failure" of policies?' (Dolowitz & Marsh, 1996: 344; 2000: 8).

1.3.2.1 Who transfers policy?

A number of actors, agencies and institutions may be involved in various ways in the process of transferring policies. Those actors, agencies and institutions will engage in devising and interpreting new policies, discovering and learning new practices, persuading colleagues and putting transfer into effect (McFarlane & Canton, 2014: 4). Over the years the academic literature on policy transfer - but also related work on lesson-drawing, convergence or diffusion (Heclo, 1974; Haas, 1980; Heidenheimer, Heclo & Adams, 1990; Robertson & Waltman, 1992; Wolman, 1992; Rose, 1991 & 1993; Hoberg, 1991; and Dolowitz & Marsh, 1996) - has identified several categories of actors, including elected officials (Heidenheimer, Heclo & Adams, 1990; Robertson & Waltman, 1992), political parties (Heclo,1974), bureaucrats/civil servants (Haas,1980; Wolman,1992), pressure groups (Rose, 1991 & 1993; Hoberg, 1991), policy entrepreneurs/experts (Rose, 1993: 56), transnational corporations, think thanks (Stone, 2000) supra-national governmental and nongovernmental institutions (Rose, 1993; Robertson & Waltman, 1992), and consultants (Stone, 2004; Prince, 2012). It is to be expected that in any specific case of transfer more than one category of actor is involved (Dolowitz & Marsh, 1996: 345). As Dolowitz (2003: 102) states: '… policy transfer does not require anything more than a vacation, trip, a stroll along the internet, discussion at a conference, or even ideas gained through the interactions of a given policy network'.

1.3.2.2 Why engage in policy transfer?

Although the question of why countries engage in transferring policies seems to be rather straight-forward, it conceals a complex set of issues. Indeed, when answering this question one needs to explore the reasons why nation states feel the need to change their policies in the first place and why they prefer to refer to another country (or countries) instead of opting for local solutions (McFarlane & Canton, 2014: 3). Nation states can draw lessons for a number of reasons and use these lessons in a number of ways. Dolowitz and Marsh (1996: 346) argue that in order to explain why societies draw lessons and why transfer occurs a distinction has to be made between voluntary and coercive transfer. In short, this means that societies can choose to search for lessons or they can be forced to adopt a ready-made policy. It is, however, not easy to draw a sharp line between these two types. Dolowitz and Marsh (1996: 346) acknowledge that at the margin these two types merge so they suggest it is better to '… conceptualise transfer as lying along a continuum that runs from lesson-drawing to the direct imposition of a program, policy or institutional arrangement on one political system by another'.

1.3.2.2.1 Voluntary transfer

The primary impetus for governments to voluntarily search for lessons abroad is when they experience difficulties with the current state of affairs. When everything operates through established routines and governmental policies are functioning properly there is no need to search for lessons. Only when discontent about or problems with the status quo arise solutions need to be provided through the search for lessons (Rose, 1993: 10; Dolowitz & Marsh, 1996). An example of voluntary transfer are visits by politicians and professionals who may draw lessons from their travels abroad.

1.3.2.2.2 Direct coercive transfer

Not every form of lesson drawing is voluntary. At times, governments may force other governments to adopt existing policies. However, a direct coercive imposition of policy transfer from one country to another is rather rare. Supra-national or international organisations such as the Organisation for Economic Co-operation and Development (OECD) or the United Nations (UN) can play an important intermediary role in coercive policy transfer. For example, the IMF or WB provide cheap loans for Third World countries who are in return forced to implement certain economic policies (such as inter alia the privatisation of certain infrastructures) if the loan is to be granted (Nathan, 2003: 199-200; Daems & Vander Beken, 2018: 9). The European Union (EU) and the European Court of Justice (ECJ) may also coerce member states to implement certain policies. With the existence of international treaties and other obligations member states are directly forced to implement certain policies drafted at the European level (Newburn & Sparks, 2004: 4). Likewise, because of their potential mobility, trans-national corporations may force governments to adopt policies that are capable of attracting these industries (Dolowitz & Marsh, 1996: 348).

1.3.2.2.3 Indirect coercive transfer

Nation states may also be forced to adopt certain policies in an indirect way. Dolowitz and Marsh (1996: 348) identify a number of push factors leading to policy transfer which are more indirect. First, indirect coercive transfer may be influenced by the potential role of 'externalities' which are side effects or consequences of an industrial or commercial activity that affect other parties without this being reflected in the cost of the goods or services involved. In some cases, governments may be functionally interdependent to solve common problems by working together. This interdependence may result in policy transfer and the development of common policies. Governments may, for example, be indirectly coerced to develop common environmental policies as a result of pollution that affects a number of nation states at the same time. Second, technological advances may also force governments to look across borders and search for precedents or ideas. The overwhelming speed with which these technologies bring

change may create potential issues and may push governments to look for solutions elsewhere (Bennett, 1992: 118-123, 150-151). Third, economic pressures may push countries into adopting similar policies when their primary markets depend upon each other. Individual governments may thus be limited in their comings and goings as the world economy restricts their behaviour. Fourth, political actors in one country may sense a feeling of insecurity when they perceive their own country as lagging behind its neighbours or competitors. Governmental actions in those countries may indirectly push the other government towards adopting similar policies for not being the odd-man out (Bennett, 1991a: 43). Fifth, the existence of a consensus within the international community may also act as a push factor. Problems may be spelled out in a particular way by the international community which may result in the introduction of a common solution to that problem in a number of nations. Nations states which did not use this definition or did not adopt the same solution will feel pressured to implement the accepted programmes or policies and join the international community.

1.3.2.3 What is transferred?

Bennett (1991b: 218) identifies three main objects of transfer: policy goals, content and instruments. Dolowitz and Marsh (1996: 349-350; 2000: 12), however, criticise Bennett's focus as being too narrow and identify eight objects of transfer, namely policy goals, policy structure, policy content, policy instruments or administrative techniques, policy programmes, institutions, ideology, ideas and attitudes, and negative lessons. Dolowitz and Marsh (2000: 8) emphasise that it is important to distinguish between policies and programmes. Policies '… are seen as broader statements of intention and generally denote the direction policy wish to take', whereas programmes '… are the specific means of the course of action used to implement policies'. Some scholars (Jones & Newburn, 2007: 31; McFarlane & Canton, 2014: 4; Newburn & Sparks, 2004: 5) make a distinction between 'hard transfers' and 'soft transfers'. 'Hard transfers' imply the more formal aspects of policy, such as programmes, instruments and institutions while 'soft transfers' refer to symbols, rhetoric, ideology, ideas and attitudes. According to Newburn and Sparks (2004: 5) much of the existing work on this topic has tended to focus on the more formal aspects of policy transfer. Countries may pursue the importing of specific technologies, methods and techniques, while practitioners at the same time are keen to learn new methods and techniques, especially in areas where they feel inexperienced. However, one should not minimise the importance of 'soft transfers'. Processes involved in importing examples of 'hard transfer' will likewise introduce new concepts and meanings, ideas, ways of thinking about crime and punishment. As Newburn and Sparks (2004: 5) state '… the fact that transfer might be more common at the level of symbol than substance should not be taken as an indication of its relative unimportance'. These 'soft transfers' of meanings and ideas may be as important as 'hard transfers' and at times even the most influential aspect

of change (McFarlane & Canton, 2014: 4; Newburn & Sparks, 2004: 5; Stone, 2004: 556). We should also keep in mind, however, that not every form of lesson drawing results in a successful transfer of policy. A particular influence can also generate a non-adoption of a particular policy. Lessons can thus be both positive and negative (Dolowitz & Marsh, 1996: 349).

1.3.2.4 Are there different degrees of transfer?

Actors have a range of options to draw lessons from programmes in effect elsewhere in order to create a novel programme at home. Dolowitz and Marsh (1996: 351) prefer to retain the options Rose (1991: 21-22; 1993: 132-134) identifies, namely copying, emulation, hybridisation, synthesis and inspiration (see section 1.3.2 for a detailed description of the different degrees of transfer).

These five categories are all different in their approach. In a way it is possible that combinations between, for example, the categories of hybridisation and synthesis emerge. While these conceptual distinctions can be useful, in practice these differences are not that easy to detect, as will become clear in the empirical part of the dissertation.

1.3.2.5 From where are lessons drawn?

One of the major adaptations Dolowitz and Marsh made to their original framework was a elaboration of the classification system of the levels of governance where policy-makers can draw lessons from. When searching for lessons, policy-makers have different options. According to Dolowitz and Marsh (2000: 12) policy-makers can look at three levels of governance: the international, the national and the local. Firstly, when searching for good practices the starting point is most often the nation state's own past because it saves time and resources. A country's own past can reveal what has worked in the past, but also what not to repeat again (Dolowitz & Marsh, 1996: 352). Standard operating procedures within the nation's organisation usually are the first places to look because they provide opportunities for transferring administrative techniques and procedures (Rose, 1991: 13). Horizontally transferring policies from one nation to another is also a form of policy transfer that Dolowitz and Marsh mention under this first category. Secondly, besides horizontal transfer a federal government can also draw lessons from lower levels of governance. Actors can draw lessons from sub-national units of government when communities or regions with in the country provide for proper solutions. Vice versa, those sub-national units of government can also draw lessons from the national level when experiencing problems at the local level. Thirdly, policy-makers can draw lessons from the international level or an international political system can force lessons upon them.

1.3.2.6 Which factors constrain policy transfer?

Policy transfer is not always successful. There are some factors which could constrain the transfer of policies: complexity of a programme; past policies; and political, bureaucratic and economic resources. Firstly, Rose (1993) states that the transferability of a programme can be affected by its complexity, that is, the transfer of a programme will be harder as the policy or programme becomes more complex. Rose (1993: 132-134) suggests six hypotheses: (1) programmes with single goals are more easily transferable than programmes with multiple goals; (2) the simpler the problem the more likely the transfer will occur; (3) the more direct the relationship between the problem and the solution is perceived to be the more likely it is to be transferred; (4) the fewer the perceived side-effects of a policy the greater the possibility of transfer; (5) the more information agents have about how a programme operates in another location the easier it becomes to transfer it successfully; (6) the more easy it is to predict outcomes the simpler it becomes to transfer a programme. Secondly, when actors search for lessons, past policies may constrain both what can be transferred and what actors look for when engaging with the transfer of policies (Dolowitz & Marsh, 1996: 353). So, when certain policies have been restricted in the past it is likely that they will influence policy makers' choices to develop new policies in the future. Thirdly, institutional and structural factors may also constrain the transfer of policies. For example, transferring policies from a federal structure towards a unitary system requires adjustments which may result in restraining the transferring process (Dolowitz & Marsh, 1996: 354). Fourthly, political, bureaucratic and economic resources of a transferring political system need to be optimal to implement a policy. Robertson (1991: 70) suggests that policy transfer will have more chances to succeed if the dominant political ideology in the host country is consistent with the transferred policy. Rose (1993) states that the transfer of policies may also be influenced by the size of state bureaucracy and its efficiency. If a nation state does not have the technological abilities to implement a policy programme, the transfer will not be successful. Transferring a policy programme from another country and implementing it costs money which makes the availability of economic resources another critical constraint for actors engaged in policy transfer (Dolowitz & Marsh, 1996: 354).

1.3.2.7 How is the process of policy transfer related to the 'success' or 'failure' of policies?

As stated above, not all transfer is successful. Dolowitz and Marsh (2000: 17) suggest that at least three factors can be at play in cases of policy transfer failure. First, when the borrowing had '… insufficient information about the policy/institution and how it operates in the country from which it is transferred' an *uninformed transfer* has taken place. Second, one could experience an *incomplete transfer* when '... crucial elements of what made the policy or

institutional structure a success in the originating country may not be transferred, leading to failure'. Third, when '… insufficient attention is being paid to the differences between the economic, social, political and ideological contexts in the transferring and the borrowing state' an *inappropriate transfer* has occurred.

The issue of non-transfer has also been touched upon by Evans and Davies (1999) who state that scholars must take greater notice of cases of non-transfer in order to enhance our understanding of processes of policy development. Evans and Davies (1999: 381) argue that one cannot simply assume that policy transfer has occurred. According to them sufficient means for demonstrating the existence of policy transfer are not well developed in policy transfer literature because it often focuses on '… abstracting alleged perfect fit cases of policy transfer' (Evans & Davies, 1999: 381). As for Evans (2010c: 159), Dolowitz and Marsh's sources of evidence that policy transfer has occurred (media, reports, conferences, visits and government statements) should rather be treated as sources of learning instead of as sources of proof. In order to provide more accurate evidence of cases which are not examples of policy transfer, Evans and Davies (1999: 381-382) offer a set of questions which touch upon a list of factors which are essential in indicating the development of policy transfer. Going through these steps should help scholars prevent making excessive claims about the nature and extent of policy transfer (Evans, 2010c: 159).

- What is the subject of analysis?

Every study on policy transfer should thoroughly clarify which phenomenon it is exploring ranging from studies that are about facilitating or enforcing policy transfer, studying the process of policy transfer and its occurrence, or studies which claim that policy transfer has occurred in the past.

- Who or what is identified as agents of transfer: who wants it, what do they want from it, how are they going about effecting it, to whose benefit, and why?

Any study on policy transfer should openly identify the agents involved in the process of transfer, why they engage in transferring policy and how they go about it. According to Evans and Davies (1999: 382), policy transfer is an action oriented learning process, whether this is undertaken voluntarily or whether it is the subject of coercion.

- Is there evidence of non-transfer?

In order to discover whether transfer actually has taken place scholars need to thoroughly compare the subject policy to domestic or other original settings. First, there is evidence of non-transfer when the 'new' policy includes elements which are obtained from domestic antecedents or which are fairly original. Second, non-transfer also occurs when agents filter out some aspects of an innovative idea or programme.

- What is the evidence provided to support a claim of policy transfer and how good is this evidence?

The evidence which demonstrates or refutes a process of policy transfer will result from an examination of the perspectives and perceptions of the recipient subjects when seeking to demonstrate whether an idea or an attitude has been transferred, a detailed comparison between both the new policy and other existing policies when a programme has been copied, and an implementation analysis to determine whether the programme has been carried out.

- What conclusions can be drawn from the above about the nature and extent of transfer, which has taken place?

This step includes overall conclusions on whether policy transfer has taken place, the content of the transfer, whether the policy has been culturally or organisationally adapted, and what measures have been adopted to filtrate the conflicting elements. As for Evans and Davies (1999: 382-383), one should make a distinction between soft transfers (including ideas, concepts and attitudes) and hard transfers (including programmes and implementation).

1.4 The concept of policy transfer in criminological research

Research on policy transfer is usually associated with the field of political science. However, it has also come to be introduced in other fields of study. Indeed, the policy transfer framework has been applied, for example, in transport studies (O'Dolan & Rye, 2012), urban studies (Parsell, Fitzpatrick & Busch-Geertsema, 2014; Lee & Hwang, 2012; Pojani & Stead, 2015; Cook, 2008; Prince, 2010; Galdon-Clavell, 2015), health care studies (Holden, 2009; Barabasch & Wolf, 2011; Asare & Studlar, 2009; Kuhlmann, 2012; French, Ferlie & Fulop, 2014; Ogden, Walt & Lush, 2003; Cairney, 2009; Müller & Slominski, 2015; Legrand & Vas, 2014) and European studies (Bugdahn, 2007; Pal, 2014; Radaelli, 2000; Bulmer & Padgett, 2005; Gorton, Hubbard & Hubbard, 2009; Clifton & Diaz-Fuentes, 2014). Interestingly, in recent years also criminologists have increasingly started to study such processes. This should not come as a surprise: against the background of an increasingly complex and fast-changing policy environment, it is to be expected that also crime control policies, practices, ideas and ideologies flow within and between nation-states (Newburn & Sparks, 2004: 1). However, and notwithstanding the significant expansion in a short period of time of work that focuses on the transfer of policies, empirical studies of policy transfer remain relatively scarce in criminological research. Indeed, as Tonry (2015b: 510) recently observed '… it is a pity that more systematic research has not been done on policy transfer'. The policy transfer theory developed in political science has to a certain degree been applied to understand changes in criminal justice policies, but most of these studies are small-scale. According to Jones and Newburn (2002b: 179), our

understanding of developments in penal policy remains underdeveloped. Most studies on penal policy making do not engage in a systematic analysis of the process of policy formation, but mainly provide a descriptive analysis of the results. Criminologists tend to focus more on the impact and effects of criminal justice policies rather than on the origins or processes that lead to policy outcomes (Jones & Newburn, 2007: 17). Newburn and Sparks (2004: 10) see here an important challenge for criminology: '… understanding similarities and differences in the pattern of contemporary systems of crime control, and understanding the movement and translation of commodities between and within these systems, is arguably one of the key tasks facing criminology'.

Within criminology, John Muncie was probably the first to explicitly use the term 'policy transfer' when he examined whether RJ ideas originating in Australasia and Scotland had any implications for youth justice (crime prevention and reducing re-offending) in England and Wales. In his article, Muncie (2001: 27) argued that the obsession with the 'what works' approach and the search for pragmatic and cost-effective solutions within youth justice discourse has encouraged policy makers to travel the world to search for evidence of what seems to 'work'. In this regard, countries are to a greater extent borrowing other states' initiatives, programmes or policies to pilot these at home to pursue reforms in one's own backyard. However, so Muncie (2001: 27) added, it seems unlikely that any policy can be simply transferred from one jurisdiction to another. Indeed, such a view would pay insufficient attention to the cultural difference and ideological specificity of each country (Muncie, 2001: 27). He therefore concluded that '… what works in some contexts may not work in others' (Muncie, 2001: 33). A few years later Muncie (2005: 37) used the concept of 'policy transfer' again in order to understand the global, international, national and local shifts in contemporary youth and juvenile justice policy and practice. Here he argued that the transfer of youth justice policy is not 'one directional' or 'one dimensional' (Muncie, 2005: 42). As an example he referred to the introduction of RJ practices in youth justice, originated in New Zealand, Australia and Canada. Muncie (2005: 42) stated that despite the widespread dissemination of these traditional forms of dispute resolution, there exists no convergence among practices in Europe. He therefore argued that '… policy transfer is rarely direct and complete, but partial and mediated through national and local cultures' (Muncie, 2005: 44).

In 2002, Newburn and Sparks (2002: 107) edited and introduced a special issue of *Criminology and Criminal Justice* dedicated to the question how crime control policies, practices, ideas and ideologies flow within and between nation states. According to Newburn and Sparks (2002: 107) the subject of crime policies travelling the world was not a new one but it was undoubtedly the right time to examine it further. The articles in this thematic issue focus, inter alia, on the nature, reasons for and limits of political similarity and convergence

(Carlen; Jones & Newburn; O'Malley), the impact of transnational structures and organizations (Loader), as well as the question: how does crime policy travel? (Karstedt, O'Malley; Jones & Newburn) (Newburn & Sparks, 2002: 108-109). In 2004 this special issue was expanded and reworked to a book-length publication *Criminal justice and political cultures. National and international dimensions of crime control* (Newburn & Sparks, 2004).

Within criminology, however, Jones and Newburn (2002a; 2002b; 2005; 2007; 2010; 2013; 2016) have gone the furthest in introducing and elaborating the concept of 'policy transfer' into criminology; the term has therefore become closely associated with their joint work. Newburn and Jones regularly emphasise the importance of studying policy transfer as an analytical framework for understanding contemporary policy-making. Their book *Policy transfer and criminal justice: Exploring US influence over British crime control* was the first empirically grounded contribution to the policy transfer debate in criminological research. Based on the political science frameworks discussed above (e.g. Dolowitz & Marsh, 1996) they introduced concepts of the policy transfer debate into criminology and elaborated three case-studies (zero tolerance policing, two and three strikes sentencing, and privatisation of corrections) to explore how and to what extent crime policy travels from the US to the UK.

Next to the study by Jones and Newburn (2007) policy transfer has also been addressed in a hand-full of other case-studies dispersed over different academic outlets dealing with themes such as, inter alia, crime prevention (Steinberg, 2011), probation (McFarlane & Canton, 2014; Canton, 2009; Vanstone, 2008; Durnescu & Haines, 2012), community supervision (Canton, 2006), terrorism (Mulcahy, 2005), youth justice (Brady & Curtin, 2012; Cox, 2010; Fernandez Molina & Rechea Alberola, 2005; Muncie, 2001 & 2005; Sprott, 2011), drug policies (Bewley-Taylor, 2014), policing (Robertson, 2005; Blaustein, 2015), radicalisation in prison (Monaghan, 2015), preventive justice (Ogg, 2015) and victim policies (Wemmers, 2005). In a number of studies developments within juvenile justice have been linked to policy transfer processes, looking at both the success and failure of transfer. Brady and Curtin (2012), for example, explore the successful introduction of the Big Brothers, Big Sisters youth mentoring programme in Ireland. Fernandez Molina and Rechea Alberola (2005: 73) emphasise the importance of national, regional and local particularities, resistance and difficulties in Spain in transferring juvenile justice policies. Cox (2010) comes to the same conclusion when studying juvenile justice reform in Vietnam. Some authors point at difficulties or failures in transferring criminal justice policies from the 'West' to Eastern Europe or Africa. Steinberg (2011: 349), for example, argues that the introduction of community policing and crime prevention policies in South Africa resulted in a 'hubristic failure' inadvertently resulting in a return of 'paramilitary policing practices' that also boomed under the apartheid regime. In similar vein, Robertson (2005: 2) identifies significant barriers to transferring criminal justice reform programmes from

Western Europe to Eastern Europe. She argues that when transferring westernised models of policing and crime prevention to former Soviet Union countries policy makers need to develop context-specific variants instead of simply copying existing Western models (Robertson, 2005: 21). According to Robertson (2005: 2 & 21), policy makers should undertake a systemic approach towards criminal justice policy transfer taking into account the specific local contexts and addressing local, national, and international concerns (Durnescu & Haines, 2012: 903; Canton, 2009: 73). In a recent book Brown et al. (2015) discuss findings from elite interviews with key players in the 'Justice Re-investment'-movement to provide insight into the development and implementation of this notion in the US and later in Australia. In a reflection on this study, Newburn et al. argue that it becomes clear that policy transfer from the US to Australia had also been restrained by a number of impediments, such as differences in legal and political structures, contrasting degrees of political consensus in relation to the 'problem' of mass imprisonment, sharply differing levels of influence by faith-based constituencies, and varying capacities for coordination between local criminal justice agencies in each country. A simple straightforward notion of policy importation was therefore disputed. Their work emphasised the importance of domestic contextual factors in reconfiguring policy ideas and programmes that have their origins elsewhere (Newburn et al., 2018: 6). Similarly, Ogg (2015) studied the development of a preventive justice system during a period of complex reform. Ogg (2015: 209) argues that policy transfer can be a valid analytical tool for understanding policy-making but '… without recognition of domestic processes of transfer, the path to preventive justice will be cobbled with complexity, disparagement, and the potential breakdown of justice as it is currently perceived and known'. Monaghan (2015) touches upon the 'new' topic of counter radicalisation practices in prison and its transfer from the transnational to the national level. He argues that transnational security networks can operate as important settings in which best practices from abroad are disseminated and replicated. In his study, Monaghan shows indeed how the Roma-Lyon Group, which is '…a practitioner-led network consisting of expert representatives from the G8/7 nations in areas of security, policing, and counterterrorism' (Monaghan, 2015: 382) has served to spread particular penal and security practices into Canadian policy landscapes and in that sense thus has facilitated the distillation of criminal justice policy transfer.

Studies by Durnescu and Haines (2012), McFarlane and Canton (2014), and Blaustein (2015) offer the reader insider accounts of the complexities and imperfections of criminal justice policy transfer processes because of their personal involvement in such processes. Durnescu and Haines (2012: 889), for example, were involved in a British-funded project that aimed to assist Romania in the development of a new national probation service and a system of community sanctions. As insiders to both the Romanian and British parties they conclude that the '… simplistic and linear notion of policy transfer is ill conceived and unhelpful' and that

'… simplistic notions of transfer need to be challenged if the development and delivery of criminal justice services are to develop along a constructive route' (Durnescu & Haines, 2012: 904-905). Similarly, Blaustein's (2015) ethnographic study of international development workers' and local police officers' attempts to implement 'community policing' models in Bosnia and Herzegovina indicates that glocal policing outputs are not determined by cultural and structural factors, but by a permanent interaction between the global and the glocal level. Indeed, Blaustein's study shows that seemingly disempowered stakeholders (actors involved with the making and implementation of low policing) can have a certain degree of 'translational' capacity and use their agency to influence the overall policy translation process.

Also McFarlane and Canton's (2014) study on a probation reform project in Turkey provides insider accounts of the experiences and reflections of multiple consultants, practitioners and academics who were directly involved in the project. They argue that '… there is a common set of challenges with which any transfer project will have to engage' (McFarlane & Canton 2014: 2) which include '… how to engage with policy makers and practitioners, the logistics of planning meetings and managing training events, working with people in another language and the importance of demonstrating a respect for and sensitivity to culture' (McFarlane & Canton, 2014: 2).

Our brief overview above illustrates that criminology is developing a growing interest in better understanding and studying the nature and trajectory of criminal justice policy and decision making. However, in studying penal policy developments criminologists generally prefer to pay attention to existing similarities and dissimilarities in policy trajectories of different jurisdictions and study to which extent nation states appear to be following comparable or differing pathways. So, the focus is much less on the movement or flows of policies; or to put it differently: there is much more attention for 'product' than for 'process'. Moreover, the study of policy transfer has remained of rather minimal concern in studies on penal policy and decision making. Scholars often only mention it in studies which focus on policy transfer itself or see it as a matter of relatively limited importance if a reference is made to it in the margin (Newburn et al., 2018: 6). There are several reasons for this limited interest in studies of policy transfer, so Newburn, Jones and Blaustein (2018: 6-7) recently suggested. They distinguish four elements or circumstances which could have had an impact on the marginalisation of the concept of policy transfer in criminological research. Firstly, the main focus of scholars interested in cross-national comparison has been the analysis of how underlying social, political and economic changes are linked with the changing ways in which the penal system of nation states are organised, operate and are governed (see Garland, 2001; Wacquant, 2009). The consequence of only focusing on understanding broader structural trends and major penal shifts is that such work tends to analyse general policy processes rather than the

particular details of policy development (for more details, see our previous discussion in section 1.2.1). Related to this, and secondly, when scholars do study 'policy' in criminology they are paying considerably less attention to the processes of policy-making or policy development and much more on the direct and formal 'outcomes' of the policy concerned. As a result such studies cannot indicate how particular penal policies are being shaped by specific mechanisms of influence. In that sense, the study of policy transfer does not seem to be compatible with this line of enquiry whereas it is more concerned with the empirical specifics of the policy development details rather than with bigger structural concerns. Thirdly, and linked with the two previous points, the studies that provide broader structural explanations for developments in penal policy (see section 1.2.1) have tended to function at the level of discourse and consequently has paid less attention to the work of particular actors. Finally, the marginal position of policy transfer research is also influenced by some other factors which apply to comparative criminology in general. Undertaking policy transfer research is labour-intensive and time-consuming. This type of research does not always find a welcoming home in contemporary academia where the focus is increasingly on short-term outputs and which therefore tends to be hostile to the profound engagement which is generally required by comparative research.

1.5 Critical discussion of the policy transfer framework

Dolowitz and Marsh were pioneers with respect to organising the highly fragmented literature on policy diffusion, policy learning and lesson drawing resulting in the development of the 'dimensions of policy transfer'-framework. The policy transfer literature is often praised for its '… focus on decision-making dynamics internal to political systems and to address the role of agency in the transfer process' (Stone, 2004: 547). In recent years, however, a growing body of work has been critical of what has been viewed as the overly-rationalistic, occasionally positivistic tendencies of much 'orthodox' policy transfer scholarship and have raised questions about the broader utility of the concept of policy transfer. A number of authors (inter alia Evans & Davies, 1999, Evans, 2004 and 2009; McCann, 2008; Peck & Theodore, 2001; Stone, 2004; Ward, 2006) have highlighted some important limitations of the policy transfer literature and have made attempts to adjust or improve it. Whilst they acknowledge that previous policy transfer literature has provided a useful focus upon key policy actors, institutions and practices involved in cross-national policy flows, they contend that it remains flawed in a number of ways. In what follows we will elaborate on four major limitations in the policy transfer literature and we will pay attention to other general comments on the policy transfer literature.

1.5.1 Rational choice assumptions are inappropriate

A first important limitation, so the critics argue, concerns the inherent assumption of transfer agents being '… optimising, rational actors, who know what they are after and scan "the market" for possible solutions, making decisions and trade-offs over which policy products to adopt, albeit on the basis of imperfect knowledge' (McCann & Ward, 2012: 327). 'Traditional' political-science understandings of policy transfer typically present the policy market as being relatively unstructured allowing policy makers to engage in 'freely-chosen transactions' with each other. They assume policy makers to be rational actors constantly striving to adopt policy products that can maximise reform goals and optimise existing policies (Peck & Theodore, 2010a: 169). A number of authors have criticised this 'orthodox' view of rational actors seeking optimal policy solutions based on perfect information in a global policy market space (inter alia Evans & Davies, 1999; Peck, 2011: 791; Peck & Theodore, 2010a, b, c).

Advocates of the institutionalist approach who rely on insights from organisational theory have been critical of this 'orthodox' policy transfer approach. Institutionalists, such as Radaelli (2000: 38), argue that policy transfer is driven by structural forces, that is, '… industrialisation, globalisation or regionalisation forcing a pattern of increasing similarity in economic, social and political organisation between countries' (Radaelli, 2000: 38). The homogenisation of organisations being part of a policy field as well as of newcomers is, therefore, assumed to be the outcome of both the appearance and structuration of the organisational field.

A relatively new body of work that is critical for the rational assumptions of policy transfer research can be found within social constructivism, more specifically human geography (McCann & Ward, 2012; Peck, 2011, Peck & Theodore, 2010a, b, c, 2012; Prince, 2012; Temenos & McCann, 2013). Human geographers suggest that the concept of 'policy mobilities' is better able to grasp the increasingly nomadic nature of public policy across the globe (Newburn et al., 2018: 8). This body of work refutes the idea of policy makers rationally selecting best practices by focusing more on the sociospatial context and landscapes in which these actors operate (Peck, 2011: 774). Peck (2011: 791) argues that the traditional policy transfer literature seriously confines the role of '… social processes of policy formation and the context-dependent settings in which "borrowing" and "learning" takes place'. In similar vein, McCann and Ward (2012: 327) are convinced that policies do not simple exist and move around freely waiting to be selected by policy makers on the basis of perfect information. Instead, the circumstances under which - and the spaces within - policy actors move around and function are structured by conditioning fields and institutions, existing pathways and trajectories (see e.g. Theodore & Peck, 2012). Policy formation is therefore looked at as a

socially constructed process that involves an 'intrinsic politics', that policy actors are not 'lone learners' but rather are members of wider epistemic communities (see e.g. Peck, 2011; Peck & Theodore, 2010a). Political actors operating in the process of policy transfer are thus situated in shifting organisational fields and subjected to a wide range of different pressures (see e.g. Peck & Theodore, 2012). Even the more subtle conception of 'bounded rationality' (Dolowitz & Marsh, 2000: 14) still sees policy makers primarily as rational decision makers rather than taking into account the geographical and temporal circumstances that shape their rationality (Prince, 2012: 191).

Related to the critiques on the rational-choice perspective, geographers also criticise traditional policy transfer research for paying too much attention to identifying and categorising the typologies of transfer agents operating in the transferring process (McCann & Ward, 2012: 326) and for not paying enough attention to the role of interorganisational relationships in processes of transfer (Evans & Davies, 1999: 365). While they acknowledge that the study of policy making requires an empirical description of those involved in the transferring process geographers argue that the focus on agents often comes at the cost of the attention given to the role of agency. As McCann and Ward (2012: 327) argue '… the political science literature tends to downplay the fundamentally social – practical, interpersonal, institutionally embedded, yet fluid and processual – character of policy making in general and the social practices of comparison, education, emulation, imitation and persuasion that characterise transfer of policies'. Indeed, for McCann and Ward (2012: 327) policy transfer is a socially constructed process. An exclusive focus on making up models and creating definitions of what policy transfer is or is not, and a too narrow focus on creating typologies of actors involved in policy transfer will therefore result in only debating these models and typologies rather than focusing on the fact that they facilitate analyses of the social processes that constitute policy transfer. In this social process policy actors do not act alone but are members of a wider epistemic community, that is, '… a network of experts characterised by consensual (usually scientific) knowledge' (Stone, 2012: 488). In these communities, policy actors build up relationships with other policy actors, some of which become permanent channels of information exchange in which policy ideas and knowledge flow, and transfer policies from place to place (Prince, 2012: 191-192). Related to this, Stone (1999, 2000) also presents the existence of policy networks which could offer an understanding of the various key participants in the policy process and the relationships and interactions between them. According to Prince (2012: 194), global policy networks '… are not just policy-making capacities getting stretched across global space so that they can link into and take advantage of all the most appropriate sources of knowledge'. Instead they are '… social forms in which the most appropriate sources of knowledge for making policy are constituted' (Prince, 2012: 194). Independent policy institutes or think tanks, for example, could play an important role in promoting particular ideas or programmes.

1.5.2 Policy is not fixed, but emergent, fluid and complex

A second critique addresses the assumption that mobile policies travel as complete 'packages' resulting in a simple and linear replication of that particular policy (Peck & Theodore, 2010a: 170). Traditional policy transfer literature seems to consider policy formation primarily as a technical phenomenon, that is, centred on solving problems that are in need of a series of technocratic fixes. In this traditional view, policies are assumed to be fully formed, off-the-shelf policies ready to be transferred from one entity to another. In other words, the process of policy transfer is presented as being one of '… linear replication rather than non-linear reproduction' (Newburn et al., 2018: 8). A number of scholars have rejected this idea of 'fixed policies' in traditional policy transfer literature. Geographers introduced the so-called 'policy mobilities' approach as a response to the problematic of the orthodox policy transfer perspective (Peck, 2011: 774). Geographers argue that policies rarely travel as fully formed packages of 'molecules circulating within an extra-terrestrial space' and in a straightforward way from A to B (Peck, 2011: 793). Policies rather move in 'a piecemeal fashion, that is, they move in bits and pieces – as selective discourses, inchoate ideas, and synthesised models – and therefore arrive not as replicas but as policies already-in-transformation' (Peck & Theodore, 2010a: 170). Geographers understand the policy making process as being a socially constructed process in which policy makers connect with each other in composing policies. This policy making process will not result in simple emulation and linear replication of policies across jurisdictions. Instead it will produce a more complex process of nonlinear reproduction. As for geography, because new policies are being formed in a comparative frame they are constantly undergoing change. When policy makers are gaining knowledge and picking up ideas at the international conference circuit, at the same time think thanks and consultancies are providing expertise, and so on. Because policies are constantly being exposed to various political contexts, cultural and social norms, local path dependencies, and institutional variation they will surely alter and transform as they travel (Peck & Theodore, 2010a: 170; Prince, 2010: 171). As policies travel they are thus '… not merely being transferred over space, but their form and their effects are transformed by these travels' (Peck, 2011: 793).

Inspired by the work of Deleuze and Guattari (2004), Lendvai and Stubbs (2009: 675) introduced the idea of 'policy assemblages'. Temenos and McCann (2013: 347) define policy assemblages as '… bundles of knowledge and techniques purposefully gathered together for particular reasons'. This idea of policy assemblages has been introduced as a way to '… grasp both the structural and fluid aspects of social phenomena pointing "to complex becoming and multiple determinations", being "sensitive to time and temporality in the emergence and mutation" of phenomena' (Lendvai & Stubbs, 2009: 675). They argue that the idea of an 'assemblage' allows for illuminating insights in how contemporary social transformations are

being shaped by '… multiple and potentially contradictory forces, pressures and tendencies' (Lendvai & Stubbs, 2009: 676) and how particular kinds of connections are being constructed before, during and after the transfer of policies (Prince, 2012: 192). Advocates of the policy assemblage theory argue that policy is not '… a static arrangement of a set of parts organised under some logic or collected randomly', but a constructed whole compiled by '… parts of fixed and mobile pieces of expertise, regulation, or institutional capacities' (McCann & Ward, 2012: 328). Policies can be found in various kinds of sources. You have the traditional policy documents or reports, but policies can also be found in books, documentaries, press releases, newspaper reports, and in line with the emergence of new social media also on websites or blogs. Social fora such as conferences, seminars, meetings and even informal chats over coffee are also considered to be important meeting places in which policies can circulate. For geographers, it is within these encounters between various local, national, trans-national and interstitial actors (Lendvai & Stubbs, 2009: 676), which also can be thought of as assemblages, that policies are organised and fitted together as policy assemblages (McCann & Ward, 2012: 328).

1.5.3 Insufficient attention paid to the spatiality of policy making

Related to the critique formulated above about the mobility of the transferring process, policy transfer literature has also been criticised for paying insufficient attention to the spatiality of policy making. Policies are often considered to be adopted by rational actors operating in the transferring process after which they travel further across a policy landscape which is assumed to be nearly immobile (Peck & Theodore, 2010a: 170). Several scholars, however, criticise this view of policy making being an inert space or condition. They argue that policy making is not a flattened process; on the contrary, policies develop through mobility, while at the same time (re)making relational connections between policymaking sites (Peck & Theodore, 2010a: 170). In other words, policies '… are not simply traveling across a landscape, but they are also remaking this landscape of places, institutions and communities, and they are contributing to the interpenetration of distant policymaking sites' (Peck & Theodore, 2010: 170). Because of this increased mobility of policies throughout various spaces the process of policy making in itself is continually undergoing change (Peck & Theodore, 2010a: 170). In this sense, specific fields of policy mobility are themselves the result of social and institutional constructions (Peck & Theodore, 2010a: 170). The spaces and times of travel are therefore playing an essential role in constructing policy knowledge (McCann, 2011a) since they do not represent an inert or stagnant landscape. This also implies that 'policy tourism' should be studied more closely because it is assumed to be a crucial element of policy making (Cook & Ward, 2011, Gonzalez, 2011, Ward, 2011). As the people involved in the transfer of policy play an important role in

this altering process it is important to identify which actors transfer policy precisely (Prince, 2012: 194).

1.5.4 Traditional political science approach is too state-centric

A final critique concerns the dominant focus on the state. The focus of traditional policy transfer literature has often been on cross-national transfers between countries assuming that jurisdiction A finds some useful or interesting policy in jurisdiction B (Dussauge-Laguna, 2012: 578). According to Prince (2012: 191), due to this 'methodological nationalism', policy transfer literature often diminishes the important role of institutions above and below the nation state or pays too little attention to how acts of transfer are changing the institutional context in which the nation state exists (Prince, 2012: 191; see also Daems, 2013b). Along the same line, Stone (2004: 549; 2012: 490-491) suggests that transfer can also be facilitated by institutions outside and between the state. Mechanisms entrenched in markets and networks can equally facilitate policy transfer as mechanisms linked to the hierarchies of the state. Interest groups, for example, which are not always the most visible actors, can play a major role in transferring policies across different institutions. In addition, the role of think tanks, non-governmental organisations (NGO's), consultant and law firms, banks and other non-state actors should not be denied or underestimated (Stone, 2012: 486). These institutions may not be based in or identified with either the importing or exporting jurisdiction but they still can facilitate the exchange between a number of polities (Stone, 2004: 549; 2012: 490-491). Related to this, Stone (2004: 549; 2012: 490-491) also argues that the state-centric view of traditional policy transfer literature represents policy transfer as being a process of direct exchange between exporting and importing countries. In her view, policy transfer can also be identified as a vertical process, that is, it can occur between states and international organisations or between transnational non-state actors. Because of the involvement of international organisations and transnational policy partnerships in policy transfer processes the environment in which these institutions operate is a more complex and multilateral environment instead of a simple bilateral relationship between importing and exporting jurisdictions (Stone, 2012: 486). Evans and Davies, therefore, argue that a multi-level' and 'multi-layered' approach is needed. The process of policy transfer should be researched '… through a structure and agency approach with three dimensions: global, international and transnational levels; the macro-level; and the interorganisational level' (Evans & Davies, 1999: 361). In other words, a model that '… recognises the importance of global, international, transnational and domestic structures and their ability to constrain and/or facilitate policy development and also understands that policy transfer may be the result of interorganisational politics' (Evans & Davies, 1999: 367). In order to do so they see policy transfer as a useful meso level concept providing an intermediate link between studies at the micro and macro level (Evans & Davies, 1999: 363).

In a similar vein, Lendvai and Stubbs' work on social policy making indicates that policy transfer is not only taking place at the level of the nation state, but, rather, that key policy players operate at different levels of governance (Lendvai & Stubbs, 2009: 680). Transnational policy does not seem to be a process of linear and direct transfers from one place to another but, rather, concerned with '… multi-scalar networks which link local and trans-local processes, producing and consolidating social constructions of place' (Jones & Newburn, 2004: 104). This idea of understanding policy as a 'translation' process instead of a 'transfer' process challenges the orthodox policy transfer literature in which policy is seen as a ready-made box that can be transported from one setting to another. According to Lendvai and Stubbs, the policy transfer process should be seen as '… one of continuous transformation, negotiation, and enactment and as a politically infused process of dislocation and displacement' and not an automatic or taken-for-granted process (Lendvai & Stubbs, 2009: 677). Scholars conducting studies from the perspective of Europeanisation, globalisation, multi-level governance or policy networks also indicate that policy actors operating in various communities can draw lessons from and spread transfer throughout multiple venues (Benson & Jordan, 2011: 371-372). Benson and Jordan (2011: 371-372) suggest a number of studies which show that the locus of policy transfer activity has moved away from its original government-centric emphasis to include multiple sites and actors. It is illustrated that through the existence of epistemic communities, NGO's, think tanks, advocacy coalitions and intergovernmental bodies such as the OECD at the international level policy ideas and norms have been widely spread (Stone, 2004, 2012). As for the European level, it is also widely assumed that EU member states actively engage in transferring policy to and from the EU institutions (Bulmer et al., 2007; Jordan & Liefferink, 2004). At the nation level, besides the vertical learning processes via which policies are being transferred from the national to various sub-national levels and vice-versa (Cairney et al., 2009), there also exists horizontal learning between various equal levels in different political systems (Bulkeley, 2006; Evans & Davies, 1999). In addition, policy actors can also learn lessons when being part of networks that surpass multiple borders and scales (Betsill & Bulkeley, 2004).

Although it has become clear that scholars working from a policy mobilities perspective no longer assume that nation states are primary agents in the production of policies and 'places' (Temenos & McCann, 2013: 347), they nonetheless admit that completely discounting national influence would be wrong. By taking this perspective for granted, these scholars argue that '… it is possible to learn from more than one jurisdiction at a time, and to take away a multiplicity of lessons which results in selective borrowing that leads to hybrids and adaptive innovation to make policy development better fit local conditions' (Stone, 2004: 549).

1.6 Is policy transfer important?

In this first chapter we introduced and discussed the concept of 'policy transfer' with the broader aim of developing a theoretical framework which will be used to explore and study empirically specific developments in Belgian penal policy in chapters three and four of this dissertation. Although we acknowledge that policy transfer is a far from uncontested concept and we are not blind for the critics that have been formulated on the concept, we are still convinced that the policy transfer framework is a useful and fitting framework for understanding developments in policy making in criminal justice. We therefore tend to refute the critiques on this framework.

First, the empirical study of policy transfer allows for a detailed examination of particular areas by examining how far and in what ways policy transfer processes have contributed to a certain degree of policy convergence in specific policy domains. We agree with Evans (2010b: 157) when he states that '… policy transfer analysis presents an intellectual context for integrating common research concerns of scholars of domestic, comparative and international politics as it provides a lens for observing both the changing nature of the nation state and the role of state actors and institutions promoting new forms of political globalisation'. By using the policy transfer framework we can provide a more clear view of how policy makers obtain knowledge and how they can act as agents of transfer in this globalised community. It provides insight into the development of relationships between various policy making actors which exist within cross cultural processes of policy-oriented learning (Evans, 2010b: 157). We acknowledge, however, that criticisms can be formulated on the 'orthodox' policy transfer approach which assumes that policy actors take decisions based on rational choice assumptions. Moreover, the conceptual shortcomings of earlier policy transfer research and in particular the critique on this literature for taking an overly rationalist account of the policy formation process have been acknowledged by political scientists in their later work (see e.g. Dolowitz & Marsh 2000, Evans & Davies, 1999). Indeed, they have provided valuable adjustments and updates of this 'traditional' policy transfer framework.

Second, we argue that drawing attention to the role of political agency in policy-making and providing the framework for it to explore it empirically is a major advantage of using the policy transfer framework in empirical research. The policy transfer approach '… acknowledges the role played by a wide range of agents, including not only politicians and bureaucrats, but also policy entrepreneurs, experts and epistemic communities' (Dolowitz & Marsh, 2000: 9) and '... recognises the existence and role of a policy transfer network that links the activities of transfer agents operating at various levels, including the local, national, international and inter-organisational' (Evans & Davies, 1999: 369). Most authors conducting research on policy

transfer accept that policies are rarely transferred without any influence of the actors involved in the process or the context. They accept that policy making is a complex and fluid process in which copying is the exception and hybrids are the rule (Dolowitz & Marsh, 1996, Evans, 2004, 2010) and they therefore tend to be aware of the pitfalls that critics of the 'orthodox' view have outlined. Although one might acknowledge that focusing too much on the categorisation of actors will result in an overly focus on the *agents* and not *agency*, identifying who is concerned with the process of transferring policies has the benefit of 'mapping' the landscape and the interrelational connections. Assuming that a variety of actors play a role in developing policies and being involved in the process of transferring these policies we consider this 'mapping' a major advantage. Interestingly, and at the same time contradictory, even geographers who tend to criticise the policy transfer research for paying too much attention to identifying and categorising the typologies of transfer agents operating in the transferring process recognise it to be of importance to determine which actors transfer policy precisely because of their decisive role in this process (see e.g. Prince, 2012: 194).

A third critique on the policy transfer framework of Dolowitz and Marsh (1996; 2000) addresses the assumption that mobile policies travel as complete 'packages' resulting in a simple and linear replication of that particular policy. Interestingly, however, the idea that policies mutate as they travel has also been touched upon by other scholars in the policy transfer field who provide various explanations for it. Rose (1991, 1993, 2005), for example, argues that policy makers attempt to adapt policies to their receiving environment which explains changes in the original policy or programme. Other authors indicate that the movement of policies and ideas is the result of processes of translation, learning and editing (Stone, 2012; Dunlop, 2009). Policy learning includes both positive and negative lessons (Dunlop, 2009: 307). Some scholars have also recognised the role of institutional and cultural factors which tend to alter borrowed policies (Stone, 1999). Whereas these scholars in the policy transfer field acknowledge to a certain degree that policy is fluid and complex, and that policy makers in transferring policies or programmes are remaking the landscape they are operating in we believe that they again tend to be aware of the pitfalls that critics of the 'orthodox' view have outlined and that therefore the third critique on the policy transfer framework does not always apply. Moreover, we agree with Dolowitz and Marsh (2012: 344) who state that geographers at times set-up policy transfer orthodoxy '… as something of a straw man'. Geography's view of policy being a construction reflects the so-called constructivist/discursive institutionalist position and constructivist ontology. (Dolowitz & Marsh, 2012: 344). This means that in their view institutions, and the policies that they produce, are seen as having no role, independent of the way in which they are described or indirectly constructed. According to Dolowitz and Marsh (2012: 344) most scholars studying policy transfer, certainly within political science, do

not share this position. They usually operate within realist ontological and a positivist or critical realist epistemological position. It seems clear that geography's approach differs epistemologically and ontologically from the orthodox policy transfer accounts. Because one cannot decide between ontological positions on empirical grounds, we acknowledge the contributions made by researchers operating within different traditions because they can offer many important insights into the policy transfer process and widen the scope of policy transfer studies. As such, we can recognise the contributions made by the scholars in geography without necessarily embracing their constructivism (Dolowitz & Marsh, 2012: 344).

Finally, the policy transfer approach has been criticised for being too state-centric and providing too much attention to the role of the state. We tend to disagree with this assumption arguing that the approach does not focus solely on the state, but it considers the influence of other normative frameworks on the transferring process, such as the European or the international level. Some policy diffusion studies, for example, focus on 'supra-national' crime control areas, such as drugs prohibition, human trafficking or money laundering (see Sharman, 2008; Jakobi, 2013). These studies therefore employ multi-level analysis with a focus on various levels of enquiry. Both the examination of policy content and instruments, the so-called 'hard transfers', and ideas, symbols and rhetoric, the so-called 'soft transfers' are taken into consideration (Dolowitz & Marsh, 2000: 11; Evans, 2009: 254-256).

Although we believe that the study of policy transfer can be fruitful in understanding developments in (penal) policies, let it be clear that we are not suggesting that policy transfer provides the sole explanation for developments in (penal) policies. We do assume, however, that the study of policy transfer can offer us a promising way forward in attempting to understand the diverse processes of penal policy making. In this dissertation we suggest (and we will demonstrate empirically in chapters three and four) that studying the role of policy transfer in penal policy making can tell us something that we did not know before. As Evans (2010b: 158) states: '… we can provide a good idea about the domestic and international circumstances which are likely to bring about policy transfer, the scope and dimensions of policy transfer and which aspects of the framework should and should not be pursued in empirical work'. In our view, it is important that we continue to examine policy transfer because it is a common feature of contemporary policy making. We agree with McCann and Ward (2012) that '… research needs to use insights developed within different disciplines and utilise different concepts and frameworks. The policy transfer framework is one that has been and that will need to be refined or adapted in the light of the findings of further detailed empirical research (Jones & Newburn, 2002a: 108).

It is the aim of this dissertation to fill the scientific gap to a certain degree by using policy transfer as a conceptual tool in an empirical study in order to understand better the developments in penal policy making in Belgium. It is in the next chapter that further details on the methodological set-up and design of this empirical study will be provided. Chapters three and four represent the main empirical part of this dissertation. Here we discuss and analyse the results of both the documentary analysis and the interviews regarding the case studies on EM and RJ. Chapter five is a concluding chapter in which the research questions are answered and a general conclusion is presented.

Chapter two

Methodological set-up and design of the empirical study

2.1 Introduction

In the previous chapter we explored in detail the concept of 'policy transfer' and we explained why we think this offers us a useful framework to study processes of penal policy-making (what we refer to as 'penal policy transfer') in Belgium. In this chapter we draw upon the relevant literature to develop a framework for the analysis of penal policy transfer in two distinct cases which will be introduced and discussed at length in chapters three and four of this dissertation, that is, EM (chapter three) and RJ (chapter four). This methodological chapter provides further details on how we have attempted to answer the research questions and how we have carried out the research objectives. We will introduce the research design and discuss the data collection methods, the data processing and data analysis. The chapter ends with a section concerning the quality of the research and some of its ethical considerations.

2.2 Case study research

The study is based upon the premise that the best way of exploring the realities of the process of policy transfer is to examine concrete cases of policy change. As noted in the general introduction, our study concentrates on two developments in Belgian penal policy EM on the one hand, and RJ on the other. George and Bennett (2005: 5) define case study analysis as '.... a detailed examination of an aspect of a historical episode to develop or test historical explanations that may be generalisable to other events'. The utility of the case study approach has been recognised in social sciences and the method is therefore often used (Ogg, 2015: 104). Sayim (2011: 582) argues that '… case study analysis allows for a deeper understanding of events, institutions, and processes, and their interaction within the particular context'. According to Hall (2004: 86) this kind of analysis has a number of benefits, which are, a flexible research design, an enhanced capacity for theory testing and building, and the cumulation of multiple sources of data. These advantages were of value in drawing up the methodology of this dissertation. On the hand, the flexible research design facilitated the comprehensive analysis of the origins and development of both EM and RJ. On the other hand, through the

analysis of a collection of documentary material and interview data we were able to test the theory of policy transfer.

Although case study analysis has often been used in policy transfer research (Marsden & Stead, 2011: 495), it has also been criticised because of the reliability and generalisability of the research findings (Ogg, 2015: 102). Reliability refers to the consistency and trustworthiness of research findings. It is often treated in relation to the issue of whether '… a finding is reproducible at other times and by other researchers' (Kvale & Brinkmann, 2009: 245). In qualitative research diverse techniques are being used, such as interviews, participant observations, documentary analysis, etc, to obtain data which are consistent in order to increase the reliability of the study (Kraska & Neuman, 2011: 127). The validity of a study refers to whether a method actually investigates what it pretends to investigate. Case study research is considerably criticised concerning the external validity of the findings (Ogg, 2015: 102). External validity refers to '…. the truth, the correctness, and the ability to extrapolate conclusions to broader phenomena by studying a single case' (Kvale & Brinkmann, 2009: 246). Critics argue that case study research is generally weaker with respect to external validity (Gerring, 2007: 43). They state that it is difficult to generalise collected data or view them as being representative. That is because case study research includes, by definition, only a small number of cases of some general phenomenon (Gerring, 2007: 43). Therefore, it is possible that a selection of other cases of policy than the ones being chosen for this study might present different insights about the nature and extent of policy transfer.

Be that as it may, the concerns about external validity and consistency are not solely limited to case study research. Indeed, benefits and shortcomings are related to any method of research. As Tansey (2007: 769) argues, '… methodological choices involve trade-offs, and how we evaluate those trade-offs and develop research designs on the basis of those evaluations will depend strongly on the assumptions we hold and the research aims we are seeking to pursue'. Therefore, despite the limitations that can be formulated with respect to case study analysis, the current research has been designed as a multiple case-study involving two case studies.

The first case study relates to *EM.* In Belgium, EM has in recent years grown exponentially. On a daily basis approximately 2000 persons in Belgium are being electronically monitored by means of tagging and GPS technology. All of this equipment is being delivered by private companies.

The second case focuses on how and to what extent *RJ* ideas and practices, such as victim-offender mediation (VOM), family group conferencing (FGC) and peacemaking circles (PMC), have been transferred to the Belgian context. Such ideas and practices have diverse roots but they often tend to go back to pre-modern ways of conflict resolution and reconciliation

such as those of First Nations (Canada), aboriginals (Australia) or Maori (New Zealand). Karstedt (2002: 117) usefully describes this as the travel mode of 'indigenisation' which implies '… that concepts are adapted and blended into the existing culture of control on the one hand, and that indigenous concepts or 'blended ones' travel from the periphery to the centre on the other hand'. At first sight, Belgium has gone quite far with introducing restorative ideas in the penal system, in particular in the areas of victim-offender mediation and family group conferencing which became law in 2005 and 2006. In 2013, Belgium has, together with Germany and Hungary, been experimenting with so-called peacemaking circles (PMC) in order to explore whether such practices, coming from First Nations (Canada), could be implemented in a European context.

A number of criteria have influenced the selection of the two cases for our study. First, Bennett (1991b) proposes to select case studies which focus upon policy innovation. EM is a relatively new idea in the Belgan criminal justice policy context as well as in most jurisdictions elsewhere in Europe. In contrast, RJ ideas and practices have a long history and tradition in Canada, Australia and New Zealand. It is interesting to inquire how processes of transfer may have placed a role in such 'new versus old' penal policies. Second, this study focuses on Belgium and has therefore the explicit intention to shift focus from the Anglophone parts of the world (see e.g. Jones & Newburn, 2007) to, in particular, a continental European policy making context (Belgium). Indeed, as we discussed in the previous chapter, there is a need for more empirical studies on policy transfer, in particular for the non-US/UK parts of the globe. In selecting two cases we have chosen 'depth' over 'breadth', that is, doing less cases more detailed instead of multiple cases more general (Berry, 2002: 680).

2.3 A qualitative research design

With regard to identifying and understanding the various policy processes in each of the two selected policy domains it seemed convenient to adopt a qualitative research approach. Qualitative research is predominantly used when researchers aim to comprehend a particular behaviour, event or object from the perspective of the respondent and to grasp their meanings and interpretations (Hennink, Hutter & Bailey, 2011: 9). In addition, qualitative methods allow us to explore particular items of the policy process which we cannot grasp with quantitative methods, such as '… innovation, originality, complexity, interactions, conflicts and contradictions' (Duke, 2002: 41-42). When studying policy transfer researchers are largely concerned with understanding the conditions for transfer in the receiving state and how differences between states may adjust the speed, scope and extent to which policies coming from outside the nation state are blended into the domestic policy-making process. These

scholars develop an interest in what kind of actors are pushing the transferring process and what kind of actors are most responsive to these policy imports (Marsh & Sharman, 2010: 42). To understand the various processes of importing and exporting policies and to comprehend the role any actors plays in it, the transfer literature uses qualitative studies which concentrate on a detailed analysis of the transfer of a policy from one jurisdiction to another, or perhaps a series of linked policies, between two or more countries (Marsh & Sharman, 2010: 38). Following this, we assume qualitative research to be the most convenient for this research as well. Whereas this study is focused on gaining detailed insight into the various and complex processes of policy making and policy development as they occur in each case study, how participants assume penal policy making occurs in Belgium, how they perceive and interpret penal policy development, and how policy transfer can contribute to this process of policy making, qualitative research is the most appropriate method.

Much of the existing research on policy transfer in criminal justice has been about updating and refining current theoretical frameworks derived from political science. The details and processes of how transfer takes place in practice have received much less attention (McFarlane & Canton, 2014: 7). Whereas our study is likewise concentrating on theory development and improving the existing policy transfer framework, it will at the same time provide, first, detailed empirical insight in the transfer of policy ideas/symbols/rhetoric, policy content and policy instruments, and second in the various processes by which such transfer occurs or is restrained.

Research was undertaken based upon a strategy of methodological triangulation. Triangulation provided for a rigorously cross-referencing of the data collected from the interviews, firstly with data obtained from published first-hand accounts or other documentary sources, and secondly with published secondary source material (Davies, 2001: 77-79). In conducting interviews it happens that interviewees have different perspectives of events or memorise only selective parts of a particular event or period. This can create discrepancies between hard facts and individuals' perceptions. In order to overcome this error, researchers need to systematically compare and contrast the interviews' content with official primary and secondary documentation. In this dissertation, empirical data in the case study is collected by means of documentary analysis and semi-structured elite interviews. Although both data collection methods are being discussed separately below, they were often used interdependent in the process of data collection. On the one hand, the initial collection and analysis of various documentation helped to draft a provisional list of actors who could be of interest for the interview stage. In addition, they provided for historical and contextual narratives of each of the two case studies informing the direction and focus of the interviews in a later stage. On the other hand, by meeting and talking to various respondents it was

possible to get access to internal documents (such as diaries, emails, etc.) that are not available in the public domain.

2.3.1 Primary method: documentary analysis

The first stage of the empirical study was devoted to collecting and reviewing in detail the literature and documentary evidence related to the two cases. Conducting a documentary analysis provides opportunities to explore policies that represent different dimensions of the policy process in order to gain insight into the details of the various policy processes. Documentary sources can reveal historical antecedents of the policy which could be used as a starting point for data gathering in a later phase of the research (Simons, 2014: 16). In addition, one can detect particular discourses and ideologies by reviewing existing documentary resources in detail. It is, moreover, at the same time useful for understanding the overall policy context (Simons, 2014: 16). Whereas particular cultural sensibilities and shifts in social structure can make certain forms of policy change and policy transfer more likely an observation of the way in which ideas are formulated and put on the agenda is of high importance (Jones & Newburn, 2002a: 114). The main aim of this stage was to use the available literature to produce a series of narratives of how policy changed in the two specific areas of study. Based on documentary evidence, these narratives provide a chronological overview of the policy changes that can be observed in each of the two areas. In this regard, these historical narratives can provide some important first evidence about the role of policy transfer in penal policy making in Belgium. In addition, these narratives were subsequently used as a framework to inform the selection of interviewees and the content of interview schedules.

The documentary analysis in this dissertation includes four types of documentary material. The first group of documents consists of scientific literature on EM and RJ, in general, and on the (historical) development of both policy areas in Belgium, in particular. A range of documentary sources have been used such as academic books and journal articles, and statistical data material. The second group of documents contains primary government publications. Primary sources were analysed in order to inquire the concrete details of formal policies. These include federal and community legislation, circulars and official governmental reports. In addition, also European and international publications were analysed. The third group encloses parliamentary reports and debates, such as an analysis of Parliamentary debates and committee reports. Committee for the Prevention of Torture (CPT) reports were also studied with regard to the case study on EM. The analysis of the fourth group of administrative documents provided additional accounts and useful insights that broadened the perspective on both cases and indicated whether and how these issues play out in society or in the media.

This group of documents included inter alia plans, evaluations and annual reports of various organisations such as Moderator, Médiante and Europris. We also examined the development of each of the policy initiatives described via reporting in a range of broadsheet newspapers (factual reporting, opinions, debate, …).

In collecting and reviewing the literature and documentary evidence related to the two cases there were some practical issues. There were more than once difficulties with tracing certain documents and gaining access to these documents. In particular, when gaining access to documents from the past that were not available in a digital format. In that sense, the researcher depended more than once on the goodwill of the respondents to provide access to these documents. In addition, the same is true for consulting governmental documents that are not publicly available.

2.3.2 Secondary method: interviews

The *second stage* of the study consisted of a series of elite interviews. Elite interviewing is often used as a method for collecting data. However, the term 'elite' is not well-defined (Harvey, 2011: 432). Because 'elite' can mean many things in various contexts scholars have been developing a range of different definitions. Some scholars consider individuals to be elites when they have a high position of power in a particular organisation, when they have a specific job title, or because they are '… high skilled, professionally competent and class-specific' (McDowell, 1998: 2135). However, individuals can acquire or lose their elite status over time, or have an elite status only in some but not all locations (Harvey, 2011: 433). Given its broad understanding across social sciences, scholars have tended to adopt different approaches (Harvey, 2011: 432). We prefer to define 'elite' in a more general way stating that elite interviewing '… can be used whenever it is appropriate to treat a respondent as an expert about the topic at hand' (Leech, 2002: 663). Although a number of the respondents in this study can be defined as 'political elites', referring to their particularly influential role in the policy process (Delaney, 2007: 210), the sample also includes other key-actors, such as academics, public servants, journalists or representatives of the private sector, who have been close observers of the various policy processes in each of the two case studies. As already noted before, the selection of respondents as well as the specific content of the interviews was informed by the provisional results from the documentary analysis. Interviews were conducted both in Belgium and other (European) countries, which were, the Netherlands, England, Scotland and Latvia. In order to gain insight into the extent to which the drafting and introduction of EM and RJ in Belgium can be comprehended using a 'policy transfer'-framework we need to '… reconstitute, link by link the long chain of institutions, agents and discursive supports', that allowed for the internationalisation of such ideas and practices (Earle, Newburn

& Crawford, 2002: 148). The group of interviewees included (former) ministers of justice, politicians, (former) policy entrepreneurs, civil servants/bureaucrats, members of criminal justice agencies and other key organisations, representatives of commercial companies, representatives of trade unions, academic experts and practitioners.

The interviews that were conducted were semi-structured interviews, which means that although the wording or order of the interview questions has been prepared in advance they can be altered in real time by the researcher conducting the interview (Davies, 2001: 76). For Duke (2002: 53), the advantage of semi-structured interviews lies in the fact that the researcher has the ability to make sure that all of her main interests are covered when conducting the interview, and that at the same time respondents have enough space to bring up issues that they feel are important (Duke, 2002: 53). Semi-structured interviews thus contain both highly structured and relatively unstructured parts (Davies, 2001: 76). Semi-structured interviewing is particularly useful when interviewing elites. Semi-structured interviews are viewed as being more adequate than unstructured or highly structured ones because they have the opportunity of changing the balance of power in the direction of the researcher by giving him or her full control over the interview's structure (Duke, 2002: 53).

2.3.2.1 Interview schedule for the semi-structured interviews

The interview schedule was prepared in advance based on a detailed understanding of the scientific literature on policy transfer and the literature linked to each of the two case studies. The interview schedule has regularly been modified throughout the empirical study depending on new insights or experiences of the interviewees. As such, insights gained from the first few interviews updated the subsequent ones (King & Horrocks, 2010: 37). The interview schedule begins with some simple introductory questions to build a basic level of understanding with the interviewee. The schedule was then split up into three subject areas. The three main areas were: (1) events and circumstances leading to the introduction of EM and RJ; (2) the role of policy transfer in the initiation of these subject areas; and (3) further development of the subject areas.

2.3.2.2 Practical and general remarks of the interviews

All interviews were carried out by the PhD researcher in person, face-to-face. Each interview started with a detailed description of the research, its objectives and how the data would be used in order to deliver outcomes of the study. In addition, the rules for informed consent were repeated. The interviewees were recalled of their willingness to take part in the interview and

were notified of the possibility to demand full anonymity and confidentiality. In order to make a correct and detailed verbatim transcript of the talks, all interviews were recorded. It was explained to the respondents why the recording was necessary and who would have the authority to listen to the recordings or read the transcript. Only one interviewee posed an objection to a recording of the conversation. Notes were taking during the audio-recorded interviews to indicate issues which needed to be followed-up further at a later point in the course of the interview (King & Horrocks, 2010: 47).

The interviews lasted on average an hour and a half. The interviews were conducted over different periods of time. The interviews in the first case study on EM took place during August and December 2015 and during January and February 2017 and 2018. The interviews regarding the case study on RJ took place between September 2017 and April 2018. However, because of work arrangements of some of the interviewees or because of unforeseen opportunities for the interviewer to talk to important respondents, a number of interviews have been conducted throughout the process of writing this dissertation. According to Snow and Anderson (1991: 161) a case study conducted over time provides a major advantage as: '… it facilitates the possibility of capturing and analysing events and happenings, interactions and relationships, and groups and institutions as they emerge and evolve across time'. All interviewees were left free to choose the date, place and time of the meeting which minimised their traveling time and expenses. Every interview was conducted in places most suitable for the respondent, such as at the participants' home or at the participants' work space. Consequently, the PhD researcher also travelled abroad (The Netherlands, England, Scotland and Latvia) to collect data. The majority of interviews were conducted in Dutch. In some others the official language was English or French.

In examining the accounts provided by the participants in the policy process we need to consider a number of difficulties. One of these difficulties which is particularly apparent in examining the (historical) development of an event is that of participants accurately recalling the facts years after the events happened. In order to address this limitation to some degree we tried to compare various sources against each other. The narratives of key actors in this dissertation were balanced against each other, and were in turn examined in contrast with the findings of the documentary analysis. Ultimately, and we therefore agree with Jones and Newburn (2007: 38) it is that '… the true picture of how or why things happened cannot be uncovered, and any study relying to a great degree on policy actors' accounts requires a considerable degree of informed, but nevertheless subjective, judgement by the researchers'.

2.4 Respondent recruitment

The process of respondent recruitment involved two stages. In the first stage we defined the appropriate study population by selecting respondents for the elite interviews. In the second stage we recruited the identified respondents to take part in the interviews. We will elaborate on both of these stages below.

2.4.1 Respondent selection

Whereas the study's aim is to examine whether the transfer of policy has been an important element in the development of two key areas in Belgian penal policy, the overall study population consists of policy makers and other actors who can accurately observe various policy processes within Belgian penal policy making and who can therefore offer us vital information. Because the research focuses on two specific case studies, the study population solely contains actors who were closely related to EM and RJ and who have observed or participated in various policy processes within these penal domains. In detail, the sample of the first case study contains six distinguished groups of respondents: (former) Ministers of Justice; (former) policy entrepreneurs; (former) criminal justice professionals; academic experts; representatives from commercial companies; representatives of the trade unions. The sample of the second case study contains five distinguished groups of respondents: (former) Ministers of Justice; (former) policy entrepreneurs; members of the judiciary; academic experts; and practitioners. The group composition is different for each of the two case studies. In total, the overall sample of the study includes 65 interviewees.

2.4.1.1 Electronic monitoring

The analysis of the first case study is based upon 37 interviews with 40 respondents, including semi-structured interviews with 2 former Ministers of Justice, 12 (former) policy entrepreneurs, 16 (former) criminal justice professionals, 5 academic experts, 3 representatives of commercial companies, 1 representative of a trade union and 1 representative of a non-governmental organisation. All interviews were conducted in Belgium, except for 7 interviews. One interview has been conducted in England, 4 interviews in Scotland, one in Latvia and another one in The Netherlands. All interviewees were closely involved in the development or implementation of EM or have observed such processes. Table 2.1 shows the group composition of respondents in the case study on EM.

Table 2.1
Respondents in the case study on EM

Former Ministers of Justice	(Former) policy entpreneurs	(Former) criminal justice professionals	Academic experts	Commercial companies	Representatives trade union	Representatives non-governmental organisations
		X				
	X					
	X					
	X					
		X				
		X				
	X					
	X					
	X					
	X					
X						
		X				
		X				
		X				
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			X			
				X		
				X		
		X				
		X				
					X	
		X				
		X				
		X				
	X					
		X				
						X
	X					
			X			
			X			
			X			

2.4.1.2 Restorative justice

The analysis of the second case study is based upon 24 interviews with 25 respondents, including semi-structured interviews of 4 members of the judiciary, 4 (former) policy

entrepreneurs, 5 academic experts, 8 practitioners, 1 lawyer, and 3 civil servants. All interviews were conducted in Belgium. All interviewees were closely involved in the development or implementation of RJ or have observed such a process. Table 2.2 shows the group composition of respondents in the case study on RJ.

Table 2.2
Respondents in the case study on RJ

Members of the judiciary	(Former) policy entrepreneurs	Academic experts	Practitioners	Lawyers	Civil servants
		X			
			X		
			X		
			X		
			X		
			X		
	X				
X					
		X			
		X			
			X		
	X				
	X				
		X			
			X		
X					
			X		
	X				
X					
		X			
					X
				X	
X					
					X
					X

2.4.2 Respondent recruitment

Researchers often use the snowball recruitment method when it is difficult to identify specific individuals who can deliver important, useful and reliable information for their study with other recruitment methods. Through asking a study participant or key informant whether they know anyone else who meets the study criteria and would like to contribute to the study, and by repeating this process several times, the sample grows (Mortelmans, 2010: 104; Hennink, Hutter & Bailey, 2011: 100). Snowball sampling also proved to be a solid method for this study. It was not clear at the start of the research which individuals could deliver relevant information and would therefore be part of the sample. Although a thorough analysis of the relevant documentation provided for a list of potential respondents, a large part of the study population

was selected by asking interviewees whether they knew anyone else who could participate in the study in a constructive way. In turn, these 'new' actors provided us with new names in order to further complete the sample. A sample has reached its maximum size if the same people are mentioned multiple times (Mortelmans, 2010: 104). This process is referred to as saturation. In this study, the maximum size of the EM sample totalled 40 respondents. The group of interviewees in the RJ case study contained 25 respondents.

The respondents were contacted via email, telephone or via new social media (Facebook and LinkedIn). The first contact consisted of an email being sent requesting the respondent's co-operation with the research. Each email contained a detailed explanation of the research and its objectives. This was particularly important for this study because most of the respondents were asked to elaborate on policy developments that happened more than ten years (sometimes even more than twenty years) ago. By providing them detailed information about the subject of inquiry they would have the opportunity to consult papers or books, or discuss the matter with others to remind themselves of the particular event or period (Lilleker, 2003: 209). Furthermore, it was made clear that their views, insights and experiences would be useful and needed in answering the research questions. For the case study on EM 57 invitations have been sent. For the case study on RJ 33 individuals were invited to take part in the research. The majority of the individuals who received an email responded and took part in the study. Most meetings were scheduled then via telephone or a follow-up email. Individuals who were not reached after a first contact received two reminders (sometimes even up to five reminders) in the course of the empirical study. Gaining access and establishing rapports was an ongoing process throughout the research. Conducting interviews and making the research as well as the PhD researcher 'known' within various 'networks' provided for some additional meetings which proved to be very useful for the empirical study. For instance, the PhD researcher had the opportunity of meeting and talking to an international leading scholar in the research domain of EM who, at his turn, arranged complementary talks with a number of commercial company representatives and policy advisors in Scotland.

However, gaining access to experts can sometimes be problematic. A great difficulty arose when a number of individuals needed to be contacted who were retired or no longer active in public service. These people were pivotal actors at one period in time, but their current whereabouts were hard to detect. The same problem came up when people had changed jobs. The Internet proved to be a very helpful tool in obtaining contact details of those people still working at the time of data collection. Contact details of those individuals who were not available on the internet were eventually obtained with the help of several gatekeepers, that are people 'who have the authority to grant or deny permission to access potential participants and/or the ability to facilitate such access' (King & Horrocks, 2010: 31). Several staff members

of the Ministry of Justice, colleagues within the Leuven Institute of Criminology (LINC), other interviewees or former colleagues who remained friends after working together provided such access and opportunities.

Unfortunately, some key players did not take part in the research which can be considered as a limitation of the research. They either did not respond to the multiple invitations (first case study, n= 10 ; second case study, n= 6) or they were unwilling to take part in the research as they indicated not being able to provide useful data (first case study, n= 7; second case study, n= 2). As a result, there are some perspectives missing in the research which should be kept in mind when reading the results in chapther three (EM) and four (RJ). Indeed, it was challenging to get in touch with people from outside Belgium for both case studies so the share of this group of respondents in the overall population is rather limited. In addition, regarding the case study on EM it was difficult to get in touch with people from the commercial sector so also their share is rather limited.

In general, we are more than pleased with the degree of access provided by the key players in the policy process and are confident that we have reached data saturation whereas there is enough data to reproduce the study and further coding is no longer beneficial. However, despite the fact that we gained access to a large number of experts in the fields of EM and RJ there are some limitations associated with interviewing elites or experts. Indeed, there is the risk of social desirability in which those closely involved in the area of EM or RJ have the tendency to answer questions in a way that will be viewed favorably by the interviewer. In that sense, there is a certain risk that our respondents did not show the back of their tongues or did not provide enough detailed insights into the so-called ‘backroom politics’. Related to this, there is also a certain risk that insiders sometimes painted a somewhat too positive picture, a too polished image of the actual situation. This is probably even more of a risk within the case study on RJ as the research has been conducted from LINC and a large number of respondents are insiders or are closely related to the insiders. In that sense, a critical distance has been taken towards statements from colleagues in the own institute, towards the historiography of the institute. Moreover, an additional documentary analysis has been conducted in order to gain a number of objectifying elements but the risk that there can be a difference between discourse and practice should be kept in mind when reading the results in chapther four (RJ) (for more details see sections 4.4.6.3).

2.5 Data analysis and coding of the interviews

In order to identify and interpreted the experiences and insights of the respondents, the collected data were thoroughly analysed. Policy transfer was operationalised according to the

Dolowitz and Marsh framework (1996, 2000) which generated a number of theoretical propositions that were used to set up the coding scheme. We created a list of categories which are: (1) what was transferred; (2) why did transfer occur; (3) who was involved in the transfer; (4) are there different degrees of transfer; (5) from where are lessons drawn; and (6) which factors constrain policy transfer. We used the method of content analysis to organise the gathered documentary materials. We conducted our content analysis of the datasets manually, using the Adobe pdf search engine and visual inspection.

The data analysis of the interviews consisted of a two-stage process, data transcription and coding of the transcripts. During the first stage, all interviews were transcribed by the PhD researcher in person who provided for a literal transcription of the audio recordings. The interviews were transcribed verbatim, capturing both the words spoken by the interviewee as well as the interviewer. Interviewees do not always speak in complete sentences, but often use pauses, hesitate, rephrase or repeat sentences (Hennink, Hutter & Bailey, 2011: 211). Because fragmented sentences using expressions, such as 'hmm', 'uh huh' or 'ok', impede the transcript to be fluidly written, the PhD researcher omitted these expressions from the transcripts. Moreover, a fragmented written transcript could pose potential difficulties at the stage of data analysis. Annotations on respondents' behaviour such as '(sighs)', '(laughs)', '(meant ironically)', '(special intonation)' and '(pauses for reflection)' were made. The interviews were transcribed completely. Even those passages that were at first sight not directly relevant to the research questions were transcribed, as this could be important to gain insight into the overall context. In some interviews a few words were not accurately audible which resulted in leaving them out of the written document. This was mainly because of difficulties with the clarity, speed or accent of some of the interviewees (mainly the interviews conducted in English). Annotations for inaudible words were made in the transcripts. These errors, however, posed no challenges to the overall understanding of the transcripts. All interviews were recorded without the occurrence of any major problems. All interview recordings were of high quality, even when unexpected background noises entered the conversation.

During the second stage of the interview analysis the interview transcripts were entered and stored into the qualitative data analysis software package NVivo (version 11). The analysis of the qualitative data proceeded through a method of coding and categorising. The process of coding means that the interview transcripts are broken down into segments of text to which labels (codes) are attached. The coding process is divided into three stages, which are called respectively open coding, axial coding and selective coding (Flick, 2006; Mortelmans, 2007; Decorte, 2009). The interview transcripts of both case studies were analysed separately. The

interview transcripts of the case study on EM were analysed first, the ones of the case study on RJ were second in line.

The first phase of coding, the phase of open coding, refers to the initial process by which raw data are first systematically analysed and categorised. Large amounts of text are broken down into meaningful categories, codes (Mills, Durepos & Wiebe, 2010: 155-156). The open coding process started with the careful rereading of each of the interview transcripts, attaching labels to fragments of the text that related to the research questions. This means that the fragments coded related to participants' experience with and knowledge about the transfer of policies in the area of EM. The analysis started by coding all text passages in which interviewees talked about which actors played a vital role in the transferring process. The same was done for the passages in which they talked about the reasons for transferring policies, the content of the transfer, which countries were mentioned being important in the transfer of policies, the transferring process in itself, and the difficulties that arose when transferring policies. After this, the data coded under each of these codes were broken down into more detailed codes.

In the next phase all codes from the previous phase were organised into higher categories. The most important codes became main codes, the other ones sub codes. Relationships were sought between and within categories. The list of codes was organised on the basis of the policy transfer framework resulting in the main codes being (1) who is involved in policy transfer, (2) why engage in policy transfer, (3) what is transferred, (4) which degrees of transfer exist, (5) from where is policy transferred, and (6) what constrains the transferring process. Through axial coding the number of codes diminished and a hierarchical structure was developed.

Selective coding is the final stage of data analysis and refers to finding patterns between the various codes and further structuring the data. Selective coding is a process of reflection rather than an actual coding process. Core categories are selected from the data through which a 'story' can be told (Gray, 2014: 617).

All of the before mentioned steps were repeated in the exact same order for the analysis of the interview transcripts relating to the case study on RJ.

The following schematic overviews (table 2.3 and table 2.4) are the codes used with the corresponding respondents for both case studies.

Table 2.3
Used codes with corresponding respondents in the case of EM

	Code	
Who transfers policy?		
	Politicians	18 EM 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 15, 16, 22&23, 30, 31, 32, 36
	Policy entrepreneurs	13 EM 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 15, 30, 36
	Criminal justice professionals	22 EM 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 19, 20, 22&23, 30, 31, 32, 37, 38, 39
	European network	7 EM 1, 2, 3, 4, 15, 24, 32
	Academics	16 EM 1, 2, 3, 4, 5, 6, 7, 9, 11, 15, 20, 30, 32, 36, 38, 39
	Commercial companies	27 EM 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22&23, 24, 29, 30, 32, 33, 34, 36
Why engage in policy transfer?		
	Eagerness of politicians	5 EM 1, 11, 12, 31, 32
	Technology is sexy	7 EM 2, 10, 11, 13, 17, 32, 37
	Progressive policy entrepreneurs and criminal justice professionals	5 EM 1, 4, 11, 12, 32
	EM as a promising alternative	7 EM 2, 4, 8, 11, 15, 19, 31
	Overcrowding	22 EM 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 19, 30, 31, 32, 33, 36, 37, 38, 39
	Limiting detention damage	14 EM 2, 3, 4, 6, 8, 10, 11, 13, 17, 18, 31, 36, 37, 38
	Economic resources	10 EM 2, 9, 13, 16, 18, 20, 30, 31, 34, 38
	New developments in technological means	12 EM 1, 2, 4, 6, 10, 11, 12, 15, 18, 19, 32, 34
	Eye catcher in the media	3 EM 4, 20, 31

	Lobby by commercial companies	13 EM 1, 6, 7, 8, 9, 10, 13, 15, 18, 19, 20, 32, 39
What is transferred?		
	1996 white paper	10 EM 2, 3, 4, 5, 6, 9, 10, 11, 20, 31
	Pilot project	15 EM 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 15, 19, 30, 31, 32
	Slow and cautious take off	6 EM 6, 7, 8, 9, 30, 31
	Necessary involvement of the private sector	8 EM 1, 2, 4, 6, 12, 19, 22&23, 32
	Technologies tested in the experiment	9 EM 1, 4, 6, 11, 12, 13, 19, 30, 32
	'Belgian model'	21 EM 1, 2, 4, 5, 6, 7, 10, 11, 12, 13, 15, 16, 17, 20, 22&23, 30, 31, 32, 37, 38, 39
	Prison-based	10 EM 1, 4, 6, 7, 10, 16, 17, 30, 31, 32
	Back door strategy	2 EM 4, 6
	Emphasis on social support	10 EM 1, 5, 6, 12, 15, 16, 20, 30, 31, 32
	EM used for more serious crimes	3 EM 12, 15, 30
	EM as a control tool: managerialism	16 EM 4, 7, 8, 10, 11, 12, 13, 15, 16, 17, 19, 20, 22&23, 30, 31, 32
	Tackling prison overcrowding	12 EM 7, 11, 12, 13, 15, 16, 17, 22&23, 29, 31, 32, 36
	Means against impunity	10 EM 6, 8, 10, 12, 13, 16, 18, 20, 30, 31
	Reducing the social support for EM supervisees	13 EM 1, 4, 5, 6, 7, 8, 12, 15, 16, 18, 22&23, 31, 32
	Private sector as a steering factor for new developments	7 EM 4, 10, 13, 15, 19, 32, 34
	GPS	12 EM 1, 6, 7, 8, 10, 11, 13, 15, 16, 18, 20, 32
	Voice recognition	9

		EM 7, 11, 13, 15, 16, 18, 20, 31, 33
	Alcohol monitoring	3 EM 15, 20, 32
	EM for victims	5 EM 15, 18, 20, 22&23, 32
	Diversification	2 EM 12, 32
	Home detention with voice recognition	5 EM 11, 13, 20, 31, 33
	Remand detention with Global positioning system	13 EM 4, 7, 11, 12, 13, 15, 18, 19, 20, 22&23, 31, 32, 33
	EM as an autonomous sanction	5 EM 9, 16, 18, 20, 34
	Terrorism and radicalisation	3 EM 18, 20, 22&23
	Domestic violence	2 EM 20, 22&23
	Sexual delinquency	2 EM 15, 32
From where are lessons drawn?		
	Desktop research	15 EM 1, 2, 3, 4, 6, 7, 8, 9, 12, 16, 17, 18, 30, 31, 33
	Canada	5 EM 1, 2, 7, 12, 31
	Israel	3 EM 1, 8, 12
	US	2 EM 19, 32
	Scandinavia	5 EM 4, 7, 12, 13, 16
	England and Wales	10 EM 4, 7, 8, 12, 13, 16, 17, 22&23, 32, 33
	France	7 EM 7, 16, 17, 18, 32, 33, 34
	The Netherlands	7 EM 8, 17, 18, 32, 33, 34, 36
	CEP-conferences	10 EM 1, 8, 10, 15, 19, 24, 32, 37, 38, 39
	Role of private actors in CEP	9 EM 1, 6, 7, 10, 13, 15, 18, 24, 32
	Round table conferences	1 EM 6
	Committee of Ministers of Justice of the Council of Europe	2 EM 17, 20
	Reversed policy transfer	5

		EM 1, 4, 10, 15, 32
	Visits to Belgium	4 EM 17, 18, 20, 32
	Publications and presentations abroad	3 EM 12, 16, 18
	International travels in other domains	2 EM 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, 14, 17, 21, 22&23, 29, 32, 33, 34
Are there different degrees of transfer?		
	Inspiration	/
	Emulation	/
Which factors constrain policy transfer?		
	Prudent politicians, academics and criminal justice professionals	20 EM 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 16, 17, 19, 20, 30, 31, 33
	Belgian state structure	12 EM 1, 4, 5, 7, 9, 10, 17, 20, 22&23, 29, 31, 34
	Confederalisation: sixth state reform	12 EM 7, 9, 10, 13, 17, 18, 20, 22&23, 29, 31, 33, 34
	A conservative prison system	10 EM 2, 3, 4, 5, 16, 17, 29, 31, 33, 34
	Elements related to the individual country	5 EM 7, 10, 19, 32, 33
	The role of the Director-General: period of obstruction	3 EM 2, 3, 5
	Unforeseen incidents: role of the Dutroux case	7 EM 3, 4, 5, 9, 10, 11, 17
	Lack of financial means	6 EM 5, 17, 29, 31, 33, 34
	Need of political agreements	6 EM 3, 6, 24, 16, 17, 18
	Policy differences	13 EM 1, 2, 5, 7, 11, 13, 15, 16, 17, 22&23, 31, 33, 34
	Trial and error politics	18 EM 1, 2, 5, 7, 8, 9, 10, 11, 12, 13, 15, 16, 20, 22&23, 29, 31, 33, 34
	Houses of justice versus the prison system	13 EM 1, 4, 7, 9, 10, 12, 13, 15, 16, 20, 31, 32, 34

	Changing relationships between public and private sector	6 EM 1, 4, 10, 13, 15, 20
	Influence of the media	7 EM 10, 16, 17, 20, 31, 34, 36
	Lack of debate	6 EM 1, 2, 12, 16, 32, 34

Table 2.4
Used codes with corresponding respondents in the case of RJ

	Code	
Who transfers policy?		
	Academic experts	18 RJ 1, 2, 3, 4, 6, 7, 8, 10, 11, 12, 13, 15, 16, 17, 18, 20, 23&24, 25
	Practitioners	12 RJ 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 23&24, 25
	(Former) key professionals of the criminal justice system	3 RJ 1, 2, 4
	Politicians	15 RJ 1, 2, 3, 5, 6, 7, 8, 10, 11, 12, 16, 17, 20, 22, 23&24
Why engage in policy transfer?		
	Eagerness of academic experts in Leuven	10 RJ 3, 7, 8, 11, 12, 15, 18, 20, 23&24, 25
	Restorative justice as a 'third' way	2 RJ 4, 23&24
	The need for penal reform	11 RJ 2, 4, 7, 8, 10, 11, 12, 15, 17, 23&24, 25
	Victims' movement	7 RJ 1, 2, 4, 7, 8, 17, 20,
	Trending concept	3 RJ 5, 11, 23&24
What is transferred?		
	Family group conferencing	5 RJ 1, 3, 9, 13, 17
	Wallonia	5 RJ 6, 7, 9, 11, 18
	Minimalist versus maximalist	2 RJ 1, 4
	Peacemaking circles	5 RJ 7, 8, 9, 12, 13

	Victim offender mediation	11 RJ 2, 4, 5, 7, 8, 11, 12, 16, 17, 20, 21,
	Wallonia	9 RJ 4, 7, 8, 10, 11, 12, 16, 18, 25
From where are lessons drawn?		
	Desktop research	7 RJ 2, 5, 8, 15, 17, 20, 21
	Council of Europe	6 RJ 2, 5, 7, 10, 12, 20
	European Union	5 RJ 2, 7, 10, 12, 18
	Norway	1 RJ 2
	The Netherlands	2 RJ 3, 8
	Northern Ireland	1 RJ 1
	France	2 RJ 2, 7
	Finland	1 RJ 2
	England & Wales	5 RJ 2, 3, 8, 9, 17
	Australia	2 RJ 1, 2
	Canada	7 RJ 2, 7, 8, 12, 15, 18, 20
	New Zealand	7 RJ 1, 2, 3, 9, 13, 17, 18
	US	2 RJ 1, 23&24
	United Nations	2 RJ 7, 20
	Flanders versus Wallonia	5 RJ 2, 6, 7, 16, 25
Are there different degrees of transfer?		
	Inspiration	4 RJ 7, 8, 9, 20
	Emulation	7 RJ 2, 3, 4, 7, 8, 15, 20
Which factors constrain policy transfer?		
	Cultural differences	16 RJ 1, 2, 3, 4, 5, 6, 7, 9, 13, 15, 17, 18, 19, 21, 23&24, 25
	Flanders versus Wallonia	9

		RJ 3, 4, 5, 6, 9, 15, 16, 17, 25
	Practical obstacles	14 RJ 2, 3, 4, 5, 6, 7, 11, 12, 13, 15, 16, 20, 22, 23&24
	Legal obstacles	13 RJ 1, 2, 3, 4, 8, 11, 12, 13, 15, 17, 19, 21, 23&24
	Lack of education on RJ	5 RJ 3, 5, 6, 7, 13,
	No added value with respect to other measures	10 RJ 1, 2, 3, 4, 6, 9, 13, 17, 18, 19
	Lack of comprehensive definition of RJ	4 RJ 1, 11, 18, 25
	Lack of knowledge about RJ	9 RJ 5, 6, 8, 9, 12, 15, 18, 19, 21
	Skepticism towards RJ	9 RJ 4, 6, 7, 11, 17, 18, 22, 23&24, 25
	Prudent juvenile judges, lawyers and magistrates	18 RJ 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 20, 21, 23&24
	Family group conferences	11 RJ 1, 3, 4, 5, 6, 7, 9, 13, 18, 19, 25
	Victim organisations	7 RJ 5, 11, 12, 13, 15, 17, 21

2.6 Quality of the research and ethical considerations

Being aware that interviewing people is subjected to a number of ethical considerations, we will discuss the basic characteristics that guide the ethics of this research, being informed consent, confidentiality, and the independence of the researcher.

As for the principle of informed consent, the participants were fully aware at all times that they were taking part in a research study. Their consent was sought before the data collection took place, that is, when they received the invitation by email requesting if they would be interested in participating in the study, and again at the start of each interview. Respondents were fully informed about the purpose of the study, what was expected from them and how much time and effort participation would take. The current study did not use any covert research techniques or deceive participants in any other way. Potential participants were free to decide whether to participate in the study and had the right to withdraw at any point in the process. They did not receive monetary compensation or any other incentive for their participation.

All participants were offered confidentiality at the beginning of the research. There were no special issues raised by the respondents regarding the confidentiality of the study.

The respondents were offered protection of privacy by anonymising potential identifying elements. The interview tapes did not mention the participants' names and after each interview the respondents received an identification code (group of actors they represent and a number). In the reporting of the results in the next chapters, quotations remain non-attributable to the participants as we only used the identification codes offering full anonymity to the participants of the study. During the period of the study, all data were stored savely on the researcher's computer (on the network hard drive) which is secured with a personal login and password, and sufficient back ups were made on the network hard drive and on a portable hard drive which was also password protected. Printed documents which were sensitive for privacy issues and interview notes were always thoroughly stored in a closet in a university office which was only accessible by the researcher. When the research is finalised, certain raw data will be stored at the KU Leuven depository. The audio files will be deleted and the audio transcripts will be transformed into read-only PDF files. All other analysed data will also be stored as read-only files at the depository.

As to the independence of the researcher, it is important to know that the study was financed by the Research Foundation Flanders (FWO). The results therefore do not suffer from any bias; the researcher was fully independent of any interest groups.

The quality of research is generally assessed by the concepts of validity and reliability. Some qualitative researchers (see e.g. Lincoln & Guba, 1985; Morse et al., 2002) reject the framework of validity which is commonly used for more quantitative research in the social sciences and argue for different standards for judging the quality of research. Guba and Lincoln (1985: 219), for example, propose four criteria, which are, credibility, transferability, dependability and conformability for assessing the solidity of qualitative research and explicitly present these as alternatives to more traditional quantitative criteria.

The concept of credibility refers to the trustworthiness of the findings. To ensure the credibility of our research we used the technique of triangulation. We used two different data collection methods (documentary analysis and interviews) and compared the results. In addition, we examined the consistency of different data sources from within the same method by interviewing people with different viewpoints and compare their insights. To become more aware of the PhD researcher's position toward data and analysis we used the technique of peer debriefing. Peer debriefing is '…a process of exposing oneself to a disinterested peer in a manner paralleling an analytical session and for the purpose of exploring aspects of the inquiry that might otherwise remain only implicit within the inquirer's mind' (Lincoln & Guba, 1985: 308). The supervisor of the project helped to uncover those biases and pitfalls in the research which are often taken for granted and provided for new perspectives during weekly planned meetings.

Transferability refers to the extent to which the findings of the research have applicability in other contexts. To improve the transferability of our research we used the technique of 'thick description', that is, we thoroughly described the research context and the assumptions that were central to the research. Moreover, both case studies were outlined in a detailed manner.

The criterion of dependability refers to '… the extent to which the findings are consistent and if the research were to be repeated, in the same context, with the same methods and with the same participants, similar results would be obtained' (Pandey & Patnaik, 2014: 5750). The dependability of our study is enhanced by the development of an audit trial. The PhD researcher described in detail how data were collected, how categories were derived, and how decisions were made throughout the inquiry. The interviews have also been recorded and transcribed in verbatim.

Confirmability refers to '… the degree to which the results could be confirmed or corroborated by others' (Pandey & Patnaik, 2014: 5751). Confirmability assumes a certain degree of neutrality ensuring that the findings of a study are formed by the participants and not the researcher's bias, motivation or interest. There are a number of strategies we used to enhance the confirmability of our study. The PhD researcher documented in detail the procedures for checking and rechecking the data throughout the study. With a view to test whether using the policy transfer framework had hindered the PhD researcher to be receptive to new categories emerging from the data, the analysis of the data happened in close cooperation with the supervisor of the research project. This helped in fostering dialogue which resulted in the development of complementary as well as different understandings of a study situation.

Chapter three

Electronic monitoring

3.1 Introduction

As we discussed in section 2.2 we choose to select two case studies for our study, that is, EM and RJ, which both focus upon the idea of policy innovation. EM in the area of prisons is a relatively new idea in the Belgian criminal justice policy context as well as in most jurisdictions elsewhere in Europe. It was only at the end of the 1990s that Belgium started experimenting with EM as it was introduced as an alternative measure to prison. Belgium was, however, one of the first countries in Europe to start experimenting with this new technology. Only England and Wales, Sweden and the Netherlands had already set up EM pilot projects shortly before. Since its advent in the US in the early 1980s, approximately 40 countries around the world have come to use one or more electronic technologies (radio frequency, global positioning system (GPS), voice verification and alcohol monitoring) for one or more penal purposes (pre-trial control, sentence, early or post-release from prison, inmate tracking within institutions) or latterly for use with immigrants awaiting deportation, either experimentally or as a mainstream programme (Nellis, 2018: 124; Nellis, Beyens & Kaminski, 2013b). Interestingly, systematic and sound international comparative quantitative data on the scale of the development of EM are non-existent or at least incomplete. The 2011 survey of the CEP revealed that the number of countries that has introduced or is introducing EM has increased worldwide and is still expanding. The CEP regularly conducts a survey to map the development of EM in Europe, but the survey does not provide complete coverage. Prior to the EM conference in Latvia in 2016, the CEP secretariat sent out questionnaires in order to receive an updated picture of the state of EM in Europe, but the response rate was very low (Beumer & Kylstad Oster, 2016). The 2016 Council of Europe Annual Penal Statistics (SPACE) II show that 31 member states of the Council of Europe have introduced EM at 31 December 2016: Albania, Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, the Netherlands, Norway, Portugal, Serbia, Spain, Sweden, Switzerland, Turkey, England & Wales, and Scotland (Aebi & Chopin, 2016: 19-20). These data are however not complete as, for example, Germany (Hessen) introduced EM in 2000 and this jurisdiction is not in the list.

This chapter discusses the origins of EM and its further development in Europe and it offers a detailed case history on the development of EM in Belgium since its advent. EM in Belgium

started off slowly but the number of people under EM steadily increased since 2007. The fourth section explores in detail the processes of policy transfer in the development of EM in Belgium. By discussing in more detail the categories of actors that have been involved in the transferring process, why they engaged in the policy transfer process, what is transferred, from where lessons are drawn, which degrees of policy transfer exist, as well as the limits to policy transfer in Belgium we will search for empirical evidence for policy transfer in the development of EM in Belgium. The chapter ends with some general conclusions about the extent and nature of policy transfer in the area of EM in Belgium.

3.2 The origins of electronic monitoring and its development in Europe

EM for offenders was first used in the US in the early 1980s. Inspired by previous work on the use of surveillance devices for students, psychiatric patients or offenders of behavioural psychologist Ralph K. Schwitzgebel (1963) (aided by his brother, Robert), mathematician and computer scientist Joseph Meyer (1971), and criminologists Barton L. Ingraham and Gerald W. Smith (1972) Judge Jack Love, a district judge in Albuquerque, became interested in the use of location monitoring to facilitate temporary release from prison for young adult offenders (Lilly & Nellis, 2013: 23-24). In 1983, Love was the first to subject a probation violator to electronic supervision. One year later, West Palm Beach County (Florida) applied it widely and in 1987 reports suggested there were a dozen projects in operation in the US (De Buck & D'Haenens, 1996: 3). The further development of EM in the US has, however, not been an unqualified success story. As Lilly & Nellis (2013: 35) state, the American impulse to continuously stimulate techno-utopian innovation in many areas of the nation's life often reflects the government's eagerness to be seen as modern, smart and even cool (Daems, 2015: 2). Although these innovations have been introduced within American penal practice throughout the years, its commitment to mass incarceration proved to be deeper and more pervasive. Indeed, by the end of the 1980s, EM was a rather minor phenomenon and ten years later it was still not widespread and came to be perceived as just another intermediate sanction (Lilly & Nellis, 2013: 35).

In the late 1980s electronic surveillance also came to be introduced in Western Europe as a means of enforcing compliance with curfews and home confinement (Nellis, et al., 2013b: 1). The first European countries that showed serious interest in and experimented with EM were England and Wales (1988-1989), Sweden (1994) and the Netherlands (1995). In the mid-1990s, England and Wales, Sweden and the Netherlands sent government delegations to the US to explore the potential of EM for domestic penal practice (Nellis & Bungerfeldt, 2013: 279). Interestingly, England and Wales and Sweden would draw different conclusions about how to implement EM in their jurisdictions. In England and Wales, policy makers promoted EM as a stand-alone curfew and outsourced the delivery of EM to the private sector. The Swedish

approach embedded the EM scheme within a probation-based programme and limited the private sector's role to the provision of the technological equipment. Whereas England and Wales already initiated the first EM pilot schemes in 1989-1990 it would take until 1999 before a national EM scheme was created. Sweden was the first European country to create a fully national scheme in 1996, two years after the start of the pilot project (Nellis & Bungerfeldt, 2013: 278). The Netherlands established their national EM home confinement scheme in 1998. There is no doubt that the use of EM house arrest in the US triggered policy makers' interest in England and Wales, Sweden, and one year later the Netherlands. In England and Wales, journalist Tom Stacy had been promoting EM already since 1981 as a means of reducing the use of custody in his country (Jones & Newburn, 2007: 44). It was only after he founded the Offenders Tag Association (OTA) in order to promote EM that the Anglo – Welsh government sent delegations to the US to explore its potential and initiate a pilot project (Mair & Nellis, 2013: 63; Jones & Newburn, 2007: 44). These pilots segued into a national stand-alone EM scheme in 1999. Around the same time an EM early release from prison programme was introduced in order to tackle prison overcrowding (Nellis, 2014b: 492). Over the following years, the Anglo-Welsh EM scheme quickly became the largest EM scheme in Europe because of its readiness to use stand-alone EM curfews on a large scale and at low tariff levels (Mair & Nellis, 2013: 77; Hucklesby & Holdsworth, 2016). The government continued to contract out the delivery of EM to regionally based commercial organisations which testifies to how EM came to be developed separately from the probation service (Mair & Nellis, 2013: 77; Nellis, 2014b: 492). As part of the so-called Transforming Justice strategy, England and Wales planned to create the largest and most advanced EM scheme in the world, combining both radio frequency technology and GPS tracking (Nellis, 2014a: 169). EM with radio frequency (RF) technology is used at all three stages of the criminal justice process: pre-trial as a condition of bail, as a sentence and in early release from prison. It is used for both adults and juveniles. Moreover, police forces have begun to use GPS technology to track offenders who are released from prison on a voluntary basis (Hucklesby & Holdsworth, 2016: 5). In that sense, Nellis (2014b: 169) emphasised the role played by the right-wing think tank, Policy Exchange, in promoting GPS-based tracking as a superior form of EM from the inside out.

Sweden adopted electronic surveillance under similar circumstances as England and Wales. Some measures were deemed to be too soft and EM was introduced as a means of finding credible alternatives to shorter prison sentences. Sweden implemented its EM scheme as a 'front door' strategy and integrated it within probation. The measure was called 'intensive supervision with electronic monitoring' (ISEM). Swedish policy makers never intended it to be a mere form of 'house arrest'. EM was therefore linked to a treatment programme with specific conditions. Supervisees were required to undertake study or to look for or have employment, to take part in personal change programmes, and accept regular home visits and checks on

drugs and alcohol use (Nellis & Bungerfeldt, 2013: 283, 292; Wennerberg, 2013: 113). Over time, EM's practice and target group has gradually expanded within Swedish penal practice. The involvement of the private sector has been and still is limited to the provision of the equipment. Since 2005, EM has also been used in Swedish prisons as a means of increasing security at a limited cost (Wennerberg, 2013: 114).

The Dutch government discussed the issue of EM already in 1987 in the context of prison overcrowding and cell shortage. The 1988 'Commission on EM for delinquents' (Schalken Committee), which was created to explore the potential of electronic house arrest as an alternative to imprisonment, suggested that electronic house arrest could be valuable in terms of rehabilitation, in combination with an intensive support program and 'meaningful activities' such as schooling or work. The committee, however, did not take a clear position but instead pointed at the importance of a social and scientific debate on the desirability of electronic house arrest (Boone, van der Kooij & Rap 2016: 1). This debate was held at a symposium in 1990 at which the majority of the organisations present were not in favour of the implementation of electronic house arrest either in the context of custody, as an alternative to detention or towards the end of a prison sentence (Boone, van der Kooij & Rap, 2016: 1; van der Wolf & uit Beijerse, 2017: 385). EM did, however, not leave the political agenda in the Netherlands. In 1994, a newly formed project group sent a recommendation to the Minister of Justice in which it advised to set up a pilot project with electronic house arrest (Boone, van der Kooij & Rap, 2016: 2; van der Wolf & uit Beijerse, 2017: 385) Eventually, in 1995, one year after Sweden initiated its pilot project, the Dutch government started its experiment with EM to tackle prison overcrowding and improve cost efficiency. The Dutch government integrated EM in the Probation Service. Electronic house arrest was introduced both as a 'front door' and a 'back door' strategy: in combination with a community service order and as an alternative to the last phase of a prison sentence in the context of detention phasing (Boone, van der Kooij & Rap, 2016: 2). Over the next years, the Dutch EM scheme was further elaborated. In 2000, an experiment was set up with EM as an alternative to remand detention for juvenile offenders. The government introduced electronic home detention in 2003 and pilots have been set up to test the use of GPS systems and mobile phones (van Swaaningen & Beijerse, 2013: 175-185). In 2013, the Master plan of the Dutch Prison Service for 2013–2018 was published in which electronic detention was presented as one of the viable instruments for reducing the expenditures of the prison service. A new bill on electronic detention was proposed in which two modalities were mentioned: a 'back door' modality to be applied after half of the prison sentence had been served but before conditional release and a 'front door' modality, as a substitution for any prison sentence shorter than six months (Boone, van der Kooij & Rap, 2017: 52). The bill was, however, not accepted and EM was never introduced as a stand-alone

measure but it is still used as an instrument to supervise the requirements added to several conditional sentences and measures (Boone, van der Kooij & Rap, 2016: 2).

All three pioneering countries became potential models for other European countries that were considering to introduce EM. They received therefore regular visits from foreign policy makers who were interested in using electronic supervision in penal practice. The Swiss authorities, for example, visited England, Sweden and the Netherlands in order to establish a strategic approach to using EM in penal practice (Lehner, 2003: 115). In the mid-1990s, the Belgian government also showed interest in the development of EM. As Belgian policy makers traditionally have been looking abroad for solutions to local penal problems, Beyens and Kaminski (2013: 151) state that the introduction of EM in Belgium cannot be disconnected from the context of policy transfer. Belgium was not a pioneer in introducing electronic surveillance in penal practice, but it was also not insensitive to developments in other countries (Devresse, 2014: 6; see section 3.4 for more details).

Since the 1980s, EM has been introduced in over forty countries worldwide and its practical application has been extended on a considerable scale since then (Nellis, 2018: 124). EM can be used in various ways and with many different aims. Indeed, EM has a 'chameleon' character as it has been presented as a solution to a wide range of penal problems (Nellis et al., 2013b: 5). Looking across different jurisdictions, EM has often been introduced as a solution for overburdened prison systems. Policy makers across the US and Europe believed it to be a quick, cheap and ready-made solution in reducing rising prison populations. Moreover, EM has also been introduced to make community penalties more demanding or to create a greater diversity in the range of intermediate sanctions between prison and probation (Nellis, et al., 2013b: 3). EM can therefore be implemented in different phases of the criminal justice system, that is, at the pre-trial stage, the sentencing stage or as an early release measure. On a very small scale, it has also been used as an electronic perimeter around open prisons or as a means to monitor inmate movements within prison (Nellis et al., 2013b: 2).

There are different types of technologies that can be used for EM. RF is the oldest and still the most popular technology. RF technology uses an ankle bracelet to ensure that the offender remains within the proximity of a transceiver that is being placed in his home. His presence (or absence) is detected via landline or mobile phone telephony connected to a box which can send alarms to a monitoring centre. Voice verification is a less visible type of technology where the offender's presence is detected by means of a recording of his unique biometric voice-print. In recent years GPS has increasingly been used to track offenders. The added value of GPS when compared to RF or voice recognition is that it can be used to create inclusion zones (e.g. house arrest) as well as exclusion zones (e.g. the victim's home or areas of previous offending) or it can be used to specify particular routes that the offender must take

(e.g. when commuting from home to work). GPS tracking can be done in real time or retrospectively (Nellis et al., 2013b: 5-6). Some countries have also been using Remote Alcohol Monitoring (RAM) technology which combines RF technology with a breathalyser to monitor offenders who are not allowed to consume alcohol.

EM is used worldwide and its development can therefore not be understood if one focuses exclusively on the dynamics in national penal systems (Nellis, et al., 2013b: 9). However, even though the technical equipment looks very similar across different countries, it has also been noted that country-specific cultural and political dynamics shape the legal and practical outcomes of EM (Nellis, et al., 2013b: 11). Indeed, in Europe, not all countries have adopted an EM scheme which suggests that cultural traditions, constitutional configurations and political contingencies affect the implementation or non-implementation of a policy (Nellis, 2014b: 495).

The CEP has played a significant role in the development of EM in Europe, devoting a great deal of attention to this topic via its biennial CEP conferences on EM. The CEP, first established as a forum to discuss mutual learning among European probation services, inspired the growing confidence of European countries that EM could be used wisely (Nellis, 2014b: 500). At their biennial conferences, commercial companies present the newest generation of monitoring equipment on the market and policy makers and practitioners are invited to learn more about the use of monitoring devices in criminal justice systems. Although the CEP conferences on EM have primarily a European focus they also attract visitors from outside Europe as these events have become a key 'networking hub' for people who wish to learn about EM. Its eight conference in 2012, for example, grasped the moment to pinpoint the growing interest in the use of GPS tracking within Europe. Indeed, a significant number of European countries is using GPS tracking or will use it in the near future. With the inauguration of Europe's own system of geolocation satellites, Galileo, between 2012 and 2019, it may even be upgraded to a higher level (Nellis, et al., 2013b: 11, 505).

The growth of EM across Europe was also noted by the Council of Europe. In February 2014, the Committee of Ministers of the Council of Europe formally adopted a Recommendation on electronic monitoring[1] after three years of study and debate. The Council of Europe's position towards EM has traditionally been ambiguous. In the past it devoted hardly any attention to EM (Nellis, 2014b: 501). The most recent European Rules on Community

[1] Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring (adopted by the Committee of Ministers on February 19, 2014). https://pjp-eu.coe.int/documents/3983922/6970334/CMRec+%282014%29+4+on+electronic+monitoring.pdf/c9756d5b-be0e-4c72-b085-745c9199bef4

Sanctions and Measures (2010)[2] have only two rules which mention EM explicitly: rule 57 emphasises the connection between EM and rehabilitation, and rule 58 the need to ensure that EM is used in a proportionate way (Nellis & Lehner, 2014: 22, 24). Unsurprisingly perhaps, in light of the growth in EM, the CEP felt that these two rules were insufficient to guide the development of EM in Europe. In 2011, the Council of Europe's Committee on Crime Problems (CDCP) requested its Council for Penological Cooperation (PC-CP) to prepare the rules on EM. The Recommendation, which is of relevance for probation services, prisons, police and legal professions, also touches upon the ethical aspects of using EM (Nellis, 2014b, p. 502). Up till then, little attention had been devoted to the ethics of surveillance techniques (Nellis, 2013: 193). The Recommendation defines '… a set of basic principles related to ethical issues and professional standards enabling national authorities to provide just, proportionate and effective use of different forms of EM'. According to Nellis and Lehner (2014: 24) this Recommendation is important because it '… finally forces countries to think about proportionality and intrusiveness'. It may even encourage further reflection on the place of monitoring technology in human supervision and relating to that encourage the debate on the ethics of EM (Nellis, 2015).

3.3 A brief history of EM in Belgium

The first cautious step towards discussing EM in Belgium was taken in 1995. Member of Parliament Francis Van den Eynde triggered the discussion on the use of EM when he asked former Minister of Justice Stefaan De Clerck (1995-1998) about his view on this new alternative measure (*Vr. en Antw.* Kamer (House of Representatives) 1994-95, 14 July 1995, nr. 0023). Van den Eynde was inspired by the experiment with electronically monitored house arrest in the Netherlands where citizens convicted of up to maximum six months in prison could receive home detention in conjunction with community service. They were then obliged to stay at home with an ankle bracelet which was connected through their home phone to a central monitoring station (Vander Beken, 2013b: 11). However, at that moment, Minister of Justice De Clerck did not seem to be fully in favour of the use of EM and his response was therefore rather sceptical. He argued that EM as an alternative measure would increase the risk of *net-widening*. Indeed, EM could result in increasing the number of people subjected to freedom restricting measures since home detention, so he argued, was only useful for people who were in any case already eligible for release. Moreover, EM could trigger a counter-productive effect. The system

[2] Recommendation CM/Rec (2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules (adopted by the Committee of Ministers on January 20, 2010). https://pjp-eu.coe.int/documents/3983922/6970334/CMRec+%282010%29+1+on+the+Council+of+Europe+Probation+Rules.pdf/f943da48-65ff-4996-9bbd-1910527861bb

appeared to weigh heavenly on the monitored person's family and his environment which may affect the social context of the persons involved in a negative way. In time, this could increase the risk of recidivism. He also questioned whether this measure could have a positive impact on the offender's behaviour and neutralise criminogenic effects. In addition, he was sceptical about the use of EM as a condition for probation as he feared that the guidance and follow-up of the offender would be shifted to the background because in the vast majority of cases where electronic surveillance was applied this guidance and follow-up was limited to a mere verification and control (Beyens, 1996a: 493). Moreover, the Minister of Justice pointed to the danger of the privatisation of security and added that this should remain a state responsibility. Due to his scepticism towards the idea of introducing EM, Minister of Justice De Clerck did not consider it appropriate '… to take decisions without prior consulting all parties involved in the sentencing policy' (*Vr. en Antw.* Kamer, 1994-95, 14 July 1995, nr. 0023, 1714-1715). He therefore instructed the Criminal Justice Policy Service (*Dienst Strafrechtelijk Beleid*) to write an advisory report on the possible introduction of EM in Belgian penal policy. This report was published in December 1996. The authors were rather hesitant in their conclusions and formulated a somewhat unfavourable advice about the possible introduction of EM (De Buck & D'Haenens, 1996: 34-37). They argued that EM should not be introduced for pragmatic reasons only (that is, EM as a cheaper and more flexible alternative to the prison) but insisted that social and ethical considerations should also be taken into account. Indeed, they warned for possible, negative side-effects of the measure such as *net-widening*, intrusion of privacy and the consequences for the family of the supervisee. The authors emphasised therefore the need to engage in a principled discussion on the topic with all actors involved in the process arguing that '…a profound discussion, whether or not combined with an experiment based on strict conditions, can avoid rushing into introducing something' (De Buck & D'Haenens, 1996: 36). This discussion, however, never took place. According to Daems et al. (2009: 3) this may be explained in part by the fact that there were no representative bodies yet for some of the parties involved. There was no High Council of Justice (*Hoge Raad voor de Justitie*) yet and no Board of public Prosecutors-General (*College van procureurs-generaal* in Dutch) or Council of public prosecutors (*Raad van procureurs des Konings* in Dutch). Moreover, politicians feared that they would get caught up in endless discussions (Daems et al., 2009: 3).

However, this did not imply that EM disappeared from the agenda. On the contrary, interest in EM would only increase in the years to come. In June 1996, EM was mentioned in an important White Paper 'Penal policy and prison policy' (De Clerck, 1996). Here, Minister of Justice De Clerck offered an in-depth analysis of several of the problems the penal system was facing at that moment, in particular prison overcrowding. As this 1996 White Paper was the first attempt since long where attention was being paid to the future development of the penal system it has

formed the basis for several future legislative reforms (see e.g. Snacken, 2007; Daems, Maes & Robert, 2013; Maes, 2009: 1). In the introduction of the White Paper it was argued that the deprivation of liberty should be an *ultimum remedium*. More attention should go to so-called community-based alternatives which were perceived to be less harmful than going to prison. Interestingly, EM was mentioned as one of these possible alternative measures to prison that could help to reduce the prison population (De Clerck, 1996: 39; Beyens & Kaminski, 2013: 150). It was argued that the introduction of EM could provide for a further differentiation of the range of sanctions. However, the White Paper also paid attention to the possible side effects of EM, that is, '… the need for the protection of privacy and human dignity, the risk of increasing social inequality in the criminal justice system, the deresponsabilisation of the person concerned, and the destabilization of its socio-familial environment' (De Clerck, 1996: 39). The cautious introduction of EM in the 1996 White Paper created (and maybe somewhat surprisingly given the Minister's earlier scepticism when responding to the question of MP Van den Eynde, see above) opportunities for EM. Kaluszynski and Froment (2003: 67) argue that some former policy advisors to De Clerck stated that despite his scepticism '… the Minister of Justice showed quite some enthusiasm with regard to all that was technological innovative, such as, electronic surveillance'. This enthusiasm was reinforced by the observation that other countries had already introduced EM by setting up pilot projects (e.g. England and Wales, Sweden, and the Netherlands). Moreover, Kaluszynski and Froment (2003: 67) suggest that the Minister's interest in EM may also have been influenced by the presence of a company which specialised in voice recognition devices (Flanders League Valley) in his birth region; he may therefore have seen an extra opportunity for the Belgian industrial sector to be involved in the development of new EM devices.

It was hoped that the 1996 White Paper would spark a parliamentary and public debate on the development of the criminal and prison policy in general, and the introduction of EM in particular (Maes, 2009: 2). However, soon after the publication of the Paper the Dutroux crisis (August 1996) would grab all the political and public attention (see Snacken 2007; Daems et al., 2013) and, as a result, no public or parliamentary debate took place neither on the White Paper, nor on the expediency of EM in the Belgian penal context and its fundamental ethical issues (Beyens, 2000b: 24; Beyens & Kaminski, 2013: 150). Indeed, the meeting of the Council of Ministers, which evaluated the EM proposal, took place in the wake of the Dutroux case which proved to be a test for the criminal justice system in Belgium (Kaluszynski & Froment, 2003: 68). The reorientation of the criminal justice system was more led by a need for safety than by the increasing prison population. Against this background, a quick and reassuring response was more important than lowering the prison population (Devresse, 2014: 13). The government, therefore, announced to build new prisons despite the Minister of Justice's stated willingness not to increase the prison capacity (De Clerck, 1996: 21-22); in this context, EM

was perceived to be a cheaper, quicker and more flexible alternative to prison. Moreover, the introduction of electronic surveillance was also seen as part of a broader movement to re-think the role of the victim in the criminal justice system (Kaluszynski & Froment, 2003: 68). The EM pilot project was approved on December 20, 1996 by the Council of Ministers. The experiment was supposed to start on December 1, 1997, but due to the unavailability of the devices the start of the project was delayed for a couple of months (Devresse, 2014: 10). On April 1, 1998 the experiment with EM began in the prison of Saint-Gilles (Kaminski, 1999: 626; Daems, et. al., 2009: 3).

3.3.1 The implementation of electronic monitoring as a 'back door' strategy (1998-2000)

After the official mentioning of EM in the 1996 White Paper there was no meaningful activity on the topic for a while. The first ministerial circular letter of 24 November 1997 indicated the outlines of the EM experiment (Vander Beken, 2013b: 13). The target group consisted of convicted persons serving a prison sentence of up to 18 months and who were eligible to be granted conditional release within a period of minimum one month and maximum three months. However, these very strict eligibility criteria in the early stage of the project resulted in a low influx of candidates for the experiment. It was therefore decided that convicted persons serving a sentence of up to three years were also eligible for the experiment (Ministry of Justice, 1998a: 1). Candidates who took part in the experiment were encouraged to spend their days in a meaningful way by either having a job or participating in an educational or therapeutic programme. The experiment was only open to a small group of convicted persons who had already served a part of their sentence. Sex offenders, persons convicted of trafficking in drugs and hormones, and some other categories (serious family and relational problems, high safety risk) were not eligible to take part in the experiment (Ministry of Justice, 1997: 4). Interestingly, participants in the project were expected to contribute financially: there was a deposit of 5000 Belgian Francs (BEF) (approximately 125 euro) for the equipment and they had to pay another 100 BEF (approximately 2,5 euro) a day. Participants with financial problems could be fully or partially exempted from paying these costs (Ministry of Justice, 1998b: 1).

The experiment was set up in the prison of Saint-Gilles (Brussels) for an initial period of nine months. This period was, however, soon extended by a year and it would only end after the federal elections of June 1999. The Individual Cases and Grace Service (*Dienst Individuele Gevallen* in Dutch) of the Directorate-General decided who was eligible and could take part in the experiment. Detainees of all Belgian prisons were eligible for the experiment if their future residence would be situated in the judicial districts of Brussels, Leuven or Nijvel. The psychosocial unit of the prison and the Houses of Justice wrote an internal and external report discussing the situation of the detainee which also included the required agreement of the adult co-habitants. After a positive review the detainee was transferred to the prison of Saint-Gilles,

first via prison leave (Ministry of Justice, 1997: 27) and later via a normal transfer (Ministry of Justice, 1998: 1), where he received his ankle bracelet. The applicable ministerial circular letters mentioned both the system of voice recognition and the ankle bracelet but in practice only the latter was used. After receiving his ankle bracelet, the detainee was accompanied by two staff members of the technical service to install the monitoring box at his residence. Maximum 24 hours later he received a visit from the justice assistant. In the first phase of the EM process the justice assistant visited the offender on a weekly basis; if the overall progression was positive the frequency was gradually reduced (Vander Beken, 2013b: 13; Bas, 1999b; Bas & Damen, 2000: 8-9).

In September 1998 a critical evaluation of the project by the Social Work Unit of the Directorate-General of Judicial Organisation (*Dienst Sociaal Werk van het Directoraat-generaal Rechterlijke Organisatie* in Dutch) drew attention to the fact that the Social Work Unit was never involved in the principled discussions, the inexistent discussion on the objectives of EM which were up till then not clearly defined, and the dominant focus on the control dimension of EM (Daems, 2000: 35, Beyens, 2000b: 29). It was argued that this strong emphasis on the control jeopardised the support role of the justice assistants. Moreover, one wondered whether the houses of justice were the most appropriate entity to take up such a role in controlling offenders through EM (Daems, 2000: 35). The interim evaluation by the management team of the prison of Saint-Gilles also pointed at this ongoing role confusion: '… If we assume that electronic surveillance is a modality of sentencing in which monitoring the restrictions on coming and going is crucial, then it would be logical for that reason to deploy staff members with special authorities and competences, and to disconnect the substantive guidance from this control' (Daems, 2000: 35). The justice assistants were confronted with a different view on their initial supporting task which they were not familiar with. The strict control requirements pressured this initial task and indicated a dormant re-orientation of their role in the judicial area of work (Daems, 2000: 37, Beyens, 2000b: 29). With the national implementation of EM and the creation of a National Centre for EM (NCEM) (see further) it was decided that a team of social assistants from the NCEM would carry out the control and follow-up of the detainee.

After the internal evaluations of the pilot project the Minister of Justice decided to adapt the existing circular. In the new ministerial circular letter of November 27, 1998 the target group was again expanded. Convicted persons serving a sentence of more than three years became eligible. They had to be at a maximum of six months before their provisional or conditional release, or at six months before the end of their sentence (Ministry of Justice, 1998b: 1).

From a quantitative perspective, the EM experiment was not an overwhelming success. At the time of the pilot project, policy makers aimed at 300 prisoners under EM. However, the start of the project was rather slow and uneven so that after 20 months only 53 detainees had participated (Bas, 1999a: 81). Over 70% of them resided in just 5 prisons and only 16% (or 9

candidates) were Dutch-speaking (Bas, 1999a: 81). According to Beyens and Roosen (2013: 57), the strict eligibility criteria and the very cautious attitudes of the staff involved in the selection process have played a major role in not reaching this predetermined goal of 300 prisoners under EM. In order to attract more candidates for the experiment the target group and selection criteria were again expanded, and the number of judicial districts involved increased (Ministry of Justice, 1999b: 1).

At the end of the 1990s, a first evaluative study on the perceptions of EM was conducted by a research team at KU Leuven (Stassart, 2000). Former Minister of Justice Stefaan De Clerck had ordered this study at the start of the experiment to gain insight into the experiences of the people under EM and to evaluate the experiment (Stassart, 2000; Robert & Stassart, 2009). The research covered a period of one year, from February 1999 to February 2000. The sample consisted of 18 people under EM. In-depth interviews were used to gain insight into all aspects of the EM experience. In general, the research suggested that EM in Belgium had some potential as an alternative measure focusing on reintegration and rehabilitation. Nevertheless, policy adjustments were necessary to bridge the gap between the potential of EM and the way it was executed at that moment (Robert & Stassart, 2009: 13-33; Stassart, 2000: 51; Vander Beken, 2013b: 14).

The upcoming elections of June 1999 forced Minister of Justice Tony Van Parys (1998-1999) to shed light on the state of affairs of the ongoing experiment. In order to justify his decision to expand the pilot project by another year he needed sufficient information by the end of May 1999 (Beyens, 2000b: 24). Already during the election campaigning period clear statements were made concerning justice and safety in general, and EM in particular. Marc Verwilghen (liberal party VLD), presented his 'G-plan' (*gevangenisbeleidsplan*) on sentencing and penitentiary policy (Bollen, 2000: 19). In this plan it was argued that one of the largest problems within the justice and safety domain was the penitentiary inflation and it made clear that building new prison facilities would not result in a structural solution. Verwilghen's plan saw merit in a sanctioning policy which favoured other forms of freedom restrictions and alternative measures. EM could be used as a 'front door' strategy, so as an alternative for pre-trial detention in order to restrict the influx (Bollen, 2000: 20). It could also be used as a 'back door' strategy in order to prepare the offender for release (Bollen, 2000: 20). Although the 1998 pilot project was only a modest success from a quantitative point of view, measures were taken in May 1999 in order to prepare for an extension of the experiment. It was up to the new federal government to follow-up this further (Bollen, 2000: 19). The coalition agreement of the federal government mentioned the modernisation of prison policy as one of its ambitions: the implementation of alternatives for detention, such as, electronic house arrest, mediation and community service, were to be encouraged. Furthermore, the new federal government wanted to widen the scope of EM: it was being considered as both a 'front door' and 'back door'

strategy. As the experiment introduced EM as an alternative for imprisonment, the coalition agreement went one step further by representing electronic house arrest as an alternative for the deprivation of liberty *an sich* which implied that EM in the field of pre-trial detention and EM as an autonomous sanction was considered (Bollen, 2000: 20).

EM was mentioned again in the 1999 White Paper of Minister of Justice Marc Verwilghen (1999-2003) in which he linked it with the notion of reparation. Whereas De Clerck pointed at the problematic nature of imprisonment from a perspective of effectiveness and human dignity, Verwilghen used restorative thinking to elaborate his views on punishment. For Verwilghen detention should be used as an *ultimum remedium* because it is not conducive to stimulating reparation (Daems et al., 2009: 28). EM as both a sanction modality and an alternative for the deprivation of liberty fitted within such a RJ framework[3] (Bollen, 2000: 21-22). In his 2000 White Paper Verwilghen clarified that EM could offer a viable alternative to imprisonment. EM could prove beneficial for avoiding or reducing the harm caused by detention and repairing any damage done to the victim, and repair the relationship between the offender and the society if necessary (Ministry of Justice, 1999: 43). It was assumed that the electronically monitored detainee would have the time and space to take up his social responsibility towards both his social network and the victim (Bollen, 2000: 22).

3.3.2 The national implementation of electronic monitoring (2000-2002)

Notwithstanding the lack of debate in Parliament on the desirability of EM, the absence of new evaluation studies about EM's potential effects or benefits or a legal framework for the regulation of EM, the government decided in June 2000 to a nation-wide implementation of EM in Belgium four months later, from October onwards (Beyens & Kaminski, 2013: 150; Vander Beken, 2013b: 14). During the pilot phase very few parliamentary questions were asked on the development of EM in Belgium.[4]

[3] The link between EM and restorative justice was not described in a detail way. Indeed, Verwilghen stated that'…in the philosophy of reparation, electronic supervision can offer a complete alternative to prison. As long as the safety of the society can also be guaranteed, electronic supervision can provide for a limitation of the damage inherent to prison, the reparation of possible damage to the victim, and for a restoration of the relationship between perpetrator and society' (see *Parl. St.* Kamer (House of Representatives) 1999-00, nr. 0198/013, 43). For some, the RJ idea of Verwilghen contained a number of other inconsistencies (for more details see e.g. Daems, 2009a: 28).

[4] Van Eetvelt (*Vr. en Antw.* Kamer (House of Representatives), 1998-99, nr. 0938, 20458) posed a rather informative question about the low number of participants in the pilot project. Only Yves Leterme (*Parl. St.* Kamer (House of Representatives), 1997-98, nr. 0459, 7) made some substantive remarks on the initial experiment and emphasised the rather low publicity it was given in Parliament. By asking

In 2000, Belgian prisons were still coping with problems of serious overcrowding: there were 8,688 inmates for 7,462 places which resulted in a 16,4% of prison overcrowding (Ministry of Economics, 2015). Like in many other countries EM came to be perceived as an attractive solution to diminish the number of prisoners (Kaminski, 1999). The creation of a separate NCEM on October 1, 2000 anchored the national implementation of EM in Belgium (Beyens & Devresse, 2009: 61). The NCEM was introduced as part of the Individual Cases Service and was responsible for the day-to-day operation of EM, that is, the safe storage and management of the EM files (not the prison files) and the disciplinary regime (Beyens & Kaminski, 2013: 152). The Centre operated autonomously with respect to the daily monitoring of detainees (Ministry of Justice, 2000a: 2). The NCEM was not responsible for purchasing the technological equipment. The Belgian government signed a contract with Alert Service (previously Belgacom Alert Service), a subcontractor of the Israeli company Elmo Tech to deliver the equipment (Devresse, 2014: 23). In November 2000, the initial objective of having 300 people under EM was realised (Vander Beken, 2013b: 14; Bas, 2001).

The operation of EM was still regulated by ministerial circular letters (Ministry of Justice, 2000a, 2000b, 2001a, 2001b). According to Devresse (2014: 18) this explains the rather low interest of the MP's in the development of EM. Due to the lack of a legal framework for EM a real debate in parliament did not take place. EM continued to be a modality for executing custodial sentences; it was therefore still exclusively used as a 'back door' strategy. Some categories of offences (sexual offences involving minors, drug trafficking and human trafficking) and convicted persons (convicts subjected to an extradition request or having a case pending) were not eligible (Ministry of Justice, 2000a: 2-3). The detainee and his or her adult family members had to give their consent in advance, they were obliged to have a useful daytime activity and the measure had to last for at least 15 days (Ministry of Justice, 2000a: 3). The monthly financial contribution of 3000 BEF was abolished (Ministry of Justice, 2001a: 1). The prison director was responsible for granting EM for persons serving a sentence of three years or less. Based on an internal report by the psychosocial service of the prison (contained the feasibility and desirability of EM, and the psychosocial and/or work related activities) and an external report by NCEM (family-related and/or social conditions) the prison director determined whether the detainee was eligible for EM. For prisoners serving a sentence of more than three years the same procedure was followed with the exception that the decision on the eligibility was now taken by members of the staff college on conditional release. The Individual Cases Unit then had the final say (Ministry of Justice, 2000a: 4-8). The follow-up of the

informative questions about the content of the project, Leterme also paid attention to some possible problematic aspects of the EM system (e.g. privacy issues). Though, the Minister of Justice's response went no further than answering to the practical and technical aspects of the question.

monitored people was done by social workers of the NCEM. Together with the detainee they drafted a day-time schedule which was needed to be approved by the Individual Cases Service. In the first month the social worker visited the convicted person every week, and after that fortnightly. Once a month a written report needed to be submitted to the Directorate of the NCEM. In case of non-compliance the NCEM could respond in several ways from a simple warning over an adjustment of the time schedule to a temporary or definitive revocation of the measure (Ministry of Justice, 2000a: 11; Vander Beken, 2013b: 15).

The scope of the measure widened again in 2001. The ministerial circular letter of April 12, 2001 stated that convicted persons with a total prison sentence of maximum three years were immediately eligible for EM (Ministry of Justice, 2001b: 3). Vander Beken (2013b: 15) highlights that this further relaxation of the eligibility criteria was an important modification: indeed, in addition to the already existing 'back door' strategy EM could now also be used as a 'front door strategy' for convicted persons who had not spent any time in prison.

3.3.3 The 'Belgian model' (2002-2006)

The operation of EM was regulated by ministerial circular letters which could easily be adapted and which resulted, as we have discussed, in several changes in the initial phase of EM. However, the ministerial circular letter of August 9, 2002 (Ministry of Justice, 2002c) succeeded in provding some stability by introducing a framework which tried to find a balance between social support on the one hand, and technical and human control on the other hand (Vander Beken, 2013b: 15; Beyens et al., 2007: 21-22). The ministerial circular letter considered the notion of reparation to be a central objective of EM, that is, the reduction of the harms of imprisonment and the promotion of reintegration. Convicts were given the chance to serve (a part of) the sentence in their own environment in order to establish or strengthen family, social and economic contacts. An adequate preparation was therefore necessary and EM needed to be part of a programme that promoted reintegration whenever possible (Ministry of Justice, 2002c: 1). This framework soon came to be known as the 'Belgian model' of EM. By emphasising the internal penal purposes and by working toward a possible positive effect on the person's situation, this model preferred to invest in the penological dimension of EM (Beyens & Devresse, 2009: 65). The emphasis on the individual situation of the prisoners prevailed over the systemic approach which focuses on the reduction of costs, better management, or the reduction of prison overcrowding. The 'Belgian model' was characterised by a highly individualised and activating approach including both controlling and rehabilitative elements in its implementation. The technological control was interpreted as a way to support the rehabilitative objectives (Beyens & Roosen, 2013: 58). The model intended to encourage the supervisee as much as possible to make efforts to integrate within society and to solve as many problems as possible in various areas of his or her life.

The day-to-day operation of EM according to this 'Belgian model' resulted in a heavy loaded administrative system and required a lot of staff (Beyens & Devresse, 2009: 66). The exclusive focus on the situation of the individual required an in-depth study of the convict's profile and his or her capacity to meet the strict requirements. Because of the strict time schedules that needed to be respected and the high degree of autonomy and discipline that was expected, the 'Belgian model' of EM was probably not the most adequate option for every possible candidate. Indeed, even if they met the formal conditions some candidates missed the skills and discipline to persevere (Ministry of Justice, 2002: 3-11; Vander Beken, 2013b: 15-16; Beyens & Roosen, 2013: 58).

3.3.4 The fading away of the 'Belgian model' (2006-2008)

In the period between 2002 and 2006 there was some stability in the use of EM in Belgium. As reflected in the parliamentary questions[5], the major objective of introducing EM in penal practice was still to help solving problems related to the rising prison population and its impact on the budget. Interestingly, no member of parliament (MP) questioned the appropriateness or the effectiveness of EM. As Devresse states (2014: 28) '… all questions contained an extremely positive appreciation towards the electronic surveillance system and systematically presented it as one of the possible solutions for the increasing prison population'. The 'Belgian model' situated EM in the post sentencing phase. Only persons convicted of a prison sentence were eligible to be subjected to EM. The first impetus of introducing EM as a 'front door' strategy was given at the government summit of 30-31 March 2004. It was stated that EM should be introduced as an autonomous sanction for offences that are punishable with an unconditional prison sentence of between six months and three years (Beyens & Kaminski, 2013: 152). It was hoped that EM could offer a solution for the fact that short prison sentences were not being executed because of a lack of space in prison. To prepare for the introduction of EM as an autonomous sanction Minister of Justice, Laurette Onkelinx (2003-2007), ordered the NICC to draft a list of offences that would be eligible for such an EM sentence. The study demonstrated, however, that the judiciary was not in favour of introducing EM as an

[5] In reaction to a number of strikes in prison, Lahaye (*Vr. en Antw*. Kamer (House of Representatives), 2001-02, nr. 0598) questioned whether EM would be a viable alternative for imprisonment to reduce prison overcrowding; In her response to a question of MP Cocriamont (*Vr. en Antw*. Kamer (House of Representatives), 2004-05, nr. 0537) Minister of Justice Onkelinx stated that the problem of prison overcrowding should be tackled by a series of measures that could reduce the number of detained persons, such as, a reform of pre-trial detention, the promotion of community service, the promotion of electronic supervision, or the transfer of persons with a foreign nationality who have no connection with Belgium.

autonomous sanction: '… the introduction of EM as autonomous sentence option will unnecessarily complicate the overall sentencing' (Goossens et al., 2005: 146). The authors of the study therefore advised to keep EM in the post sentencing phase (Goossens, 2006: 57; Goosens & Maes, 2009: 43). In this context, Maes et al. (2006: 13-14) emphasised the possibility of a *net-widening* effect and the low impact of the measure on the overall prison population. Keeping in mind the views and opinions of the judiciary, Onkelinx postponed the idea of introducing EM as an autonomous sanction.

In 2005, Minister of Justice Onkelinx ordered another study focusing on the evaluation of the regulations, the decision-making process and the development of EM in Belgium (Devresse, M.S. et al., 2006). The study showed that the hyper-individualised 'Belgian model' was a complex system which resulted in a heavy workload for the staff as the model was characterised by bureaucratic relationships between the services involved in the execution of EM (Beyens & Devresse, 2009: 66).

Without awaiting the results of the above mentioned UCL/VUB research, however, the system of EM underwent important changes from 2006 onwards. Several, often unrelated incidents which resulted in a political crisis in 2006, forced Minister of Justice Onkelinx to justify her policy regarding EM: the murder of Joe Van Holsbeek[6], the racist murders in Antwerp by Hans Van Themsche[7], the massive escape from the prison of Termonde[8], the fire in the prison of Nijvel, and again the record-breaking prison overcrowding (Beyens & Kaminski, 2013: 152). On May 9, 2006 two MP's criticised Onkelinx's penal policy by tackling her efforts to decrease the prison population. Both politicians rightly pointed out that the changes in the law on remand custody and the construction of new prisons had not achieved the desired results (*Parl. St*. Kamer (House of Representatives), 2005-06, 9 May 2006, (vr. nr. 11386 S. Lahaye-Battheu)); *Parl. St.* Kamer (House of Representatives), 2005-06, 9 May 2006, (vr. nr. 11544 T. Van Parys)). EM did not seem to have decreased the number of prisoners (Dupont, 2003: 11) and the goal of 1000 people under EM which was mentioned in the coalition agreement of July 2003 was not reached (coalition agreement, 2003: 71). Onkelinx promptly tackled the critics and in a few months' time the number of people under EM nearly doubled to 600 in October 2006 (Beyens & Devresse, 2009: 67-68).

[6] Joe Van Holsbeeck was a Belgian student who was murdered in broad daylight during rush hour on 12 April 2006. The murder is also known as the mp3-murder.

[7] On 11 May 2006, Hans Van Themsche killed Malian baby sitter Oulematou Niangadou and the two-year-old Belgian girl Luna Drowart during a walk in Antwerp.

[8] On 19 August 2006, 28 prisoners escaped from the prison of Dendermonde. Two detainees forced their cell doors, took a number of guards hostage and used the keys to liberate 26 fellow prisoners.

The changes in the daily operation of EM practice from May 2006 onwards indicated a shift away from the existing 'Belgian model'. In order to increase the number of people under supervision and reduce the overall costs of the penal system the selection and modus operando were altered (Beyens et al., 2007: 38). Three important modifications were put into practice. Firstly, the eligibility criteria were revised (Ministry of Justice, 2006a; Ministry of Justice 2006b, Ministry of Justice, 2007a). Six different categories of application were elaborated, each of these categories being subjected to a different EM procedure (Ministry of Justice, 2006a: 3). Secondly, the government rationalised the role of the social assistants of the NCEM. For prison sentences of up to three years their task to collect relevant information and inform the person about EM was largely taken over by the prison director. For a large group the social enquiry with respect to the supervisees' social and familial background was no longer mandatory and overall control only took place between 20PM and 6AM (Ministry of Justice, 2006b: 1). In 2007, the social services of the NCEM were also transferred to the newly established Directorate-General of the Houses of Justice (Beyens & Devresse, 2009: 68). For some, these decisions distorted the balance between social support and follow-up on the one hand, and electronic control on the other hand. The downgrading of the penological dimension of EM led some academics to conceptualise this new model as a light version of the previous one (Beyens & Devresse, 2009: 70; Beyens & Kaminski, 2007: 38). Thirdly, the implementation of two new laws[9] altered the penal decision making procedure in general and the EM decision process with respect to EM in particular. Thus far, EM had no legal framework (Vander Beken, 2013a: 74). The laws on the external legal status of sentenced prisoners and the Sentence Implementation Courts (SIC) of 17 May 2006 established a two-track model in the execution of EM. A clear distinction was being introduced between prison sentences of three years or less and sentences of over three years (Beyens & Roosen, 2013: 59). For the shorter sentences (up to three years of imprisonment) the prison director took the decision to grant EM. In cases where a person was convicted for sexual offences, the Detention Management Unit (*Dienst Detentiebeheer*) of the central Prison Administration decided on EM (Ministry of Justice, 2008: 3). For this group of convicted persons EM was therefore used as a 'front door' strategy. The preparatory home visits and social inquiry reports were abolished in order to speed up the assignment procedure and reduce the overall costs. According to some academics this new procedure showed a clear move away from the highly individualised approach of the 'Belgian model' towards a more standardised approach (Beyens & Roosen, 2013: 58-59). For the group of prisoners with a sentence of more than three years the SIC

[9] Act of 17 May 2006 with regard to the 'External legal position of the sentenced prisoner and the rights of the victims', *B.S.* 15 June 2006; Act of 17 May 2006 creating the Sentence Implementation Courts, *B.S.* 15 June 2006.

granted EM. This more individualised procedure was regulated by the laws on the external legal position and the Sentence Implementation Courts, and related ministerial circular letters (Vander Beken, 2013b: 18). In these cases, EM was used as a back door strategy, serving as a transitional measure between imprisonment and conditional release (Beyens & Roosen, 2013: 60).

As stated before, from a quantitative perspective, the adjustments in the EM procedures were successful: in a few months' time the initial target of 600 prisoners under EM was reached. However, the increasing number of eligible prisoners for EM also had some negative side-effects. The reorganisation of the NCEM and the establishment of the Directorate-General of the Houses of Justice did not occur smoothly, and the lack of EM equipment and justice assistants available to prepare the social inquiry reports resulted in long waiting lists. These waiting lists were in particular related to the group of prisoners with a prison sentence of three years or less. Priority was indeed given to the implementation of the decisions of the SIC's because these needed to be executed immediately. This was not the case for prisoners serving a sentence of three years or less (Vander Beken, 2013a: 75; Vander Beken, 2013b: 19).

3.3.5 The relaunch of the 'Belgian model'? (2008-2010)

After the elections of June 10, 2007 a new government (Leterme I) was formed and, again, EM was mentioned in the coalition agreement of March 18, 2008 (coalition agreement, 2008). It was stated that EM would be extended to the area of pre-trial detention and would be introduced as an autonomous sanction (coalition agreement, 2008: 29). The White Paper of new Minister of Justice, Jo Vandeurzen (2007-2008), announced a reform of EM and a better cooperation between the partners involved in order to establish an efficient and effective EM scheme (Vandeurzen, 2008a: 6). Vandeurzen requested two studies to evaluate the Act on Remand Detention and to explore the possible added value of introducing EM as an alternative for pre-trial detention or as an autonomous sanction (Vandeurzen, 2008a: 9). By extending EM to these areas of criminal justice the government hoped to increase the number of people under EM to 1500 and expand the opportunities to use EM (Beyens & Kaminski, 2013: 152). The proposal of introducing EM in the pre-sentencing phase received some attention in parliament.[10]

[10] MP's Lahaye-Battheu (*Parl. St*. Kamer (House of Representatives), 2007-08, 52-649/1) and Taelman (*Parl. St.* Senaat (Senate), 2007-08, 4-613/1) as well as MP Landuyt (*Parl. St.* Kamer (House of Representatives), 2007-08, 52-40/1) submitted bills concerning this issue. According to Lahaye-Battheu and Taelman (*Parl. St.* Kamer (House of Representatives), 2007-08: 4), the increasing number of pre-trial detainees was one of the causes of the overpopulation in prisons and EM provides a reasonable alternative to this prison overcrowding. Lahaye-Battheu and Taelman suggested to introduce EM only

In his 2008 White Paper Minister of Justice Vandeurzen suggested to introduce EM with GPS surveillance as an alternative for remand detention (Vandeurzen, 2008b: 14). As mentioned in his White Paper, the contract for delivering the ankle bracelets expired and the Minister of Justice used this as an opportunity to explore new technological applications in order to increase the efficiency of the EM procedure (Vandeurzen, 2008b: 14). An important consideration proved to be the overall cost of EM compared to traditional imprisonment (Vandeurzen, 2008b: 14). Goossens (2009: 76) stated that the Minister of Justice was considering a European contract which could include GPS tracking devices. In the meantime, the study evaluating the added value of EM as an alternative for remand custody (De Man et al., 2009) was coming to an end. The study was sceptical about the added value of EM in the pre-sentencing phase and was therefore not in favour of its expansion (Beyens & Kaminski, 2013: 152). De Man et al. (2009: 265) tempered, for example, the ambitions in terms of reducing the prison population and saving costs if EM would be introduced as an alternative for remand custody.

Despite the fact that economic considerations still played an important role in the overall discussion on EM, Vander Beken (2013b: 22) argues that one could interpret some of the changes that took place in 2008 as a possible return to the old 'Belgian model'. The ministerial circular letter of 2008 that regulated the EM procedure for the sentences of up to three years reintroduced a social inquiry report prior to making a decision on EM (Ministry of Justice, 2008). For sentences of more than three years, the agreement of the house mates was again requested.

3.3.6 Diversification in the field of electronic monitoring (2010-…)

At December 18, 2008 Minister of Justice Vandeurzen (and the entire government Leterme I) resigned in the aftermath of the Fortis affair in he was suspected of politically interfering in the appeal proceedings of Fortis Bank's case against the Federal Participation and Investment Company. Vandeurzen was replaced by Stefaan De Clerck (2008-2011) who had already been Minister of Justice between 1995 and 1998. The 2010 White Paper of new Minister of Justice

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in cases where the pre-trial chamber (*raadkamer*) examined the enforcement of remand detention. Persons suspected of property crimes and crimes within the family were not to be made eligible for EM (*Parl. St*. Kamer (House of Representatives), 2007-08: 5). The proposal by Landuyt took EM one step further. His proposal stated that when the investigating judge ordered an arrest or the pre-trial chamber (*raadkamer*) extended the arrest, the choice had to be made between two custodial measures: imprisonment or EM. Landuyt stated that '… instead of dropping the accused between already convicted criminals, at a time when it is not even certain that these persons are guilty, we can equally secure them at home with an electronic tag than in prison'. None of these proposals, however, were turned into law.

De Clerck (2008-2011) repeated the government's target of 1500 under EM, which was already mentioned in the coalition agreement of 2008, as we discussed above (Ministry of Justice, 2010: 51). In order to expand the number of supervisees, Minister of Justice De Clerck repeated the government's plans to extend the scope of EM. Indeed, he would further explore the introduction of EM as an alternative to remand detention and as an autonomous sanction (Ministry of Justice, 2010: 52). Mentally ill offenders and convicted persons who were put at the disposal of the SIC were mentioned as potential candidates for EM. In this context, De Clerck also referred to the possible introduction of GPS tracking (Ministry of Justice, 2010: 52).

After a long period of negotiations (459 days) a new government (Di Rupo I) was formed. In her 2011 White Paper New Minister of Justice, Annemie Turtelboom (2011-2014), countered the prison overcrowding by stating that the ankle bracelet should be maintained as an alternative for detention (Ministry of Justice, 2011: 8-9). Also in her second White Paper (Ministry of Justice, 2012) Turtelboom paid attention to EM and she announced some major reforms. Minister of Justice Turtelboom not only looked at EM as an alternative to decrease problems of overcrowding but, unlike her predecessors, she also emphasised that EM could offer a viable response to a perceived 'sense of impunity' (*straffeloosheid*) within society caused by the fact that many sentences of three years or less were systematically reduced or not executed (Vander Beken, 2013b: 22-23; Daems, 2013a).

With the introduction of this new concern to fight impunity, the EM procedures were thoroughly reformed from 2012 onwards (Devresse & Kaminski, 2013: 238). Firstly, in 2012, Minister of Justice Turtelboom published a new ministerial circular letter for prison sentences of up to eight months (Ministry of Justice, 2012). For this category of convicted persons the technology of voice verification was being introduced (Ministry of Justice, 2012: 8). The prison director took the decision to grant EM without any form of social inquiry and the supervisee received no further follow-up or guidance from the justice assistants. Therefore, some labelled it a 'cold' measure or even EM 'zero' (Vander Beken, 2009: 30). However, the system of voice verification faced some (technical) difficulties (e.g. the system did not seem to recognise peoples' voices when they were sick and talked with a husky voice (see De Standaard, 2013) and the ministerial circular letter of August 2012 on home detention was subsequently replaced by a new ministerial circular letter of July 2013 on EM for sentences of up to three years (Ministry of Justice, 2013b).

Secondly, notwithstanding the objections mentioned in the NICC study about introducing EM as an alternative for pre-trial detention (De Man et al. 2009; see above) Minister of Justice Turtelboom remained very much in favour and, eventually, a law was passed on 27 December 2012 which came into force on January 1, 2014 (see Beyens & Roosen, 2016).

Without first testing it in a pilot project it was decided to use GPS technology for EM as an alternative to pre-trail detention (Ministry of Justice, 2013: 2).[11]

Thirdly, and again, notwithstanding a critical study by the NICC on this topic (see Goossens et al., 2005; see above), EM also came to be introduced at the level of sentencing. The law of February 7, 2014 introduced EM as an autonomous sanction which can be imposed by a judge for offences punishable with a prison sentence of up to one year. The implementation of this Act took place on May 1, 2016. Individualised conditions are only available in exceptional circumstances and there are no supervisory conditions to support from justice assistants.

EM in Belgium will continue to be used in a variety of contexts and for a variety of purposes as the deprivation of liberty is still to be seen as an *ultimum remedium*, as was mentioned in the 2014 White Paper by current Minister of Justice Koen Geens (2014-now) (Ministry of Justice, 2014: 7) and in the coalition agreement (coalition agreement, October 10, 2014: 117). In his Justice Plan 'An efficient justice system for more justice, Geens (2015: 53) argued that the duration of pre-trial detention should be limited stating that EM would be granted automatically for people in remand detention if they were to be convicted of a sentence between one year and three years in prison.

Our discussion so far demonstrates how EM has come to play an important role in the Belgian criminal justice system. Figure 3.1 shows the evolution of EM and its usage since its was introduced in Belgium. After a slow start in the early years of the pilot project till the mid-2000s, the number of people under EM increased significantly from 2007 onwards, and in particular after 2012. On 31 October 2016, 1621 people were under EM in Belgium (871 in Flanders, 750 in the Brussels-Wallonia Federation). There is a decrease in the number of people under EM in 2016 which is mainly the result of a lack of personnel and material, as well as

[11] Interestingly, the Council of Ministers already agreed with Minister of Justice Turtelboom's proposal to intensify the use of electronic equipment as part of the contract between the Belgian government and the company 3M Electronic Monitoring on June 8, 2012. Bearing in mind that the law on EM as an alternative for remand custody was only approved on December 27, this meant that the GPS tracking devices were already ordered before the law was voted and a substantial debate on the possibility of an individual tracking device ever took place (*Parl. St.* Kamer (House of Representatives), 2012: 234-235; Devresse, 2014: 62). This debate would have been important because GPS tracking is far more intrusive than the regular ankle bracelet as it makes a permanent monitoring possible (Vander Beken, 2013a: 76). According to Devresse (2014: 63), the GPS tracking system in the context of remand custody highlights a paradox since the supervisee is not allowed to leave the house but he is supervised by a system which aims to detect every in- and outside movement.

organisational problems related to the transfer of the organisation and monitoring of EM to the Flemish and French communities (Beyens & Roosen, 2017a: 16).

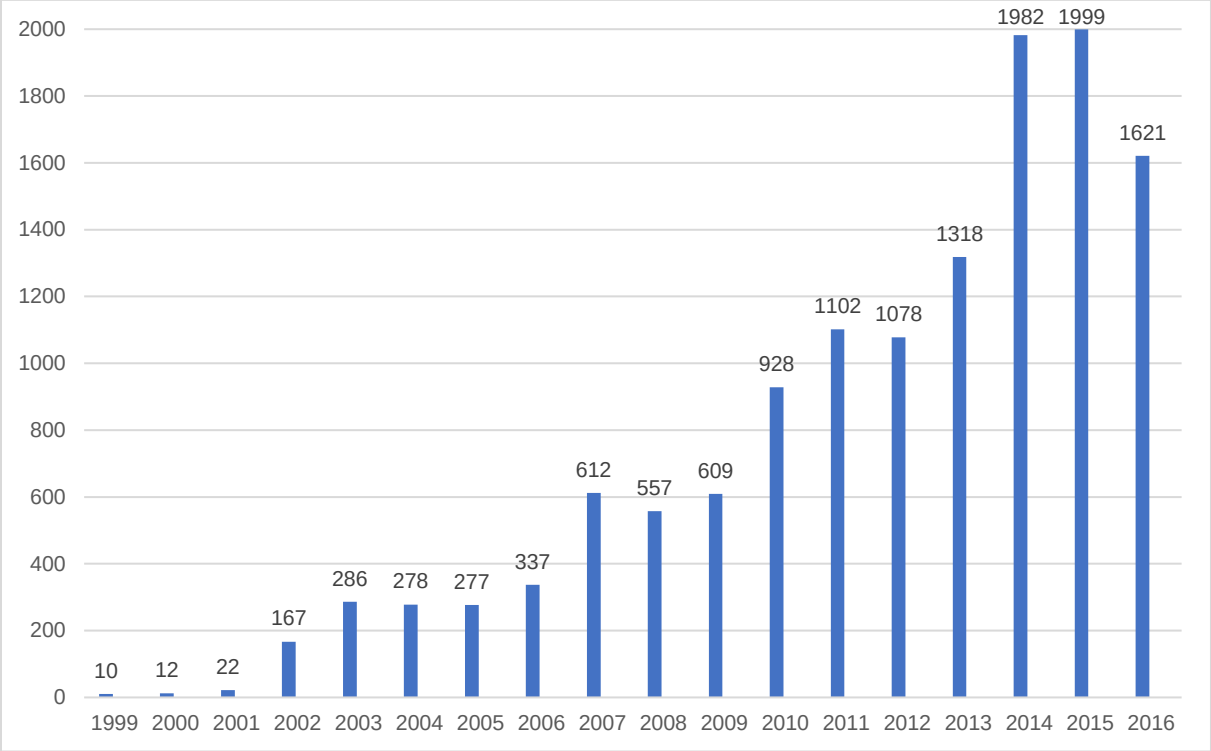

Figure 3.1 Daily Belgian EM population: 1999–2016 (source: Beyens & Roosen, 2017a: 16)

3.4 Policy transfer and electronic monitoring in Belgium

This section explores the empirical evidence for policy transfer in the development of EM in Belgium. This section discusses in more detail the categories of actors that have been involved in the transferring process, why they engaged in the policy transfer process, what is transferred, from where lessons are drawn, which degrees of policy transfer exist, as well as the limits to policy transfer in Belgium.

3.4.1 Policy transfer agents

As we discussed in chapter one of this dissertation, the 'policy transfer' – literature has identified several categories of actors that can be involved in transferring policies, including: politicians (elected officials), political parties, bureaucrats/civil servants, pressure groups, policy entrepreneurs/experts, academic experts, international organisations and supranational institutions (see section 1.3.2.1). In our study we have been able to identify a number of actors who have been important in initiating, implementing and further developing EM and who have, to differing degrees, drawn on foreign examples in the area of EM. Our documentary analysis

of the historical development of EM enabled us to identify a number of key players, many of whom were interviewed during this study. The main agents of transfer in the first case of our study fall into five categories: (1) (former) policy entrepreneurs who proved to be vital in initiating EM in Belgium[12]; (2) academic experts[13]; (3) politicians[14]; (4) (former) key professionals of the criminal justice department[15] tasked with implementing EM; and (5) commercial companies[16] who have proved to be important in the lobbying for change and subsequent winning of contracts.

3.4.1.1 (Former) policy entrepreneurs

As discussed above (section 3.3), the idea of EM in Belgium was first suggested in 1995 by MP Francis Van den Eynde who referred to the existence of an experiment with electronic surveillance in the Netherlands when he asked former Minister of Justice De Clerck about his view on EM and whether the introduction of EM in Belgium was being considered (Vander Beken, 2013b: 11; *Vr. en Antw.* Kamer (House of Representatives) 1994-95, 14 July 1995, nr. 0023). In his reply, De Clerck openly expressed his doubts about this idea referring to the possible side-effects of the measure, such as, *net-widening* and privacy issues, and arguing that no further decisions should be taken about this matter than after consultation with all parties involved (*Vr. en Antw.* Kamer (House of Representatives) 1994-95, 14 July 1995, nr. 0023). De Clerck asked the NICC to carry out a literature study on the experiences with EM abroad. This study, which was finalised in February 1996, was not entirely positive about the use of EM and was not in favour of a hasty introduction of this measure in Belgium (De Buck & D'Haenens, 1996: 36). Shortly after the publication of the NICC study, in June 1996, De Clerck published his White Paper on 'Penal policy and prison policy' which offered an in-depth analysis of several of the problems the penal system was facing that moment, in particular prison overcrowding. Moreover, and interestingly for the subsequent introduction of EM in Belgium, it was argued that priority should be given to the development of alternative sanctions (De Clerck, 1996). This White Paper has been very important for future developments in penal

[12] The group of (former) policy entrepreneurs includes policy advisors to the private offices of subsequent Ministers of Justice.

[13] The group of academic experts includes academics from various universities, both in Flanders and the Walloon region.

[14] The group of politicians refers to Ministers of Justice and Members of Parliament.

[15] The group of (former) key professionals of the criminal justice department (or criminal justice professionals) includes a variety of civil servants in the Justice Department.

[16] The group of commercial companies includes representatives of commercial companies who have been involved in setting up and further developing the Belgian EM scheme.

policy (see e.g. Snacken, 2007; Daems, Maes & Robert, 2013) including EM. Indeed, the paper referred to EM as one of the possible measures to reduce the number of custodial sentences (De Clerck, 1996). During the interviews the 1996 White Paper was often mentioned as a key document for initiating change in penal policy in Belgium. As a former policy entrepreneur states:

> *'Credit to those who deserve it, I think that the White Paper meant something. It was the first time someone put things on paper and expressed very clearly the general vision from which one would work'*
>
> (former policy entrepreneur, EM 2)

A number of policy advisors[17] to former Minister of Justice De Clerck (1995-1998) have been decisive in drafting the White Paper and initiating the idea of EM. As policy entrepreneurs these people had some progressive ideas about what punishment and the execution of punishment should look like and stimulated the Minister of Justice to search for new objectives. In their view, the deprivation of liberty was to be seen as an *ultimum remedium* and sentences should be carried out more within society. As a former policy entrepreneur clarifies:

> *'We wanted to avoid prison as much as possible. Improve the use of the existing arsenal of alternatives. Critically reviewing and making suggestions for improvement and then expanding what already existed here and there.'*
>
> (former policy entrepreneur, EM 3)

Based on their conviction that alternatives to prison were needed, policy entrepreneurs stimulated the idea of using EM methods to serve sentences within the community. Two policy entrepreneurs in particular have been influential in stimulating this idea and were responsible for further elaborating on it. The Minister of Justice even gave them '… *carte blanche* in writing the White Paper' (former policy entrepreneur, EM 3). Or as a former criminal justice professional recalls:

> *'That duo was a golden duo. And with a Minister of Justice who is open to the idea, you are on your way'*

[17] Interestingly, in 1996 an article was published in the Flemish journal on prisons (FATIK) with the title 'De Clerck komt kloek uit de hoek'. The Dutch expression 'kloek uit de hoek komen' means 'act in a valiant way', and was a note that concealed reference to the name of one of his advisors. See Beyens. K. (1996). 'De Clerck komt kloek uit de hoek. Enkele beschouwingen bij de Oriëntatienota', *Fatik*, 70-71: 4-7.

(former criminal justice professional, EM 5)

The mid-1990s were characterised by an unusual atmosphere and ambiance in which people were looking for initiatives that could challenge the status quo. Policy entrepreneurs introduced new ideas and thought carefully about how to shape them. Obtaining knowledge and initiating new ideas was mainly done through meetings and consultation with people in their own networks, including academics at the universities. As a former policy entrepreneur clarifies:

> *'But it was more a combination of our own knowledge together with some contacts with other people which resulted in putting a number of things on paper.'*

(former policy entrepreneur, EM 2)

Policy entrepreneurs had built up strong networks with a variety of people. They had close contacts with people from the administration of the Justice Department, prison directors, practitioners, as well as with fellow policy entrepreneurs. These meetings with fellow policy entrepreneurs in particular proved to be useful in disseminating new ideas or projects. As a former policy entrepreneur explains:

> *'So what regularly happened […] was a meeting with all the personal advisors to the Minister of Justice. Mostly once a month. Each advisor explained what he or she was doing and which choices or dilemmas occurred in his area of expertise. The feedback you received from colleagues who were dealing with completely different matters was often very useful. That gave you a little insight into the support within society. These people were lawyers who were engaged in all sorts of matters, such as notarial matters, civil matters ... Moreover, those people were all operating at a certain level and also had an international view of what was happening. So these meetings sometimes resulted in that person is working on that topic in that specific country and you should contact him.'*

(former policy entrepreneur, EM 3)

These policy entrepreneurs also relied on networks with academic experts from various universities in Belgium, in particular the KU Leuven and the VU Brussels. Interestingly, many of these policy entrepreneurs obtained university degrees in criminology and at times even doctoral degrees allowing them to maintain close relationships with professors or fellow academics working at the departments of law and criminology. The intense contacts with academic experts have proven to be influential in the development of the idea of EM in Belgium. Academic experts provided policy entrepreneurs with useful international scientific literature which referred to foreign experiences and examples of electronic surveillance. A number of academics also wrote articles themselves, already at a very early stage, about the

use of EM abroad and the risks and dangers involved when EM is being considered as a solution for problems within the penal system (see e.g. Beyens, Snacken & Eliaerts, 1992; Beyens, 1996 a & b; Kaminski, 1999). Policy entrepreneurs were inspired by these international developments and consulted academics which resulted in stimulating the (cautious) introduction of EM at the political level.

Policy entrepreneurs have thus been looking across borders for inspiration but in not in a literal sense, that is, not so much in terms of travelling to other countries for inspiration or welcoming foreign visitors to prepare the introduction of EM. A large part of the inspiration for introducing EM in the debate on penal policy reform in Belgium seemed to be based upon what one might call '*desk research'*. Policy entrepreneurs were aware of the international scientific literature regarding EM and they met with academics who knew about the international developments. Exchanging best practices in the initial phase was therefore mainly limited to reading and writing behind their desk on the basis of information that had been gathered over time and that had been circulating through academic and policy channels. A former policy entrepreneur puts it like this:

> *'How electronic surveillance has developed […] I have never met people. I also did not go abroad to see EM. I only got to know that idea during the experiment. I only learned about electronic supervision based on what I read about it.'*
>
> (former policy entrepreneur, EM 2)

From reading the international scientific literature and meeting with academic experts policy entrepreneurs knew which initiatives were being developed in other countries. In some cases, people abroad were contacted to provide further information or data concerning their EM schemes. For instance, there have been contacts with people in the Netherlands who were already setting up small-scale experiments with EM. However, 'desk research' was seemed to be the prime method for learning about EM; policy entrepreneurs therefore rarely visited EM schemes abroad. This is a somewhat remarkable finding, given the international context of policy making. Indeed, also in those days it was common practice for policy entrepreneurs to attend conferences abroad or to visit institutions around the world in other areas of criminal justice policy, such as victim support, internment, sentencing, or the prison system in general. But no such physical visits seemed to have taken place for EM. As a former policy entrepreneur clarifies:

> *'I have been abroad attending victim conferences, conferences about alternative judicial measures, but not about electronic supervision. It might have happened, but it*

didn't arise or it didn't catch my attention. It could be that people within the administration of the criminal justice department visited other countries, but I did not do that myself. The only thing we did was examining the literature and contact someone who might have known more about it, but that was not the case. The Netherlands were already engaged in experiments with electronic supervision.'

(former policy entrepreneur, EM 4)

Policy entrepreneurs were not only indispensable for introducing the idea of EM in the Belgian penal context; they also were important during the phase of policy development, helping ideas to rise to the political agenda. Which ideas eventually find their way into concrete policy proposals often depends on the composition of the private office of the Minister of Justice at a certain period in time. Or as a former policy entrepreneur states:

'But I think the success of a good minister […] that's the quality of his personal advisors. When the Minister of Justice has a very good private office with very competent people then you feel that things are moving forward and you see that things are happening. But when the Minister of Justice has a weak private office, for example, when the representative of the prison system is a light-weight, then forget it. Then you are stuck for four years and nothing happens for four years.'

(former policy entrepreneur, EM 5)

3.4.1.2 Academic experts

From the analysis above it has become clear that policy entrepreneurs developed strong ties with academic experts[18], in particular with those based in criminology departments. Indeed,

[18] In the past decades, there have been conducted a number of studies on the issue of EM in Belgium, that is, (1) De Buck, K & D'Haenens, K. (1996). *Electronic monitoring*. Brussel: NICC, 37p.; (2) Stassart, E., Peters, T. & Parmentier, S. (2000). *Elektronisch toezicht. Een belevingsonderzoek bij de eerste groep van deelnemers. Eindrapport*. Brussel: Ministerie van Justitie – KU Leuven, onuitg., 160p.; (3) Goossens, F., Maes, E. & Deltenre, S. (2005). *Onderzoek met betrekking tot het invoeren van het elektronisch toezicht als autonome straf. Eindrapport*. Brussel: NICC, 204p.; (4) Devresse, M.S., Luypaert, H., Kaminski, D. & Beyens, K. (2006). *Onderzoek betreffende de evaluatie van de reglementering, van de besluitvorming en van het verloop van het elektronisch toezicht. Eindrapport*. Brussel: FOD Justitie – UCL – VUB, onuitg., 288p. + 5 bijlagen; (5) Goosens, F., Maes, E., Deltenre, S. & Vanneste, C. (2005). *Onderzoek met betrekking tot het invoeren van het elektronisch toezicht als autonome straf. Eindrapport*. Brussel: NICC, 271p.; (6) Van Haelemeesch, D. (2015). *De beleving van het elektronisch toezicht in vergelijking met de gevangenisstraf*. Den Haag: Boom Uitgeverij; (7) Roosen,

throughout our research it became clear that academics have played a key role in the development of EM in Belgium, in particular through feeding the debate on (the limits of) EM (e.g. with reviews of the international literature and empirical research) as well as through maintaining close contacts with those in power. As a criminal justice professional clarifies:

> '*We have been lucky that academics have been involved as advisors at the political level which resulted in a mixture of these two approaches in the first five to six years. And I think because there was so much enthusiasm in the administration and because the results were so good that they were also interested from the other angle, namely the political level. That allowed us to continue doing the things we were doing'*
>
> (criminal justice professional, EM 1)

In the mid-1990s contacts with the universities were very intense. Academics from both KU Leuven and the VU Brussels inspired politicians and policy entrepreneurs to search for and develop new ideas. A number of penal policy developments during that period were inspired by ready-made 'packages' that had been prepared at the universities, that is, through studies that academics had conducted or proposals that they had already formulated. Academic experts were often consulted by policy entrepreneurs to provide feedback about certain new developments or policy proposals. Moreover, these contacts were also intensified because of regular meetings in and work for expert commissions on prisoners' rights (1998-2000), internment (1996-1999) and the external rights position, Sentencing Implementation Courts and sentencing (2000-2003) where academics, policy makers and practitioners met to discuss and prepare legal reform (on this, see e.g. Snacken, 2007; Daems et al. 2013). Many academic experts also had elaborate international networks and contacts with fellow academics abroad which resulted in a constant stream of information going back and forth. Access to academic knowledge to impel new developments in penal policy in Belgium has thus proved to be of crucial importance. A lot of things were being developed at the universities. The criminological schools in Leuven and Brussels, in particular, have to some degree been able to exert influence. As a former Minister of Justice states:

> *'The influence of the criminological school in Leuven has in general been very important. There was a lot of impact from all of the professors at that time. […]. Who also always have had an influence are the people from the VU Brussels.'*
>
> (former Minister of Justice, EM 11)

M. (2018). *Using technology to punish. An empirical study of the work of the EM officer from a structuration theory approach.* Doctoral thesis, VU Brussels.

The *zeitgeist* of the mid-1990s provided for a platform for academics to disseminate their ideas. During that period, academic experts wrote about the use of EM but also about its potential side-effects and its limits. Academics were therefore not only prominent actors because of the inspiration they offered to policy entrepreneurs; they were at the same time critical and cautious about EM. They warned, for example, for the effects of *net-widening,* that is, that the use of EM would result in more people being supervised and controlled for longer periods of time than would have been the case with EM. As a former policy entrepreneur clarifies:

> *'Academics certainly have had their share in this … in that slow, thoughtful, balanced development of electronic supervision. It is mainly from a scientific point of view that one got warned for its side effects … the risk of privacy or that the whole family is to be involved. That makes a policy advisor with some knowledge a bit more cautious.'*
>
> (former policy entrepreneur, EM 3)

Academic experts, then, drew attention to some of the risks involved in using EM. EM should not become a virtual prison and the privacy of the people under supervision had to be respected. These were all cautionary steps, for the sake of prudence. In a time frame where the Internet and cell phones were novelties, criminologists proved to be a bit sceptical about using electronics to monitor people. Technology was still in its infancy but definitely something to beware about because in no time new techniques would pop up such as implanting chips to monitor prisoners.

3.4.1.3 Politicians

The initial political response towards the idea of EM was somewhat hesitant. As we discussed earlier, the then Minister of Justice did not seem to be convinced that EM could become a viable alternative for imprisonment; this explains why he addressed the risk of *net-widening* in his formal reply to the 1995 question of an MP on this issue (see section 3.3). Moreover, the results from a study of the NICC were not entirely positive about the use of EM; indeed, the authors of the study questioned whether it should be introduced in Belgian criminal justice (De Buck & D'Haenens, 1996).

However, these early doubts about the added value of EM disappeared quite quickly. The general climate at that time, as we discussed earlier, was a climate that seemed to be open for penal reform and EM soon became one of the new initiatives on this broader reform agenda. Former Minister of Justice Stefaan De Clerck was one of the key figures in promoting EM as a positive and future-oriented alternative to the prison. Indeed, notwithstanding his previous cautious stance towards EM (see above) and the negative tone of the NICC study the Minister firmly believed in using technology as a means to improve the functioning of the

justice system in general, and, indeed, as a means to supervise detainees in particular. He therefore defended the use of EM as an alternative to imprisonment and he was very motivating in expressing his views to members in his team as well as fellow politicians. As a former policy entrepreneur recalls:

> *'I think the fact that he said 'I want it to happen' ... But that is who he is. The justice houses too, that was all at once [...] I do not know where the idea came from, but he believed in it, and he actually played a major role in that. […] He had very concrete ideas about that. He was a visionary person in that respect. He was very inspiring and motivating too. [...] He was the one who made the deepest impression on me. His white paper received some criticism, but I don't think he was impressed by that. I think he was convinced of the idea 'we have to do that.'*
>
> (former policy entrepreneur, EM 2)

The former Minister of Justice created a certain openness towards the idea of EM which he perceived as being a small element in a much broader context. EM was seen as a convenient solution which he believed to be efficient and effective, and not too expensive. But the use of technology was also attractive because it has obvious links to the idea of innovation; EM contributed to expressing a message that the time had come to move the penal system into the 21st century. De Clerck was therefore forward-looking in appreciating the possibilities of technology as a tool in a number of other fields within the criminal justice system. As a former policy entrepreneur indicates:

> *'At a certain time we visited the United States with a group of people from the Justice Commission and we went to a night court. At the night court we saw a judge working with videoconferencing. So the detainee stayed in prison ... and he was very impressed by that. And also electronic supervision, those were things that appealed to him. He was very motivating in that.'*
>
> (former policy entrepreneur, EM 2)

Interestingly, and in line with our findings in the previous section (3.4.1.2), we have not been able to find any evidence of direct policy transfer. The Minister of Justice and his fellow politicians indeed went abroad to look at developments in a number of fields but there have been no visits abroad in the field of EM. As a former Minister of Justice states:

> *'We went on a study trip with the entire Justice Commission in 1996. I do not think we imported it (EM) from the US. I do not remember that we picked it up over there. We*

visited a prison at Rikers Island in New York and also in other cities. We have done tours, but I do not think EM comes from the US.'

(former Minister of Justice, EM 11)

The political level has also been playing a (small) role in building up relationships with people from the private sector. In close cooperation with a number of criminal justice professionals networks have been built up with the industrial world. At that time, there was a certain drive for innovation which probably also had something to do with the close proximity of Flanders Language Valley (which was home to promising companies such as Lernout & Hauspie which were internationally known for their speech technology) to the home of the Minister. There have been talks with representatives from Keyware Technologies NV, which licensed the voice verification technology from Lernout & Hauspie Speech Products, about the opportunity of developing electronic supervision and linking it with the existence of an innovative technology in the vicinity. As a criminal justice professional clarifies:

'The Minister of Justice was there and there were very high-ranking people from the industrial sector, especially Belgacom, but also people from the close circle of Lernout and Hauspie. And I suspect that that had to do with the Minister of Justice at that time. It was clear that at that time there had already been many contacts between the industry and the political level.'

(criminal justice professional, EM 1)

The fact that it was fairly quickly decided to experiment with EM may be an indicator that this was an important element in the Minister's reform agenda. EM was sexy and innovative and created a buzz. It was also something that proved to be an eye-catcher in the media. Press conferences were given at the start of the experiment and later on when the first results were available (see e.g. SV, 1998).

In terms of the next phase of policy development, politicians have further expanded the use of EM as a means to control the problem of overcrowding in prison (see e.g. Rombaut, Pletincx & Bas, 2003: 14). At the time of the pilot project policy makers aimed for 300 prisoners under EM but because of the strict eligibility criteria (*Hand*. Kamer, 1997-1998, 5/01/1998, 7-9) this objective was not reached and only 72 prisoners were placed under EM at that time (Beyens & Roosen, 2013: 57). In 2000, when EM became implemented on a national scale Minister of Justice Marc Verwilghen (1999-2003) repeated the objective to increase the number of people under supervision. The objective was to reach an average daily number of 300 prisoners under EM but by the year 2003 the average daily number was only 238 (*Vr. en Antw*., Kamer, 2004-

05, 21 March 2005, 51, nr. 0531 S. Lahaye-Battheu (question no. 0531)). It took until 2006 before the daily EM population reached 600 prisoners. All next Ministers of Justice have repeatedly presented EM as a panacea for the crisis in the Belgian prison system. So although each Minister of Justice has had his or her own idea[19] about EM and has used it in his very own way electronic supervision as a policy is something that has continued to evolve as a management tool to combat the problem of prison overcrowding (Beyens & Roosen, 2013: 58).

3.4.1.4 (Former) key professionals of the criminal justice system

Thus far we have discussed how policy entrepreneurs and politicians have played an important role in initiating EM in Belgium. Via close interactions with academics experts they were introduced to the international literature on EM. Once the decision had been taken to set up an experimental scheme people from the prison administration were recruited in order to further develop the scheme and inform the private office of the Minister of Justice about the state of affairs. The way in which EM developed further in Belgium and, in particular, the peculiar way in which the scheme came to be designed (back-end, from within the prison administration, see further), was largely influenced by some key professionals in the Justice Department. There was a criminal justice professional recruited to implement EM and to promote it actively. He can therefore also be regarded as a key transfer agent. People within the administration were reasonably fast in taking up the challenge of moving forward with EM. The then Director-General of the Prison Administration played an important role in this. After a period of stagnation in the prison administration in which there was no animo towards change and innovation the appointment of a new Director-General proved to be refreshing. Moreover, as an engineer he was particularly interested in the use of technology. In the start-up phase of the scheme the Director-General maintained close relationships with various people from the political level. As a former criminal justice professional indicates:

> *'It is not that we bought an ankle bracelet on a particular day and used it. That has been prepared with inter alia people from the psychosocial service, the technical service, and some lawyers who had to look into the legal aspects.'*

[19] Interestingly to note is that former Minister of Justice Marc Verwilghen, for example, linked EM with the idea of restoration. In his 'Federal Security and Detention Plan' EM was mentioned as an alternative to prison which could reduce the harm of detention, help to repair possible harm to the victim, and restore the relationship between perpetrator and society (*Hand*. Kamer (House of Representatives), 1999-2000, 13 June 2000).

(former criminal justice professional, EM 6)

The implementation in practice, however, was the almost exclusive concern of the management team of the prison of Saint-Gilles (that is, the prison where the experimental scheme was introduced) together with the Director-General of the Prison Administration and a number of people trained in logistics who had to manage the purchase of the devices. At that time only detainees from the Brussels region were eligible and only one House of Justice was involved. The management team of Saint-Gilles has played a vital and defining role in the substantive elaboration of EM scheme. In those first years EM evolved very much bottom-up. As a criminal justice professional argues:

> *'I think that for the first, two, three years the regulations were exclusively based upon input from the prison directors of Saint-Gilles. The steering from the central prison administration was extremely limited at that time. So they almost dictated the content of the ministerial circular letters to the central government because they were the only ones who had empirical experience with the system, what worked and what did not work. How the concept has evolved over the first ten years has been fairly bottom-up. Unlike many other things. The only top down instruction was "you have to detain electronically", but how the concrete programme of EM developed has been a quasi-exclusive bottom-up matter. That is a rarity within our sector.'*

(criminal justice professional, EM 12)

In setting up the EM scheme in the prison of Saint-Gilles criminal justice professionals were inspired by the available international scientific literature on electronic surveillance. Many of them entertained close contacts with academic experts and had academic backgrounds in criminology which facilitated access to the international literature. Some also wrote scientific and policy-relevant articles themselves about the early experiences with the EM scheme (see e.g. Bas, 1999 a & b; Bas, 2000; Bas, 2001; Bas & Damen, 2000; Bollen, 2000). However, in this initial phase, they did not visit EM schemes abroad. Again, a lot of insights were gained from 'desk research', that is, by consulting reading materials on EM. Concrete information about how tagging works in practice was obtained via contacts in the industrial world. At the start of the experiment criminal justice professionals reached out to a number of commercial companies but none of these was able to help except for one company, that was, Belgacom. The telecom company came with a viable proposal to implement an EM scheme. Belgacom also had contacts in the United States which were used to organise a meeting with representatives of an American prison that was already using EM in practice. Via

videoconferencing, Belgian criminal justice professionals were able to ask questions about how to apply EM in practice, as a former criminal justice professional indicates:

> *'When I was appointed in 1997 we started to collect literature but there was very little. I then contacted a few companies but there was only one company that could help, that was, Belgacom. They could make us a real proposal for EM. They also brought us into contact with an American prison where they used electronic supervision and I had a videoconference with the person in charge in the US during which we could ask our questions and listen to their experiences to get an idea of "how does that work in practice?".'*
>
> (former criminal justice professional, EM 6)

When Belgian criminal justice professionals started to explore EM there was not that much experience with this technology in Europe. A few European countries were taking first tentative steps towards developing an EM scheme which resulted in a number of pilot projects in the mid-1990s. England and Wales were the first in 1988 to experiment with EM. The Swedish pilot project was set up in 1994 and in the Netherlands they initiated it one year later. However, it was only after Belgium had initiated its own pilot scheme that criminal justice professionals at the centre of this project started to search for best practices abroad. This resulted in frequent contacts between a number of people who exchanged experiences and who met on a regular basis to see what EM could mean in the context of the execution of sentences.

There was a lot of consultation and reflection about the development of those EM schemes. Ideas were exchanged about the role of the private sector and the extent to which EM could be applied in a broad or limited sense. Criminal justice professionals were given a reasonable amount of latitude in developing EM. Sweden, the Netherlands and England and Wales were the first in Europe to experiment with EM and they received, therefore, often visitors from abroad. A former criminal justice professional explains why this was the case:

> *'I used to say that they went to Sweden to see how it was done, they went to Holland to see how they could afford it and they went to Britain to see what not to do. That was a rather personal view. But in a certain way there is also a lot of truth in it. Everybody knew that the Swedish system was the Rolls Royce system. They had better results in reconviction and completion rates than anyone else. But it also costed more than anyone else's system. They had one person who was in charge of it for the first ten years which is quite extraordinary. He wrote the original policy papers to the Swedish parliament and he managed the system thereafter. He did it with a lot of support from*

another man who happened to be a friend of mine so I used to talk to him on a regular basis. So I was aware of what was going on in Sweden. So we used contacts like that.'

(criminal justice professional, EM 24)

As it was expected that EM would further grow and expand throughout Europe an initiative was taken to formalise the rather informal contacts that existed at that time between criminal justice professionals from the pioneering countries, including Belgium. The CEP provided a forum to organise biennial meetings in which good practices were shared. This European network of people was very small when the first CEP conference on EM was organised from 15-17 October 1998. Belgian criminal justice professionals along with representatives from England, Sweden and the Netherlands met in Egmond aan Zee to discuss the development of EM in Europe. This small network of actors played an important role in what EM became, especially in Europe. Moreover, in those years, they spoke at conferences and wrote articles about EM. In turn, these written pieces offered inspiration to other countries interested in setting up an EM scheme.

3.4.1.5 Commercial corporations

A fifth set of agents of policy transfer were the commercial corrections companies. Commercial companies have played some role in helping to transfer the more concrete aspects of policy into the Belgian context mostly through their involvement in commercial contracts in EM schemes. In the initial phase, companies played a major role in setting up the experiment by providing the necessary equipment. Indeed, electronic supervision is by definition about technology, so the personal advisors to the Minister of Justice and the administration were required to cooperate with private actors. The Director-General of the Prison Administration therefore contacted telecom company Belgacom to discuss the start of the experiment and learn from their experience. As an international company Belgacom had multiple contacts abroad. Via its subcontractor Belgacom Alert Services the Israeli company Elmo Tech (now 3M) came into the picture which eventually would provide for ankle bracelets for the Belgian EM scheme. As a representative of the commercial company explains:

'By coincidence we had a meeting with one of the managers or President, I don't remember anymore, of Belgacom. And we discussed and we said that we had a product that could be interesting for Belgium as well. We had Ameritech as a partner which owned Belgacom so we had a meeting in the US and we discussed the product that could be interesting for them. Then we organised a meeting in Belgium with the government and it seemed they found it interesting because they had a lot of overcrowding at that time and it could be a solution. […]. The cooperation started

because Belgacom, the local telecom company, was owned by Ameritech, or at least partly owned by Ameritech, and so we had a meeting by coincidence in the US. In Belgium we met with the Minister, with the head of jails, with several judges, with some organisations that take care of the rehabilitation of the offenders. It was a whole process, but the idea was raised by coincidence at this meeting in the US.'

(representative commercial company, EM 19)

During the pilot project a second EM device was tested. This explains why a second company was involved during the test phase. In that period, the Belgian company Lernout & Hauspie was a pioneer in developing voice recognition for a variety of purposes. Their so-called 'Parole Guardian' system, which was licensed by a subcontractor of Lernout and Hauspie, that was, Keyware Technologies NV was perceived as a promising alternative for the ankle bracelet (see De Tijd, 2 April 1998). This system provided for the detainee to be called at irregular times by the central computer in the prison of Saint-Gilles to respond to a number of questions when being under supervision at home. By means of speech technology the central computer would recognise the supervisee's voice and notify the prison administration in cases of violation. The voice recognition technology, however, did not prove to be reliable at that time; it was therefore decided to use henceforward exclusively the bracelet.

From the very beginning it was clear that an EM scheme could only be initiated in a close partnership between the public and the private sector. Both sectors needed each other in the development of the system. The involvement of commercial companies was (and still is) indispensable in setting up an EM scheme because governments usually cannot design and produce the necessary technological devices. But the private sector was (and is) in turn depending on the public sector to create a demand for its goods and services. At the time of the pilot project only a few companies worldwide were involved in developing EM equipment which offered such companies a certain degree of independence from the Belgian policy makers. A criminal justice professionals summarises this as follows:

'What I have always found interesting in that period was that it was a collaboration with the private sector. And there was a constant interaction between the two parties involved. That was a very strange relationship. Each sector had its own peculiarities and I also think that that was played correctly … that there have been no conflicts of interest. But the two sectors needed each other at that moment. You cannot expand EM without support from the private sector. But the private sector cannot sell its material if there is no clear concept. Then I noticed that during that period there was a lot of discussion about which model should be developed. And what ultimately came on the market I think is also a combination of those two visions of what do we need and what

do we want to use, and what is technically possible? The private sector could deliver a lot of things but policy makers were not interested in everything they had to offer. I thought that was a fascinating story to see how these two sectors tried to find each other to build something together.'

(criminal justice professional, EM 32)

In our study we did not find evidence of commercial companies influencing, or even attempting to influence, penal policy in Belgium. However, there is some evidence of the involvement of commercial companies in stimulating the ongoing development of EM over the years, though respondents differed on how significant this has been in bringing about policy change. There is some evidence that commercial companies lobby to present new and innovative equipment to policy makers and criminal justice professionals. Commercial companies often detect new markets for which EM could be a solution and request a meeting to talk about the existing technical possibilities. Family violence is for example one of these new phenomena. As a criminal justice professional indicates:

'There were certainly a number of representatives from commercial companies who contacted the private office of the Minister of Justice and policy makers to praise a certain product. And that happened regularly. They came to present their product but governments were interested in EM and they had no other choice than to involve the private sector. There were only three or four suppliers so there is not really a large market to cover for it if there are only one or two people who can sell the product.'

(criminal justice professional, EM 32)

However, other respondents played down the importance of commercial lobbying. There were some respondents who remembered some low-level contact from commercial companies, such as, occasional invitations to lunch and so on. A criminal justice professional confirmed this impression when he told us that one commercial company had invited him for an all-in holiday abroad in order to 'show him a few things' while he was there:

'I remember that they really tried to invite me and us to go there at their expense. We always held on to a very strict and rigid ethical position: "no, we do not do that". I remember that the first time and also the only time we did go was only after three, four, five years. That happened only once because we were convinced that we had to be careful with that. We are the public sector and they are the private one.'

(criminal justice professional, EM 1)

In the development of EM there is a constant interaction between the public and the private sector. Because the private sector notices what is trending in society they will have the opportunity to develop a certain variety of products. In that general climate of the time, the CEP offered an important platform for commercial companies to present their products. The biennial conferences were (and still are) places to meet with an academic/policy part with workshops and speeches, but also a commercial part, because these events offer companies the possibility to show their products to interested people.

3.4.2 Why engage in policy transfer?

The process of developing an EM scheme in Belgium has been influenced by a set of factors. In the mid-1990s, Belgian policy makers were increasingly confronted with a growing prison population. Prison overcrowding had been a problem for a long time but the number of inmates was now rising significantly and intensified the problems with prison capacity (Maes, 2010: 49). Belgium has experienced a rising prison population since the 1980s. As Maes (2010: 48) indicates the average prison population in Belgium rose with 63 percent between 1980 and 2004. As the incarceration rate fluctuated around sixty-five per 100.000 during the 1980s it rose to ninety per 100.000 in 2003 (Snacken, 2007: 145). In 1995 the average prison population consisted of 7693 prisoners (Maes, 2010: 49). Moreover, some of the older solutions to deal with this problem were no longer available. Indeed, pressure on prison capacity was for a long time primarily dealt with by Royal Decrees which granted mercy and which were invoked at special occasions or celebrations and which resulted in a reduction of a large number of prisoners in a short period of time (see e. g. Maes, 2009: 887). The last such Royal Decree dates back to June 1993 when Belgium was the Chair of the European Economic Community.

The past quarter of a century policy makers have been searching various ways to deal with prison overcrowding: introduction of community sanctions, construction of new prisons, non-execution or reduction of prison sentences, transfer of foreign prisoners, and, indeed, the introduction of EM (see e.g. Maes, 2009; Daems, 2018). This implies that EM has to be seen against this background of a system suffering from overcrowding:

> *'In the beginning, I do not think that EM had an objective. It was just pragmatic because there was no space or because there were too many detainees. Politicians usually perceive it as a lack of places in prison. To solve this lack of space you can build, what they have done, or you can execute sentences in a different way. I do not think that it*

(EM) responded to the idea of "in terms of reintegration electronic surveillance might be more interesting than mere imprisonment".'

(former policy entrepreneur, EM 9)

Whereas EM was seen as an alternative to prison and in that sense could potentially reduce prison overcrowding it was also perceived to be less expensive than imprisonment. This was particularly appealing to Ministers of Justice who had been under strong budgetary pressure to use the available resources of the Justice Department in an efficient way. Moreover, introducing and expanding EM can happen quicker and more flexible than the construction of new prison facilities. The 1996 White Paper was the first official document in which EM was proposed as an alternative measure. In the introduction of the White Paper it was argued that the deprivation of liberty should be an *ultimum remedium*. More attention should go to so-called community-based alternatives whereas these are less harmful than going to prison. But also the more intensive supervision through electronic devices seemed attractive. As a former Minister of Justice clarifies:

'In a post- Dutroux-era where you, as a Minister of Justice, release someone and that decision results in he or she just walking around versus in other cases where you still have a trace of the person or have opportunities to track someone … the latter is of course the better solution. That was my opinion. … certainly, in the discourse that I defended about the humane character of punishment and therefore the way in which you can pursue integration and that you can keep a person busy or working. Of course, this offers much better prospects to get prisoners reintegrated. It was evident to me that EM fitted perfectly in the intersection between a gradation of penalties and integration possibilities. With EM you could therefore get multiple effects at once. That has always been obvious to me and it the same holds for the idea to remove people from prison in order not to harm them further. More opportunities for reintegration. All arguments seemed to be in favour of EM and that has never really been questioned by anyone, in my opinion. That was something that was very quickly and broadly accepted at the political level.'

(former Minister of Justice, EM 11)

One of the reasons why the idea of EM in Belgium gained momentum had probably to do with the atmosphere of reform that we discussed earlier. Indeed, the mid-1990s proved to be a time when a lot of new ideas and projects were being introduced in order to address the existing problems in the criminal justice system, including prisoners' rights, houses of justice and victim policy. This eagerness for innovation was also found with a number of criminal justice professionals who took up the responsibility to implement EM under the supervision of the

Director-General of the Prison Administration who was an engineer and therefore very interested in technology. In the late 1990s there was some experience with EM in the neighbouring countries so relationships were set up with civil servants in England and Wales, Sweden and the Netherlands and best practices were exchanged as a criminal justice professional indicates:

> *'What I remember from that period is that there were frequent contacts between a small group of people who exchanged experiences. Who also came together on a regular basis to see what EM could mean in the context of sentencing. The countries that were leading the way were England and Wales, Sweden, and the Netherlands, and Belgium also got involved along the way. I think that was a group of six or seven people. People from the field supported by a number of academics.'*
>
> (criminal justice professional, EM 32)

But as EM in Europe was still in its infancy Belgian criminal justice professionals involved in the experiment were also obliged to rely on their own networks. Belgium is a small country in which people are rather accessible and relationships are rather informal so it was easier for criminal justice professionals to develop tight relationships with inter alia academic experts who provided them with the necessary international scientific literature on EM.

Another supporting factor is the attractiveness of EM as a future-oriented technological tool. Indeed, EM as a technological innovation with potentially wide-ranging applications fascinated (and still fascinates) policy makers and politicians. Even before its introduction in the Belgian criminal justice system in the late 1990s, the idea of EM was already circulating with certain people at the political level. One person, for example, put forward the use of a GPS chip for sexual offenders. In that period, however, EM was still seen as a gadget that would be difficult or impossible to introduce because of privacy reasons: '*When the idea of the chip for sexual offenders came up, we looked at him like that's a step too far*' (former policy entrepreneur, EM 9). Indeed, the mere confinement and the use of technical means for that purpose was seen as a step backwards; it was believed that priority should be given to investing in human support rather than in constructing prisons and electronic equipment. Although there were no concrete projects on the use of electronic equipment in the early 1990s it means that the idea was already circulating.

The story of EM is somewhat peculiar for the field of criminal justice policy since it cannot be disconnected from the mood and sphere of the late 1990s and the early 21st century (on this, see also Nellis, 2018). Indeed, in recent times technology has become an integral part of our everyday lives. The current generation of adolescents, for example, looks very differently

at privacy issues than previous generations. In the early years of EM books and articles were written in which supervision was seen as a spying 'big brother' (see e.g. Beyens, 1996; Bas & Damen, 2000; Nellis, 2005; Daems et. al., 2009). Nowadays, young people seem to be less concerned to give up their privacy when using their smartphones to personal information and their whereabouts. EM seems to be part of this larger story of the changing role and influence of technology on everyday life. These developments in society have been noticed by commercial companies which have adapted and innovated their products accordingly. For example, public servants in the field of EM were already convinced in the mid-2000s that GPS technology would be proposed at a certain moment in time by the commercial companies whereas they knew that this new technology would be accepted as time went on. As a criminal justice professional reflects on the lobbying activities of companies active in the market of EM:

> *'The commercial companies are always selling: 'I have a miracle solution for you for securing society and suchlike'. We get information on things such as voice recognition and biometrics. All sorts of things and everything is possible.'*
>
> (criminal justice professional, EM 10)

At times one gets the impression that EM offers a solution to a wide range of emerging social problems. Indeed, EM has over the years always been an eye-catcher in the media and a tool for policy makers to 'score' with the public. As a former policy entrepreneur indicates:

> *'The system of EM has attracted a lot of attention in the press, with researchers, with everyone. So there is always a lot of pressure from the media, from the parliament. You almost feel that it appeals to the imagination and with almost every phenomenon that presents itself socially, EM comes into view at a certain moment. In the period between 2008 and 2011, it was mainly domestic violence that came up. Now also in the context of radicalization and terrorism cases. In that sense it was therefore always important to inform very well about what EM can do and what EM cannot do, and that does not always seem to be an obvious story to bring. I think that people have very high expectations about that and they also create their own image of what it is. I think that a lot of people now have a wrong idea of what EM is and what it can do, but that is something that is difficult to refute. In the day-to-day work at the private office of the Minister of Justice there was always something that was happening concerning EM. Either questions from the media, or parliamentary questions. The pressure to increase the capacity was also very high. Linked to the fight against impunity. Policy-wise in the very short term there is not much else possible than to intervene via EM. The ordering of ankle bracelets seems to go faster than building prisons. That is not always the case*

in reality, but ... (laughs). Whereas there is the overcrowding in prison and the creation of an interruption of penalties, the idea of dissolving the pressure of the waiting lists for prisons through EM is always very much present. That was a theme that was addressed in one way or another every day.'

(former policy entrepreneur, EM 20)

From the above it seems clear that the question of 'why policy transfer?', cannot be reduced to a single, fixed answer. EM has, indeed, many different functions (see for more details e.g. Daems, 2013a). EM has a systemic function; it has since its existence in Belgium increasingly been regarded as a means to reduce prison overcrowding. This has resulted in a sharp quantitative growth of EM in recent years. In 2016, the average number of people under EM on a daily basis was 1601 (Directorate-General of the Prison Administration, 2017: 44). EM also has a re-integrative function. Indeed, EM is carried out within society and the supervisee is therefore expected to fulfil a useful day time activity during his so-called 'free hours'. However, the re-integrative function of EM in Belgium has been somewhat side-lined in recent years. Indeed, the individual guidance by justice assistants has systematically decreased over time. Anno 2018 there is individual guidance and follow-up by justice assistants for offenders with sentences of more than three years. In relation to this, the share of technology in the operation of EM has increased sharply in recent times and it has had a part in a virtual elimination of the human aspect of EM (Daems, 2013a: 85).

3.4.3 What is transferred?

As we discussed above, the emergence and growth of EM in Belgium was the result of a dynamic set of processes in which a number of policy entrepreneurs, politicians and criminal justice professionals were involved. At the time when Belgian civil servants were thinking of initiating the pilot project on EM only a small number of European countries had an EM scheme. In the mid-1990s EM schemes were being developed in the Netherlands, England and Wales, and Sweden resulting in limited experience with its operationalisation. Or it was at least perceived like that. As a former criminal justice professional argues:

'You must not forget that we had to invent everything in the field of electronic surveillance. There was no ready-made package available that indicated "that is electronic supervision". First question: which form of electronic supervision? The ankle bracelet or voice recognition? Voice recognition was not fully developed at that time so it was not an option for EM. That is different now. With regard to the ankle bracelet we cooperated with Belgacom because they were the only ones who could offer it. But we also needed to get to know the material. I had a very good technical service which I had set up in a previous career. That technical service could do the testing of the

material. But then we also needed a protocol: "how do we proceed? Who is eligible? What is needed for the man or woman at home? What is needed at the prison administration? What are the consequences? How do we react if there is a violation?" As you can see we had to invent everything.'

(former criminal justice professional, EM 6)

In order to address such questions the Director-General of the Prison Administration had set up an implementation team. Interestingly, the operationalisation of the EM scheme in Belgium differed in a number of ways from the schemes that were being developed in those other European countries so Belgium came to be perceived as an outsider. One of those differences was that the Belgian EM scheme was initiated from within the prison system and was not operationalised by the probation service as in Sweden or outsourced to the private sector as in England and Wales. In the mid-1990s the prison administration and the probation service in Belgium were part of the same Directorate-General. This implied that only one Director-General was responsible for both administrations and there was no real split between them. The Belgian EM scheme was initiated from with the prison administration because of its experience with exercising control. In that sense, EM had to be conceptualised as a virtual prison. As a former criminal justice professional indicates:

'Our first idea was to look at EM as if it was a prison. A virtual prison in which the detainee who was wearing an ankle bracelet had the same rights and obligations as a detainee residing in prison. The difference was that the electronically monitored prisoners were serving their sentence at home. It was in that context that we actually started.'

(former criminal justice professional, EM 6)

This explains why the Belgian experiment with EM was initiated from within the prison of Saint-Gilles where a small team from the prison administration was responsible for its operationalisation. However, the idea of EM as a virtual prison was somehow abandoned because of the negative side effects of too much control and the risks involved in using EM. Moreover, as discussed above, academic experts too criticised the idea of EM as a virtual prison by arguing that the privacy of the people under supervision had to be respected. As a result EM became operationalised as an alternative to prison with special emphasis on individual support from social assistants to facilitate reintegration in society. EM came therefore to be introduced as a back door measure; as a transition measure between prison and freedom.

The central role of support by social assistants also typified the Belgian EM scheme in the initial period. The staff involved in the early development of the Belgian EM scheme

believed that EM was only useful when supervisees were sufficiently supported and followed-up by social workers during their transition period between prison and freedom. It was therefore not the intention to control people for long periods of time. People under supervision were instead encouraged to look for work and useful daytime activities. This implies that sufficient attention must be paid to any underlying problems or difficulties by means of guidance from a social assistant. Because of this emphasis on individual support and follow-up EM was not conceived as a goal in itself, but rather as a means that could contribute to the goal of reintegration.[20] Indeed, it was believed that having useful daytime activities would also be beneficial for control purposes. As a criminal justice professional clarifies:

> *'It may seem very progressive that we demanded people to have a useful daytime activities but that was actually also a form of control. They could not be controlled through technology when they were not at home so we assumed therefore that they were being controlled in a social way at work or at school. The social assistants did the follow-up and they checked whether the supervisee had been at school or at work by talking to the director of the school or to employers.'*
>
> (criminal justice professional, EM 1)

Against this background one can better understand why those involved in the early Belgian EM scheme were very careful to use strict control techniques; indeed, using such technologies did not fit into their overall concept of EM. In addition, EM was seen as a core business of the public sector and thus the involvement of the private sector in the daily operation of EM was strictly limited to delivering the equipment. However, in the initial period there was no mobile team in Belgium that could be used for the installation of the equipment so there was no other option than to outsource this to the private sector. But this was only so for a brief period of time. As a former criminal justice professional clarifies:

> *'There was no mobile team in Belgium that you could be used to do that. There was no other solution than to outsource some tasks to the private sector because we simply did not have the expertise to do it ourselves. We could not fabricate our own control*

[20] A similar remark was made by Annie Devos on the occasion of the tenth anniversary of the houses of justice. On that occasion, former Director-General Annie Devos argued that: *'If the technology and supervision leave the human aspect behind we will lose the possibility of developing active social reintegration. Technology must remain an instrument for the execution of the sentence and must not become a goal in itself. One must avoid that the technological aspect gets the upper hand: the technology must not dominate the human aspect. After all, it is clear that supervision is essential for the success of the measure.*' (Devos, 2010: 32-32 cited in Daems, 2010)

equipment. We discovered that the mobile team which installed the EM equipment at the person's home provided information to the supervisee which was not always correct. We missed a lot of information and a lot of contacts with the people in practice. And so since such a first contact with the installation of the equipment is so crucial for the further course of the measure we decided to do it ourselves. And then we found out that if your own people are responsible for the placement of the equipment you can give messages and already work on the future trajectory. And you have it in your own hands. If you want an installation to take place today it can happen without you having to comply with the terms of a contract. It went faster, it was more efficient and the results were better when we did it ourselves.'

(former criminal justice professional, EM 32)

The Belgian EM scheme was also distinctive in terms of the selection of inmates. At first, the selection of prisoners eligible for EM was very strict. Indeed, the civil servants who set up the pilot project in the prison of Saint-Gilles were very carefull and hesitant to select serious cases. A number of categories were therefore excluded (see e.g. Beyens et. al., 2007; Beyens & Devresse, 2009; Vander Beken, 2013b, Devresse, 2014; Beyens & Roosen, 2017a). However as the first circular letter was very strict in determining who was eligible (only for prisoners in the judicial district of Brussels, Leuven and Nijvel who serve a sentence of up to three years) only a handful of prisoners could participate in the EM scheme. In the first months of the experiment (April - September 1998) only nine prisoners were selected to serve the final part of their sentence at home by wearing an ankle bracelet (Bas, 1999 a & b; Stassart, 2000; Daems, 2000). The first ministerial circular letter was therefore quickly adapted in order to increase the number of prisoners in the EM scheme. And, indeed, over the next months and years the eligibility criteria were further gradually extended. As a result also people convicted of more serious crimes became eligible for EM. This inclusion of more serious cases in the scheme differs from the approach taken in some other countries where often only short-term prisoners or offenders who committed less serious crimes are eligible for EM. As a criminal justice professional indicates:

'I know that I went to a conference in the Netherlands where I heard that there were 2000 people under EM in Scandinavia at that time. But if you had a closer look at these numbers you saw that 1600 of those 2000 people were convicted for traffic crimes. Crimes for which you were not punished in Belgium at that time. When a person violated the traffic regulations this violation was added to his criminal record but you did not see anyone in prison for traffic crimes. Scandinavian countries have always had a very tight policy for traffic crimes linked to alcohol abuse. So the vast majority of Scandinavian

EM supervisees fell into that category whereas the Belgian EM scheme focused on people who had committed more serious crimes. This also meant that the debate in the beginning was very much focused on the support of those people. I think for a decade we were very much respected at the international level because of our customized EM scheme.'

(criminal justice professional, EM 12)

In 1997 when Belgium initiated its EM scheme there was not much experience with EM in Europe. As we discussed above, solely the Netherlands, England and Wales, and Sweden were taking first tentative steps towards developing an EM scheme which resulted in a number of pilot projects in the mid-1990s. In that initial period, Belgian criminal justice professionals were mainly inspired by the available international scientific literature on electronic surveillance and did not visit EM schemes abroad. As a criminal justice professional argues:

'If there were already initiatives in Western Europe these were very new and they were not really extensive in quantitative terms. So basically we were almost obliged to start testing ourselves'

(criminal justice professional, EM 1).

As we already discussed above, it was only after Belgium had initiated its own pilot scheme that criminal justice professionals at the centre of this project started to search for best practices abroad. This resulted in frequent contacts between a number of people who exchanged experiences and who met on a regular basis to see what EM could mean in the context of the execution of sentences. These rather informal meetings were quickly formalised in the sense of the organisation of a first CEP conference on EM in Egmond aan Zee (the Netherlands) (see section 3.4.4 for more details). Despite the frequent contacts between that small group of people, which consisted of representatives of England and Wales, the Netherlands, Sweden and Belgium, it seemed clear that each country made its own choices regarding the operationalisation of EM. On the one hand, Sweden and the Netherlands were in favour of initiating their EM scheme from within probation. England and Wales, on the other hand, outsourced the operation of their EM scheme to the private sector. This leaves us with the impression that in these interactions between representatives of those countries, including Belgium, it were mainly ideas, ideologies and attitudes that were being exchanged, that is, so-called 'soft transfers'. We found no evidence of 'hard transfer', that is, the transfer of programmes or policies. The Belgian EM scheme was perceived as an outsider in Europe. The strong focus on support by social assistants for those being monitored attracted the attention of people abroad. Indeed, as the operation of the Belgian EM scheme seemed to be significantly different in a number of ways from schemes in other European countries people

in the field of EM even started talking about the 'Belgian model'. As a criminal justice professional indicates:

> *'The fact that the prison system took the lead in Belgium was striking for them. In the other countries it was always the probation system that initiated EM. So we were, to a certain extent, sexy for them because we came from the prison system but there was also a bit of suspicion. On the other hand, they were very open to our very intensive form of support for the people we had under EM. They could not handle that well. I think it was Dick Whitfield who started talking about a 'Belgian model' for the first time stating that this is a certain way of working and we have other ways of working.'*
>
> (criminal justice professional, EM 1).

The Belgian EM scheme received a lot of appreciation abroad so it became clear that Belgium had become an important player in the field of EM. A former criminal justice professional puts it like this:

> *'Belgium is literally situated at the intersection of different cultures. Previously you had the Anglo-Saxon model with especially England as a pioneer but also in part the Dutch EM scheme. And then you had the Latin countries, France, Portugal, which were looking for their own way. Because Belgium really is at the junction of these two models, I think that at some point we also made some connections between those strands in Europe. It all came together somehow. Belgium used elements from the Anglo-Saxon model, but it also had some connection with the French systems. We also have a French-speaking part of the country. And that also played a role. And I do think that Flanders together with a number of other countries has also partly determined what EM could mean at the time. The speed with which it all evolved depended in part on the national context. And political decisions. EM in England went on and on ... They followed US standards and that was out of control. In addition, the Netherlands were slightly larger than Belgium. In Europe, these were the biggest customers. Whereas the number in the Netherlands stabilised for a long time EM in Belgium expanded a lot in terms of quantity.'*
>
> (former criminal justice professional, EM 32)

Belgian criminal justice professionals also tended to use the phrase 'Belgian model' in meetings to draw attention to the system and emphasise its distinctiveness. Belgian civil servants were also often contacted by civil servants from other countries who showed interest or played with the idea to operationalise the EM scheme from within the prison system (for more detail see section 3.4.4).

As we mentioned above EM in Belgium could only by operationalised in a close partnership between the public and the private sector. The private sector has been (and still is) an important partner in the development of EM in Belgium because of its responsibility for the delivery of the electronic devices. As Belgian criminal justice professionals had no experience with the implementation of EM in practice they had to reach out to the industrial world to make the necessary electronic equipment available to them. In the initial phase of the Belgian experiment there were two companies involved in the transfer of the 'hard ware' of EM: the Israeli company Elmo Tech which was responsible for the delivery of the ankle bracelets and the maintenance of the material, and the telecommunication company Belgacom which took care of the phone services. As we mentioned above, after the decision was taken to experiment with EM criminal justice professionals reached out to a number of companies that could help to implement a Belgian EM scheme. However, only one company could offer a realistic proposal to apply EM in practice. Via its subcontractor Belgacom Alert Services the telecommunication company had contacts in the United States with a company called Ameritec. Belgacom used its contacts with Ameritec to organise a videoconferencing meeting between Belgian criminal justice professionals and representatives of an American prison that was already using EM in practice. As Belgacom was the largest telecom company in Belgium at that time it was somewhat inevitable for criminal justice professionals not to make use of its services. Engineers from Belgacom were responsible for updating the basic software package according to the application requirements of the Belgian EM scheme. The cell phone technology was still in its infancy during the experiment with EM so the transmission of the signal happened over landlines which were operated by Belgacom. The agreement with Belgacom could be settled in a short period of time because of a favourable financial arrangement as a former criminal justice professional indicates:

> *'I first contacted people in the management of Belgacom. Belgacom was a private company and had to be paid for its services. I had found a way to pay them without any consequences for the annual budget of the Justice Department. That is why we were also able to start immediately and we did not have to submit a budget proposal first. I would not even been able for me to do this because I had no idea of the costs. At that time we had the Prison Labour Service which organized work opportunities in prison. Industrial labour so not cleaning or household labour, or preparing food. Industrial labour so maintenance or working in workshops, both in-house and managed by private firms. In that sense I also had experience with cooperating with private companies because I also worked with this Service in prison. That was a commercial agreement. The Prison Labour Service was an independent body which could conclude commercial agreements outside of the annual budget of the Justice Department. The intention was*

to make a profit. It sounds a bit harsh to make a profit on the back of the prisoners but its director had to pay his own staff. They were not paid by the budget. We needed money for personnel, technicians, classrooms, maintenance, heating, wages of detainees, etc. We all had to pay for that ourselves. From that budget I could draw money to initiate the experiment with EM. That is how I made an agreement with Belgacom. Very temporary and very primitive to allow the start and to gain experience. Otherwise that would have been much more difficult.'

(former criminal justice professional, EM 6)

In order to fully operationalise the Belgian EM scheme a second commercial company got involved in the experiment, that is, the Israeli company Elmo Tech. As a criminal justice professional indicates it was Belgacom that first contacted Elmo Tech:

'I am almost convinced that there was also a tender for the experiment but I assume that at that time only one company in Belgium could de facto be ready to respond to this tender. At that time there were not yet twenty operators for telephony and cell phone traffic so it was inevitable not to reach out to Belgacom. Belgacom then went looking for other companies and they then got in touch with the Israeli firm. It was not the government that has contacted the Israeli firm but Belgacom and they have concluded joint ventures with other companies that were responsible for the rest of the technology.'

(criminal justice professional, EM 12)

Belgacom got in touch with Elmo Tech via its contacts with an American telecom company, that is, Ameritec. The Ameritec Cooperation had close contacts with Elmo Tech via which they organised a meeting in the US with a number of representatives of Belgacom to discuss the use of ankle bracelets in the operationalization of the Belgian EM scheme. As Belgian criminal justice professionals showed interest a meeting was organized in Belgium at which representatives of Elmo Tech presented the available EM equipment to a select number of people (see section 3.4.1.5). A commercial company representative summarizes the start of the cooperation between the Belgian government and Elmo Tech as follows:

'The cooperation started because Belgacom, the local telecom company, was owned by Ameritech, or at least partly owned by Ameritech, and so we had a meeting by coincidence in the US. In Belgium we met with the Minister of Justice, with the Director-General of the Prison Administration, with several judges, with some organisations that

took care of the rehabilitation of offenders. It was a whole process but the idea was raised by coincidence at this meeting in the US. At that time we looked for every country that could be relevant for EM. In every country I came with a bracelet and they laughed and said we were crazy. They said that they were trying to keep the offenders in jail and we wanted them to come out. They did not believe that electronics would solve overcrowding. People laughed with us but we tried. Everywhere were we had an opportunity or local contact or company that could do something we jumped in on those meetings. And Belgium was one of these cases.'

(representative commercial company, EM 19)

Criminal justice professionals and representatives of Elmo Tech continued to operationalize the Belgian EM scheme in practice. In the initial phase the technology was very basic. Supervisees received an ankle bracelet which was connected to a monitoring box installed at the supervisee's home. The monitoring box transmitted data to an another box that was situated in the prison of Saint-Gilles where the management team was responsible for the follow-up of the alarms. As mentioned above, next to the RF-technology Belgian criminal justice professionals also tested voice recognition at the start of the experiment. As Belgacom had a few months delay in submitting its proposal for the tender on the use of voice recognition it was decided to cancel the contract *ex officio* and to call on to the second provider, that was, Keyware (subcontractor of Lernout and Hauspie) for the voice recognition system. This technology, however, turned out to be unreliable at that time so it was decided to stop using voice recognition. As EM was a novelty in Belgian penal policy its development required a lot of attention and consultation. Indeed, Belgian criminal justice professionals were almost on a daily basis in contact with Elmo Tech in the beginning. Representatives of Elmo Tech flew to Belgium a number of times to maintain the electronic equipment and to solve technical problems. As a criminal justice professionals indicates the Belgian prison administration had very intense contacts with the Israeli company:

'There was … a lot of movement in that company because they were so small when they started but with very enthusiastic people who all had studied. Who wanted to go for it very hard and who went for it. Very good engineers, but also very good managers and sales people. So that was all right there. They have conquered a very large part of the market on a global scale. A number of large American players which had the quantity in the beginning but did not sufficiently monitor the quality of the technology or invest in its evolution were thrown out of the market by Elmo Tech. […] As far as the technology is concerned we never had real problems in Belgium, unlike other countries. We have always been able to work with their technology in a very reliable way. Fortunately, because I think if that had not been the case we might have ended up in

more stormy waters. They were also extremely professional. Those times, and those were very scarce, if there really was a serious problem then they got on the plane from Tel Aviv to Brussels the same day. […] they also had a number of contact points and a technical team working at Belgacom so they could provide the first assistance.'

(criminal justice professional, EM 1)

The private sector has been indispensable in introducing the hardware and securing its reliability in the early phase of EM in Belgium and in that sense has played a crucial role in the success of the Belgian EM scheme (see above). A criminal justice professional expresses it as follows:

'The company we have been working with from the start has become a big player on the market throughout that first period because they have worked so hard to make themselves known in a particularly sympathetic way. I cannot deny that. They have been really professional in their approach.'

(criminal justice professional, EM 1)

Criminal justice professionals had close contacts with Elmo Tech in the initial phase of the Belgian EM scheme and these close interactions were also maintained afterwards when EM was implemented on a national scale from 2000 onwards as a criminal justice professional explains it as follows:

When the pilot project in the prison of Saint-Gilles ended EM became implemented on a national scale in 2000. As discussed above, because of the distinctive way in which criminal justice professionals developed EM in Belgium the EM scheme became quickly known as the 'Belgian model'. The 'Belgian model' provided for a strict control regime by means of an ankle bracelet together with intensive individual follow-up and support of the supervisee by social workers. This customized EM scheme attracted a lot of attention at the international level which resulted in regular visits to Belgium from policy makers interested in developing an EM scheme in their home country (see further). However, as the 'Belgian model' was hyper-customized and hyper-individualised it was at the same time very labour intensive. A former criminal justice professional summarises it as follows:

'A second fact in this context was that the "Belgian model" actually offered a very large framework, a very large accessibility and the social support was very important. This explains in part why it was so expensive and why the caseload was rather modest. So what you got was that even though everyone looked at how unique the "Belgian model" was nobody wanted it. It was too expensive and it was too much of this and that. At the

same time every increase in the number of supervisees resulted in an increase of that net cost. Because there were x number of ankle bracelets more and there were x number of this and that. And at that time it was still organized from within the prison administration. This means that the sector that was already very much under pressure also had to bear the costs of EM.'

(former criminal justice professional, EM 16)

As the 'Belgian model' focused so much on an individualised approach only a limited group of people could participate in the scheme. Somewhat paradoxically, EM was seen as a valuable alternative to prison but at the same time it was perceived as only applicable to a specific group of people. However, during that period the prison administration was still being confronted with a large overcrowding problem which resulted in a need to get more people out of prison. In order to reduce the pressure on the prison system the selection criteria for the application of EM were extended which resulted in an increasing number of people under supervision in the following years. EM became a tool to manage the constant pressure of overcrowding in prison as it was felt to be easier to increase the number of people under supervision than to provide for additional capacity in prison. As a former criminal justice professional indicates:

'Political pressure, I think, because of prison overcrowding. If I remember correctly it was during that period that there were massive strikes in prison. […] that was the period when there was a lot of pressure on the prison system and where there were more and more strikes. And then they added one and one. Like ok we have EM and that is going well because that was a success story at that time. It is cheaper than the prison system so let us try to use EM as part of the negotiations in the political discourse to counter prison overcrowding. EM cannot do this as we explicitly described but it was sold like that politically and it also had social support. And then it exploded. Successive Ministers of Justice have increasingly wanted to get people out of prison. Also under the pressure of the trade union organizations within prison. And so you had a model that worked. I think that at one point EM also became a victim of its own success. It worked well. It could handle a number of cases at a certain level and there were never incidents with it. And EM still had a certain punitive element that was important for politicians and also for penal policy to sell it. We're not just going to put someone in jail anymore and we're not going to go back to that collective grace and those pardons that previously existed. No, people are going to serve their sentences and it is a real punishment. And then the numbers started to rise. And every successive Minister of Justice has had difficulties with prison overcrowding. Not much has changed but every time EM was the solution.'

(former criminal justice professional, EM 32)

As the number of people under supervision steadily rose it was not feasible anymore from an operational point of view to provide for the intensive individual follow-up and support that was typical for the 'Belgian model'. The integrated and people-oriented vision of the 'Belgian model' has shifted towards a more 'managerialistic' vision of EM as a technical means to constrain the constant influx of people in prison. As a result the individual follow-up was drastically reduced for prisoners serving a sentence of more than three years and abolished for prisoners serving a sentence of less than three years. The vision on the central role of intensive follow-up is therefore reversed. During the period of the 'Belgian model' it was assumed that everyone needed support unless it was determined that this was not the case. Nowadays it is the other way around and it is assumed that nobody needs follow-up unless there are serious indications that it is necessary. This reversed vision on EM has become prominent when Annemie Turtelboom was Minister of Justice (2011-2014). As the number of people under EM increased the workload for the justice assistants also increased. This resulted in waiting lists for people under supervision and a sense of impunity with the general public. In order to provide an answer to this sense of impunity, which can in part also be explained by the prison overcrowding, Minister of Justice Turtelboom expanded the use of EM to execute all short sentences between four months and one year. In order to restrict the workload for the staff there was no guidance provided for the supervisee (Vander Beken, 2009; Vander Beken, 2013b; Devresse & Kaminski, 2013; Beyens & Roosen, 2013). This shift has often resulted in the perception that the 'Belgian model' has been abandoned over the years but for some this impression should be nuanced, as a former policy entrepreneur indicates:

> *'I think it is still a coherent story. In my view we have never stepped down from the "Belgian model". And of course when EM as an autonomous sanction became introduced this perception of abandonment echoed even more. But for the more severe cases and for the cases where EM was initially used for the model of supervision by judicial assistants is still preserved.'*
>
> (former policy entrepreneur, EM 20)

In that sense, for some, the 'Belgian model' has not been rejected but it has become more diversified in terms of its use. As the number of prisoners eligible for EM increased there were long waiting lists due to a lack of technical equipment and justice assistants available to prepare the social inquiry reports. The operationalisation of the EM scheme therefore needed to be adapted to this new reality. In 2012, Minister of Justice Annemie Turtelboom (2011-2014) introduced home detention by means of voice recognition for sentences of up to eight months in order to cope with the non-execution of short sentences. Furthermore, EM as an alternative

for pre-trial detention is possible since January 1, 2014. As the number of people under remand detention in prison was very high Minister of Justice Turtelboom introduced GPS tracking to control the detainees under remand detention at home. Since May 1, 2016 EM has also been introduced as an autonomous sanction.

3.4.4 From where are lessons drawn?

Dolowitz and Marsh (2000: 12) identify several levels of governance where the search for lessons may start: the international, the national and the local. As we discussed above in the case of EM in Belgium the search for lessons abroad did only start after the decision had already been taken to start an experiment in the prison of Saint-Gilles. In the initial phase policy entrepreneurs and criminal justice professionals did not visit EM schemes abroad: access to knowledge about EM was mainly limited to reading and information that had been gathered over time and that had been circulating through academic and policy channels. Policy entrepreneurs were aware of the international scientific and policy literature regarding EM and they had intense contacts with academics, in particular criminologists from the VU Brussels and the KU Leuven who knew about the international developments. As a former criminal justice professional indicates:

> *'I did nothing more than read what was written about it. I did not have any contacts with the Netherlands at that time. Not even with England or Sweden because that were the three countries that were ahead of us. But they started only maximum two years earlier so that was all very close together. In Canada they were earlier and in the US even more early.'*
>
> (former criminal justice professional, EM 1)

In the mid-1990s there was not that much experience with EM in Europe. Sweden, the Netherlands and England and Wales had recently started with EM but this was not comparable to the experience with EM in the US. Several US states were already experimenting with EM since the early 1980s. So when policy entrepreneurs in Europe became interested in electronic supervision in the mid-1990s they were somehow forced to look at the US for best practices and experiences with setting up EM schemes. This explains why policy entrepreneurs in, for example, England and Wales, and the Netherlands visited EM schemes in the US. A former English policy entrepreneur expresses it as follows:

> *'In 1995 the only place you could go to was the US. You had to go to places like Florida where they had schemes that were fairly well established.'*
>
> (former policy entrepreneur, EM 24)

A few years later when Belgian criminal justice professionals started setting up the EM pilot project in the prison of Saint-Gilles England and Wales, the Netherlands and Sweden had already been experimenting for a brief period of time with EM. However, most of these schemes were still in their infancy and rather modest in terms of the number of supervisees. According to a criminal justice professional this implied that there was not so much to learn from these countries when questions concerning the monitoring technology needed to be addressed. Criminal justice professionals involved in the Belgian EM scheme were therefore to some extent obliged to start testing themselves. As we already discussed in a previous section (section 3.4.1.5) at the time when the scheme was being set up there were intense contacts between Belgian criminal justice professionals and commercial companies. In this initial period there was a small link with the US: representatives of telecom company Belgacom flew to the US to visit an EM scheme in order to see how the equipment was being used in practice. Via the contacts Belgacom maintained in the US Belgian criminal justice professionals eventually got in touch with the Israeli company Elmo Tech. As EM was a new tool it required a lot of attention and dedication from both the Belgian criminal justice professionals and the representatives of Elmo Tech to initiate the Belgian EM scheme. A representative of a commercial company reflects back upon this period as follows:

> *'After one or two meetings we created a context in which we continued with […] and many other people, but there was a very good chemistry so it was very easy. I flew to Belgium like 20 or 25 times just for the … also because it was a new issue and we had to check and to test. In the beginning we had some problems and then we fixed it so it was not an easy slide. It required a lot of attention and dedication at the beginning.'*
>
> (representative commercial company, EM 19)

In the initial phase the international contacts were mainly of a problem-solving, technological nature. Representatives of Elmo Tech regularly travelled to Belgium to fine-tune the system and solve problems with the ankle bracelet. At one moment criminal justice professionals went to Israel to visit the company's headquarters in Tel Aviv (see section 3.4.1.5). In a later phase in the development of the EM scheme criminal justice professionals also started to visit other EM schemes abroad. At the end of the 1990s, for instance, a criminal justice professional visited Canadian EM schemes in Alberta, British Colombia and Nova Scotia. He reflects upon his visit as follows:

> *'At one point I asked permission from the Director-General of the Prison Administration, I think it was in 1999 or 2000, to go to Canada to look at their electronic surveillance project. It was organized then at provincial level and only for sentences of up to two years. Sentences above two years were carried out at the federal level. It was carried*

out at provincial level in Alberta, British Colombia and in Nova Scotia. I went to Alberta and British Colombia and I was charmed by the way people worked over there. It was exclusively about working with short-term prisoners but a great deal of attention was devoted to supporting the supervisees towards their release from prison and even afterwards. Electronic surveillance was seen as an overlap between prison and probation. A coordinating individual was appointed to organize a good transfer. That person was responsible for a number of individuals.'

(criminal justice professional, EM 1)

In the Canadian EM scheme a great deal of attention was devoted to support and guidance of the supervisee. This way of working shows some similarities with the 'Belgian model' which was hyper individualised and known for its large focus on support. The criminal justice professional who visited EM schemes in Canada therefore argues that:

'If there has been an influence from another country on the substantive configuration of the Belgian EM scheme in the initial period than I think it was mainly Canada.'

(criminal justice professional, EM 1)

The English, Swedish and Dutch EM schemes were distinct from each other in their operationalisation of EM. The Swedish EM scheme paid a lot of attention to support and was initiated and operated by the state. In the Netherlands EM was introduced in cooperation with a commercial company whereas in England and Wales the entire EM scheme was outsourced to a commercial company. Since these EM schemes were the first ones in Europe everybody else looked at them. As a former English policy entrepreneur indicates:

'*It is a fascinating jigsaw of pieces to put together because in fact everybody adopted what they saw from elsewhere'*

(former policy entrepreneur, EM 24).

These three countries had a constant stream of foreign visitors, including from Belgium. As a former criminal justice professional explains:

'Yes, we went abroad very often. But 'going abroad' that was restricted to England, the Netherlands, France, …. The American story did not connect with the European story. This is still not the case today. EM is conceived in a different way over there so European countries mainly looked for inspiration amongst themselves … In any case, we went to all conferences but besides that there were also work visits to see "how are they doing it?" "How do they handle certain things?" A number of practical issues with respect to EM need to be addressed in every country. You work with the same material

so you are dealing with the same problems. We also received regularly visitors from other countries. Delegations that asked us to come over and see how we had arranged it. Yes, there were a lot of travels back and forth'.

(former criminal justice professional, EM 32)

At the end of the 1990s there were thus regular contacts between representatives from Sweden, the Netherlands, England and Wales, and Belgium. They found each other somehow in their search for developing and managing an EM scheme and out of these rather informal encounters it became clear that most countries experimenting with EM were facing similar problems and difficulties in reaching that goal. Against that background Belgian criminal justice professionals visited EM schemes in the Netherlands, England and Wales, and later on also in France. In the latter case, for example, Belgian criminal justice professionals visited an EM scheme in Rijsel when the idea of introducing GPS to reduce the number of people under remand detention in Belgian prisons was on the table. Interestingly, as Belgium consists of three language communities, the Flemish community, the French community and the German-speaking community, the direction of the encounters differed. It became clear that the northern part of the country was and still is more Anglo-Saxon oriented and therefore looks at penal developments in countries such as Canada, the Netherlands, Sweden, and England and Wales. The southern part of the country feels closer to South-European countries such as France or communities in which French is the main language such as Québec (Canada). A former criminal justice professional expresses it as follows:

'I always felt that Flanders was looking at the North and that Wallonia was looking at France. That meant, for example, that Flemish people were looking at the Netherlands, England and possibly the Scandinavian countries. The others mainly looked at France. Spain was already less accessible because of the language. Italy too. So it was mainly a French phenomenon.'

(former criminal justice professional, EM 16)

Besides field visits Belgian criminal justice professionals also got (and still get) in touch with representatives from other countries at conferences and seminars abroad. As discussed above in the mid-1990s there were only a small number of European countries experimenting with EM which resulted in close interactions between representatives of these countries. These rather informal encounters transformed over time in more formal meetings in Egmond aan Zee (the Netherlands) and, eventually, in the biennial CEP conferences on EM. Professional actors involved in the EM schemes in England and Wales, the Netherlands, Sweden and Belgium started to realise that the difficulties they were facing and the questions they were having were somewhat similar and that no one knew the answers or the solutions. As most of the pioneering

countries in Europe were not in favour of looking for inspiration to the US they were drawn towards each other in order to improve the use of EM. A former English probation officer expresses it as follows:

> *'My dream was that we would have a better practice manual for the use of EM. Backed up by research and with plenty of case studies so that anybody knew how to use it better.'*
>
> (former probation officer, EM 24)

In that sense there was an initiative taken by the probation officer responsible for the implementation of the EM scheme in England and Wales to organise a conference on EM. As the CEP was the only European forum probation services had at that time it was assumed that they would be best suited to provide a forum to organise the conference on EM. The small organising group consisted of the probation officer from England and Wales, one civil servant from the Netherlands and one from Sweden. Although the Belgian EM scheme was not initiated from within the probation service and Belgium was not a member of CEP they were seen as an important partner in the set-up of this conference. The first CEP conferences were organised in Egmond aan Zee (the Netherlands). They were very small-scale in the beginning and were focused on exchanging views on the development and use of EM. An English probation officer explains it as follows:

> *'We used to have a fascinating time then because everybody was doing something different. And that is not a surprise when you consider what their problems were and what their structure was to set up. [….] What we wanted to know was "which one of these work". And the CEP conference was the only way we had to actually exchange views.'*
>
> (former probation officer, EM 24)

The first CEP conference in 1998 was therefore very much focused on 'who is doing what'.[21] There were speakers from countries that had either a pilot scheme or a scheme in operation

[21] The first CEP conference took place in 1998 in Egmond aan Zee (the Netherlands) and was titled 'Electronic monitoring in Europe'. The aim of the conference was to develop good practice, through shared experience, of offender electronic monitoring schemes in Europe. It was mainly based on experience from the Netherlands, Sweden and England but it also took into account schemes in other countries that were in preparation or piloting. The conference covered issues related to targeting and risk assessment, operational issues, monitoring and research as well as wider strategic and policy issues (internal document, 1998).

who were presenting what they were doing and how they hoped to study it. As a former criminal justice professional indicates:

> *'It was a meeting place. You met each other there. You were there for two days where you were constantly together. Where you had a continual exchange. That was the advantage at that time. You had no back up. Nobody knew anything about EM. There was no scientific research. There was no material. Everyone had to invent it. It was therefore very important for the people who had to do it in practice that they could share stories, experiences with representatives from other countries. How does that work with you? Which problems do you encounter? How do you handle things? Especially countries that were interested in EM could gain experience from countries with a little more know-how. Then we noticed over time that during the successive CEP conferences that more and more countries were participating in order to obtain knowledge and experience. And that is why a network emerged that worked reasonably well. There was also a lot of exchange on a daily basis and a lot of communication between these different countries, regardless of these CEP conferences. And on the basis of certain affinities, which model fits best and what is possible, you saw that certain countries found more connection with each other than others.'*
>
> (former criminal justice professional, EM 32)

Whereas the first CEP conference was predominantly focused on information sharing the second one was more focused on the (research) results and the learning from operational experience on implementation that were gained so far.[22] The CEP conferences provided a framework to look at the development of EM from a comparative perspective. A former English probation officer explained it as follows:

> *'What happened was that every country was well aware of what was going on elsewhere and if they were going to make the same mistakes again they could be warned.'*
>
> (former probation officer, EM 24)

The CEP conferences were rather small-scale in the beginning but over the years there were more and more people coming from various corners of the world, including Eastern-Europe, Australia, New Zealand, Argentina, Japan, and even the US. As the CEP conferences were

[22] The second CEP conference took place in 2001 in Egmond aan Zee (the Netherlands) and was titled 'Electronic monitoring in Europe'. The conference addressed three questions: (1) What is happening now?, (2) What have we learned?, and (3) What do we do next? Participants from 16 different countries attended the conference.

the only forum where people could exchange views and discover comparative developments these conferences had (and still have) a lot of influence. A former English probation officer expresses it as follows:

> *'That is one of the nice things about the CEP conferences. CEP had probation links in every country in Europe. But if it wasn't the probation service they would talk to its colleagues in prisons and say you need to come to this conference anyway. We have always had a good European representation on all these conferences, regardless of whether people have come from the probation services which is most often, but also from prisons. In Austria, for instance, it was always people from the prison service who used to come. And if Hungary came we also used to get prison governors. But the theme which was "what is the best use we can make of EM", in the end it didn't matter to me where they came from. We all had the same equipment to work with, we all had the same companies to deal with. And it was a way of getting everybody together under one roof. And swapping disasters as well as successes.'*
>
> (former probation officer, EM 24)

The CEP conferences were (and are) not only important fora for the exchange of information and views for criminal justice professionals worldwide but they were (and are) also providing an interesting and unique meeting place for commercial companies active on the market of EM. The first CEP conferences[23] were very small-scale: only a small number of countries were taking part and the private sector was only partly involved. During the first couple of conferences commercial companies were given the opportunity to show and demonstrate their equipment and give seminars at a designated moment during the conference. A clear distinction was being made between the commercial part of the conference and the policy or academic part. However, as there were no other similar venues for the companies[24] to present

[23] The past CEP conferences took place in 1998 (15-17 October in Egmond aan Zee, the Netherlands), 2001 (10-12 May in Egmond aan Zee, the Netherlands), 2003 (8-10 May in Egmond aan Zee, the Netherlands), 2005 (19-21 May in Egmond aan Zee, The Netherlands), 2007 (10-12 May in Egmond aan Zee, the Netherlands), 2009 (7-9 May in Egmond aan Zee, the Netherlands), 2011 (5-7 May in Evora, Portugal), 2012 (8-10 November in Balsta, Sweden), 2014 (11-13 December in Frankfurt, Germany), 2016 (19-21 April in Riga, Latvia) and 2018 (16-18 April in Zagreb, Croatia).

[24] The first CEP conference was made possible by grants from the European Commission's Grotius programme and from the Dutch Probation Service. From 2001 onwards, commercial companies sponsored the event and were able to exhibit their latest equipment and talk about new developments. The companies that took part in the past CEP conferences were BI, Elmo Tech, On Guard Plus, Premier Monitoring Services, Pro Tech Monitoring, Reliance Monitoring Services, Securicor Justice Services,

their products they were very enthusiastic about getting involved in the conference. As EM became popular worldwide commercial companies were increasingly looking at the CEP conference as a particularly interesting and unique place to sell their products. These conferences, indeed, also attracted a number of countries that did not yet have EM but were interested in initiating it so commercial companies became more and more interested to be present at the CEP conferences to offer their services. As a representative of a commercial company indicates:

> *'Yes, it is very important for many things. For networking, for seeing the projects, for seeing alternatives. So they can say we work with 3M since '97, almost 20 years, so we want to see other companies. This is a great place to see competitors so it is a good platform, but mainly I think the most important issue is to share information between the countries and to have a network. Because tomorrow there is a country that does not know exactly what to do in a case or happens something of which they are not sure what to do so they call each other and say: "hey, do you have a case like this, what happened here?".*
>
> (representative commercial company, EM 19)

Whereas initially companies were only permitted to present their material at a designated moment during the conference this would change eventually; indeed, at some point they were given the opportunity of having exhibition boots throughout the whole duration of the conference where interested participants could see and test the material. This resulted in intense interactions at the conference between the companies and the (potential) users of the monitoring equipment, that is, criminal justice professionals and policy entrepreneurs of various countries attending the conference. Furthermore, as an increasing number of companies appreciated the unique commercial opportunities of these CEP conferences the number of companies interested in presenting their equipment grew steadily.[25] The first CEP

ADT Security Services, G4S Justice Services, Serco Home Affairs, Guidance Monitoring Services, 3M, Geosatis Technology, Comp Electronic Monitoring, SuperCom, Attenti, Track Group and Buddi.

[25] The second CEP conference (2001) was funded by *four* commercial companies (BI, Elmo Tech, On Guard Plus and Premier Geografix), the third conference (2003) by *five* companies (BI, Elmo Tech, On Guard Plus, Premier Geografix, Reliance Monitoring Services and Securicor Justice Services), the fourth conference (2005) by *five* companies (Elmo Tech, On Guard Plus, Premier Monitoring Services, Pro Tech Monitoring and Securicor Justice Services), the fifth conference (2007) by *two* companies (ADT Security Services and Pro Tech Monitoring), the sixth conference (2009) by *four* companies (Elmo Tech, Serco Home Affairs, G4S Justice Services and Guidance Monitoring Services), the seventh conference (2011) by *four* companies (ElmoTech, G4S Justice Services, Guidance Monitoring Services and Serco Home Affairs), the eight conference (2012) by *three* companies (3M, G4S Justice Services

conference in 1998 was made possible by grants from the European Commission's Grotius programme and from the Dutch Probation Service. Since 2001 the initiators of the CEP conferences agreed to outsource the financial cost of the conference to the commercial companies active in the field of EM. However, not everyone was in favour of letting commercial companies pay for the organisation of the conferences. As a former English probation officer indicates:

> *'I think a lot of my colleagues thought I was being very foolish. That we couldn't trust commercial companies and that it was like having lunch with the devil.'*
>
> (former probation officer, EM 24)

Opponents to the idea of financially involving commercial companies in the upcoming CEP conferences argued that these conferences should in the first place be fora were civil servants, policy entrepreneurs, academic experts, etc. could speak freely about EM without the presence of the private sector. They feared that the involvement of commercial companies would lead to the private sector determining the content of the conferences. A criminal justice professional expresses it as follows:

> *'Those CEP conferences were in the long run fully paid by the private sector and then you can ask yourself "where will this end and will they define the content of the programme?" The substantive content of the conference was determined by the different countries that were working with EM. If you wanted to give a presentation yourself you basically told what you wanted and there was research that was being presented. As I have never had the feeling that it was completely defined by the private sector they have, however, the advantage of knowing what is going on in the various probation services that work with EM. That is of course valuable information for them to keep track of how the policy is evolving and what they are going to do about it from a commercial perspective.'*
>
> (criminal justice professional, EM 15)

Although not everyone was enthusiastic about the (financial) involvement of the commercial companies in the CEP conferences they have been part of it since 2001. As there was a lack of funding to organise the conference the private sector was somehow needed to financially

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and Serco Home Affairs), the ninth conference (2014) by *three* companies (3M, Geosatis Technology and Comp Electronic Monitoring), the tenth conference (2016) by *six* companies (SuperCom, Track Group, 3M, G4S Justice Services, BI and Comp Electronic Monitoring), and the eleventh conference (2018) by *six* companies (G4S Justice Services, SuperCom, Attenti, Geosatis Technology, Track Group and Buddi).

support its organisation. Their involvement has, however, been always fairly constrained. There has, indeed, been a certain separation between the commercial and the practical part of the conference. Nevertheless, this commercial involvement has continued to be a point of discussion in the organisation of the CEP conferences throughout the years. As a criminal justice professional indicates they are recently trying to scale down this involvement:

> *'It is the first time at a CEP conference (2016) that the private sector cannot speak. They cannot be part of a workshop, they are put aside. We received some letters from private companies stating that if they cannot participate they will not come or not pay, so we said "ok, than you should not come". We have never had so much sponsors as this year. So when we say to them we don't want you, they come. If we say we need you, they say yeah we shall see. So they feel that something is changing. In Riga, there is a workshop on possible European golden standards to create tenders. If these tenders are more or less the same for whole Europe that is also done to drop the pressure from the private sector. We can say it diplomatically by stating that "if every European country has the same things it will be better for you" but the real issue is that we are too much depending on people that earn money with technology. We must change the scope. It is not a revolution, it is an evolution. We will not declare war but step by step they see that they are losing influence.'*
>
> (criminal justice professional, EM 13)

The rather informal encounters at the exhibition boots prove to be important for companies as best practices were (and are) not always exchanged during official encounters such as presentations or workshops but also on informal occasions, that is, during dinner, receptions or, indeed, an informal chat at one of the boots. As a criminal justice professional indicates:

> *'That are things you experience at such a conference. That you are having a good meal and drinks with colleagues from other countries and that people convince each other in a certain way. And sometimes people thought: "what can we use?". Almost like a gadget.'*
>
> (criminal justice professional, EM 15)

Although the CEP conferences are the prime meeting venues in the field of EM at which the exchange of information and ideas takes place there are also other places where interaction occurs. As mentioned before (see section 3.4.1.4) the Director-General of the Prison Administration regularly attended round table conferences at which best practices were exchanged with regard to the criminal justice system. Likewise, during encounters at the Council of Europe good practices are exchanged as a former policy entrepreneur indicates:

'In June there is a meeting of the Council of Europe which assembles all the prison directors and the representatives of the houses of justice. At such meetings a lot of good practices are exchanged and attention is being paid to new developments. There is a lot that is being picked up about which direction you are going to take. In the context of research too there is a lot of information that is being exchanged about what is happening in other countries. I think the international and European texts are always used as a reference framework in drafting new regulations.'

(former policy entrepreneur, EM 20)

Our discussion so far makes clear that Belgian criminal justice professionals have maintained close relationships with a number of representatives from European countries in the course of the development of EM. Belgian criminal justice professionals have regularly visited EM schemes abroad and have systematically attended the CEP conferences on EM. As the Belgian prison-based EM scheme was somehow considered to be an outsider in the field it attracted foreign interest which resulted in multiple visits to Belgium. Belgian criminal justice professionals were regularly contacted by people in other countries who, for instance, also played with the idea of introducing EM from within the prison system. Indeed, the range of countries that visited the Belgian EM scheme was very diverse, as a former criminal justice professional explained:

'Yes, for example, we want to start EM: "How does that work with you? We would like to come over and see your EM scheme." We have received visits from so many countries, even South American countries. I remember that I was doing videoconferences with the Minister of Curacao, for example, who was interested in what was happening here. A number of Eastern-European countries have also come to check our EM scheme. We have had people from Denmark and Sweden who had initiated their EM scheme some time before us but they still wanted to see how we did it. The Netherlands, of course. France which started with EM after us. Switzerland of which I do not know if they ever started. Andorra and Spain. There have been a lot more countries visiting us than we have been to somewhere.'

(criminal justice professional, EM 1)

As Belgium was one of the front-runners in the application of EM in Europe it frequently happened that people visited the Belgian EM scheme. Moreover, Belgian criminal justice professionals were also regularly invited to present and explain the operation of the 'Belgian model' at seminars or conferences abroad, as a criminal justice professional indicates:

'I have been to Poland once to present our model there. The conference was organised by the Ministry of Justice because Poland had a lot of ambitions. They were very focused on the US. They were a bit of an outsider in Europe because they were looking at it from a quantitative perspective and not from a qualitative one. They wanted 1000 people under EM in the next year.'

(criminal justice professional, EM 15)

In addition, Belgian criminal justice professionals were also very active in contributing to these exchanges of views by publishing policy-relevant scientific articles on EM and presenting at the CEP conferences.

These European and international travels did not only occur in the domain of EM. Over the past decades there have been multiple contacts in the context of developments regarding inter alia internment, conditional release, alternative judicial measures, RJ and more recently radicalization. There have also been close contacts in the context of victim support and victim policies. In these meetings the development of EM in general and what it meant for victims in particular was also touched upon as a former policy entrepreneur indicates:

'I will give an example. We have once organised a seminar about victim support. […] That was in the Ghislain museum in Ghent. In the main hall. There were a lot of magistrates because some magistrates were also appointed as first liaison magistrates for victim policy. […] At the conference, thanks to us, there were people from England, France and the Netherlands. Marc Groenhuijsen, the professor of criminal law from Tilburg University and two people from Victim Support England and Wales. The Scots were there too. We already had a lot of contacts with them. Sometimes electronic supervision was also discussed among the victim organizations. What was our attitude towards this when alternative judicial measures or alternative sanctions were taken? How did the victim movement deal with this and how did the victims respond? […] The victim's movement in England and Wales was much older and much better structured than ours. So we looked up to them very much. Although, the opposite was also true.'

(former policy entrepreneur, EM 4)

3.4.5 Are there different degrees of transfer?

Dolowitz and Marsh (1996: 351) identify four strategies to sort and assess different degrees of transfer: copying – when a country adopts an entire programme in use elsewhere without any changes; emulation – when a country rejects copying in every detail but accepts that a particular programme in use elsewhere provides the best standard for designing a policy at

home; hybridisation and synthesis – involves a combination of two or more models of programmes into a new one; and inspiration – when looking at how different countries solved one common problem inspires new and fresh solutions at home but the eventual policy outcome does not resemble the original in any detail.

This section explores in more detail the processes via which policy transfer in the area of EM in Belgium occurred. In our study we found no evidence of direct copying, hybridisation and synthesis regarding the development of EM in Belgium. Belgian policy entrepreneurs or criminal justice professionals did not adopt an EM programme in use elsewhere in setting up the Belgian EM scheme. Nor did they combine elements of different policies or programmes in initiating a new EM policy. However, there does seem to have been a significant degree of inspiration in the development of EM in Belgium. The emergence of EM in Belgium involves a complex set of processes. As discussed above (see section 3.6.2) the idea of EM was first mentioned in the 1996 White Paper as a potential alternative to prison. Indeed, in the mid-1990s, Belgian policy makers were increasingly confronted with overcrowding in prison and were looking at various ways to deal with this, such as the introduction of community sanctions, the construction of new prisons, the non-execution or reduction of prison sentences, the transfer of foreign prisoners, and also the introduction of EM (see e.g. Maes, 2009; Daems, 2018). As policy makers in the mid-1990s had little knowledge about electronic surveillance they used their extensive network of people to improve their know-how. Policy advisors to the Minister of Justice at that time had close contacts with people from the administration of the Justice Department, prison directors, practitioners, fellow policy advisors, as well as with academic experts from various universities in Belgium, in particular the KU Leuven and the VU Brussels. These academic experts provided policy entrepreneurs with useful international scientific literature which referred to foreign experiences and examples of electronic surveillance. Policy entrepreneurs were thus inspired by these international developments and have thus been looking across borders for inspiration but not in a literal sense. Indeed, in the initial period, a large part of the inspiration for introducing EM in the debate on penal policy reform in Belgium seemed to be based upon what we referred to as '*desk research'* (see section 3.6.1). The initiation of the Belgian EM scheme was therefore inspired by information that had been gathered through contacts (such as with academics in criminology departments in Brussels and Leuven) as well as by reading what was available in the literature. We found no clear evidence in our study that there was a degree of emulation involved in what happened. Belgian policy entrepreneurs did not drew on one particular example of EM in order to inform their thinking on this.

Whereas policy makers in the initial period were mainly inspired by what they read in international (scientific) literature or what they heard from those with expertise in their networks

the search for best practices abroad by visiting other EM schemes only started after Belgium had already initiated its own pilot scheme. When a country has little knowledge or experience it seems inevitable that the search for ideas takes place by crossing national boundaries. Once the decision had been taken to set up an experimental scheme one criminal justice professional in particular was recruited in order to further develop and implement the Belgian EM scheme. This criminal justice professional entertained close and frequent contacts with representatives from Sweden, the Netherlands, and England and Wales who exchanged experiences to see what EM could mean in the context of the execution of sentences (see section 3.4.4). These interactions were, however, merely inspirational in nature as the way in which EM further developed in Belgium and, in particular, the way in which the scheme came to be designed (back-end, from within the prison administration), has been peculiar and different from EM schemes in other countries. As the 'Belgian model' devoted a great deal of attention to support and follow-up of the supervisee it had some similarities with the Canadian EM scheme (see section 3.4.4). As there have been travels to visit the Canadian EM scheme at the end of the 1990s one could assume that there has been some Canadian influence on the way the 'Belgian model' came to be shaped in that period. In all instances Belgian criminal justice professionals did not simply emulate or take inspiration, but followed a process of adaptation. They sensitized the development and implementation of EM to the Belgian context.

In the initial period of the development of EM in Europe we found strong evidence for the role of elite networking and the development of transnational policy networks involving criminal justice professionals from a small number of European countries. This 'European network' has been crucial in spreading policy ideas and principles about EM throughout Europe. In addition, international conferences played a role in promoting the general ideas and principles of EM. The CEP conferences, for instance, involved a range of commercial companies, policy entrepreneurs and criminal justice professionals and did have (and still have) a large influence in terms of sharing ideas across national boundaries.

3.4.6 Limits to policy transfer

In the previous sections we have tried to investigate which role policy transfer has played in the development of EM in Belgium. It became clear that there are differences in the ways in which EM developed subsequently in different jurisdictions throughout Europe. Such variations are important because they highlight the constraints and limitations of policy transfer, and emphasise the enduring importance of domestic influences. In this section we first look at the lack of experience in Europe with EM in the mid-1990s which have had some influence on the distinctive way in which EM has developed in Belgium. We then consider the role of political and legal institutions in Belgium in the context of the development of EM. Finally, we pay

attention to the important role played by the agency of key policy actors, and the essential unpredictability of the policy process.

3.4.6.1 Lack of experience with the operationalisation of EM

As discussed above, in the mid-1990s only a small number of European countries had some experiences with EM. EM schemes were indeed being developed in England and Wales, Sweden, and The Netherlands. As EM was a new penal measure there was only limited experience with its operationalisation in Europe so civil servants were in need of searching for lessons abroad. As we discussed in section 3.9.4 the only place you could go to at that time was the US where EM schemes were already being developed in a number of states since the late 1980s. English and Dutch civil servants have therefore visited EM schemes in the US to gather some inspiration. However, there was a certain antipathy in Europe towards developments with EM in the US, which needs to be understood against US developments in terms of prisons and community sanctions. As for Feeley and Simon (1992: 449) the US was confronted with '… a new language in penology'. Indeed, the focus on the traditional concerns of individualism and rehabilitation ('old penology') was shifted towards a new strategic formation in the penal field, which they called the 'new penology'. This shift towards this 'new penology' resulted in the formation of more 'systemic' objectives. As for Feeley and Simon (1992: 450) there was '… an increasing primacy given to the efficient control of internal system processes in place of the traditional objectives of rehabilitation and crime control.' These new objectives were also noticeable in the development of EM in the US as it was characterised by the control of large groups of people and a strict control and follow-up of the supervisees (Feeley & Simon, 1992; Simon, 1993, Daems, 2001). As this dominant focus on control and management did not connect with the more individualised approach in Europe the transfer of ideas or programmes from the US was somewhat constrained (see also e.g. Sack, Nogala & Lindenberg, 1997). The US experiences were, indeed, used as 'negative lessons' (Dolowitz & Marsh, 1996) whereas the way in which EM subsequently developed in Europe was somehow distinctive from the American EM schemes. Indeed, the Swedish EM scheme was being operationalised by the probation service, in England and Wales the scheme was fully outsourced to the private sector and in the Netherlands it was operationalised in conjunction with the private sector. A short period later also Belgian civil servants started thinking of experimenting with EM. As we discussed above, the emergence and growth of EM in Belgium was the result of a dynamic set of processes in which a number of policy entrepreneurs, politicians and criminal justice professionals were involved (see section 3.4.2). In a way the 'negative lessons' that were experienced in the US by other European countries also helped to shape a distinctive Belgian EM scheme. As there was only little experience with the operationalisation of EM in Europe and the American EM schemes were assumed to be bad

examples policy transfer at that time was rather limited and Belgian civil servants were somehow obliged to start setting up their own EM scheme. Interestingly, the operationalisation of the EM scheme in Belgium differed in a number of ways from the schemes that were being developed in other European countries illustrating the importance of domestic influences. The way in which EM has been initiated in Belgium has been a cautious trial and error trajectory in which the EM scheme was being operationalised from within the prison administration with considerable attention for social support and follow-up of the supervisee. As there was limited experience with the operationalisation of EM in Europe the transfer of ideas and programmes from abroad was rather limited resulting in a mere transfer of the EM technology. In the operationalisation of the Belgian EM scheme criminal justice professionals have been in touch with the Israeli company Elmo Tech for the delivery of the ankle bracelets in which a transfer of technology took place.

The development of EM in Belgium has to a large extent been determined by the ways in which EM was used to fight prison overcrowding. Indeed, this enduring predicament has at least in part influenced the way in which policy entrepreneurs and criminal justice professionals have been taking future decisions on the further development of EM, that is, in particular after 2006, when support and supervision was scaled down and the role of the technology became more important in order to expand the number of people under EM. As a criminal justice professional indicates it was merely a trial and error politics, which may be an important feature of Belgian penal policy making in general[26], rather than the undertaking of a long term view on EM:

> *'Each time these voluntarist statements were expressed they were made in the context of "we want to take a step forward from 1000 to 2000 to 4000 people under EM." And what is then the technology with which you can reach those numbers in a very short period of time? I think that is something which is not sufficiently researched at times: "Is this a valid technique to do this in such a short period of time?" The practice contradicts the policy options or orientations afterwards because it cannot all be implemented so quickly. There are laws and practical objections between dream and reality, and they must draw up specifications. […] These are balloons that are released at times but they empty very quickly and quietly because they only start to investigate afterwards how do they do it abroad? And then they realize that what they established*

[26] Interestingly, this was openly acknowledged by Minister of Justice Stefaan De Clerck in a documentary of 'Panorama' ('Prison complet') where the Minister said himself that policy making has been a matter of 'trial and error'. A study of the Court of Audit (*Rekenhof*) on policy initiatives to tackle prison overcrowding also confirmed this: an overall lack of planning and evaluation characterised policy making in the period 1996 – 2010 (Rekenhof, 2011).

is not an unbridled success and they quietly look away from it and simply continue with what they were doing.'

(criminal justice professional, EM 12)

3.4.6.2 Institutional structures and cultural differences

Besides the somewhat distinctive trial and error approach of Belgian penal policy making Belgium's institutional structures have also had an impact on the development of EM. Belgium has a complex state structure consisting of a federal government, three communities and three regions. The federal government is responsible for all matters that are not allocated to the communities or regions, that is, foreign affairs, national defense, justice, finance, social security and a large part of public health and home affairs. The communities are responsible for cultural and personal matters, such as language, education and aspects of health policy. The Flemish, Walloon and Brussels-Capital Region are responsible for spatial planning, environmental issues and economy. As EM in Belgium has been initiated from within the prison administration it was considered to be a federal matter under the responsibility of the Minister of Justice for several years. However, it has long been unclear where EM could be placed in the organizational chart of the prison administration. In the beginning it was part of the Individual Cases Service (*Dienst Individuele Gevallen* in Dutch) of the Directorate-General of the Prison Administration which was a purely administrative service. The operationalization of the EM scheme throughout the years happened by means of consecutive ministerial circulars as there was no legal basis for EM. The absence of a legal basis for EM resulted in EM being a matter subjected to continuous changes. The discussion where to locate EM became prominent in 2006-2007 when the Directorate-General of the Houses of Justice was established. Since 2007 the EM service is part of the DG Houses of Justice and EM (for case of over three years imprisonment) now was regulated by the Law of 17 May 2006 on the External Legal Position of Detainees. As a result of the sixth state reform in 2014, however, the Flemish and French communities have become responsible for the operationalization of EM as it is no longer a federal matter. The national EM centre has been divided into a Flemish and a Walloon EM centre, and the Flemish and Walloon Minister for Welfare, Public Health and Family have become responsible for the operationalisation of EM. This 'defederalisation' has further complexified EM in Belgium as the number of people at the negotiation table has further increased, as a criminal justice professional indicates:

'We used to have two partners: the Directorate-General of the Prison Administration and the NCEM. Every three months we had a meeting. The majority of the issues were resolved then. Now of course we are having meetings with four. You have the

Directorate-General of the Prison Administration, you have representatives of the Flemish community, the French-speaking community and the German-speaking community. Ideas are introduced there but they all work with the same software. So if Flanders, for example, would say we want to adjust a deadline then that deadline must be adjusted in the software and it must then be adjusted nation-wide. So if the French community would say that they do not want to change that period then that is the end of the discussion. You no longer have to agree with two representatives, but with four. That is more difficult anyway and there are a lot of problems that are no longer being solved because people simply do not reach a decision with all four. So it has only become worse.'

(criminal justice professional, EM 23)

Due to the fact that EM is now organised at the level of the communities there is the risk that there will be differences in the way EM will be operationalised in the future. In that sense there is the additional hazard of the cultural differences between Flanders and the Walloon region. In the search for inspiration or ideas across borders policy makers in the Flemish community have historically been Anglo-Saxon oriented. They have been looking at developments in the Netherlands, Canada, Scandinavia and England and Wales. Policy makers in the Walloon region have always been more attracted to developments in France or Québec (Canada). Cultural similarities such as sharing a common language, for example, can in part facilitate the communication or affiliation between partners and in that sense also facilitate the transfer of policies. As EM in Belgium is nowadays organized at the level of the communities this may have an influence on the way EM will further develop in the future.

These cultural differences do not only exist across the communities in Belgium but also at an operational level. Cooperation between different partners implies that opinions may differ which may result in disagreement over objectives or conflicting interests. At the start of the Belgian EM scheme in the mid-1990s there have indeed been some differences in views on the development of EM between representatives from the prison administration and the probation service. As EM in the initial phase was operationalized from within the prison administration it was up to the prison service to electronically monitor the supervisee. The probation assistants who visited the supervisees at home were providing social support and follow-up but were less interested in controlling the supervisee as they assumed it was not part of their job (see e.g. Daems, 2000). This disagreement on whose role it was to control the supervisee has had an influence on the way EM has been developed in Belgium as the probation service has not been part of the EM scheme until the establishment of the Houses of Justice. A criminal justice professionals expresses it as follows:

'… the discussion that has taken place between the prison administration and the probation service about the concept of "control" was not without friction. This was a very dogmatic discussion. At some point, the probation service of Brussels was also excluded because of this conflict concerning the idea of supervision and control. There were the control freaks of the prison system versus the care providers of the probation service who tried to maintain a relationship of trust with their clients. In the first phase it was not possible to find a match between those two apparently contradictory objectives of controlling and supervising which meant that after three to four years initially the probation service was excluded from the project. Social assistants from the Directorate-General of the Prison Administration were recruited to take their place. These social assistants were then distributed regionally between the different prisons because EM was at that time already developed on a national scale.'

(criminal justice professional, EM 12)

3.4.6.3 Policy agency and happenstance

Variations in institutional and cultural structures do not in themselves determine the outcomes of penal policies. This requires the agency of key actors to take advantage of the opportunities and overcome the obstacles that such structures impose. The importance of political agency shaping the trajectory of EM has been apparent at every stage of the developmental process. At key 'policy windows' (Kingdon, 1995) in the trajectory of EM key agents took crucial decisions that could have been very different. The particular efforts of two key policy entrepreneurs outlined in one of the previous sections (section 3.4.1.1) were crucial in placing the idea of EM on the political agenda in Belgium. EM in Belgium was first mentioned in the 1996 White Paper on 'Penal policy and prison policy'. This White Paper offered an in-depth analysis of several of the problems the penal system was facing in the mid-1990s, in particular prison overcrowding, and referred to EM as one of the possible alternative measures to reduce the number of custodial sentences. Two policy advisors in the team of former Minister of Justice De Clerck have been decisive in drafting this White Paper and initiating the idea of EM. As policy entrepreneurs these people had some progressive ideas about what punishment and the execution of punishment should look like and stimulated the Minister of Justice to search for new objectives. Based on their conviction that alternatives to prison were needed, these policy entrepreneurs created a certain openness towards the idea of using electronic surveillance methods to serve sentences within the community despite the rather negative tone of the study by the NICC about the use of EM. Moreover, former Minister of Justice De Clerck was also referring to EM as a positive and future-oriented alternative to the prison and, being a charismatic figure, he was very enthusing in expressing his beliefs in using technology as a means to improve the functioning of the justice system.

The general climate of the mid-1990s, as we discussed earlier, was a climate that seemed to be open for penal reform and EM soon became one of the new initiatives on this broader reform agenda. Minister of Justice De Clerck embraced the idea of EM as a potential solution to some of the problems in the Belgian penal system which he believed to be efficient and effective, and not too expensive. People within the administration were reasonably fast in taking up the challenge of moving forward with EM. The then Director-General of the Prison Administration played an important role in this as his appointment proved to be refreshing after a period of stagnation in the prison administration. As the then Director-General of the Prison Administration was an engineer he was, indeed, particularly interested in the use of technology. Moreover, the use of technology was also attractive because it has obvious links to the idea of innovation; EM contributed to expressing a message that the time had come to move the penal system into the 21st century. However, the way in which EM was initiated in Belgium was also informed by a certain prudence from academic experts and policy entrepreneurs concerning the potential negative side effects of this new measure. In the mid-1990s, academic experts wrote about the use of EM but also about its potential side-effects and its limits (see e.g. Beyens, Snacken & Eliaerts, 1992; Beyens, 1996; De Buck & D'Haenens, 1996). In their publications academic experts drew attention to some of the risks involved in using EM, such as, the intrusion of the privacy of the people under supervision and the risk of *net-widening*. In addition, they argued that EM should not become a virtual prison and that it should not be privatised as the technology should only be used as a secondary means. In that sense, academics were not only prominent actors because of the inspiration they offered to policy entrepreneurs; they were at the same time critical and cautious about EM. It is against this background of prudence that EM has been developed in Belgium. These cautionary steps have inhibited in part the process of policy transfer and have been influential in initiating a distinctive Belgian EM scheme, and they might help explain in particular why the US has never been an example in this respect.

As the trade unions are important and powerful actors in penal policy making in Belgium (on this, see e.g. Gudders & Daems, 2018; Daems, 2018) they may also have been influential in the development of EM. Because of their strong resistance towards every form of privatisation they may have contributed to restrict the involvement of the private sector in the privatisation of punishment in general, and in EM in particular. Ultimately, these constraints to policy transfer were successful in so far as there are to date no private prisons in Belgium and there is no privatised EM scheme. Such opposing forces have therefore restricted the role of policy transfer and helped to shape particular penal policy in distinctive ways. At each of these moments, it is quite plausible that if some of these key players had chosen to act differently the development of EM in Belgium could have been very different.

When initiating the EM scheme criminal justice professionals were inspired by the available international scientific literature on electronic surveillance. They had an incredible drive to develop an EM scheme that focused largely on social support of the supervisee. Some of these criminal justice professionals also wrote scientific and policy-relevant articles themselves about the early experiences with the EM scheme. Together with the criminological schools of the KU Leuven and the VU Brussels they generated, for a brief period of time, a certain atmosphere of debate and consultation about the way in which EM should develop in Belgium but also abroad. After a couple of years, however, this general feeling of intense involvement and the resulting debating culture would evaporate which may have contributed to the more recent focus on increasing the number of people under EM and decreasing the role of human support (see e.g. Vander Beken, 2013). Indeed, under the pressure of the continuing prison overcrowding the number of people under EM steadily grew and EM became more diversified. EM by means of GPS became introduced in the case of remand detention and EM became an autonomous sanction. These newer uses of EM have been introduced without any thorough debate, as a criminal justice professionals indicates:

> *'The people who have come afterwards have not written anything anymore. Consequently, this created a lack of any debate on the development of EM. Since then, politicians and senior officials within the prison administration have had the opportunity to do what they wanted with the measure. I think that is what happened. […] EM is not a priority anymore. That is regrettable but there is also no one who makes sure that this becomes a debatable matter again in society. I still very much believe in electronic supervision, much more than in prison, but there is not much substantive debate in Flanders or Belgium about that matter.'*
>
> (criminal justice professional, EM 1)

Another criminal justice professional agrees:

> *'The big discussions have not taken place. There has never been a major political debate about how EM must evolve over time. It is something that has been growing over the years and so it passed.'*
>
> (criminal justice professional, EM 32)

3.5 Conclusion

In this chapter we have explored in detail the role of policy transfer in the development of EM in Belgium. EM was first officially mentioned in the 1996 White Paper on 'Penal policy and

prison policy' where it was introduced as one of the possible measures to reduce the number of custodial sentences. On April 1, 1998 an experiment was set up in the prison of Saint-Gilles which was extended on a national scale in 2000. In the next years the number of people under EM in Belgium has steadily grown as is has increasingly been seen as a panacea for the continuing prison overcrowding.

In our study we have been able to identify five categories of main agents of transfer who have been important in initiating, implementing and further developing EM and who have, to differing degrees, drawn on foreign examples in the area of EM. The first category consists of policy entrepreneurs who have been influential in initiating and creating a certain openness to the idea of EM. Based on their networks with academic experts they were also responsible for further elaborating on it. These academic experts have played a key role in the development of EM in Belgium, in particular through feeding the debate on (the limits of) EM (e.g. with reviews of the international literature and empirical research) as well as through maintaining close contacts with those in power. The criminological schools in Leuven and Brussels, in particular, have to some degree been able to exert influence. Academics have also been critical and cautious about EM and have in that sense contributed to the somewhat prudent and hesitant development of EM in Belgium. The third category consists of politicians who have been key figures in the promotion of EM as a positive and future-oriented alternative to the prison. Indeed, former Minister of Justice De Clerck created a certain openness towards the idea of EM and firmly believed in using technology as a means to improve the functioning of the justice system in general, and, indeed, as a means to supervise detainees in particular. He therefore defended the use of EM as an alternative to imprisonment and he was very motivating in expressing his views to members in his team as well as fellow politicians. Once the decision had been taken to set up an experimental scheme criminal justice professionals were recruited in order to further develop the EM scheme. Criminal justice professionals have therefore been vital in implementing EM in Belgium and actively promote it. They had close contacts with academics which facilitated access to the international literature and some also wrote scientific and policy-relevant articles themselves about the early experiences with the EM scheme. Moreover, they have played an active role in the organisation of the first CEP conferences on EM together with civil servants from England and Wales, Sweden and The Netherlands. The last category consists of commercial companies which have played a key role in setting up the EM pilot project by providing the necessary equipment. As the involvement of commercial companies is indispensable in setting up an EM scheme the private office of the Minister of Justice and the administration were required to cooperate with private actors. In our study we did not find evidence of commercial companies influencing, or even attempting to influence, penal policy in Belgium. However, there is some evidence of the

involvement of commercial companies in stimulating the ongoing development of EM over the years.

The question of why engage in policy transfer cannot be reduced to a single, fixed answer. Indeed, the process of developing an EM scheme in Belgium has been influenced by a set of factors. The past quarter of a century policy makers in Belgium have been searching various ways to deal with prison overcrowding: introduction of community sanctions, construction of new prisons, non-execution or reduction of prison sentences, transfer of foreign prisoners, and, indeed, the introduction of EM. EM was assumed to happen quicker and to be less expensive than the construction of new prison facilities. The mid-1990s were characterised by a certain eagerness for innovation to address the existing problems in the criminal justice system and the attractiveness of EM as a future-oriented technological tool fascinated (and still fascinates) policy makers and politicians.

As we discussed in section 3.4.1.4 it was only after the decision had been taken to set up an experiment with EM that criminal justice professionals have been looking across borders for inspiration. This resulted in frequent contacts between civil servants in England and Wales, Sweden and the Netherlands who exchanged experiences and who met on a regular basis to see what EM could mean in the context of the execution of sentences. These rather informal meetings were quickly formalised in the sense of the organisation of a first CEP conference on EM in Egmond aan Zee (the Netherlands). Despite the frequent contacts between that small group of people, which consisted of representatives of England and Wales, the Netherlands, Sweden and Belgium, it seemed clear that each country made its own choices regarding the operationalization of EM. This leaves us with the impression that in these interactions between representatives of those countries, including Belgium, it were mainly ideas, ideologies and attitudes that were being exchanged, that is, so-called ‘soft transfers’. We found no evidence of ‘hard transfer’, that is, the transfer of programmes or policies. Indeed, as the operation of the Belgian EM scheme seemed to be significantly different in a number of ways from schemes in other European countries people in the field of EM even started talking about the ‘Belgian model’.

In the initial phase of the EM scheme policy entrepreneurs and criminal justice professionals did not visit EM schemes abroad: access to knowledge about EM was mainly limited to reading the information that had been gathered over time and that had been circulating through academic and policy channels. Policy entrepreneurs were aware of the international scientific and policy literature regarding EM and they had intense contacts with academics, in particular criminologists from the VU Brussels and the KU Leuven who knew about the international developments. The search for best practices abroad (if we can even call it a ‘search’ as we found no evidence of deliberate expeditions to learn from other jurisdictions) only started after the initiation of the experiment with EM was set up in 1997. In

the mid-1990s there was not that much experience with EM in Europe. Sweden, the Netherlands and England and Wales were the first countries to set up an EM scheme. These three countries had, therefore, a constant stream of foreign visitors, including from Belgium. In a later phase in the development of the EM scheme criminal justice professionals also started to visit other EM schemes abroad. At the end of the 1990s, for instance, a criminal justice professional visited Canadian EM schemes in Alberta, British Colombia and Nova Scotia. Besides field visits Belgian criminal justice professionals also got (and still get) in touch with representatives from other countries at conferences and seminars abroad. In the mid-1990s there were only a small number of European countries experimenting with EM which resulted in close interactions between representatives of these countries. These rather informal encounters transformed over time in more formal meetings in Egmond aan Zee (the Netherlands) and, eventually, in the biennial CEP conferences on EM. Professional actors involved in the EM schemes in England and Wales, the Netherlands, Sweden and Belgium started to realise that the difficulties they were facing and the questions they were having were somewhat similar and that no one knew the answers or the solutions. Nowadays, the CEP conferences are still the prime meeting venues in the field of EM at which the exchange of information and ideas takes place. As the Belgian prison-based EM scheme was somehow considered to be an outsider in the field it attracted foreign interest which resulted in multiple visits to Belgium. Belgian criminal justice professionals were regularly contacted by people in other countries who, for instance, also played with the idea of introducing EM from within the prison system.

In our study we found no evidence of direct copying, hybridisation and synthesis regarding the development of EM in Belgium. Belgian policy entrepreneurs or criminal justice professionals did not adopt an EM programme in use elsewhere in setting up the Belgian EM scheme. Nor did they combine elements of different policies or programmes in initiating a new EM policy. However, there does seem to have been a significant degree of inspiration in the development of EM in Belgium. The interactions at the end of the 1990s between civil servants in England and Wales, Sweden, the Netherlands and Belgium were merely inspirational in nature as the way in which EM further developed in Belgium and, in particular, the way in which the scheme came to be designed (back-end, from within the prison administration), has been peculiar and different from EM schemes in other countries. In all instances Belgian criminal justice professionals did not simply emulate or take inspiration, but followed a process of adaptation. They sensitised the development and implementation of EM to the Belgian context ensuring a fit with the cultural and social realities of the local context.

It became clear that there are differences in the ways in which EM developed subsequently in different jurisdictions throughout Europe. Such variations are important because they highlight the constraints and limitations of policy transfer, and emphasise the

enduring importance of domestic influences. As there was a lack of experience with the operationalisation of EM in Europe in the mid-1990s and the American EM schemes were assumed to be bad examples policy transfer at that time was rather limited and Belgian civil servants were somehow obliged to start setting up their own EM scheme. Because of this limited experience the transfer of ideas and programmes from abroad was rather limited resulting in a mere transfer of the EM technology. Furthermore, Belgium's complex institutional structures have also played a role in the development of EM. As the Flemish and French communities have become responsible for the operationalisation of EM in 2014 this 'defederalisation' has further complexified EM in Belgium as the number of people at the negotiation table has further increased. Moreover, there is the additional hazard of the cultural differences between Flanders and the Walloon region. Finally, there is the important role played by the agency of key policy actors, and the essential unpredictability of the policy process. At each of the moments in the development of EM in Belgium it is quite plausible that if some of these key players had chosen to act differently the development of EM in Belgium could have been very different. This illustrates that the process of penal policy making is subjected to happenstance and influenced by which key actors are residing at which places at what time.

In the next chapter we will discuss the role of policy transfer in the development of RJ in Belgium.

Chapter four

Restorative justice

4.1 Introduction

This chapter focuses on our second case study, that is, RJ. In Belgium, RJ practices came to be introduced from the early 1990s onwards. These were intended to respond to a growing dissatisfaction with the way in which the criminal justice system dealt with crimes. Indeed, it was, hoped that the consequences of crime would be better addressed when victim and offender are brought together (Walgrave & Vettenburg, 2006: 13). Since then, RJ in Belgium has been developing in a progressive and pronounced way as numerous initiatives have been taken in the sphere of both practice and policy development (Aertsen, 2006: 68).

Shadd Maruna (2014: 9) argues that it was Albert Eglash who fist coined the term 'RJ' in a series of articles in the 1950s (see Eglash, 1957, 1958, 1959), whereas McCold (1998: 26) refers to Barnes and Teeters as inventors of the term. Although the term 'RJ' is often refered to in literature a commonly accepted definition does not seem to exist (Cunneen & Hoyle, 2010, Zehr, 2004: 307). Indeed, RJ can mean different things, depending on the country, state, and community where such programmes exist (Weitekamp et.al., 2006: 9). RJ can comprise a diversity of practices at different stages of the criminal justice process. Amongst these are diversion from court prosecution, actions taken in parallel with court decisions and meetings between victims and offenders at any stage of the criminal justice process (pre-sentencing, sentencing and post-sentencing). Furthermore, the term is also used to refer to a range of civil matters, including family welfare and child protection, and disputes in schools, neighbourhoods and workplace settings. Moreover, the term has also come to be used with respect to the aftermath of large-scale political conflicts (Daly, 2002: 57-58). There's an ongoing expansion, both in research and practice, in relation to the application of RJ in cases of war atrocities (Christie, 2001), its use by truth commissions (Parmentier, 2001; Parmentier, Vanspauwen & Weitekamp, 2008), on people's opinions in relation to retributive and restorative options for dealing with the past (Parmentier & Weitekamp, 2011), and on the relationship between RJ and peace building in post-conflict societies (Aertsen, Arsovska, Rohne, Valiñas & Vanspauwen, 2008; Braithwaite, Charlesworth, Reddy & Dunn, 2010).

Given this wide diversity of practices it should not come as a surprise that there are several definitions available in the literature. Marshall (1999: 5) defines RJ as '… a process whereby parties with a stake in a specific offence resolve collectively how to deal with the

aftermath of the offence and its implications for the future'. He also states that RJ is '… a problem-solving approach to crime which involves the parties themselves, and the community generally, in an active relationship with statutory agencies. It is not a particular practice, but a set of principles which may orientate the general practice of any agency or group in relation to crime' (Marshall, 1999: 5). Marshall emphasizes the processual and participatory character of the model. The British Restorative Justice Consortium defines RJ in a very similar way and argues that '… RJ seeks to balance the concerns of the victim and the community with the need to reintegrate the offender into society. It seeks to assist the recovery of the victim and enable all parties with a stake in the justice process to participate fruitfully in it' (Restorative Justice Consortium, 1998). Bazemore and Walgrave, among other RJ advocates, have criticised these definitions stating that they are too narrow due to solely including face-to-face meetings. This places the emphasis on the process, instead of the primary goal, being repairing a harm. Moreover, actions to repair the harm may need to include coercive responses (Walgrave, 2000c: 418). These latter advocates call for a 'Maximalist' model, where RJ is defined as '… every action that is primarily oriented towards doing justice by repairing the harm that has been caused by crime' (Bazemore & Walgrave, 1999: 48) In other words, RJ is '… an option on doing justice after the occurrence of an offence which is primarily oriented towards repairing the individual, relational and social harm that is caused by an offence' (Bazemore & Walgrave, 1999: 48). A few years later this definition was further expanded by Walgrave (2005: 4) to define RJ as a new philosophy whereby RJ is '… an option of doing justice that is primarily focused on repairing the harm that has been caused by the crime'.

Some other authors prefer interpretating RJ in terms of 'healing justice'. They suggest the term better explains the objectives and processes of RJ in context of conflict resolution, making the term more convincing and tangible. (Weitekamp & Parmentier, 2016: 145). They argue that 'healing justice' cannot be limited to focusing on emotional harm and psychological redress, but must include all types of harm (physical, material, emotional etc.) inflicted on all stakeholders involved (victims, offenders, community, society).

The absence of a commonly accepted definition for RJ is not only shown by the existence of a variety of definitions in the literature on this topic, but also when looking at European regulations. Indeed, the most recent Council of Europe Recommendation concerning RJ in criminal matters[27] explicitly refers to existing differences in the operationalisation of RJ depending on the country in which it is being used and the manner in which it is administered. The Recommendation defines RJ as '… any process which enables

[27] Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters adopted by the Committee of Ministers on 3 October 2018 (CM/Rec(2018)8).

those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party' (CM/Rec(2018)8). The same definition is used in the Directive of the European Parliament and Council establishing minimum standards on the rights, support and protection of victims of crime (Art. 2 Directive 2012/29/EU).[28]

For our study we have decided to use RJ in a more strict sense by exploring in detail the processes of policy transfer in the development of victim-offender mediation (VOM) for adult offenders, family group conferences (FGC) for juvenile offenders and peace-making circles (PMC).

In the next section we will discuss the origins of RJ and its further development in Europe. This will be followed by an overview of the history of RJ in Belgium. The fourth section explores the processes of policy transfer in the development of RJ in Belgium. By discussing in more detail the categories of actors that have been involved in the transferring process, why they engaged in the policy transfer process, what is transferred, from where lessons are drawn, which degrees of policy transfer exist, as well as the limits to policy transfer in Belgium we will search for empirical evidence for policy transfer in the development of RJ in Belgium. The chapter ends with some general conclusions about the extent and nature of policy transfer in the area of RJ in Belgium.

4.2 The origins of restorative justice and its development in Europe

The fact that one umbrella term brings together a variety of practices operating under different legislations makes the history of RJ highly complex. Also, the world-wide distribution of these practices and them being based on multiple theoretical origins and traditions makes it even more complicated (Zinsstag, Teunkens & Pali, 2011: 23). The rising and elaboration of RJ has mainly been understood as a bottom-up development. Prime initiatives were mostly launched by practitioners or academic experts, in search for new and alternative ways of dealing with crime and conflict. Academics and practitioners have been cooperating from the very beginning of the RJ movement. Their initial common ground was found in the challenge of youth justice and criminal justice reform. While academics started their initiatives based on research findings in educational an social sciences such as criminology and victimology, practitioners were driven by their long-term professional experience in the fields of child care, youth justice, probation and prisons. In a later stage, when RJ became less limited to juvenile

[28] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

and criminal justice and its field expanded, both groups worked together even more. Parallel to the development of RJ, the focus of collaborative research evolved from supportive research and descriptive-inventory research to different forms of evaluative research (Vanfraechem, Aertsen & Willemsens, 2010). Recent history of RJ shows that practitioners and academics frequently formed interrelated groups, more often than separate ones.

The first victim offender reconciliation programme (VORP) was set up in Kitchener, Ontario. As a result, Canada is often mentioned as the birthplace of the RJ movement. In 1974 a probation officer used mediation successfully to deal with two young offenders as they each visited their victims and arranged to pay restitution (Van Ness, Morris & Maxwell, 2001; Zehr, 1990). Aertsen (2004: 204), however, argues that the tendency to chronologically order the developments in RJ in North America (and countries like New Zealand and Australia) before those in Western Europe is unjustified. Great Britain is often referred to as being the bridge between both continents. Paul Rock (1990: 282-300) refers in this context to the personal role of a number of 'pilgrim criminologists' who constantly travel the world to search for new ideas. They arrange study tours, visit institutions and one other. Attending conferences plays a special part in the organisation of their knowledge. During the 1970s Robin Griffiths (an English barrister and criminologist), his colleague Christine Chinking (an English international lawyer) and Martin Wright created an environment for the emergence of reparation in the UK. Indeed, Griffiths and Chinking visited one or two conferences at John Jay College where they noted the existence of a number of mediation projects in the US. After hearing about these projects Griffith talked about it at the British Society of Criminology in November 1979 where he was heared by Martin Wright who later on embraced the idea of reparative justice (Rock, 1990: 289-291). In Aertsen's view (2004: 204), however, we should not see VOM – or RJ in general - as a mere import from the Anglo-Saxon world. He argues that the debate on how the consequences of crime can be addressed and resolved by those immediately involved, namely victim and offender, had already started in Europe in the late 1960s. In 1969, for example, the Bristol Victims Offenders Group, consisting of victims, offenders and judicial staff members, discussed themes such as reparation and the use of face-to-face meetings between victims and offenders (Aertsen, 2004: 204). These discussions thus took place even before the first experiments with VOM were set up in Canada and the US in the mid-1970s. Also, it's notable that some of the first North-American initiatives were clearly influenced by the theoretical work of European scholars such as Albert Eglash, Herman Bianchi, Nils Christie, Louk Hulsman, Thomas Mathiesen and others (Aertsen et al., 2013: 305-306). Dutch criminologist Louk Hulsman already touched upon the idea of conflict resolution in criminal justice in 1968. In Norway, Nils Christie's article *'Conflicts as property'* (1977) was of influence to policy makers and judicial authorities. In addition, Bianchi was a source of inspiration for the Mennonites in North-America in establishing their first mediation services (Aertsen, 2004: 204-205).

The present form of VOM came into existence in Europe in the 1980s. In general terms, VOM refers to a process in which contact between victim and offender (directly or indirectly, personally or supported by others) should lead to an agreement on what should be done to restore or compensate as much as possible the loss to the victim (settlement, restitution, compensation, apology, or even reconciliation) (Vanfraechem & Walgrave, 2001: 480). There is, however, a large diversity with respect to the historical background and development of VOM across Europe (Vanfraechem, 2006: 60). Norway, under the influence of Nils Christie, was the leading country to implement a diversionary project aimed at first-time offenders in 1981. This resulted in 81 Norwegian municipalities offering mediation only a few years later (Willemsens & Walgrave, 2007; Aertsen, 2001: 411). After Norway, Finland set up its own pilot project in 1983, followed by Austria in 1984 (Zinsstag, Teunkens & Pali, 2011: 26). Even though these experiments received positive feedback, the support that the movement hoped for held off. This resulted in a slow development of VOM in the beginning. The approach differed from the culture of legal professionals and criminal justice policy making. While the creation of a legal framework was an important impetus, it wasn't a certain key to success. From a quantitative point of view the practice remained rather limited. However, in this first phase, evidence that this way of responding to crime contained a strong innovative potential came from a qualitatieve point of view, through many small-scale experiments and also some national programmes (Aertsen & Willemsens, 2001: 291-292; Aertsen, 2004: 409).

During the 1990s, the number of mediation programmes and the number of cases processed on an annual basis increased steadily in Europe. In a number of countries (that is, Belgium, Germany, Finland, France, Norway, Austria and the UK), mediation between victim and offender had by then become a sound practice (Aertsen & Willemsens, 2001: 291-292). Belgium, Germany, Norway, France and Austria had already implemented legislation at the beginning of 1990s whereas in Finland and the UK a legal framework was developed at the end of the decade. Furthermore, throughout the 1990s some local practices had been developed or pilot projects had been launched in Ireland, Italy, Luxembourg, the Netherlands, Spain and Switzerland. Since the second half of the 1990s, a rapid development of mediation projects has also taken place in a number of Central and Eastern European countries. Indeed, Poland, Slovakia, Slovenia and the Czech Republic adopted a legal framework on VOM and experimental programmes were set-up in Albania, Bulgaria, Hungary, Romania and Russia (Aertsen, 2005: 12). A recent survey undertaken by Zinsstag and others (Zinsstag, 2012, Zinsstag et al., 2011) for the EU, which looked at mediation in Europe and beyond, indicated that mediation occurs in 28 jurisdictions in Europe and 11 jurisdictions outside Europe. Of the 66 programmes outlined, most were for young offenders: 13 only for young offenders, 37 for both adult and young offenders and 16 just for adults (Shapland, 2014: 114).

VOM has been, and still is, the most important and prevailing RJ practice in the European context. However, besides VOM, which is a rather individualistic model of RJ because it focuses predominantly on initiating a meeting between victim and offender, there are also other RJ practices being developed that pay more attention to the involvement of the community in resolving conflict, which are, the New Zealand FGC model and the Australian Wagga Wagga police-led conferencing model (Zinsstag, Teunkens & Pali, 2011: 18). Conferencing is a process in which victim and offender, along with a group of supporting people, get together and discuss the consequences of crime (Morris, 1999). Conferencing has started developing quite consistently since the 1990s as the first large scale programmes were being set up in New Zealand and soon thereafter also in Australia.

The practice of FGC originated in New Zealand and can be traced back to aboriginal uses and practices of doing justice after a crime. Interestingly, the introduction of FGCs in New Zealand was not so much inspired by the RJ movement (Maxwell & Morris, 1994: 15). The New Zealand government primarily tried to enhance the involvement of parents and families in responding to crime or improving problematic situations at home, especially in Maori communities (Maxwell et. al., 2004: 7,10). Indeed, these conferences were mostly intended for young people from the Maori population as this group was overrepresented in the official statistics and the existing juvenile justice system failed to offer appropriate answers. By introducing a practice which was inspired by Maori traditions the government intended to offer a conflict resolution model that would be adaptable and applicable to various ethnic minorities (Vanfraechem, 2006: 103-104). In that sense, the Children, Young Persons, and Their Families Act focuses on the family and abilities to collectively take responsibility for the offense that has been committed and repair the damage that has been done to the larger community (Brown & Macelrea, 1993; Vanfraechem, 2006: 105; Walgrave & Vettenburg, 2006: 34). It was only during the 1990s that the RJ potential of FGC became known as an alternative for or an addition to the traditional criminal law system (Vanfraechem, 2006: 64, 103-104).

A FGC consists of a facilitated meeting between victim and offender who are both accompanied by a group of support figures and in some cases also by a number of other people who have suffered directly from the consequences of the crime (Aertsen, 2004: 183; Vanfraechem & Wagrave, 2004b: 27). A conference consists of a meeting between (1) the offender and his family, (2) the victim with his or her family and (3) and a facilitator to supervise the meeting. Subsequently, a number of other individuals may also take part in the meeting such as a police officer, a social worker, a community worker, a lawyer etc. acting as representatives of the larger community to find a constructive solution to the consequences of the crime (damage, relationships, society) (Vanfraechem & Walgrave, 2001: 481; Zinsstag, Teunkens & Pali, 2011: 18). Most of the FGC meetings in New Zealand take place based on

a referral by the police. Unlike in Belgium, police officers in New Zealand have the ability to act as prosecutors and make decisions about whether or not a conference meeting should take place (Vanfraechem & Walgrave, 2004b: 27). As stated in the New Zealand Children, Young Persons and Their Families' Act the juvenile court should first make an attempt to find a solution for the conflict through family group conferencing before it can possibly impose a penalty on a juvenile offender (Maxwell et al., 2004: 21). This means that all cases involving young offenders that are not handled by the police should proceed towards the conferencing process (Vanfraechem, 2006: 105). This priority rule is applicable to all juvenile offenses with the exception of murder and manslaughter. These crimes are treated by ordinary criminal law (Vanfraechem & Walgrave, 2001: 481).

A typical FGC process starts with a referral by the police or the juvenile court. Hereafter, a Youth Justice Coordinator starts preparing the meeting by visiting both offender and victim. If both victim and offender agree to a meeting a date is set and the group of support figures is being put together. The meeting starts with an introduction by the Youth Justice Coordinator who is followed by a representative of the police presenting a summary of the facts. In order to take a first step towards repairing the harm that has been done both offender and victim can then provide their comments on what has happened and elaborate on the consequences of the act. Hereafter, the Youth Justice Coordinator suspends the conference for a private meeting with the offender and his group of support figures to draw up a plan for repairing the harm that has been done to the victim. The victim can provide its comments on the content of the plan and together with the entire group he or she can discuss its implementation. When both parties are satisfied an agreement is signed (Vanfraechem & Walgrave, 2004b: 27-28; Maxwell & Morris, 1994: 18).

In August 1991, a form of conferencing was introduced in the city of Wagga Wagga (New South Wales, Australia) by a group of Australians, Sergeant Terry O'Connell and other members of the New South Wales Police Service (Strang, 2001: 6; Moore & O'Connell, 1994: 46). They were inspired by the programme in New Zealand, but approached it with one main difference: the Wagga Wagga model is a police-initiated diversion approach using police officers, usually in uniform, to 'facilitate' family conferencing meetings (Zinsstag, Teunkens & Pali, 2011: 50). This was based on the argument that conferencing shoud be coordinated by the department responsible for the first contact – being the police – instead of the welfare department. Generally speaking, the process of the police-led conferencing differs from the New Zealand FGC, in four ways. First, the conference itself has a clear script, including a list of questions and seating arrangements for the attendees. Second, during the conference, the offender followed by his/her network speak first. Afterwards the victims and his/her network of supporters are given the word. Third, although the formal part of the conference is always followed by some informal interaction time for participants there is no 'private meeting time'

allocated to the families during the phase of agreement proposal. Fourth, in the Wagga Wagga model officials representing the 'authority' actively facilitate the process. This clearly differs from other meditation practices and FGC which emphasise the need for an absolutely neutral facilitator (McCold, 1998; Zinsstag, Teunkens & Pali, 2001: 58).

The theory of 're-integrative shaming' of John Braithwaite (1989) offered a framework for theoretical analysis and evaluation of conferencing programmes. Braithwaite claims that offenders who express remorse for their past conduct and wrongdoing, take accountability for their actions, apologise to their victims, and repair the harm caused by the crime by making amends should be given a chance to rejoin their community as law abiding citizens (Walgrave & Braithwaite, 1999: 71; Braithwaite & Mugford, 1994: 140). The project called 'Reintegrative Shaming Experiments' (RISE) has been a great influence in the further development and evaluation of conferencing. It was developed by the Australian National University, based on the concept of re-integrative shaming, and took place from 1995 until 1999 in the Australian Capital Territory by the Centre for Restorative Justice. The project used an experimental research design which randomly assigned cases to either a conference or a court hearing. Its directors, Heather Strang and Lawrence Sherman, produced a rich collection of data for a number of offences (1997, 1998, 1999, 2000). Evidence on the effectiveness of RJ conferencing was collected by comparing re-offending patterns and the satisfaction experienced by victims who were randomly assigned to these programmes, with those who experienced the formal court system in the usual way. Their research has been influential in many countries outside of Australia, such as the UK (Zinsstag, Teunkens & Pali, 2001: 59).

In 2008, Nathan Harris conducted a comparative study on the implementation and use of conferencing in Australian states and territories. Besides New South Wales, FGC has also been used in Victoria, South Australia, Western Australia, Australian Capital Territory, Tasmania and Queensland. His conclusion, however, was that FGC had not yet become part of mainstream practice in most of Australia, even though FGC have had an impact on practice (Harris, 2008: 16). The first practice of RJ conferences by police outside Australia began after a visit from Terry O'Connell to Canada, the US, the UK and South Africa in 1994 during a 13-week study tour on a Churchill Fellowship. Afterwards, he conducted a series of trainings together with other Australian innovators in Minnesota and Pennsylvania in 1995. The scripted process developed in Wagga Wagga had, however, also been used by police officers and agencies in a number of other innovative police departments in the US in handling recurrent crime and disorderly conditions (US Department of Justice, 1997). Moreover, Real Justice, a private non-profit training organisation, had trained more than 2,000 conference facilitators by the year 1998 in more than 30 US states, including 368 police officers representing 141 different police departments, as well as others in Canada, New Zealand and Australia (McCold, 1998: 2).

For a long time, the practice of conferencing was virtually absent in mainland Europe where mediation in its various forms was the most important RJ practice. In that sense, conferencing in many parts of Europe started as complementary to already existing VOM practices. Conferencing has quite different terms in Europe: restorative conferences, diversionary conferences, youth justice conferences, community conferences, real justice conferences (*echt-recht conferenties*) and so on (Vanfraechem & Walgrave, 2006; Vanfraechem, 2006: 124). There is also a huge variation in the localisation and use of conferencing practices in Europe, as well as the way in which they are prepared and carried out. They are either situated at the level of the public prosecutor or the police (Vanfraechem & Walgrave, 2004b: 29; Vanfraechem & Walgrave, 2001: 481). Northern Ireland was the first country to introduce FGC in Europe in 1998 where it is situated in the heart of the criminal justice system. Scandinavian countries have been experimenting with FGC between 1995 and 2003 (Vik, 2008). Since 2007, Norway has implemented FGC nationwide as a centralistic system driven by state institutions. During the 1990s various forms of conferencing practices were also being implemented in the UK. In the Netherlands, 'Eigenkracht conferenties', which operate as an NGO and are thus not state run, were set up in 2001 and received a legal basis in 2012. Belgium started experimenting with FGC in 2001 and a legal framework was provided in 2006. In Germany, where FGC is offered by the municipalities started in 2006. The practice of FGC is also being used in Eastern Europe. Indeed, countries such as Russia, Poland, Slovakia, Serbia, and Bosnia and Herzegovina have been experimenting with FGC since the second half of the 2000s (Straub, 2012: 30-31).

A recent survey, undertaken by Zinsstag and others (Zinsstag et. al., 2011) indicates that the practice of conferencing has spread worldwide and it is used much more than expected (Zinsstag & Vanfraechem, 2013: 27). Indeed, conferencing was found to occur in 26 countries and on all continents, 15 of the countries being European and 11 outside Europe. It was primarily used with young offenders: 25 programmes which were described dealt solely with young offenders, 21 with both young and adult offenders and just 6 solely with adult offenders. The range of offences was very wide, from theft, robbery, fraud and handling stolen goods, to assault, sexual violence, wounding, possession of firearms, domestic violence and arson (Shapland, 2014: 114). In recent years, some Latin American and African countries also began to use conferencing, in particular in the area of juvenile justice (Zinsstag & Vanfraechem, 2013: 13).

VOM and FGC are the most commonly used RJ practices in European judicial systems. A more 'exotic' restorative practice are circles (peacemaking, sentencing, healing anc community circles) which can be viewed as an additional RJ method for dealing with crime next to VOM and FGC.

The origin of PMC is to be found within the tradition of the First Nations in Canada in the late 20th century. During that period, many native communities were confronted with the consequences of alcohol abuse which resulted in high incarceration rates for natives in Canadian prisons (Ehret, Dhondt & Szegö, 2013: 12). One of the causes for this was that the Canadian government deliberately tried to suppress the cultural habits of First Nation members by, for example, removing children from their homes in order to fade out the existing native culture. Against this background, these local communities fell it was important to reconnect with their own traditions and in addition to search for solutions for the problems in their communities. PMC offered a model for those local and often small-scale communities to resolve conflicts and to search for answers of how to deal with the crime committed and its consequences in a way that allowed for an active involvement of the entire community (Bazemore & Umbreit, 2001: 6; Dhondt & Aertsen, 2014: 35). Moreover, during these circle meetings one could also discuss other themes related to community life which may have been relevant for the crime (Ehret, Dhondt & Szegö, 2013: 12).

The practice of PMC, however, goes further than the First Nations' culture. In 1991, Canadian judge Barry Stuart decided to use this traditional settlement procedure in an official court proceeding as an alternative for a court hearing in the case of R. vs. Moses (Ehret, Dhondt & Szegö, 2013: 13). By using a PMC, judge Stuart wished to reach a verdict which could be agreed on by the offender, the victim as well as the local community (Stuart, 1992). The use of this traditional mechanism in the case R. vs. Moses had a significant impact on the expansion of PMC in Canada. Since then, PMC have been introduced in various settings in several common law countries, such as the United States and Australia (Dhondt & Aertsen, 2014: 35).Indeed, the usage of circle sentencing spread to the US in 1996 when a pilot project was initiated in Minnesota (Bazemore & Umbreit, 2001: 6; Pranis, 1997: 74). In addition, also in 1996, judge Barry Stewart and three local Justice Committee members from Carcross (Yukon Territory, Canada) presented their model of circle sentencing to Alaska at the Sitka Native Justice Conference (Rieger, 2001: 1). PMC in the US are, however, not based on any kind of legal framework but find their basis in local agreements (Ehret, Dhondt & Szegö, 2013: 13). There are applied most commonly in juvenile justice as so-called transition circles to facilitate offenders to re-enter into society after being institutionalisd (e.g. arrest, detention or youth home), but they are also used for dealing with internal conflicts within facilities or youth centres (Umbreit, Coates & Vos, 2001). In Australia, circle sentencing is mainly used for aboriginal offenders for dealing with offences such as assault, unlincensed driving, breaching and apprehended violence order (Fitzgerald, 2008). The use of PMC in a European context is rather marginal.

As the implementation of PMC happens in such a way that the PMC itself is adapted to the needs and culture of the local community there exist differences in their use (Bazemore

& Umbreit, 2001; Stuart, 1995 in Dickson-Gilmore & La Prairie, 2005). However, there are also some overarching similarities to be found. The idea behind PMC is that it provides the community an opportunity to learn from a conflict (Stuart, 2001) which includes a shift of responsibility as a PMC looks further than the offender (individual responsibility) towards the community at large (individual and collective responsibility) (Pranis et al., 2003). Circles also expand participation beyond the primary victim and offender, like conferencing, but additionally any member of the community who has an interest in the case may participate. 'Community' in the sense of circle sentencing can include anyone affected by the crime: this can be persons affected by the offense, such as the victim, the offender, their respective family and friends, other community members, justice system representatives (judge, public prosecutor, defense counsel, police, probation officer), and others. The members of the circle debate about: 1) what happened; 2) why it happened; 3) what the impact is; and 4) what is needed to repair the harm and prevent it from happening again (Pranis, 2005: 15-16; Lilles, 2001). There are five 'visible' elements that reappear in each circle meeting: (1) the presence and role of a facilitator; (2) the use of a 'talking piece' in the circle which reduces reliance on the facilitator, since he/she does not speak until the 'talking piece' comes back; (3) the use of ceremonies at the beginning and the end of the circle meeting; (4) the development of guidelines and (5) consensus-based decision-making in the circle meeting (Ehret, Dhondt & Szegö, 2013: 15; Zinsstag, Teunkens & Pali, 2011: 62). Given this broader format, complex cases in which more than one victim or offender, or even collaterally affected persons are involved are particularly well-suited for circle sentencing. In addition, the focus is not only on the specific crime that has been committed (and its causes and consequences), but also on the elements in the community itself which (helped) cause(d) the crime. PMC are seen in that sense as a form of 'community-building justice' (Ehret, Dhondt & Szegö, 2013: 12). Moreover, various types of conflicts are applicable for circle sentencing so it is therefore not restricted to criminal justice alone (Ehret, Dhondt & Szegö, 2013: 169).

In December 2000 the European Forum for Restorative Justice (EFRJ) was established to facilitate a more regular European (and international) exchange of information between practitioners, academics and policy makers, and to offer mutual support in developing VOM and other RJ practices. Indeed, by that time, it had become clear that even though VOM was steadily growing throughout Europe, in setting up projects the established contacts seldomly exceeded national borders. Since its establishment, the EFRJ has played a significant role in the development of RJ.[29] The creation of EFRJ was prepared by a steering group comprised of mediation experts, with a strong commitment to RJ, from eight countries (Austria, Belgium,

[29] For more information, see http://www.euforumrj.org/

Finland, France, Germany, Norway, Poland and the UK), together with a secretariat based in the Department of Criminal Law and Criminology at KU Leuven. In 1998, they received a non-recurrent grant from the EU to launch a European Network as part of a scheme to stimulate co-operation between European countries in the field of justice and home affairs, named the Grotius programme (Aertsen & Willemsens, 2001: 295-296; Aertsen, 2004: 18).

To make sure a formal EFRJ reflected the views of the people working in the European RJ field to a maximum extent, multiple broad consultation were held to form its structure and aims. In June 2000, the steering group organised a technical seminar to continue the discussion about a draft constitution for the European Forum (Aertsen & Willemsens, 2001: 297). A continuing operation of the secretariat into the year 2000 was made possible through financial support of the Belgian and Norwegian governments. This enabled the co-ordinating group to start with a European Newsletter of which the first issue appeared in June 2000. This newsletter still is one of the European Forum's instruments to act as a platform for communication and participation for all who wish to support RJ developments. The newsletter is comprised of information about new publications, international developments, upcoming or past events and other news (Aertsen & Willemsens, 2001: 297). The launching event of the EFRJ took place on 8 and 9 December 2000 and was attended by some 50 people from 15 different countries. The constitution was adopted at the first General Meeting resulting in the Forum becoming a formal organisation according to Belgian law. The Board of directors was also elected, consisting of: Ivo Aertsen (Belgium) as Chair, Andrei Pascu (Romania) as Vice-Chair, Robert Mackay (UK) as Secretary, Tony Peters (Belgium) as Treasurer, and Juhani Iivari (Finland), Torunn Bolstad (Norway), Christa Pelikan (Austria), Martin Wright (UK) and Jesús Trujillo (Spain) as members (Aertsen & Willemsens, 2001: 297-298).

Out of the above, it seems clear the development of RJ practice and theory, its dissemination and its further implementation at the European and international level has benefited substantially from academic thinking and research (Aertsen et al., 2013: 2). A close partnership between researchers and practitioners has also been beneficial to the initiation and development of international networks and organisations in the field of RJ. In addition to the EFRJ there have been other networks and organisations that have been influential in that sense, such as the work of Prison Fellowship International, the International Institute for Restorative Practices, the Asian-Pacific Forum for Restorative Justice and the International Network for Research on Restorative Justice for Juveniles (INRRJJ) (Aertsen et al., 2013: 305-306). This latter network was set up by Lode Walgrave in 1997 and it was recognised and subsidised as a Research Community by the Fund for Scientific Research in Flanders (Belgium). INRRJJ held annual meetings from 1997 until 2001 (Leuven, Vancouver, Fort Lauderdale, Tübingen and Canberra). During these meetings, academic experts from various countries worldwide got together to discuss the scientific progress of RJ. Academic research

and the development of the theory, philosophy and legal framework of RJ were the main agenda. The first conference of the INRRJJ was organised in Leuven in May 1997. A number of prominent members of the network, among whom Gordon Bazemore, John Braithwaite, Ezzat Fattah, Uberto Gatti, Susan Guarino-Ghezzi, Russ Immarigeon, Janet Jackson, Hans-Jürgen Kerner, Rob MacKay, Paul McCold, Mara Schiff, Klaus Sessar, Jean Trépanier, Mark Umbreit, Peter van der Laan, Daniel van Ness, Ann Warner-Roberts, Elmar Weitekamp and Martin Wright were present during this first conference (Walgrave, 1997: 118). At that fist meeting the members of the INRRJJ endorsed the Declaration of Leuven (13 May 1997) in order to '… emphasise the belief of a substantial part of the scientific world in the potential of RJ for offering a constructive response to crime' (Walgrave, 1997: 118).

The growth of VOM and other RJ practices across Europe was also noted by several international and supranational organisations. Indeed, since the end of the 1990s, the CoE, the EU and the UN have encouraged the further development of RJ practices. Interestingly, researchers and academics have frequently played an important role in this field of international policy making as active members of expert committees preparing resolutions and recommendations on RJ (Aertsen et al., 2013: 305-306).

The Committee of Ministers of the Council of Europe was the first to approve an instrument for the implementation of VOM. Recommendation No. R (99)19 of the CoE concerning Mediation in Penal Matters[30], adopted on 15 September 1999, encourages member states of the CoE to provide mediation as a voluntarily accepted and confidential service at all stages of the criminal justice process. The Recommendation promotes an active and personal participation of victim and offender in the criminal justice process as well as a larger involvement of the broader community. The Recommendation argues that legislation should be adopted, as well as appropriate working principles for the operation of the criminal justice system and the mediation services themselves. Moreover, evaluation and research must be promoted. The Recommendation was prepared, over almost three years, by a committee of experts, composed of practitioners, legal professionals, policy makers and academics from several European countries, including Belgium (Aertsen & Willemsens, 2001: 293; Aertsen, 2005: 18-19). This Recommendation was recently (October 2018) supplemented by a new one confirming the principles mentioned above.[31]

[30] Recommendation No. R (99)19 of the Council of Europe concerning Mediation in Penal Matters, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168062e02b

[31] Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters, https://rm.coe.int/cm-rec-2018-8-concerning-restorative-justice-in-criminal-matters-03-10/16808e3b08

Also in 1999, the European Commission of the EU made a plea for additional research and experiments in VOM. This was done through the Communication on Crime Victims in the EU: Reflections on Standards and Action (COM (1999) 349 final).[32] With this communication the Commission was contributing to the further implementation of the Action Plan on the establishment of a European Union Area of Freedom, Security and Justice, adopted on 3 December 1998. On 15 March 2001, the Council of the European Union took a further step in this implementation process with the adoption of a Council Framework Decision on the standing of victims in criminal proceedings.[33] This framework decision obliges the member states of the EU to adapt their national laws so as to afford victims of crime a minimum level of protection. The document also contains a specific provision on mediation in criminal cases. Indeed, article 10 states that: (1) Each member state shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure; and (2) each member state shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account. Article 17, which specifies the implementation of some of the dispositions, states that the member states should bring into force the laws, regulations and administrative procedures necessary to comply with article 10.

RJ has also been accepted onto the UN agenda. Indeed, in April 2002, the UN Economic and Social Council (ECOSOC) adopted the Declaration of Basic Principles on the Use of Restorative Justice Programs in Criminal Matters.[34] The adoption of the Declaration of Basic Principles was largely due to the efforts of the Working Party on RJ which was formed by an alliance of (international) non-governmental organisations on crime prevention and criminal justice (Cunneen, 2010: 130-131). Sponsored by the government of Canada and co-sponsored by 40 countries, the Declaration was approved in the UN Crime Commission in April 2000 and then moved onto ECOSOC (Aertsen & Willemsens, 2001: 293-294). Its purpose is to inform and encourage member states to adopt and standardise RJ measures in the context of their legal systems, but there is no intention to make them mandatory or prescriptive. The

[32] European Commission, Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee (Brussels, Commission of the European Communities, 14 July 1999; COM (1999) 349 final).

[33] Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), see also https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/framework_decision_2001_220_on_standing_of_victims_in_criminal_proceedings_en_1.pdf

[34] ECOSOC Resolution 2002/12 Basic principles on the use of restorative justice programmes in criminal matters, see also https://www.un.org/ruleoflaw/blog/document/basic-principles-on-the-use-of-restorative-justice-programmes-in-criminal-matters/

Declaration contains a number of substantive similarities with the 1999 Recommendation of the CoE, but it has been interpreted in a broader sense including also other forms of restorative intervention, such as, FGC (Aertsen, 2005: 20).

4.3 A brief history of restorative justice in Belgium

The question of how victim and offender can participate in a more direct and personal way in handling a conflict arose in the mid-1980s in Belgium as the result of a concurrence of circumstances.

Firstly, for a long period of time there was a growing dissatisfaction with the criminal justice system, especially imprisonment (Aertsen, 2004: 27-28). Academic experts have played a vital role in uncovering the dysfunctions of imprisonment by inquiring its internal functioning and investigating and denouncing certain difficulties in prison since the 1970s. Indeed, the doctoral projects of Tony Peters (Peters, 1976) and Johan Goethals (Goethals, 1980) contributed to questioning the way sentences were executed. In line with Peters and Goethals, Van Outrive's study (1978) made reference to the ongoing critical concerns about the actual course of events in prisons. Moreover, prison research in that period increasingly started to unmask the discourse of treatment and rehabilitation as being hollow phrases (see e.g. Peters, 1980; Van Outrive, 1978; Aertsen, 2004: 27-28). Peters (1980: 267), for example, argued that the implementation of alternative measures in practice proved to be of little significance to reduce the number and length of prison sentences.

Secondly, a number of studies on violent crimes (see Christiaensen, Dupont, Goethals & Peters, 1987; Christiaensen & Goethals, 1991; Aertsen & Vander Zande, 1991) were devoted to the concept of 'victimisation', victim-oriented interventions and victims' needs. The research findings of these studies were summarised and discussed in the first Belgian victimological book '*De achterkant van de criminaliteit*' (Peters & Goethals, 1993). These insights into the consequences of victimisation and the needs and expectations of victims of crime resulted in an increasing number of research projects in the field of victimology in the following years.

Thirdly, based on the developments outlined above and more specifically from the perceived need to develop new approaches, from both a penological and victimological point of view, that could structurally influence the (re)orientation of the criminal justice system, the research team led by Tony Peters searched for others ways to deal with crime in which both victim and offender were actively involved (Aertsen & Peters, 2012: 85). Reference was therefore made to the notions of RJ and the practice of mediation introducing a necessary conversion of the classic, retributive approach to crime towards a more victim and restorative-oriented one (Van Garsse, 2004: 47). Professor Peters, who introduced the RJ approach in

Belgium in the early 1990s, depicted it as a ‘third way’ between the retributive approach, which emphasises the legal qualification of the crime, proportionality of the punishment and equality of citizens, and the rehabilitative approach which focuses on addressing the causes of delinquent behaviour (Peters, 1996; Peters, 2001; Daems, 2012:82).

From the early 1990s onwards a number of scientific research projects were initiated which led to the gradual introduction of RJ practices in Belgium (Ehret, Dhondt & Szegö, 2013: 51-52). This development of RJ was driven by a close collaboration between practitioners and academics. Indeed, in Flanders, pilot projects, so-called ‘action research’ projects, were initiated in which researchers introduced and tested new ideas and co-operated with practitioners to implement restorative practices (Lemonne & Vanfraechem, 2005: 191). Action research merges social action and research in order to influence a social system in which both the direct participants in the system and the external researchers direct and examine the activities (Aertsen & Peters, 1995: 224). The partners involved in the action research are not only responsible for the ‘action’ but they also contribute to the research aspect. Researchers are assigned a role that is significantly different from the role of the 'traditional' researcher as they are strongly involved in the field and will give direction to the developments (Aertsen & Peters, 1995: 225). Action research focuses on the development of a certain process as it seeks to simultaneously develop a process of planned change and to acquire knowledge about the process of change and its results. In that sense there is a continuous interaction between action or change on the one hand and research on the other (Aertsen & Peters, 1995: 224). An action research project has a cyclical or phasic process which allows, at regular intervals, for the action to be evaluated and adjusted (Aertsen & Peters, 1995: 236-237).

Nowadays, RJ practices in Belgium can take place for a variety of offences and at different stages of the judicial process. They are available for both adults and juveniles (Vanfaechem, 2011: 54). VOM came to be regulated by law in 2005 and one year later a new youth protection law was adopted providing a legal framework for FGC. In what follows, we will discuss the historical development of the various RJ practices which exist in Belgian penal policy.

4.3.1 Victim-offender mediation

Mediation has made its entrance in Belgium through experiments, first in the field of juvenile justice and later in the field of criminal justice for adults (Peters, 2001: 404). During the second half of the 1980s, both in the Dutch-speaking part and in the French-speaking part of Belgium, a handful of small non-governmental organisations (Oikoten in Flanders; Arpège, Gacep and Radian in Wallonia) working in the field of juvenile delinquency started to explore other ways of dealing with juvenile delinquency (Dominicus, 2010: 92; Van Garsse, 2001b: 425). These organisations operated within the framework of the Belgian Juvenile Justice Act of 1965 which

was clearly based on a rehabilitative philosophy (Aertsen, 2000: 153; Aertsen, 2004: 206). Their search for practices of social integration for youth offenders first led to an exploration of the idea of community service (unpaid work in the public interest) and later on to the idea of working toward 'reparation'. This implied that these organisations increasingly started to involve the victim in dealing with the aftermath of juvenile delinquency. As a result, some of these practices gradually evolved from pure community service practices to mediation practices (Dominicus, 2010: 92; Van Garsse, 2001b: 425).

It was thus mainly through a (pedagogical) concern for young offenders that the practice of mediation came to be introduced in juvenile justice in Belgium. Indeed, since its establishment in 1982, Oikoten's underlying philosophy has been based upon an 'emancipatory pedagogy' which starts from the idea that young people do not benefit from a protective approach; they should rather be treated as adults who can take up real responsibilities (Walgrave, 1980; Van Garsse, 2001b: 423-426; Lemonne & Vanfraechem, 2005: 184; Dominicus, 2010: 92). Practitioners from Oikoten were facing a challenge to deal constructively with persistent juvenile delinquents and were inspired by the American youth service organisation 'Vision Quest' to organise challenging hiking tours abroad for young delinquents which lasted several months (Van Garsse, 2001a: 523-524). For less problematic young delinquents the agency began to experiment with community service in 1987. This first community service project for juvenile delinquents (*vereffeningsproject*) was set up in co-operation with the public prosecutor's offices and the juvenile judges (Aertsen, 2000: 154). However, this project would soon attract a number of criticisms (e.g. it was argued that if functioned as a mere penalty and failed to stimulate the youngster's responsibility). Moreover, some victims made it clear that they were open to a meeting with the offender. As a result, the initial focus on responsabilisation shifted towards a more explicit focus on restoring the harm that had been done to the victim. From the end of 1987 onwards victims were systematically contacted about their needs and expectations of the meeting. The Oikoten programme thus evolved from a pure community service project to a mediation project in which the interests of the victims were more fully incorporated (Van Garsse, 2001b: 423, 426; Lemonne & Vanfraechem, 2005: 184).

The state reform in 1988 preluded an era in which some important changes were made to the youth justice system. The introduction of the Juvenile Justice Act in 1965 implied a shift towards a more behaviour oriented approach to juvenile delinquency. Young offenders were no longer viewed as 'dangerous individuals' but rather as 'individuals in danger' who were in need of help and protection. In order to accomplish this goal, the Juvenile Justice Act designed a full *sui generis* legal system for offenders under the age of 18 in which protection of the

offender was the first objective.[35] The state reform of 1988 shifted responsibility for all aspects related to youth protection to the Communities. However, the effectiveness of the existing 1965 Juvenile Justice Act was increasingly being questioned. In 1991, former Minister of Justice Wathelet created the Commission Cornelis, composed of academics, magistrates and practitioners, for the operationalisation of a new youth justice system. In its 1996 report the Commission called for the creation of a youth sanction model for young offenders above the age of 12.[36] Juvenile offenders were no longer perceived to be victims of society but rather risks to society. As a result, a youth sanction model was proposed that would focus on both the responsabilisation of the youngster (by imposing sanctions with a pedagogical character) and a restoration of the damage caused to the victim (Bradt, Bouverne-De Bie & Visscher, 2012: 123). In one of the meetings of this Commission, Prof. Lode Walgrave (research group on youth criminology of KU Leuven) suggested that it could be fruitful to explore RJ as a potential 'third way' between the old approach of helping and protecting the offender on the one hand, and punishing the offender on the other hand (Walgrave, 1992, Lemonne, 2018: 235). According to Walgrave the state was responsible for the protection of citizens and the restoration of the harm that was caused to victims of crime (Decock & Van Steenkiste, 1999; Geudens et al., 1999). Moreover, for Walgrave these victims were not only people of flesh and blood; indeed, also the community in general could be considered a victim of crime. This explains why, in addition to mediation, Walgrave also suggested that community service could be imposed as a restorative measure (Walgrave, 2008). However, Walgrave's proposal to make use of RJ practices in juvenile justice did not receive much support at that time.

Notwithstanding the lack of support for a RJ approach within the Commission Cornelis mediation for juvenile delinquents would further develop throughout the 1990s (Van Garsse, 2001; 2002; Van Garsse, 2015, p. 452). Shortly after the first national conference 'RJ for juveniles', organised by the INRRJJ in May 1997 in Leuven, Prof. Walgrave was commissioned by the then Minister of Justice, Stefaan De Clerck, to undertake a study on the possibility of introducing a juvenile justice system based on the principles of RJ in Belgium. The report of the study was published in July 1997 and suggested the development of mediation and community service for young offenders between the age of 12 and 18 in order to repair the harm that had been done to the victim and the community (Geudens, Schelkens & Walgrave, 1999: 53).

[35] Wet 8 april 1965, *BS* 15 april 1965.

[36] 'Eindverslag Nationale Commissie voor de hervorming van de wetgeving inzake jeugdbescherming', In: G. Decock & P. Vansteenkiste (Eds.), *Herstel of sanctie: naar een jeugdsanctierecht met de integrale rapporten Cornelis en Walgrave* (pp. 5-49), Gent: Mys & Breesch.

Simultaneously, yet independently from their colleagues from youth criminology, members of the research group on penology and victimology of the department of criminal law and criminology at KU Leuven started to show interest in VOM (Aertsen, 2000: 159; Lemonne, 2018: 234). In the autumn of 1992 financial support was requested for setting up an action research on VOM within the context of the criminal justice system through submitting a proposal to the King Baudouin Foundation (Aertsen, Van Garsse & Peters, 1994: 5). In 1993, the pilot project was set up as a local partnership in the judicial district of Leuven. It was hosted by the Service for Forensic Welfare Work (*forensisch welzijnswerk* in Dutch) until the end of 1995 (Aertsen, 2000: 159). The research team of the KU Leuven was in charge of the design, development and implementation of the VOM-project. The research project was specifically designed to examine whether mediation would be a viable option for more serious offenses, that is, cases where the decision to prosecute had already been taken by the public prosecutor. The reason for this approach were results from previous research on the consequences of victimisation and the position of the victim in criminal proceedings that had revealed that some victims might be interested in mediation, even in cases of serious offending (Peters & Goethals, 1993). VOM was perceived to be complementary to the ongoing process of investigation and punishment (Peters & Aertsen, 1995; Aertsen & Van Garsse, 1996; Aertsen & Peters, 1998; Aertsen, 2004: 218; Van Garsse, 2005: 72; Dominicus, 2010: 93). Moreover, the research project also intended to examine the impact of this type of mediation on the decision-making process by the public prosecutor and the judge (Aertsen, 2006: 71; Van Garsse, 2015: 437).

Case studies and interviews with both victims and offenders were used to comprise the evaluation of the pilot project (Peters & Aertsen, 1994; Aertsen & Van Garsse, 1996). The results proved to be encouraging as in a significant number of cases an agreement was reached through mediation, and both victim and offender were satisfied afterwards (Van Garsse, 2008: 18). The project adopted a more definitive status in the beginning of 1996 after an experimental period of three years. VOM became part of the prevention service of the city of Leuven. Together with the Oikoten mediation practice for juveniles and the practice of mediation at the level of the police they formed BAL (*Bemiddelingsdienst Arrondissement Leuven* in Dutch), the mediation service of the Arrondissement Leuven (Van Garsse, 2015: 454). From the original three organisations involved in the association, the network was widened to a group of eight judicial and non-judicial services which were part of a centralised steering group of mediation (Aertsen, 2000: 160)[37]. At that time, BAL was seen as a reference point in RJ developments in Belgium and, therefore, it was commissioned to make the practice

[37] As of February 1996, the partners were: the city of Leuven, the prosecutor's office, the municipal police, the national police, two welfare organisations (the Service for Forensic Welfare Work and the Oikoten mediation service), the bar of lawyers and the KU Leuven (Aertsen, 2000: 160).

of VOM available throughout Flanders. La Guidance d'Actions Compensatrices Educatives ou Probatoires (GACEP) received a similar assignment in the French speaking part of the country.

As of November 1997, VOM became recognised and financed by the Minister of Justice as a 'national pilot project' (Aertsen, 2000: 160). About a year later, in October 1998, the Flemish NGO Suggnomè was created in order to employ all staff involved in VOM in the judicial districts in Flanders and to support, train and co-ordinate VOM programmes in general (Aertsen, 2000: 161; Van Garsse, 2008: 16). Médiante was established to do the same in the French-speaking part of Belgium (Van Garsse, 2004: 50; Van Garsse, 2008: 16). It became clear, however, that the lack of a solid legal basis for VOM proved to be a major obstacle for the further development of mediation in Belgium. In 2001, former Minister of Justice Marc Verwilghen initiated a working group to better coordinate the developments with respect to VOM and to study the possibilities of providing a legal basis for VOM (Annual report vzw Suggnomé, 2001: 24-26; Annual report vzw Suggnomè, 2000: 28-30). These meetings, however, did not result in the development of a law on VOM (Kenis, 2003: 23-34; Annual report vzw Suggnomè, 2003: 27 e.v.).

Questions related to the future funding of VOM ultimately proved to be decisive for moving forward with the establishment of a legal basis for VOM in Belgium. In an advice of 11 March 2002 the Council of State (Raad van State) had made the funding of VOM dependent on its legal regulation.[38] As a result an ad hoc working group was established to draft a bill that ultimately led to a legal framework for VOM in 2005 (Dominicus, 2010: 95-96). Representatives of Suggnomè and Médiante were invited to participate in this small working group, together with representatives of the criminal justice system, the private office of Minister of Justice Laurette Onkelinx and the Prosecutor-General. One could distinguish two different views in the proposals for the development of a legal framework. Some wanted VOM as an additional instrument to be used by magistrates, either as an alternative for the classical legal process (diversion)[39], or as a victim-oriented ingredient in the punishment process.[40] Others[41], however, were not in favour of such an instrumental approach and argued that too little attention was being paid to the interests of the victim and that the fundamental principles of mediation were

[38] Advies Raad van State nr. 32.417/2 bij het K.B. betreffende de subsidiëring van organismen die voorzien in een gespecialiseerde omkadering voor burgers die betrokken zijn bij een gerechtelijke procedure.

[39] See inter alia de voorstellen Franchimont met betrekking tot de uitbreiding van de toepasbaarheid van art. 216 ter Sv. Inzake Bemiddeling in Strafzaken.

[40] See inter alia Wetsvoorstel C. De Permentier et al. tot wijziging van het Wetboek van strafvordering om de rechter in strafzaken de mogelijkheid te beiden de partijen voor te stellen het dossier naar een ambtenaar van de Dienst Justitiehuizen te verwijzen, *Parl. St*. Kamer, 2003-04, nr. 0235.

[41] Cf. Final report Commissie Holsters, part II, Strafuitvoering, 2003, p. 4 e.v.

being undermined. For them mediation should become the cornerstone of a participatory justice system (Van Garsse, 2004: 47). In July 2004 a bill was submitted defining mediation as a communicative process and guaranteeing the principles of confidentiality and voluntariness. VOM was conceived as an offer to victims and offenders which was made possible for any kind of crime. The criminal justice system has to inform parties about VOM and to make the offer available at all stages of the criminal justice process, including after the sentence (Van Garsse, 2005: 73-74; Aertsen, 2006: 72). On 22 June 2005, the Belgian parliament voted the law on VOM in order to legally establish VOM in each judicial district (Van Garsse, 2008: 18).

In addition to the first research project on VOM, a second 'action research' (1997-2000) was set up in the second half of the 1990s exploring the development of RJ measures in prison. In 2000, so-called 'RJ consultants' were employed in prisons in Belgium. Their goal was to make the climate in prison more restorative and to provide more attention to the victim (Van Camp et al. 2004). As the duties of these RJ consultants were considered temporary these functions were integrated at the level of management in 2008 (Vanfraechem, 2011: 55).

Criminologists from KU Leuven were not the only ones exploring the added value of mediation in the early 1990s. Indeed, former Minister of Justice Melchior Wathelet announced the drafting of a law on mediation in penal matters in 1992. This type of mediation was first introduced in October 1991 as an experiment at a few public prosecutor's offices in order to deal with frequently occurring urban crime (Van Garsse, 2015: 437; Beyens & Raes, 2005: 34-35). The realisation and application of mediation in penal matters, however, developed against a different political and social context than VOM.[42] In the early 1990s Wathelet complained about the failure of the courts to respond adequately to both serious and complex cases as well as what he referred to as small and mediocre city delinquency (Wathelet, 1991: 302-309). According to Wathelet the failure of the courts in these matters impacted the daily lives of Belgian citizens and threatened to discredit the judicial system as a whole. This proposal to address this issue was to simplify and speed up procedures for small and medium-sized crime. Inspired by similar developments in France[43], he proposed the introduction of fast procedures (*snelrecht* in Dutch) for more serious crimes and for recidivists and mediation in penal matters for dealing with less serious offenses. When a penalty of over two years' imprisonment is deemed not necessary by the public prosecutor (minor criminal cases) the law on penal

[42] The quick implementation of penal mediation should also be seen against the background of the political situation of the early 1990's. Indeed, during the parliamentary elections of 1991, the federal government was confronted with the success of the extreme right party 'Vlaams Blok'. As a result the federal government felt a certain urge to quickly develop multi-faced policies in order to deal with insecurity problems in society and regain public trust (Aertsen, 2015).

[43] 'La médiation pénale' was already being applied with a similar orientation for some years in France.

mediation of 1994 (Art. 216 ter Sv) offers the possibility of proposing mediation (to support reparation) to the suspect as only one of four possible options. The other being treatment for crime-related personal problems, training or community service (Aertsen, 2006: 70; Claes, Daems & Peters, 2006: 519).

The practices of VOM and mediation in penal matters coexist in Belgium, even though the dual use of the term 'mediation' can cause some confusion (Vandromme, 2005-2006: 1363). According to Claes et al. (2006: 524), however, there is quite a difference in the way penal mediation and VOM have been institutionalised in Belgium. Unlike the law of 10 February 1994 on penal mediation, the law of 22 June 2005 was not a response to social pressure to address the inefficiency of the criminal procedure. The aim of the government was to provide a legal basis for a permanent subsidy of VOM, as well as to give it a fixed place in the criminal justice procedure and to generalise the offer so that all those involved in criminal proceedings, in the broad sense of the word, may consider using it (Claes, Daems & Peters, 2006: 524). Furthermore, another crucial difference with the 1994 law on penal mediation is that the law of 22 June 2005 states that VOM is not an alternative measure imposed by a judicial body which could have legal consequences, as in the case of penal mediation. The law on VOM provides an offer of mediation but leaves the parties who have a direct interest in the procedure to decide whether they wish to use this offer or not (Claes, Daems & Peters, 2006: 524). Moreover, unlike the law on penal mediation and its application, the law of 22 June 2005 is not trying to serve different goals. The latter was preceded by a long maturation of its philosophy and its underlying principles that allowed the legislator to make clear and consistent choices. This becomes clear by the concept of mediation as a voluntary offer which is organised independently of the criminal justice system, but which maintains relations of communication and collaboration with it (Claes, Daems & Peters, 2006: 524).

Our discussion so far demonstrates how VOM has become institutionalised in Belgium (see inter alia Lemonne, 2018 for more details). Figure 4.1 shows the evolution of VOM in Flanders since 2005. The number of mediation cases in Flanders increased significantly from 2006 onwards. The numbers stabilised somewhat after 2012. However, notwithstanding the enthusiasm at the base, the encouraging research results after its introduction and the establishment of legislation in Belgium, the practice of VOM still obtaines a relatively weak position in practice and in criminal justice policy.[44]

[44] Interestingly, integral statistical data covering all restorative justice programmes in Belgium do not exist. Indeed, organisations at the federal or regional level collect the data and present them in their annual reports. Important to note is that the collected data cannot easily be compared between restorative justice programmes (VOM for juveniles and adults, FGC, mediation at the level of the police,

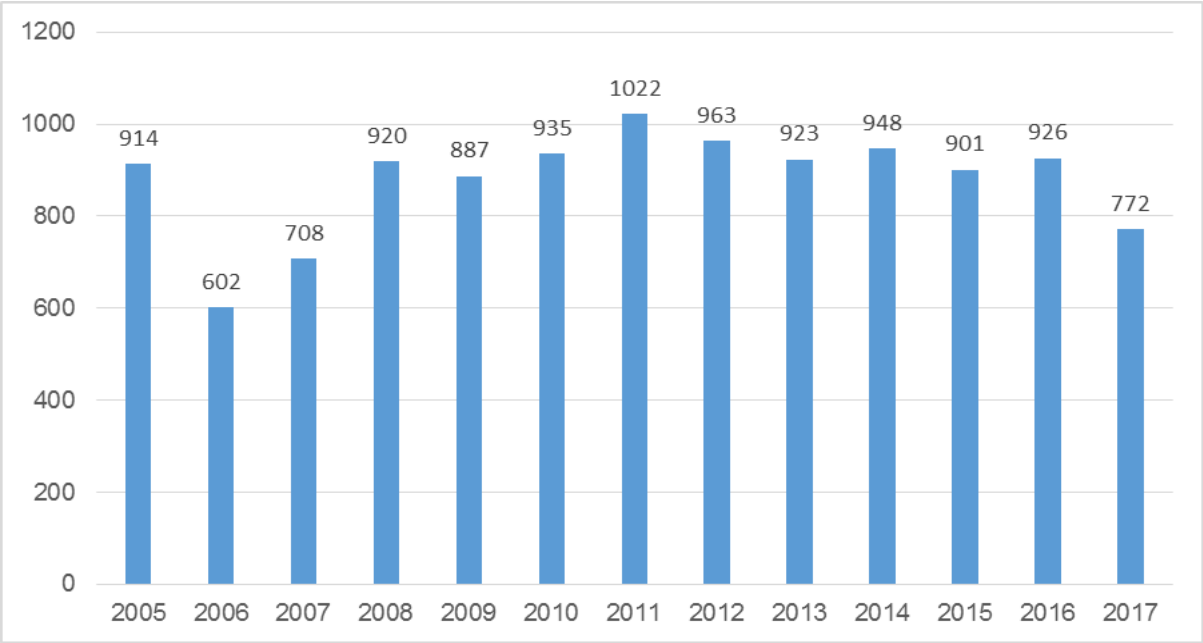

Figure 4.1 Number of closed mediation cases (mediation cases that result in an agreement) in Flanders 2005-2017 (source: Annual reports Suggnomé/Moderator)

4.3.2 Family group conferencing

In Belgium, conferencing is embedded in the youth justice system where it is used as a restorative and reparative measure for serious forms of juvenile delinquency (Put, Vanfraechem & Walgrave, 2012: 88). A study visit of several months in the spring of 1999 to Australia and New Zealand by Prof. Lode Walgrave (KU Leuven) and additional visits[45] of two Flemish youth judges Van de Wynckel (Antwerpen) and Raes (Leuven) in 1998 and 1999 gave an impetus to set-up a conferencing pilot project in Flanders in 2000 which focused on offering a RJ settlement in cases of serious youth offending (Walgrave, 1999; Vanfraechem & Walgrave, 2004b: 27; Walgrave & Vettenburg, 2006: 10). Conferencing turned out to be promising for handling serious offenses because of the involvement of victim and offender, and their supporting people (Walgrave, 1999: 281-282; Vanfraechem & Walgrave, 2001: 482). In the set-up of the pilot project it was decided to develop a Belgian conferencing practice reflecting very closely the FGC practice in New Zealand. Indeed, both youth judges as well as the criminologist were quite enthousiastic about the FGC practice in New Zealand as it was

…) as the counting criteria can differ: data are collected depending on the programme, 'cases' are counted on the number of offenders involved, the number of victim-offender relations, or the number of judicial files (Aertsen, 2015).

[45] These visits were funded by the 'foreign internship for magistrates' programme of the King Baudouin Foundation.

regarded as a RJ practice in which a ‘full and constructive’ response towards youth crime could be offered (Aertsen, 2004: 185; Walgrave, 2000a: 97-98, Walgrave, 1999: 281-282).

Former Minister of Welfare, Mieke Vogels, offered financial support for the development of the scientific research. Allan MacRae (an experienced Youth Justice Coordinator from Wellington, New Zealand), David Carruthers (Principal Youth Court Judge from New Zealand) and Gerard Folk (Australia) were invited to Leuven to help with the research and the start of the Belgian project. Allan MacRae organised a training session (both in 2001 and 2004) on conferencing for fifteen experienced mediators in Flanders. David Carruthers took part in a number of information sessions about FGC in Flanders where he talked about his experience with conferencing. His presence at these information sessions and at a meeting organised by the Commission on Welfare of the Flemish Parliament also proved to be important for the general acceptance of the project in Flanders (Vanfraechem, 2006: 7-8). Gerard Folk came to Leuven in 2001 where he informed a number of moderators about the conferencing practice in Australia (Vanfraechem, 2006: 160). Scientific support was also provided by Dr. Nathan Harris who had taken part in the set up and evaluation of a conferencing project in Canberra, Australia (Vanfraechem, 2006: 7-8). As the researchers feared that the English term ‘family group conferencing’ would cause problems in official and court documents it was suggested to translate it somewhat differently into Dutch: ‘Herstelgericht groepsoverleg’[46]. This term makes clear that the focus is on repairing the harm that is done to the victim (‘herstelgericht’); that it is more than a meeting between just family members because representatives of the larger community can also be invited (‘groep’); and that it is a meeting between people and not a consultation (‘overleg’) (Vanfraechem & Walgrave, 2001: 485).

Because the New Zealand FGC model had proved its potential as a restorative measure in serious cases it was decided to use it as a reference for the introduction of a Belgium FGC practice. The researchers offered three reasons for choosing the New Zealand model of conferencing as a basis for the Belgian project (Vanfraechem, Walgrave & Aertsen, 2013: 9). Firstly, by involving people who support him during the meeting the offender will feel

[46] It was difficult to find a Dutch translation for the English term ‘Family Group Conferencing’. 'Family group conferencing' did not seem to be the most appropriate option because the meaning of the terms ‘family’ and ‘group’ partially overlap in Dutch and because the term 'conferences' has a different meaning in Dutch than in English. In fact, Family Group Conferencing was (and still is) specifically associated with New Zealand. In other countries, where the model was partly implemented, people sometimes used the terms 'diversionary conferences' or 'youth justice conferences'. Increasingly, 'restorative justice conferences' were being used as a collective term. Prof. Walgrave initially chose to use the term 'restorative family sessions' (restoratieve gezinssessies) in Dutch, but the difficulty of translating FGC in Dutch lead him to set up a competition to find a more appropriate term: ‘Herstelgericht groepsoverleg’.

encouraged to take up his responsibility for the crime and for the implementation of the agreement. Although parents are also often invited for mediation, in conferencing meetings they are addressed in a more systematic way to find a solution for the crime. Moreover, the number of people in the meeting could be extended towards all people who have a positive influence on or meaning for the offender. Also the victim has the opportunity of bringing supporters to the meeting. Secondly, the presence of a representative of the police was important to indicate the seriousness of the conferencing process. In New Zealand the police representative has the responsibility of summarising the facts and its consequences for the victim. However, in some other countries he or she also has the authority to facilitate the session (e.g. the RISE-experiment in Canberra, Australia, the Real-Justice experiment in Pennsylvania, USA., or 'Echt Recht'- experiment in The Netherlands). On the other hand, in several other countries the police's role is rather limited because this may hamper a free and open discussion. In Belgium, the presence of the police is considered to be valuable because it indicates that the damage to both the victim and the larger community is taken into account. Moreover, it helps stressing the seriousness of the crime which deserves a constructive answer. The police, however, should not be the facilitator of the meeting because taking up two different roles in the meeting would not be beneficial for the process (Vanfraechem & Walgrave, 2001: 483). Thirdly, conferencing was not a diversion measure, but was deeply embedded into the core of the youth justice system (Vanfraechem, Walgrave & Aertsen, 2013: 9). Due to its integration at the level of the youth court conferencing was implemented as a measure that could only be used for serious offenses.

The preparations for the pilot project ended in November 2000 and the first juvenile offending case was referred to conferencing on January 1, 2001 (Vanfraechem & Walgrave, 2004b: 29). The pilot project was launched with the help of five Flemish medation services[47] of which a number of mediators were trained by Youth Justice Co-ordinator Allan MacRae from New Zealand. Although conferencing in Belgium shares many features with FGCs in New Zealand, a number of adjustments were required to make it fit into the Belgian juvenile justice system (Vanfraechem & Walgrave, 2001: 485). As we discussed earlier, conferencing was introduced to deal with serious cases and therefore it was implemented at the level of the youth court. The subsidiarity principle is here at play: when a case seems to be suitable for conferencing the youth judge should use it as a first measure. The youth judge is, however, not obliged to propose conferencing to the juvenile offender but then he has to motivate this

[47] The pilot project was set up in Antwerp (ADAM and VZW Elegast), Brussels (BAS!), Leuven (BAL), Hasselt and Tongeren (BAAL).

decision.[48] The law lists three conditions that must be fulfilled to proceed to set up a conferencing meeting: a) there must be serious indications of guilt; b) the victim must be identifiable; and c) the juvenile offender should not deny his involvement in the crime.[49] When all three conditions are fulfilled the youth judge refers the case to a mediation service which notifies the offender. If the offender agrees to a conference meeting, the victim is informed as well. The consent of both victim and offender has to be obtained throughout the entire process.[50] Whereas the youth judges are the ones with the competence of doing the referrals the introduction of conferencing into a civil law regime as Belgium required a much stronger involvement of those agencies (Vanfraechem & Walgrave, 2001: 485). In order to secure the collaboration and support of those agencies they were, therefore, already notified and involved at a very early stage in the process.

The meeting is supervised by an independent mediator who monitors the process and checks if both parties have equal opportunities to speak. Before the start of the meeting, the offender and his group of supporting people have the opportunity of meeting the mediator in private to discuss potential causes of the crime, such as difficulties at home, school or during leisure time. During the meeting, both victim and offender can invite support people. These people are most often family members, but they can also be other significant others. The seriousness of the cases and the fact that conferencing is taking place at the level of the juvenile court makes clear that the process may have serious implications for the rights and safeguards of the persons involved (Vanfraechem & Walgrave, 2001: 484). The law, therefore, also provides for the possibility of requesting advice from an attorney before the start of the meeting. This attorney can also assist when the final agreement is being signed (Van den Bril & Goethals, 2008: 36). Although in some countries the presence of a representative of the police is either restricted or not allowed, in Belgium a police officer may be present during the meeting.[51] The police's presence is, however, not obliged. Moreover, the juvenile offender can request the police officer to leave the room when other issues are being discussed in the meeting. Indeed, the representative of the police has the duty to notify his superior when new crimes or names of accomplices are mentioned during the meeting.[52]

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[48] Ministeriële omzendbrief 7 januari 2007 betreffende de wetten van 15 mei 2006 en 13 juni 2006 tot wijziging van de wetgeving betreffende de jeugdbescherming en het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd, *B.S.* 8 maart 2007, 11.500.

[49] Art. 2 wet 15 mei 2006 tot wijziging van de wet van 8 april 1965 betreffende de jeugdbescherming, het Wetboek van strafvordering, het Strafwetboek, het Burgerlijk Wetboek, de nieuwe gemeentewet en de wet van 24 april 2003 tot hervorming van de adoptie. , *B.S*. 2 juni 2006, 29.028.

[50] *Idem*.

[51] Ministeriële omzendbrief Nieuw Jeugdrecht, *B.S*. 8 maart 2007, 11.497.

[52] *Idem*, 11.498.

In 2006, FGC was included in the new youth law as a restorative practice that can be applied in cases of serious juvenile offending (Vanfraechem, Walgrave & Aertsen, 2013: 8). Since then, conferencing is available in any judicial district in Flanders and the French-speaking part of Belgium where it resides next to VOM (Bradt, 2013: 30). However, looking at the developments of the last twelve years it becomes clear that conferencing remains rather marginal in practice (see figure 4.2).[53]

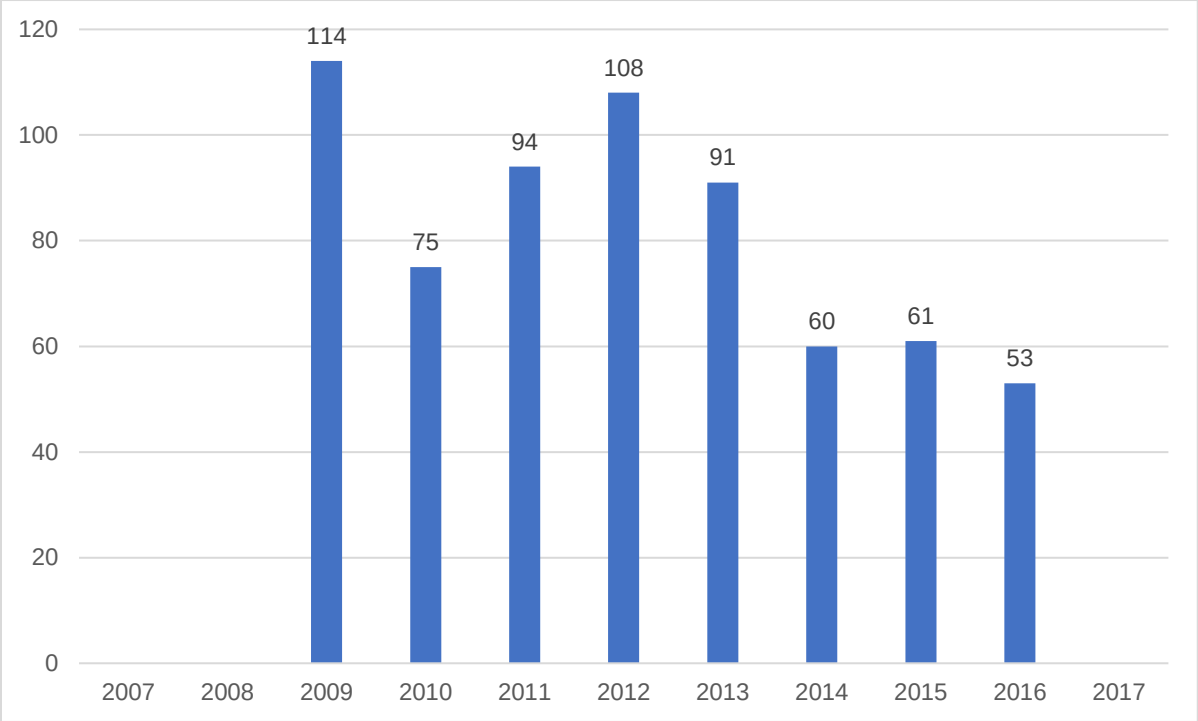

Figure 4.2 Number of FGC cases in Flanders and Brussels 2007-2017 (source: Annual reports 'Jongerenwelzijn' Flanders)

A study by Bradt (2013) examining the limited use of FGC in Flandes identified a number of bottlenecks and obstacles in the current (referral) practice of FGC. The study made clear that the practice of conferencing is rather unknown in Flanders. Criminologists working at the prosecutor's office indicated that the usage of VOM has become an automatism in the past few years which means that the option of conferencing is often no longer considered. In that sense, conferencing seems to some extent to be the victim of the success of VOM for juvenile offenders. Moreover, conferencing is considered to be a time-consuming process that does not guarantee the actual taking place of a meeting (Bradt, 2013: 44).

[53] As for the French Community a total of 190 cases was referred to conferencing in the period between 2007-2011 (Aertsen, 2015, 70).

4.3.3 Peacemaking circles

A research project titled "*Developing peacemaking circles in a European context*" (1/9/2011 – 31/8/2013) explored whether it would be possible to implement PMC in a RJ context in three civil law countries in Europe (Belgium, Hungary and Germany) and, if that would be feasible, which format would be most appropriate and under what conditions (Dhondt & Aertsen, 2014: 34).[54] The researchers argued that there was insufficient attention for the broader community in existing RJ practices in the three countries. It was therefore assumed that PMC could address this weakness in VOM and FGC (Dhondt & Aertsen, 2014: 36). As a result, in each of the three participating countries an action research was set up which focused on the development of a model for PMC in Europe and which was tested in a limited number of cases. In total, 30 PMC had successfully been organised and analysed across the three countries. In Belgium, the PMC process was tested by mediators working at Suggnomè vzw, the mediation service certified by the Ministry of Justice for carrying out mediation with adult offenders in Flanders (Dhondt & Aertsen, 2014: 36-37). They were trained by Phil and Harold Gatensby, two experienced peacemaking facilitators from Canada, in October 2011 (Dhondt & Aertsen, 2014: 35).

The European study made clear that PMC could be put into practice as a restorative measure in a European context. Indeed, participants and mediators in this project saw some potential benefits for victims and offenders in using circle meetings. PMC's may be appropriate if there is a need from within the community to participate in the settlement of a conflict or if there is a need from victim and offender to share questions, expectations and needs with the wider community (Dhondt & Aertsen, 2014: 42). Nevertheless, they also pointed at some potential risks and raised questions about practical implications. One of the most problematic aspects of implementing PMC seems to be the inclusion of the broader community. Involving the broader community was not always evident for victims and offenders because they enjoyed their privacy and therefore felt uncomfortable when talking about the crime they committed or where affected by in front of members of a broader community. Some were concerned that people within the community might violate the confidentiality of the meeting and talk to others about what happened. Moreover, when victim and offender did agree to involve the community in the circle meeting it was often difficult to identify the particular community members and to invite them to the meeting (Ehret, Dhondt & Szegö, 2013: 427-428; Dhondt & Aertsen, 2014:

[54] The research project 'Developing Peacemaking Circles in a European context' resulted from a collaboration between the Eberhard Karls University Tübingen, KU Leuven, the Foresee Research Group (Budapest) and the National Institute of Criminology (Okri, Budapest). The project was co-funded by the European Commission (DG Justice Grant JLS / 2010 / JPEN / AG / 1609).

38, 41). Another problem was related to the involvement of judicial representatives in the circle meeting. PMC are time-consuming and demand lots of effort from all involved in the process. As judicial representatives have busy work schedules practical problems can arise in organising the circle meetings. Besides practical problems, also particular legal issues were identified as obstacles, such as the secrecy of the investigation and the obligation of judicial representatives to report new crimes (Ehret, Dhondt & Szegö, 2013: 117-118).

The overall conclusion of the study was that PMC can certainly be introduced and work in a European context, even though it depends on the structures and conditions of the respective country. Currently, however, the practice of PMC is rather unknown in the Belgian RJ landscape.

4.4 Policy transfer and restorative justice

This section explores the empirical evidence for policy transfer in the development of RJ in Belgium. Like in the previous chapter we will discuss in more detail the categories of actors that have been involved in the transferring process, why they engaged in the policy transfer process, what has been transferred, from where lessons are drawn, which degrees of policy transfer exist, as well as the limits to policy transfer in Belgium.

4.4.1 Policy transfer agents

In our study we have been able to identify a number of actors who have been important in initiating, implementing and further developing RJ and who have, to differing degrees, drawn on foreign examples in the area of RJ. Our documentary analysis and our interviews with close observers of the various policy processes in the historical development of RJ in Belgium enabled us to identify four main agents of transfer: (1) academic experts[55] who proved to be vital in initiating, implementing and promoting RJ in Belgium; (2) practitioners[56]; (3) politicians[57]; and (4) (former) key professionals of the criminal justice system[58].

[55] The group of academic experts includes academics from various universities, both in Flanders and the Walloon region.

[56] The group of practitioners includes professionals working in organisations providing assistance to victims and offenders.

[57] The group of politicians refers to Ministers of Justice and Members of Parliament.

[58] The group of (former) key professionals of the criminal justice system includes civil servants working in the Justice Department, lawyers supplemented with members of the judiciary (magistrates and public prosecutors).

4.4.1.1 Academic experts

As we discussed above (section 4.3) the idea of RJ has been introduced in Belgium by some key academic experts at KU Leuven in the early 1990s. As already became clear in the chapter on EM, the mid-1990s were characterised by an unusual atmosphere and ambiance in which people were looking for initiatives that could challenge the status quo. Academic experts introduced new ideas and thought carefully about how to shape them. At that time, criminologists at KU Leuven were inspired by developments abroad which made reference to the idea of bringing together the victim and offender of a crime in order to repair the harm that had been done. Researchers at the department of criminology and criminal law were charmed by this idea of RJ. The need for penal reform in the penal system for both adults and minors encouraged them to look for alternative ways of thinking about punishment. As an academic expert indicates, RJ in Belgium has been developed from both the research domain of penology and victimology, and youth justice:

> *'Actually, you can say that the idea of RJ has gradually begun to emerge as something that we had to take seriously at the beginning of the 1990s. The word "RJ" had been launched earlier but I did not know that at that moment. It is only then beginning to emerge, internationally and in Belgium. Leuven was fairly fast, not only because of the International Network for Research on Restorative Justice for Juveniles (INRRJJ), but also because Tony Peters was working on setting up a EFRJ at that time. That was a coincidence. We were almost next door to each other and we did not know from each other what we were doing. He was actually interested in penology and victimology. I was involved in youth justice and prevention. And we were both so busy with our own research group that we did not know that we ... Until at a certain moment a colleague told me about it. […] That's how things happen sometimes.*[59] *And then Ivo Aertsen took over. Leuven was really a centre at that time and it still is. You can see that people come from everywhere in the world to conduct a PhD in Leuven, for example. Internationally, RJ has really put criminology in Leuven on the map.'*
>
> (academic expert, RJ 1),

Criminologists at KU Leuven were aware of the initiatives with RJ that were being developed in other countries from reading the international scientific literature. At the end of the 1980s,

[59] The Leuven Institute of Criminology was officially established on 12 December 2006. Before 2006 there were four research groups within the department of criminology and criminal law with in addition a diverse group of professors and researchers who were not formally part of any of these groups (Casselman, Aertsen & Parmentier, 2012: 135).

academics were thus looking across borders for inspiration but not in a literal sense, that is, not so much in terms of travelling to other countries for inspiration or welcoming foreign visitors to prepare the introduction of RJ. A large part of the inspiration for introducing RJ in the debate on penal policy reform in Belgium seemed to be based upon what one might call 'desk research'. Academic experts were aware of the international scientific literature regarding RJ and were inspired by the international developments. Exchanging best practices in the initial phase was therefore mainly limited to reading and writing behind their desk on the basis of information that had been gathered over time and that had been circulating through academic and policy channels, as an academic expert indicates:

> *'I think we should look at the department of criminology and criminal law for the origins of the development of RJ in Belgium. In the beginning of the 1990s, criminologists at KU Leuven were inspired by developments abroad. We heard about RJ for the first time on the basis of the international scientific literature. We, that was Tony Peters, Wilfried Meyvis, who worked as an assistant at the department of criminology and criminal law, and I. We actually discovered RJ on the basis of foreign literature. Scientific literature in criminology. So it was not the case that the idea was suggested by someone from the department of criminology and criminal law or someone in Belgium. In that sense that has already been an important element of influence or a kind of transfer, not a policy transfer I assume, but a kind of transfer, inspiration across borders.'*
>
> (academic expert, RJ 2)

The way in which RJ was initiated in Belgium was thus largely influenced by some key academic experts at the KU Leuven. Already at a very early stage, a number of academics wrote articles about the use of RJ as a solution for problems within the penal system (see e.g. Peters, 1993, 1994, 1995, 1996; Walgrave 1997, 1998, 1999; Peters & Aertsen, 1994, 1995; Aertsen, Van Garsse & Peters, 1994; Aertsen & Van Garsse, 1996; Bazemore & Walgrave, 1999; Geudens, Schelkens & Walgrave, 1997; Aertsen & Peters, 1995, 1997, 1998). Academic experts from the KU Leuven had built strong networks with a variety of people. They had close contacts with practitioners, people within the private office of the Minister of Justice, professionals working in the criminal justice system (e.g. lawyers, prosecutors and (youth) judges), as well as with fellow academics. Already since the 1980s, academics at the department of criminology and criminal law had been developing strong ties with local organisations providing assistance to victims and offenders which resulted in a permanent close and constructive relationship between academics and practitioners. This constant interplay is somewhat peculiar to Belgium, abroad they are looking at with admiration, as an academic expert explains:

'I always have to explain to people abroad how we could actually develop something like that in consultation with people in practice. That started in the 1970s-1980s. It is actually a bit of a tradition of criminology in Leuven to always have that kind of embedding. Most of the research groups have that. One research group more than the other of course but a kind of embedding within practice. And especially the ability to build a constructive cooperation. There were of course very important differences in style. In cooperation style between people. For example, Tony Peters was much more pragmatic and much more moderate than Lode Van Outrive who was much more critical of the police. Tony was also aspiring to fundamental reform and he did that in a diplomatic, pragmatic way by building a kind of mutual, respectful cooperation with prison directors, public prosecutors, welfare workers, … And that has been our strength. That has been built up since the 1980s. Those kinds of close relationships, cooperative relationships with the people in practice. In many ways also a basic trust relationship between the department of criminology and criminal law and that broad sector of forensic welfare work, the prison system, … The criminal justice system let's say. That made it possible for us to get those people on board at the beginning of the 1990s. Lawyers and welfare workers, and other people. That has been the result of years of building up relationships and cooperations. And that is something you do not see that often in other countries where people conduct criminological research. They conduct their research for one or two years and then they are gone. But we have something of a more ongoing relationship, an almost permanent relationship with a number of organisations in practice.'

(academic expert, RJ 2)

As there were already some previous close connections between criminologists at the department of criminology and criminal law and people in the field of victim and offender assistance, and the public prosecutor's office in Leuven involving partners in the pilot project on mediation was rather straightforward. In setting up the pilot project on victim-offender mediation, there were three organisations involved, that is, the KU Leuven, the office of the public prosecutor in Leuven and the Centre for General Welfare (*Centrum voor Algemeen Welzijnswerk* in Dutch*)* which provided victim and offender assistance. As Belgium is a small country the contacts between academics, practitioners, as well as policy entrepreneurs and politicians were very open as there was only a short distance between people working at different levels. This short distance between theory, practice and policy has played a vital role in the development of RJ in Belgium and is quite unique, as an academic expert explains:

'Yes absolutely. And I think that is indeed something unique in Belgium, so those short links between practice, research and policy. You do not easily find that in other countries.'

(academic expert, RJ 3)

In the early 1990s, RJ practices were not well-known in Belgium which resulted in a somewhat hesitant reaction towards it from a number of organisations and practitioners. On the one hand, victim organisations were afraid that a face-to-face meeting between victim and offender after the crime would lead to secondary victimisation. On the other hand, lawyers and public prosecutors wondered whether the legal rights (e.g confidentiality of the meeting) of participants in mediation were jeopardised. The short links between the department of criminology and criminal law and the practitioners or organisations in the field, and eventually the policy makers, have been of vital importance to carefully convince people of the idea of RJ and to create a context to proceed with its development and afterwards its implementation in the law. A key academic in the department of criminology and criminal law was very good at creating these connections and convincing people of the advantages of RJ, as another academic expert indicates:

'And someone like Tony Peters could do that. He had that gift and he could build something with people. He was not arrogant nor did he start to criticize things … he convinced practitioners and policy makers or people in high positions so that they started saying: "wel ok, maybe RJ is something interesting."

(academic expert, RJ 2)

Penal policy making in a small country offers the advantage for academic experts to almost directly express their views to policy makers and politicians in the field. In drafting the laws on mediation (2005) and FGC (2006), for example, academic experts from the KU Leuven were closely involved in the preparation phase, and wrote articles about it afterwards when the laws were implemented. Nevertheless, there is also a downside of living in a small country, as an academic expert clarifies:

'There is a danger and that is when you are living in a small country you also keep each other in balance. You can easily be asked as an academic expert to take part in a committee, a policy-preparing committee. And you do not want to lose that position. And so you are going to push less to change things because the Minister of Justice might shock you and say: "I cannot do anything with that person so I take another one." By the way, you depend on him for a part of the research funding. So you are a bit cautious. So in a small country you keep each other in balance. I have written once that

they are mutually disciplining. So the critical ideas do not go far enough to offend someone, but the critical ideas that you do have do reach the policy makers. Anyway, you know what I mean. And that is something you get in a small country. In a large country where you have less chance to get to the Minister of Justice or to the policy makers you can push things. So in a large country there are more uncontrolled ideas and that is a big difference.'

(academic expert, RJ 1)

Academic experts were thus not only indispensable for introducing the idea and the practice of RJ in the Belgian penal context but they also were important during the phase of policy development. In the development of RJ in Belgium, academic experts also developed strong ties with people in the private office of the Minister of Justice and there were regular contacts between the university and the political level. The research projects undertaken by academic experts at KU Leuven have played a vital role in the further development of RJ in Belgium, as an academic expert indicates:

'And then afterwards we got a mandate from the private office of Minister of Justice De Clerck to make a design of how a new juvenile law that was completely inspired by RJ would look like. And that was of course a very nice challenge. Together with a number of people in my research group we have thought and wrote about it and one year later we had a report.[60] And that has continued to influence the reform of the Belgian juvenile system. That is true, for sure. It was only in 2006 that Minister of Justice Onkelinx changed it, but in the meantime there were already practices of mediation and community service. So there were already a lot of practices in the field, supported by the university. Both Tony Peters and I, we helped. We conducted research. We organised study events about this. What happens and what do we learn from it? So there was a lot of work in practice when Minister of Justice Onkelinx eventually drafted that law. And the RJ practices in itself were developed under the impulse and with the support of the academic world. Especially Tony Peters' team and mine. There is no doubt about it. Research helps'

(academic expert, RJ 1)

[60] Geudens, H., Schelkens, W. & Walgrave, L. (1999). 'Op zoek naar een herstelrechtelijk jeugdsanctierecht in België. Een denkoefening', In: G. Decock & Ph. Vansteenkiste (Eds.), *Herstel of sanctie. Naar een jeugdsanctierecht* (pp. 49-101). Gent: Mys & Breesch. See also Walgrave, L. (2000). *Met het oog op herstel. Bakens voor een constructief jeugdsanctierecht*. Leuven: Universitaire Pers.

Academic experts at the KU Leuven had also built up strong networks with fellow academics abroad in the field of RJ. It were mainly academics from criminology departments that were interested in RJ. These international contacts have played a vital role in making the project on VOM well-known outside Belgium, as an academic expert indicates:

> *'We were lucky to have permanent contacts with foreign colleagues in the field of RJ. And certainly someone like Tony Peters who was very internationally focused at that time. So he had a lot of contacts throughout the world which made our project on victim-offender mediation well-known. We could publish a little about it in English and Tony was asked a lot to talk about it abroad. So it has always been that interaction, those contacts. These exchanges with foreign countries. Tony has talked countless times about our project. The philosophy behind it, the collaboration with the practitioners and the public prosecutor's office, and the method of mediation. He often talked about this in Spanish-speaking countries and in English-speaking countries. In Germany. In Scandinavian countries.'*

(academic expert, RJ 2)

In the initial phase of the pilot project on VOM there were close contacts between academics at KU Leuven and academics in Canada. Together with a number of Canadian partners and a number of European universities, including the KU Leuven, an exchange programme was set up which was supported by the EU. This exchange programme brought together Canadian and European students but at the same time it was also a place where a lot of exchanges took place at the academic level, as well as with practitioners and policy makers. Indeed, Belgian academics had developed good contacts with policy makers abroad, both at the European and the international level, as an academic expert states:

> *'Tony Peters had a lot of good relationships with policy makers, not only in Belgium, but also abroad. With Ministers of Justice or people very close to Ministers of Justice. People within the UN, people within the EU. Especially in the CoE, and so on. Of course that was also remarkable.'*

(academic expert, RJ 2)

In the initial phase of the development of RJ in Belgium these contacts between researchers at the department of criminology and criminal law and other European and international actors were rather informal. At the end of the 1990s, academics in Leuven were the initiators of a more formal way of working together which resulted in the development of EFRJ[61] and the

[61] See European Forum for Victim-Offender Mediation and Restorative Justice (2000). *Victim-offender mediation in Europe: Making restorative justice work*. Leuven: Leuven University Press.

International Network for Research on Restorative Justice (INRRJJ) (for more details see section 4.2).

Interestingly to note is that the KU Leuven, in particular the department of criminology and criminal law, has always been much more active in initiating and promoting the idea of RJ than that has been the case for other Belgian universities. A practitioner indicates:

> *'I come from Ghent. I graduated in 1993 and mediation was only mentioned marginally. So it was not discussed there, whereas in Leuven that was thé thing.'*
>
> (practitioner, RJ 23)

Or as a criminal justice professionals suggests:

> *'I think Leuven is very ... you had people like Lode Walgrave and Tony Peters. They have focused a lot on RJ. That idea is picked up at various levels, also at the political level. They tried to implement it in one way or another. Restorative detention, victim-offender mediation. Yes, that has caused a bit of a snowball effect. In my opinion it mainly came from the direction of Leuven. From the experiments that have been set up there. The role and importance that the scientific world had attached to it and the support that was given to it as well. I think that has been an important catalyst.'*
>
> (criminal justice professional, RJ 11)

Because of their strong focus on RJ and the ongoing promotion of its use researchers at the department of criminology and criminal law are sometimes perceived more as activists than researchers. An academic expert expresses:

> *'Yes, it has always been evaluated in a positive way because it has always been evaluated by Leuven. By the promotors themselves. Sometimes they have been more activists than researchers. And I still believe that. I am not saying that they were totally wrong. I also like mediation and this idea. It was a good attempt at that moment because there were not that many other things that were popular at that moment. But the fact is that they evaluated their own programs. So, yes it was positively evaluated because they always showed the good parts. And it has sometimes be evaluated by others, especially by the VU Brussels in the juvenile justice system, and they were much more critical. I was also much more critical even though I am in favor of it. That is difficult because you don't want to break something that is meaningful to you but still, as a researcher, I think you need to look at all the issues at stake. And the network was huge at that moment. RJ was introduced in the law because the people in the private office of the Minister of Justice were people who had been trained at the KU Leuven and they had intense contacts with the KU Leuven. This network had a huge influence*

on the way the law has been formulated because they drafted the law. It was not the political field that drafted the law, it were the practitioners and the academics from the KU Leuven. And some public servants in the administration who were always in contact.'

(academic expert, RJ 25)

This interwoveness between theory and practice has been (and still is) very peculiar to the development of RJ in Belgium. As an academic expert indicates this can be perceived as both an advantage and a disadvantage:

'I think it was (and still is) very typical for the sector of RJ that there is a very strong cooperation between academics, people who are involved in developments in practice and the interested policy makers. Where there is almost a continuous mixture of activist academics, people in practice who also write, think, and participate in action research, and people who have some connections at the policy level, which is not always liked by the academic world. Or from the judicial world, such as the public prosecutor in Leuven who has been involved since the very beginning. I think the mixing is something typical of which I also often think that it is being perceived critically from the outside. I think that it is an asset, but at the same time it may be, not really a weakness, but something which invites comments from outsiders like: "is that serious?"

(academic expert, RJ 7)

Interestingly, in the initial phase of the development of RJ there was not such a strong academic support in the southern part of Belgium as there was in Flanders. From the start, the main difference between the development of RJ in Flanders and Wallonia was that the pace of the development was different because there was a strong academic support in Flanders which was not the case in Wallonia, as a practitioner indicates:

'I also think that had something to do with the fact that practitioners in Wallonia did not have the academic support that we had. Not at all. Yes, there were a few people at the University of Liège who were interested in it, and then there was a seminar now and then. We have also been invited to tell something about the practices or to come over and listen to something. But if academics or practitioners from the southern part of Belgium needed academic support, they came to Leuven.'

(practitioner, RJ 4)

RJ developed differently in the French-speaking part of Belgium. In Wallonia, reflection about RJ emerged from within youth justice when practitioners started to think about how to deal with young people in a different way. This reflection started bottom-up and was not that much

supported by academics at the universities in the French-speaking part of Belgium. Academic experts in Wallonia have been interested in the concept of RJ but they have at the same time been somewhat critical and cautious. In that sense, academic experts in Wallonia were afraid that mediation would legitimise the existing system and not provide sufficient legal guarantees for the people involved in the process. An academic expert expresses it as follows:

> *'You really have a different position in Wallonia than in Flanders. In the French-speaking part of Belgium, except maybe a bit in Liège, but at the UC Louvain, the Facultés Universitaires Saint-Louis and the UL Bruxelles everybody thought the concept of mediation was interesting but not becasuse it gives a new direction to the criminal justice system. The position of the universities has always been "Watch out, it could be really dangerous". In fact, in some ways you legitimise the system which now has a new name but that is it. You can say that a person will be punished and that he has to repair the victim, but he will still be punished. And in some way you add an objective which is more humane and which will legitimise the criminal justice system. That has been the dominant position in the French-speaking part of Belgium which is definitely not the discourse you hear at least from the promotors of RJ in Leuven. They say: "Ok, there is this risk but you know RJ is better.'*
>
> (academic expert, RJ 25)

Interestingly, there was a lot of discussion amongst criminologists in the French-speaking part of Belgium whether to promote RJ or to keep a certain distance towards it, as an academic explains:

> *'What is your world? Should you study the system? If you do that you indirectly influence the system with your research. But should you, as an academic, really promote the use of RJ? Is it good to include the victim in the criminal justice system? Nobody at my university was really thinking that it was such a good idea. Maybe it was not such a good idea. At least they did not want to take a position. At the KU Leuven they really had a different position in the beginning. And now, sure, you have seminars and courses on victimology because now the victim is involved in the penal system. So you need to study it. And you see, for instance, that perspective towards the victim, is it good or not? I don't know. Sometimes it is also bad. We have done some research on the impact of practices on the victims of crime and you see that sometimes victims do not perceive a certain practice as being restorative.'*
>
> (academic expert, RJ 25)

Interestingly, in the initial phase of the development of RJ in Belgium there were no courses on victimology yet at the French-speaking or Flemish universities. The first steps in introducing a course on victims of crime were taken under the impetus of Tony Peters, who introduced 'victimology' as a research and educational field in Belgium. From 1991-1992 onwards a course in victimology (and criminal justice) appeared in the KU Leuven curriculum which analysed crime and criminal justice from a victim's perspective (Goethals, 2012: 47). As an academic expert indicates this evolution took much longer in the French-speaking part of Belgium:

> *'There are no courses on victimology at the universities in the French speaking part of Belgium. Nearly anything, except in Liège. That has been the only university working on this concept of RJ, starting from the point of view of the victim. At the UC Louvain, Université Saint-Louis and the UL Bruxelles you have no course on victims. Now it starts. And that is also the position from the academics saying: "What should we study and is victimology a part of criminology?" And at the French-speaking universities it has not been considered as a part of criminology. You can be victim of many things so why should it be part of criminology? I think that the epistemological position of these universities is that you should do research on things but not try to implement things.'*
>
> (academic expert, RJ 25)

Academic experts in Leuven have not only played a crucial role in the initiation of RJ in Belgium, but also in its further development by constantly feeding the debate on the use of restorative measures and conducting studies to further expand its use.[62] Indeed, there have been many research projects at the KU Leuven on RJ. In particular, in 2013, academics at KU Leuven were part of a European project on PMC. Together with academics from Germany and Hungary they explored whether the practice of PMC, which has its origins in Australia, could be implemented in a European context (for more details, see section 4.5.3). In this development of RJ, in general, there has been a constant interaction between academics and practitioners. Because academics notice what is trending in society they will have the opportunity to set up a number of studies. In that general climate of the time, the EFRJ offered an important platform for academics, practitioners and policy entrepreneurs to exchanges ideas. Their conferences were (and still are) places to meet (for more details see section 4.2).

[62] For an overview of the past and present research projects on restorative justice at KU Leuven, see https://www.law.kuleuven.be/linc/onderzoek/LINC_RJ_Research_Brochure

4.4.1.2 Practitioners

From the above it became clear that academic experts, in particular criminologists from the KU Leuven, developed strong ties with practitioners. Indeed, throughout our research it became clear that practitioners have played a key role in the development of RJ practices in Belgium, in particular through taking part in the pilot projects on mediation and FGC and implementing the aforementioned practices as well as through promoting the further development of RJ in Belgium. In the early 1990s contacts between the KU Leuven and practitioners in the field were very intense. Academic experts at the KU Leuven had already been developing these contacts since the late 1980s when they developed strong ties with local organisations providing assistance to victims and offenders which resulted in a permanent close and constructive relationship between the university and people in the field, as an academic expert indicates:

> *'So there was actually a kind of history of working together with practitioners in the field. Especially with the judicial welfare service and forensic welfare service. We, criminologists from KU Leuven, stood at the forefront in the creation of these services. It has largely been set up by the department of criminology and criminal law, by Tony Peters and Lieven Dupont, together with the probation service, the center for mental health care, and the two prison facilities in Leuven.'*

(academic expert, RJ 2)

At the end of the 1980s, practitioners from Oikoten, an organisation dealing with young offenders, introduced its community service orders for minor offenders in which they sometimes invited the victim in the decision-making process in order to repair the harm that had been done. Although this practice was not called 'mediation' at that time, it could be seen as a precursor of the victim-offender mediation practice which was developed in Leuven from 1993 onwards. An academic expert therefore argues that practitioners in the field of juvenile justice had taken the first tentative steps towards incorporating the idea of RJ without calling it RJ yet:

> *'Mediation started with the academics, but not really with the academics. It started mainly from the practitioners. People in the juvenile justice system in Belgium were implementing community service orders and at a certain moment they said maybe we should make a kind of … the victim was always left out but the victims were complaining about that and they started mediation. It was really a grey zone. Nobody knew anything about it and they started to do that in this framework. Then you had the creation of the reparation fund. So Leo Van Garsse was one of these persons.'*

(academic expert, RJ 25)

Another practitioner adds:

> *'When we heard more about it, we had something like "Ah but that ..." Sometimes we thought, or maybe I still think that, we already did mediation avant-la-lettre. Because sometimes I had a question from my colleague who provided victim support about the victim and then I knew that ... Because we were on each other's team. We thought it was important to always look at the other side too ... we were sitting together in one house, we had one team and there was always someone from victim support on our team... There was a team meeting every week and one week it was about the victim cases and the other week about the offender cases. So sometimes my colleague knew that I would talk to the perpetrator or vice versa. So we were already doing mediation ... That happened not so often, but for us it was something very obvious like "… yes, actually we do that too."*
>
> (practitioner, RJ 8)

In the early days of Oikoten, there were many contacts between practitioners and academics from KU Leuven, in particular with professor Lieven Dupont who was very much interested in the field of juvenile justice. Academics at KU Leuven were very attracted by and contributed to the emergence of innovative ideas and thinking in a pioneering organisation such as Oikoten (see also Van Garsse, 2015). They have also been very supportive towards a number of developments in the field. This academic interested in and support of the work of practitioners was of vital concern for the further development of these practices. Firstly, academic experts provided for a theoretical background as they engaged fragmented inspirations or intuitions into ideas. Secondly, these practices were also easily taken more seriously by the political level when academic experts expressed their support. Vice versa, practitioners were (and still are) also important for academics as they need them to put their theoretical work into practice. Nevertheless, there is something tricky in this close relationship between practitioners and the academic level, as a practitioner indicates:

> *'Of course we have had incredible support from the academic level. And without that support RJ wouldn't have developed as it did in Belgium. As practitioners, we can be terribly rancorous about some things, but if we did not have the opportunity to take part in the pilot project on mediation than things would have been completely different. That's a fact. But there is something tricky about that relationship. And that has to do with the fact that it are two fields with their own agenda. And that we must also acknowledge this. And the tricky thing is that we ... of course you work very closely together and yes ... about theft and such things. You sometimes have professors with*

a number of years of seniority who are at a conference stating: '… I once had a case'. Then you ask yourself: '… You once had a case?'

(practitioner, RJ 4)

Practitioners have also been of tremendous value for the implementation of RJ practices in Belgium. After the experiment with VOM at the KU Leuven had ended it was decided to nationally implement VOM from 1999 onwards. One practitioner in particular played a vital role in this national development of VOM as he was appointed to oversee its implementation, as a criminal justice professional indicates:

'We were lucky to have someone who oversaw the implementation of VOM. He was appointed by the Minister of Justice at a certain moment. Almost directly appointed by the Minister of Justice who declared that it was a very valuable initiative and that it should be implemented everywhere in Belgium. And then the person who was responsible for the implementation of VOM had been on the road to try to accomplish it one way or another in every judicial district.'

(criminal justice professional, RJ 11)

This practitioner who oversaw the implementation of VOM and who had previously worked at Oikoten, was recruited to nationally implement the practice of mediation. In each judicial district he set up a steering committee which included practitioners and people working in the criminal justice system, such as lawyers, public prosecutors, judges, etc. One practitioner that whom interviewed referred to him as the founding father of RJ in Belgium:

'To me he is the founding father of mediation in Belgium. He was the person who ensured that this could be set up in all judicial districts. He could inspire people, victims and offenders, policy makers, judges, and prison directors. A very intelligent person, but also a very inspiring person. And he convinced a lot of people. Without him, we would not be standing where we are now, I think. Also with the law on mediation. I think that is all his merit. I think that he has worked double shifts.'

(practitioner, RJ 8)

Practitioners have also been influential in the process of the drafting of the law on mediation. As it became clear above (section 4.4.1.1), academic experts and practitioners have worked closely together to develop the practice of mediation and expand it across all judicial districts Belgium. An academic expert therefore argues that the law on mediation has not been written by politicians but rather by practitioners and academic experts:

'And I think Leo Van Garsse was still responsible for the implementation of VOM then. In that period, mediation was implemented everywhere and he was a supporter or coach for those local projects in the judicial districts. He also did some research about mediation for Suggnomè. So he had the time and space to deal with the development of the legislation at that moment. And yes, in fact, he has definitely left his mark on that law. Yes it is written here [Leuven], not in Brussels. Leo Van Garsse will not say that because he is very modest, but absolutely. Those principles of voluntariness and neutrality ...'

(academic expert, RJ 2)

As mediation became law in 2005 it was supposed to be used on a regular basis in Belgium, both in Flanders and the Walloon region. Public prosecutors were supposed to systematically scan their files in order to offer mediation to victim and offender of a crime. However, as the data indicate (see section 4.3.1) the use of mediation in Flanders increased up until 2007 after which the numbers have stagnated. It has become clear that RJ in general, and mediation in particular only constitutes a small part of the overall criminal justice system. For the practice of FGC for young offenders the numbers are even more limited. Therefore, practitioners are also playing a large role in promoting RJ ideas and practices to keep victims and offenders, but also lawyers and public prosecutors informed about its existence. A practitioner expresses it as follows:

'Yes, and in that sense all that work, what we call the structural work, that is not very visible and it is very diffuse, but I think it is in the long term an important way to ... I know Braithwaite talks about the "trippling down-effect" like a percolator. He means that rain can drip diffusely into the earth, but it also cannot rain for a long period of time and then the earth gets dry. And yes it (RJ) is so fragile, but it can also be so powerful if you get someone who comes in and gets started, and has the power to do things. And then you see that locally a lot can happen sometimes. But in general we must remain very modest and if you look at the criminal justice system in general than you have to say that it is really a small thing at the moment. And I think that you are supposed to look at it from a long term perspective, otherwise you say to yourself: "What are you actually doing?" '

(practitioner, RJ 7)

4.4.1.3 (Former) key professionals of the criminal justice system

Thus far we have discussed how academic experts and practitioners have played an important role in initiating and further developing RJ in Belgium. They were introduced to the concept of RJ via the international scientific literature. Once the decision had been taken by criminologists

at the KU Leuven to set up a pilot project on victim-offender mediation practitioners and professionals working in the criminal justice system (e.g. lawyers and public prosecutors) were asked to take part in this pilot project in order to develop mediation in practice. A local steering committee in the judicial district of Leuven was set up consisting of academic experts from the KU Leuven, the office of the public prosecutor in Leuven, a lawyer, and the service for forensic welfare work. As we mentioned above (see section 4.5.1.1), when academics from the KU Leuven started to explore RJ there was not that much experience with this concept in Europe. In setting-up and taking part in this pilot project on mediation the professionals working in the criminal justice system in the judicial district of Leuven were provided with the available international scientific literature on RJ. Many of these professionals maintained close contacts with academic experts from the KU Leuven and had academic backgrounds in criminology or law which facilitated access to the international literature. Interestingly, in the initial phase, they did not visit RJ projects abroad so a lot of insight was gained from 'desk research', that is, by consulting published materials on RJ. Because of these close contacts with academics from the KU Leuven it has been rather easy and straightforward to convince the public prosecutor in Leuven and a number of lawyers operating in the judicial district of Leuven to take part in the pilot project on mediation, as a practitioner indicates:

> *'There was a close relationship between the public prosecutor's office in Leuven and the KU Leuven. And that might sound a bit vague 'to set up a relationship' but from the start they have involved the public prosecutor and they exchanged ideas and discussed things. It has not been like "Hey, we have a project, bam and it is implemented."*
>
> (practitioner, RJ 7)

Professionals working in the criminal justice system have also been of vital concern for the further development of RJ for adults in Belgium. Whereas the public prosecutor and the lawyers in the judicial district of Leuven were rather positive about the implementation of mediation there was quite some skepticism and criticism in other judicial districts, as an academic expert indicates:

> *'RJ was then portrayed as antagonistic to the criminal justice system. People in the criminal justice system actually felt criticised, especially by those people from RJ. That has now changed a lot of course and those relationships have all become somewhat different in the meantime, but it was not so easy to build up a trust relationship with the criminal justice system. But in the end I think we managed to do this. At home and abroad.'*
>
> (academic expert, RJ 2)

Professionals in the criminal justice system were not always in favour of a face-to-face meeting between victim and offender of a crime, in particular because they feared it would undermine fundamental legal rights (such as confidentiality, the obligation to report, etc.) and because they were suspicious to let victim and offender settle the conflict and its solution. In that sense, it became clear that some professionals of the criminal justice system had to be informed about and convinced of the added value of using mediation, as an academic expert expresses:

> *'Yes, especially by involving people from the policy level and practitioners in those pilot projects and in those practices. By showing them, by means of case studies, that it is feasible to do this and which effects it has on victims and offenders if they participate in mediation. In the local partnership that we set up we very much wanted to show the exemplary nature of these practices. Like, yes you can indeed do that, even though it does not involve large numbers of cases. That was actually often an eye-opener for public prosecutors, lawyers, people from the houses of justice, and so on. To get to know the practice in a very concrete way by getting acquainted with those cases, with those files. By discussing them at a local level. By talking about this locally with the mediator, and so on.'*

(academic expert, RJ 2)

In the further development of mediation in Belgium it has often been the case (and still is) that a magistrate's opinion about RJ determines whether the practice of mediation can develop successfully or not. Indeed, if a public prosecutor is open to the idea of mediation it becomes much easier to develop this kind of practice than if a public prosecutor is a non-believer. A practitioner expresses it as follows:

> *'It depends to a large extent on the magistrate you have in front of you if you can put steps in that victim-minded direction. If you have someone who does not believe in that, you cannot achieve anything. Very little. And that is the case with mediation. If you have people who want to go for it then it is ok.'*

(practitioner, RJ 24)

Professionals working in the criminal justice system have also proved to play a vital role in the development of FGC for young offenders in Belgium (see e.g Vanfraechem, 2009). Criminologists at the KU Leuven were inspired by the development of FGC in New Zealand and Australia where young offenders, together with a group of supporting people, take part in a meeting in order to repair the harm. When the pilot project on FGC was set up in Belgium there was not so much experience with this practice in Europe. Academic experts at the KU Leuven were inspired by the international scientific literature on FGC and they went abroad to

meet with academics and practitioners in New Zealand and Australia. In setting up the pilot project on FGC, academic experts had developed close relationships with a number of youth judges who were expected to play a vital role in the development of FGC in Belgium. The youth judges who were involved in the pilot project were inspired by the available international scientific literature on FGC which was provided by academics from the KU Leuven. Again, a lot of insights were thus gained form 'desk research', that is by consulting reading materials on FGC. However, in the initial phase, two youth judges visited FGC schemes abroad, as an academic expert indicates:

> *'There are also occasional circumstances that have an influence sometimes. At that time, the King Baudouin Foundation organised internships abroad for Belgian magistrates. So as a judge you could submit a project to the King Baudouin Foundation to go abroad for one month to see how decisions were being taken in the criminal justice system and sentences were being executed. The King Baudouin Foundation was of the opinion that the Belgian legal system was in need of reform and that there was therefore a need to get some new ideas. And so I received visits from a few juvenile judges asking me whether I could recommend something. I just came back from New Zealand so I said they should go to New Zealand (see also section 4.3.2). And New Zealand is of course also attractive for a judge as a tourist country. And two juvenile judges have done that. That was a juvenile judge from Leuven and one from Antwerp. And when they came back they were almost even more enthusiastic than me. So they thought that it was fantastic. Well, if that happens then you have already a little bit of an entrance towards that group of people.'*
>
> (academic expert, RJ 1)

After the pilot project on FGC had come to an end it took until 2006 before the law was drafted. In that law, the practice of FGC became one of the priorities for juvenile judges to consider in handling a case. In that sense, the juvenile judges who went to New Zealand and who were convinced of the added value of using FGC were important to inform their colleagues of the existence of this practice. At the Union for Dutch youth judges (*Unie van Nederlandstalige Jeugdrechters* in Dutch), for example, the topic has regularly been addressed but as an academic expert indicates, it is still not very well known:

> *'So in our procedure FGC is being carried out, but we do not call the outcome an agreement but rather a joint letter of intent which should be submitted to the juvenile judge. That has to be done in Belgium. And concerning that particular issue we already had an appeal right away. The father of a young offender, who had been present during the FGC, had started to talk to his lawyer and he appealed. The case was transferred*

to the Court of Appeal in Brussels. The judges of the Court of Appeal had, however, never heard of FGC. But Belgium is a small country. I had participated in the Justice Commission with one of the judges of the Court of Appeal concerning the report we had prepared for Minister of Justice De Clerck on RJ in the juvenile system. So that judge called me. We went to the Court of Appeal in Brussels and we got the chance to explain everything and the Court of Appeal approved it.'

(academic expert, RJ 1)

4.4.1.4 Politicians

As we discussed in our chapter on EM (chapter three), in the mid-1990s contacts between the universities and the political level were very intense. The general climate at that time seemed to be open for penal refom and new ways of thinking about punishment found their way onto the political agenda. The initial response towards the idea of RJ was rather positive. Former Minister of Justice Stefaan De Clerck (1995-1998) was one of the key figures in promoting RJ as a new way of thinking. Indeed, he created a certain openness towards the idea of RJ which he perceived as being a new and inspiring method, as a professional of the criminal justice system indicates:

'At a certain moment, I think it was Stefaan De Clerck who said that instead of penalties we should talk about RJ. He did not even want to hear the word punishment at any given time. It was all about the RJ approach.'

(professional of the criminal justice system, RJ 22)

One of the reasons why RJ gained momentum had probably to do with the atmosphere of reform that we discussed earlier. Indeed, in the mid-1990s Belgium was confronted with a severe penal crisis.The Dutroux case resulted in a call for structural changes in the criminal justice system and more attention to be paid to the victims of crime. In that sense, De Clerck was very much interested in the idea of RJ in order to meet victim's needs instead of looking at more repressive measures. As an academic expert explained:

'So they were actually very interested in the fact that we were developing RJ practices. They said: "Tiens, what is this?" … the people in the private office of the Minister of Justice themselves. And when I organised one of my international conferences I asked Stefaan De Clerck to give a lecture in his capacity as Minister of Justice. That was in 1997. So in 1996, Belgium became world famous with the Dutroux case. In 1997 there was that conference and De Clerck delivered the opening speech, and he scored very well internationally among the criminologists. They thought after the Dutroux case one

would think that he would take measures against the offenders and that was not the case at all'[63]

(academic expert, RJ 1)

In creating this openness towards the idea of RJ Minister of Justice De Clerck was assisted by two policy advisors in his private office who had been influential in stimulating the Minister of Justice to search for new ideas (see section 3.4.1.1), as a practitioner indicates:

'And of course there was also his private office with his two policy entrepreneurs. And they succeeded in receiving some support from the Minister of Justice for this kind of approach. So at that time there was a certain context where something was possible at the policy level. Because after the pilot project a mediation service was created and then it became a national project. This national expansion was only possible because you had a number of people at the political level who were open to the idea.'

(practitioner, RJ 7)

As we discussed in chapter three Belgium is a small country which resulted in close ties between the Minister of Justice and the people in his private office, and the KU Leuven in the development of EM in the mid-1990s. Interestingly, as an academic expert indicates these close interactions between policy level and the academic level have also been important for the development of RJ:

'Yes, Belgium is of course a small country. And the former Minister of Justice was Stefaan De Clerck. A number of people in his private office were former students from the KU Leuven. So at receptions, a study event, and so on, that was just part of ... That is the difference with the US or France where La Garde des Sceaux is sitting on a throne. I now have quite a lot of contact with people in France because they have also discovered RJ over there and La Garde des Sceaux is sitting on a throne and nobody has access to them. When I had a certain idea at that time I picked up the phone and I called the people in the private office of the Minister of Justice. That is unthinkable in France and certainly in the US. And that is because Belgium is a small country. And I think that the smallness of a country, the distance between the decision maker, so in this case the Minister of Justice, and the academics or the people who develop ideas, is shorter. I think that in a small country new ideas can easily seep through.'

[63] This statement may be too rose-coloured. Indeed, sex offenders, for example, did have more difficulties in obtaining conditional release. See also Snacken (2007) and her idea of bifurcation policy (softer actions against the less serious cases and more severe actions against the more serious ones).

(academic expert, RJ 1)

In the initial phase, the Minister of Justice and people in the private office were for a large part introduced to the concept of RJ by reading the international scientific literature and by meetings with academic experts who knew about the international developments. From reading the international literature and meeting with academic experts they became aware of the initiatives that were being developed in other countries. In a later phase, people within the private office of the Minister of Justice also attended conferences abroad, as a criminal justice professional indicates:

> *'There was a very strong connection at that time between the policy level, the ministry, and practice. So the political level was often also present at the conferences of the field workers. In the beginning, I think there were only a few other policy makers who were there from other countries. But that started to increase somewhat. And in time we were also attending conferences that were only open to policymakers. For example, concerning a handbook on RJ at which only official representatives of the member states were allowed to speak about the practices in their country and the principles that were implemented in the field.'*

(criminal justice professional, RJ 11)

The federal government was supportive of the further development of RJ in the criminal justice system as it was perceived as an inspiring practice providing an added value for both victim and offender. However, there were at the same time some mixed feelings about this small project as it became clear that the mediators in the judicial districts had a rather limited caseload in comparison with the justice assistants at the houses of justice. In that sense, political support has always been crucial in the further development of RJ in Belgium. As a practitioner indicates this has not always been so easy:

> *'And another aspect is of course to what extent you get political support for it. I do not think that RJ is something that is picked up by politicians and that they then say: "… We are now going to invest in that". So if you look at mediation in general you cannot say that it has become something dominant. Absolutely not. Certainly not. You will never hear me say that. But ok, there has been a large evolution from pilot project to practice, to a national practice, and to a really good legislative framework which is entirely financed by the government. However, the government itself has never taken the lead. When I look at it over the years, I think, it has always been developed and promoted from bottom up. Even when drafting the law on mediation it were practitioners and people from the university who have helped to write it. But you obviously need policy makers who are open to this idea. That has at least been the case over here.*

They were even so open to it that they made a law and also financed it. On the other hand, I think you cannot say that there have been policy makers who really have put their mark on... Except in the beginning for Minister of Justice De Clerck who stated that he was really going to invest in that.'

(practitioner, RJ 7)

Succeeding Ministers of Justice have (to a varying degree) been referring to RJ in policy documents since its national implementation in Belgium. Interestingly, the attention for and interest in RJ at the policy level has not always resulted in a positive outcome in practice, and vice versa. A criminal justice professional expresses it as follows:

'That was picked up like something that had to be implemented in every judicial district and as a valuable thing. And I must say ever since the national implementation the word 'restorative' and the RJ approach actually never really disappeared from the policy documents. It always comes back. Of course, if you look at what it actually means, the impact of that concept on the development of policy and on the field, there will be some fluctuations in that. Sometimes it was mentioned in policy papers, but there was actually little impact in practice. And sometimes there was only a small mandate needed from the political level to actually implement something that has led to a law and a whole new practice. Sometimes there was much written about it, but little was done and sometimes there was only a little bit written about and much was done. So that fluctuated a bit, but actually that has not gone away since then. And still now. Yes, that has never disappeared since then.'

(criminal justice professional, RJ 11)

As mediation had been implemented on a national scale since 2000 onwards there were a number of mediation services being set up around the country. Because of this growth the question arose to provide for a legal basis in which a number of basic principles, such as confidentiality and neutrality, could be anchored. However, it took a long time before mediation eventually received a legal basis in Belgium (in 2005), as an academic expert confirms:

'Of course we have waited quite a long time to make that law. Until 2005. And the practice of mediation started in 1993. So actually that law could have come a lot earlier. However, on the other hand, there was no rush from our side because we really wanted to let it evolve bottom up. Anchor it in each judicial district and only then proceed to a legal framework. I think that we could have or should have done it sooner, but that was not only our decision either. You must also have a Minister of Justice who is open to it.

And that Minister of Justice will at a certain moment of time set up a committee, a working group to develop a law, to work it out.'

(academic expert, RJ 2)

It was Minister of Justice Laurette Onkelinx (2003-2007) who created this openness towards developing a legal framework for mediation. Indeed, there was a great deal of willingness from the Minister of Justice and the people in her private office to initiate the drafting process. A professional of the criminal justice system argues:

'There was a great deal of willingness from the private office of Minister of Justice Onkelinx about incorporating a number of basic principles in the law on mediation. Article 3ter of the Preliminary Title includes a "right to mediation", which is a very strong principle. The definition of mediation, the objectives of mediation, and then the confidential nature. Those are all very strong principles and they are clearly described in the law. We could not have dreamt it to be better. Sometimes people have an idea and a Minister is willing to support it, but if you then see the text that is published afterwards you are like: "No, that is not it". But no, the collaboration with the private office of Minister of Justice Onkelinx was actually exemplary. I have rarely experienced that. Except when I was in the private office of Minister of Justice Whatelet.'

(professional of the criminal justice system, RJ 5)

In drafting this law, people in the private office of Minister of Justice Onkelinx worked closely together with practitioners and academic experts from the KU Leuven. As we discussed above, they have also been playing a pivotal role in the process of drafting the law on mediation as they were part of the working group (see section 4.3.1) that had been set up, as a practitioner indicates:

'So at a certain moment there was a real need for a legal framework on mediation. Practitioners were really focused on that in collaboration with the university. They have set up a working group and that has taken a few years. Ultimately, that law was implemented in 2005 with Minister of Justice Onkelinx. I think the strength has really been that cooperation between practitioners, the university and the policy makers. The policy level has played an important role in this process in the sense that for example people from the administration and academic experts often went abroad together. To Poland, for example, to provide for training to formal institutions over there. Yes, in my view these have been important informal moments to exchange trust, to transfer a vision and those people have reinforced each other … and I think that has been an important interplay of forces.'

(practitioner, RJ 12)

Politicians have also been influential in the development of RJ practices for young offenders. In the mid-2000s, academic experts at the KU Leuven had set up a pilot project on FGC for minor offenders. After the pilot project on FGC both academics and policy makers were eager to legally implement this kind of practice, as an academic expert indicates:

> *'The report was published, very good results. It was presented at an academic session in Brussels. FGC is of course to a large extent also an emotional event so actually you have to be able to convey that emotion. Because that's the power of something like a FGC. That is why we decided to make a video about it. We made a video of one session which was an integral part of the report. It was a real case, but we re-enacted it. And that report was being presented in Brussels. So we invited the Minister of Justice and she had sent a member of her private office who was influential in writing the new law on youth protection. I still see it happening. The video is projected and the lights are switched off. The moment that the lights are switched on again and the video is played out I see her like that (wiping away tears). She was very moved. The next day she phoned: "How do we get that in the law?". That's how it went.'*

(academic expert, RJ 1)

Interestingly, although Stefaan De Clerck often referred to RJ in his first period as Minister of Justice he did not put in onto the political agenda again in his second period (2008-2011). The openness for penal reform and experiments of the mid- and late 1990s seems to have whithered away nowadays. A professional of the criminal justice system, therefore, suggests that RJ can be perceived as a fashion trend:

> *'I think this is a very important and interesting concept, but I think that on a political level it is a fashion trend. And I notice that it is now less on the political agenda. The House of Representatives is, for example, currently deliberating about a draft law on the amendment of Article 216ter of the Code of Criminal Procedure[64]. In the Explanatory Memorandum of this draft law the RJ aspect and the victim-oriented aspect are renounced in order to put more emphasis on measures for the suspect. As you know, in Article 216ter you have the aspect of mediation, but also the possibility for the public*

[64] Article 216ter of the Code of Criminal Procedure refers to the practice of penal mediation. This article offers the possibility of proposing to the suspect one or more of the following conditions or measures in exchange for no further prosecution: reparation to the victim, treatment for crime-related personal problems, training or community service. Mediation (to support reparation) is therefore only one of four possible options. See section 4.3.1 for more details.

prosecutor to propose offender-oriented measures. So the emphasis has now shifted towards those measures whereas in 1994, still before the fashion trend of RJ, the victim-oriented aspect was the focus of attention of Minister of Justice Whatelet. So now I hear in the College of public prosecutors-general that there was a bit of lobbying to change this article in the sense that they also needed to use the instrument in cases without victims, and so on.'

(professional of the criminal justice system, RJ 5)

Since the 6th reform of the Belgian state (in 2014) the implementation and execution of RJ practices in Flanders and the Walloon region are the responsibility of the Communities. Both Moderator in Flanders and Médiante in the French-speaking part of Belgium are now the responsibility of respectively the Flemish and Walloon Minister of Welfare, Public Health and Family. This transfer to the community level may provide some potential for horizontal policy transfer and lesson-drawing, as a practitioner indicates:

'We see a great lack of communication between policy domains. RJ in school is being developed, RJ within the criminal justice system., RJ within juvenile justice. And you see that at the policy level there are a lot of problems to link all of these practices. There is very little communication. So policy transfer in a horizontal way. I find that very interesting to observe, but also in a problematic way. But this has a lot of potential. This is now all organised under the same minister and this has never happened before. Through that transfer from the federal level to the communities you have a situation in which you could manage everything from one department or one minister and develop one vision. So the Minister of Welfare, Public Health and Family has actually a great opportunity to put his mark on this. But you see that in the administration they are almost not working together ... They do not know what is going on even though they are working on the same themes.'

(practitioner, RJ 7)

4.4.2 Why engage in policy transfer?

Towards the end of the 1980s, Belgian policy makers increasingly became aware of the plight of victims of crime. The state reform of 1980 transferred a number of competences in the area of justice and welfare from the federal level to the Flemish and French communities, including social assistance to detainees in view of their reintegration and support for victims of crime. This was reflected in a decision of the Flemish government of 24 July 1985. This new attention for victims of crime was also reflected at the federal level with the establishment of the compensation fund for help and assistance to victims of intentional acts of violence (1985) by former Minister of Justice Jean Gol (1981-1988). Throughout the 1990s, this interest in victims

and their needs would grow stronger. Indeed, as we also discussed in the previous chapter on EM (see section 3.4.2), the mid-1990s proved to be a time when a lot of ideas and projects were being introduced in order to address existing problems in the criminal justice system, including EM, prisoners' rights, houses of justice and victim policy. There was a certain *zeitgeist* in which policy makers were eager to look for new ways to do things differently, as a professional of the criminal justice system indicates:

> *'I think it had to do with the atmosphere at that time. Everyone was thinking about how to do things better. And certainly also how to involve victims more in the process. A lot of initiatives were introduced for victims of crime. This process already started before the Dutroux case. We already had the association for parents of children who had been killed in traffic accidents and which played a very important role in drafting the legislation. We then had the Dutroux case which gave us another push … And, of course, as more and more of these pressure groups were being set up and certain initiatives were being initiated the legislator actually stepped in quite quickly. So it is a bit of a confluence of such pressure and the zeitgeist.'*
>
> (professional of the criminal justice system, RJ 17)

As another practitioner described the atmosphere at that time:

> *'The interesting thing was that in the discussions about the implementation of VOM in the judicial districts you received resistance, of course. However, in this penal crisis it meant that almost everyone - there were some exceptions but these were scarce - had a certain willingness to look for alternatives, even the most rigid hardliners. That willingness was there.'*
>
> (practitioner, RJ 4)

At the end of the 1980s there was also an emerging interest in victims of crime and their needs at the academic level. Criminologists at the KU Leuven started to explore the phenomenon of violent crime and hold-ups, and they were looking at it from a victim's perspective (Peters, 1996: 561; Aertsen & Peters, 1998: 106). This research showed that victims of crime often were not really satisfied about their participation in the criminal justice process. The attention for the perspective of the victim resulted in subsequent research to focus more on victims of crime and their needs rather than on offenders. This victimological research played an important role in the introduction of RJ in Belgium, as an academic expert indicates:

> *'At the end of the 1980s, victimology began to develop through a number of studies into the consequences of victimisation. Quantitative research, qualitative research at the beginning of the 1990s looking at the psychological consequences and so on. So you*

had penology which had already become a classic domain here within criminology and, in addition, you had the emergence of victimology at the end of the 1980s. It was not that surprising therefore that immediately afterwards we discovered something like RJ from that interest in penology and victimology because we were interested in integrating those different positions and interests.'

(academic expert, RJ 2)

Criminologists at KU Leuven were at the same time also interested in penal reform. Researchers in the department of criminology and criminal law had experience with the penitentiary context, both at a theoretical and practical level, as a number of academic experts had also worked with offenders in prison. In that sense, these academics brought together the two perspectives, the victim-oriented perspective and the offender-oriented perspective. RJ proved to be an attractive, new way of thinking about responding to crime which linked this interest in victim and offender perspectives with a commitment to work towards penal reform. As an academic expert argues:

'At the same time we were also interested in criminal justice reform. I think that criminal justice reform was very important to us. Penal reform, criminal justice reform, the search for improved methods of intervention, etc. Moving away from classical punishments, such as imprisonment, but doing so in a way that is also useful for the victim. You see? And then you immediately come across what we now call RJ. But at that time, of course, it was not so obvious to do this so it was quite a journey of discovery. And then you understand how we ended up with RJ by looking at those needs for penal reform and to do something for victims.'

(academic expert, RJ 2)

The RJ approach was very attractive to these criminologists at that time. By paying attention to both the victim and the offender one could provide for a solution to the conflict that could potentially satisfy both parties. Interestingly, as we already highlighted in the previous section (see section 4.4.1.1), initially (but to a large extent also afterwards) only KU Leuven played a part in the introduction and development of RJ. A criminal justice professional expresses it as follows:

'I think it was the presence of the School for Criminology with a number of professors who were very interested in this approach or who evolved towards looking at this new approach because they were all doing offender-oriented research first. And with the evolution from offender-oriented research over victimological research into victimagogy and action towards both offenders and victims. And policy makers followed these

developments. Leuven has always felt the desire to influence policy, on the federal level as well as on the level of the Flemish Community.'

(criminal justice professional, RJ 20)

At the end of the 1980s, criminologists at KU Leuven were inspired by RJ developments abroad via reading the international scientific literature. These criminologists were also very internationally oriented which resulted in various contacts abroad with fellow academics, policy makers and practitioners. There have been visits, for example, to the University of Montréal (Canada) and criminologists from Leuven also met with Ezzat Fattah (University of Simon Fraser (Vancouver, Canada)), a victimologist who was a strong advocate of the RJ approach at the beginning of the movement. As an academic expert indicates:

'And then you had Tony Peters. He had been in Canada, at the university of Montréal where he met with Ezzat Fattah. Ezzat Fattah was one of the promotors of the idea of RJ in the early years of the movement. And he was quite an abolitionist. He was saying that RJ was a new way of doing justice. He stated that we needed to transform the criminal justice system. And then Tony Peters came back with this idea. They were working in the penitentiary field, in penology and they really started to work on this idea of reparation saying that when you punish somebody you can do it in a positive way.'

(academic expert, RJ 25)

The presence of a university was probably one of the reasons why the idea of RJ gained momentum in Leuven.[65] In conducting their research projects, criminologists from KU Leuven worked at the theoretical level but also in cooperation with practitioners in the field. There were also close links with the Minister of Justice and his private office. As Leuven is a small judicial district the ties between academic experts, practitioners and professionals of the criminal justice system were very close. In that sense, the judicial district of Leuven has always had a certain openness towards new developments, as a practitioner indicates:

'But also in Belgium, I think, you see a difference between the judicial district of Leuven and other districts where that openness is not always present. I think that is a combination of factors. The fact that you have a university creates a certain image or has a certain prestige which results in people listening more than to a judicial district where there is no graduate school or university. If you look at the idea of the steering groups I think it was a big advantage here in Leuven that you had a steering group on

[65] Some authors argue that there is a direct link between RJ and religion, that is, RJ having a direct link with the Catholic values and that its implementation is largely supported by religiously inspired actors. We acknowledge that the link between RJ and religion has somewhat been overlooked in the interviews.

RJ or mediation that was presided by the university. Staff from the university were not only participating but they also had their own research and their own vision regarding it so you immediately had a supporting forum. If there is an attitude to carry out a certain approach you can also convince other partners more easily. When in another judicial district the steering group was presided by a mediation service it was often perceived as: "They want to have cases to keep their operations running". And then the steering group is less about the ideas behind the practice and more about the concrete practice of having to refer people to this mediation service. It is another way of cooperation. I think that the first method is much more efficient because you can work from a certain vision and fill in the practice than when you try to come to a certain vision from practice.'

(practitioner, RJ 15)

This eagerness for innovation and reform also characterised a number of youth criminologists at the KU Leuven who took up the responsibility to implement RJ practices as part of a reform of the juvenile justice system. During the 1990s, youth criminologists observed that neither the repressive approach nor the rehabilitative approach really worked well as a response to juvenile delinquency, as an academic expert expresses:

'If you look at it more closely then I must say that I was actually thinking in terms of RJ in relation to the discussion about the Belgian youth protection system without even knowing it. So I was a fierce critic of the system of youth protection that purported to act in a protective way in response to a crime while in practice I saw that children or young people were actually put in youth detention facilities to teach them a lesson. So they were actually punished. Belgian judges proudly said that they had a legal system without punishment and I thought they handed out sentences without having the right to do that. That was a bit of the classic discussion.'

(academic expert, RJ 1)

Youth criminologists at KU Leuven therefore argued that there was a need for a third way, a RJ way, in which young offenders were stimulated to take up their responsibility in repairing the harm that had been done to the victim. They were charmed by the initiative of a youth judge in Mechelen, Jan Peeters, who initiated community service in which the young offender was encouraged to make up for the harm that had been done. In that sense, youth criminologists at KU Leuven suggested that the juvenile justice system should be reformed to ensure that young offenders were not punished or re-educated, but stimulated to take up their responsibility in repairing the harm that had been done to the victim. A professional of the criminal justice system expresses it as follows:

'Gradually the perception grew that a young person needed to take up responsibility for his actions. They had to realise that if they did something that also caused pain and suffering and that they had to take up responsibility for it. From that perception one started to think in a different way. And I think the origin has always been with the young offenders. Experiments that have been set up with young offenders from which certain things have grown.'

(professional of the criminal justice system, RJ 17)

At that time, there were also some initiatives taken in the field of youth justice. Indeed, Oikoten initiated the practice of community service and linked its implementation to the interest of the victim. Although it was not called 'mediation' at that time, practitioners at Oikoten sometimes started to involve the victim in the decision-making process about the implementation of community service for young offenders. It became clear that in line with the youth criminologists at KU Leuven practitioners in the field of juvenile justice were also interested in this RJ approach for young offenders. As we already mentioned above (see section 4.4.1), the fact that there were close ties between practitioners and academic experts from KU Leuven resulted in a mutual influence between both groups of actors which has played a vital role in the development of RJ in Belgium.

At the end of the 1990s, there was only community service and some first tentative steps towards mediation in the juvenile justice system. Youth criminologists at KU Leuven also came across new and innovative practices, such as FGC, which could be used in cases of more serious offences. As there was less experience with FGC in Europe criminologists at KU Leuven travelled to New Zealand and Australia to be present at FGC meetings and learn more about the practice (for more details see section 4.4.4). In 2000, inspired by their visits abroad, they set up an action research focusing on introducing FGC in the Belgian juvenile justice system. Belgium became one of the first countries to experiment with FGC in Europe, as an academic expert indicates:

'Yes, it started in 1999-2000. As far as I know we were one of the first in Europe. Certainly for the more serious crimes.'

(academic expert, RJ 3)

Like in the previous chapter on EM (see section 3.4.2), it seems clear that also the question 'Why policy transfer in the field of RJ?', cannot be reduced to a single, fixed answer. Indeed, the development of RJ has been influenced by a concurrence of circumstances which boosted its initiation in the early 1990s. KU Leuven has been an important catalyst in the development of RJ practices in Belgium under the influence of the perceived need to involve the victim more

and an eagerness for penal reform for both juveniles and adults. Intense contacts between practitioners in the field and criminologists at KU Leuven have been of tremendous importance for the initiation and implementation of RJ in Belgium. As politicians and policy makers (at least some politicians and policy makers) in the mid-1990s were also open to the idea of bringing together victim and offender of a crime this resulted in the development of a legal framework for mediation in 2005 and FGC for juvenile offenders in 2006. In the next years, criminologists at KU Leuven conducted several studies and research projects in order to provide for a better theoretical understanding of the concept of RJ and to widen the scope via studying the potential implementation of new RJ practices.

4.4.3 What is transferred?

As we discussed above, the emergence and growth of RJ in Belgium was the result of a concurrence of circumstances in which a number of academic experts, practitioners, key professionals of the criminal justice system and politicians were involved. In the early 1990s, criminologists at KU Leuven discovered the practice of RJ in the international scientific literature. The need for reform in the penal system for both adults and minors, and the emerging interest in the plight of the victim and his or her needs encouraged researchers at the department of criminology and criminal law to look for alternative ways of thinking about punishment. They felt attracted to this idea of RJ and, as they were aware of some existing mediation practices in Europe (England and Wales (Coventry, Leeds) and Scotland (Edinburgh), Finland, Norway and France) and Canada, they went abroad to visit a number of these projects. Academic experts at KU Leuven were thus inspired by these models of mediation abroad but only partly as their focus was on introducing mediation for serious offences and many models of mediation abroad were focusing on less serious offences. An academic expert expresses it as follows:

> *'Were we affected by that? We were partly influenced by the concrete method of mediation, the process. The steps you had to take, the kind of agreement you had to draw up, the kind of letters you had to send to the parties. We have certainly been inspired by these foreign examples. Definitely. However, because we were interested in mediation for serious crimes there was also a difference with those foreign models of mediation. We also had to put our own accents into it.'*
>
> (academic expert, RJ 2)

In 1993 criminologists at KU Leuven initiated the pilot project on VOM for serious offences which was funded by the King Baudouin Foundation. As they had read in the international scientific literature that mediation was feasible in cases of less serious offences researchers

at the department of criminology and criminal law were eager to apply the model of mediation also to more serious offences. In that sense, they could apply the practice of mediation not only before trial but also in a prison context. Indeed, academic experts were interested in exploring whether RJ could be applied to all sorts of crime and, therefore, move to the center of the criminal justice system, as an academic expert indicates:

> *'We wanted to know that because it also has to do with criminal justice reform. If you want to strive for a kind of criminal justice reform, you try to do it as widely as possible and then it is about all sorts of crime. So if RJ can contribute to criminal justice reform then you have to see what the possibilities are and also the possible limits of applying it to all types of crime. So we were interested in whether we could design, apply, try and generalise the methodology of mediation to serious crimes.'*
>
> (academic expert, RJ 2)

Next to addressing the question whether mediation could be applied to serious offences academic experts were at the same time also interested in exploring whether RJ could challenge or change the underlying rationality or logic of the criminal justice system (see also Peters, 1996). In order to address such questions criminologists at KU Leuven set up an action research in close cooperation with practitioners in the field of victim and offender assistance, and the public prosecutor's office in Leuven. A steering committee was established consisting of practitioners in the field of victim and offender assistance in Leuven, the public prosecutor's office in Leuven supplemented with a lawyer and a mediator who was responsible for implementing mediation in practice. As the steering committee was provided with regular updates from the mediator about the ongoing process they were able to draw up VOM for more serious offences and examine whether RJ could challenge or change the underlying rationality or logic of the criminal justice system. The close ties between the actors involved in the pilot project have been of vital concern for its progress. By involving practitioners, lawyers and representatives of the public prosecutor's office in the process it has been much more easy to create a certain context for this practice. Nevertheless, the research equipe also encountered some resistance and obstacles along the way (for more details see section 4.4.6).

The pilot project on mediation for serious offences terminated in 1995. In order to continue the practice of mediation the funding for the mediators was taken over by the then Minister of Justice Stefaan De Clerck (1995-1998). In the initial period there were only two mediators but this number would grow steadily over the upcoming years as Minister of Justice De Clerck decided to nationally implement VOM. In 1998, when VOM was implemented nation-wide, a practitioner was appointed to oversee the implementation of this practice in each judicial district in Flanders. Interestingly, in order to implement VOM steering groups were set up in each judicial district in Flanders to embed it structurally in a local context. These steering

groups consisted of representatives of the criminal justice system, the police and the welfare sector who met on a regular basis to further expand the restorative approach more broadly in their judicial district. A practitioner expresses it as follows:

> *'At a certain moment Minister of Justice De Clerck decided to generalise this mediation practice to all Flemish judicial districts. This was not done in one year but year after year subsidies were provided to implement the practice in a number of cities, in a number of judicial districts. One practitioner was actually working full-time to make that happen. It was rather difficult because nothing existed in practice so the practitioner really had to start from scratch. The resources were also limited so often it was just one full-time mediator in a judicial district who had to start it up. From the very beginning the choice had been made to strongly embed this mediation practice in a local steering group. It was decided that the practice needed to be structurally embedded in a context in which local partners of both the criminal justice system, the police as well as the welfare services work together to implement the RJ approach more broadly in their judicial district. And victim-offender mediation was one method or one service in this broader approach. In fact, the design of these steering groups served a much larger purpose. I think that was a smart move. It made sure that the practice of mediation was not an isolated thing but that the initiation, the implementation and the evaluation was actually supported by various partners in the judicial district.'*
>
> (practitioner, RJ 12)

It was of vital concern for the advocates of VOM to establish these steering groups because it was believed that these could help create a common ground which could help convincing other partners of the added value of mediation in particular, and RJ in general. The actors involved in the steering groups closed joint ventures to seal their engagement in the project. In 1997, the non-profit organisation Suggnomè was established to coordinate the implementation process of mediation in Flanders and to act as an umbrella organisation for the local mediation services that were being set up in the judicial districts. Suggnomè was (and still is, but changed its name to Moderator) an autonomous organisation but it also has close links to organisations offering victim and offender support. It was subsidised by the federal government to finance the local mediation services that were being set up in the judicial districts in Flanders and employ the mediators. Moderator is now, due to the sixth state reform, dependent on subsidies from the Flemish Community.

In parallel with the implementation of mediation in Flanders another practitioner was appointed to oversee the implementation of this practice in the judicial districts in the French-speaking part of Belgium. As in Flanders there was also a non-profit organisation established

in Wallonia, that is, Médiante. Interestingly, from the start VOM in Flanders developed differently, and at a different pace, than VOM in the Walloon region. As we discussed above (see section 4.5.1.1) academic experts in Wallonia have been interested in the concept of mediation but they have at the same time been somewhat critical and cautious arguing that mediation would not provide sufficient legal guarantees for the people involved in the process and it would legitimise the current criminal justice system. In that sense, there was not as much support and back-up from academics in the French-speaking part of Belgium for the idea of RJ as there was in Flanders. Moreover, the opposition of public prosecutors, lawyers and judges towards VOM was much larger and more massive in the French-speaking part of Belgium. Mediation was perceived as an invasive practice which did not fit in with the logic of the criminal justice system. In that sense, it was very difficult to convince individual public prosecutors, lawyers or judges in the French-speaking part of Belgium of the added value of mediation. A criminal justice professional puts it like this:

> *'I think it's a bit of a double position. On the one hand we have always tried to do it in parallel and together with the French-speaking part of Belgium. There was a very strong connection. We have always worked together very closely. The two umbrella mediation services also met very often with people at the political level but the way in which the implementation process took place was completely different. I do not think that they were using steering groups as they did in Flanders. It was really more about convincing individual stakeholders or key actors in the criminal justice system because in their minds they were actually not prepared and there were relatively few academics who wrote really leading texts and articles about that. I think that idea was often not warmly received. That made it a bit more difficult but once there were a number of key figures involved it also started to run. But in a different way. In a more pragmatic way, perhaps. I think these developments are really not comparable with the very specific development of mediation in Flanders.'*
>
> (criminal justice professional, RJ 11)

As there was an overall resistance towards the idea of mediation in the French-speaking part of Belgium the implementation process was being approached from a pragmatic perspective. Instead of setting-up steering groups in each judicial district bilateral talks were taking place between the practitioner who was appointed to oversee the implementation process and individual public prosecutors in order to familiarise them with the idea of mediation. The other parties involved were contacted in a later phase. A practitioner reflects upon these developments as follows:

'I knew from the meetings I had with the practitioner responsible for the implementation of mediation in Flanders that they used the method of the steering groups. We didn't manage to do that. Unfortunately, our staff was much smaller because in Leuven there was academic support. So from the start there were already a number of people involved. Leo was in charge of the implementation and coordination, they had mediators and when they started he could dedicate himself only to the process of implementation. I started with one person and that was me. I had to be the mediator, the person to oversee the implementation, etc. It was impossible to organise, it was very time-consuming to talk to each party … the lawyers, the Houses of Justice, the public prosecutors, to sign joint ventures. So we started in a more pragmatic way by only cooperating with the public prosecutor to find a way to inform the parties involved. We did not meet with all the parties involved but progressively we tried to involve all the other partners to cooperate with us and to make them aware of the project. So in a more bilateral way. So it was a more pragmatic approach and not very structured. Up until the drafting of the law the Flemish approach proved to be more effective because it was the only way to get the partners involved in the project. But after the law was passed and in particular after the Circular of the public prosecutors was published it seemed less useful to have this formal structure because it implied a lot of work in each judicial district and that was impossible. We were very interested in the approach but it was not feasible so we tried to develop some cooperation in a bilateral way.'

(practitioner, RJ 16)

Next to the abovementioned characteristics of the mediation practice and its implementation process Belgium has also received a lot of appreciation from abroad for its law on VOM which was passed in 2005. As a criminal justice professional indicates, it was quite unique:

'I do not know a lot of examples where the RJ approach has so explicitly and so radically been included in the law. And the fact that it exists in addition to the classic criminal justice system and the classic criminal code is, I think, quite unique. There are still a number of other procedures in Belgium but either they are completely voluntarily such as the assistance and support services or they fit within the framework of the criminal justice system, such as the Houses of Justice. But something that could run in parallel with the criminal justice system ... Yes, this is a very unique interplay between the criminal justice line and the RJ line. And I think it received a pretty unique place in Belgium.'

(criminal justice professional, RJ 11)

An academic expert adds:

> *'I think that the law on mediation of 2005 is still an exemplary law. I also say this sometimes when I am abroad. I sometimes explain what our law on mediation contains. I am not saying that what is in the law is always applied well in practice. In quantitative terms the potential of the law is much greater than what is being achieved now but in terms of the law, I think, that law is very good. It includes a vision on RJ, on mediation, and so on.'*
>
> (academic expert, RJ 2)

As we already discussed above, academic experts discovered the idea of RJ via reading the international scientific literature. As they were very eager to set up a Belgian pilot project on mediation researchers at the department of criminology and criminal law visited mediation practices in both Canada and the US, and Europe and met with fellow academics and practitioners. Criminologists from KU Leuven visited, for example, projects in Kitchner (Canada), Leeds, Edinburgh and Coventry (England and Wales), Finland, Norway and France. However, notwithstanding the frequent contacts between academic experts at the KU Leuven and fellow academics or practitioners abroad, it seems clear that Belgium has made its own choices regarding the operationalisation of mediation (e.g by making mediation available for serious offences; by fostering close partnerships with actors in the field; and by its peculiar implementation process with the establishment of steering groups). This leaves us with the impression that in these interactions between academics from the KU Leuven and practitioners and academics abroad it were mainly ideas, ideologies and attitudes that were being transferred, that is, so-called 'soft transfers'. We found no evidence of 'hard transfer', that is, the transfer of programmes or policies. Indeed, VOM, as developed in Belgium, seems to be different in a number of ways from mediation practices in other countries. One practitioner even argues that we have a 'Belgian model' of mediation:

> *'I really think we have a Belgian model, in all perspectives. What I have described may really amount to a Belgian model. Formally speaking, we are the mecca of RJ. I think that is right. If you see in which contexts the word mediation appears … that is very impressive. […] We have picked it up and we have made it our own.'*
>
> (practitioner, RJ 4)

An academic expert puts it like this:

> *'We have "transferred" a number of things, but we actually did develop our own model of victim-offender mediation. A model of its own. A model, a process, a method of mediation, victim-offender mediation in individual cases and actually also an entire*

institutional or organisational framework, in particular, those partnerships with the steering groups. I had not seen that in other countries. For us it was also a system designed in part to protect this dynamic and autonomy. To protect the neutrality of the organisation because mediation should be neutral in itself and the way in which you institutionalise or organise it should preserve a certain degree of neutrality. But also, of course, pragmatically, to convince the various actors and partner organisations. You needed the public prosecutor's office for the referrals to the mediation service. You needed people from victim support to manage the process and to develop the practice. So we have also relied very strongly on those other actors. The bar, a lawyer from the bar, people from victim support, people from the judicial welfare service to share their knowledge and expertise on how to work with victims if you want to involve them in mediation. So I think that the multi-agency model is something that we have greatly expanded here in Belgium and that has lasted for many years. Until now in a certain way. In that sense it was our own organisational or institutional model that was being developed. And that has certainly inspired foreign countries'

(academic expert, RJ 2)

It became clear that Belgium had become (and still is) an important player in the field of RJ as the 'Belgian model' of mediation received a lot of appreciation abroad. In many European countries RJ practices are only used for less serious offences and often focused on juvenile offenders instead of adults. In that sense, as the focus is on less serious offences, mediation mostly takes place before trial and not after trial as it is often the case in Belgium. Moreover, the Belgian legal framework for mediation has often attracted interest from countries worldwide. A practitioner summarises it as follows:

'If you look at Europe, in many countries these restorative practices are, first, often limited to less serious offenses, and second, often focused on juveniles offenders and not on adults. And three, these countries often do not have such a strong legal framework. So that is something that often arouses interest. And, four, you could say that a lot of these practices are mainly or exclusively used at a pre-sentencing stage. So what usually arouses most interest is mediation in a prison context. And that often depends on the focus on more serious offenses. So I think these are the elements. The fact that we work with adults. This seems obvious to us, but it is not obvious in many countries. The focus on more serious offenses and in that sense on mediation after judgment or in a prison context. And then the legal framework that is strong in comparison with what you see in other countries. I think that is it.'

(practitioner, RJ 7)

In the course of the 1990s, the idea of RJ also emerged in the juvenile justice system. During the 1990s, youth criminologists at the KU Leuven observed that neither the repressive approach nor the rehabilitative approach really worked well as a response to juvenile delinquency. In that sense, a number of youth criminologists at the KU Leuven started to explore how to implement RJ practices as part of a reform of the juvenile justice system. Indeed, youth criminologists at the KU Leuven explored new and innovative practices and became familiar with the practice of FGC which could be used to cope with more serious juvenile offences. As there was less experience with FGC in Europe criminologists at the KU Leuven travelled to New Zealand and Australia to be present at FGC meetings and learn more about the practice (for more details see section 4.5.4). In 2000, inspired by their visits abroad, they initiated an action research focusing on introducing FGC in the Belgian juvenile justice system. Indeed, in parallel with their fellow colleagues who set up the pilot project on VOM in 1993 youth criminologists at KU Leuven developed strong ties with a number of services who support youngsters in difficult family situations. Already at the end of the 1980s, there were some RJ initiatives taken in the field of youth justice (see sections 4.3.2 and 4.4.2). Indeed, during the second half of the 1980s, both in the Dutch-speaking part and in the French-speaking part of Belgium, a handful of small non-governmental organisations (Oikoten in Flanders; Arpège, Gacep and Radian in Wallonia) working in the field of juvenile delinquency started to explore other ways of dealing with juvenile delinquency (Dominicus, 2010: 92; Van Garsse, 2001: 425). These organisations operated within the framework of the Belgian Juvenile Justice Act of 1965 which was clearly based on a rehabilitative philosophy (Aertsen, 2000: 153; Aertsen, 2004: 206). Their search for practices of social integration for youth offenders first led to an exploration of the idea of community service (unpaid work in the public interest) and later on to the idea of using 'reparation'. This implied that these organisations increasingly started to involve the victim in dealing with the aftermath of juvenile delinquency. As a result, some of these practices gradually evolved from pure community service practices to mediation practices (Dominicus, 2010: 92; Van Garsse, 2001b: 425). Moreover, RJ was suggested a number of times throughout the late 1980s and the 1990s in the course of the development of a new youth justice system.

In setting up the pilot project on FGC a steering group was established to oversee the implementation of FGC schemes in a number of judicial districts (Brussels, Leuven, Limburg and Antwerp) which involved a number of practitioners in the field of youth help as well as academic experts at KU Leuven, a lawyer, and youth judges. A practitioner explains it as follows:

> *'I think that the theoretical work had been done by the academic experts. They brought up the theoretical idea and afterwards they talked to lawyers, police, juvenile judges,*

public prosecutors in order to translate it to a Belgian context. There were four services which took part in the pilot project. These were Brussels, Leuven, Limburg and Antwerp. By using FGC in practice we tried to implement the theoretical idea in practice and we talked to each other about the bottlenecks we encountered, what worked, what did not work. In this way we tried to refine the practice and ultimately a procedure was being written of how FGC could be applied in Flanders. […] There were also working groups organised concerning the role of the police, concerning the role of the legal profession, concerning the role of the youth counselors.'

(practitioner, RJ 9)

From the above it has become clear that youth criminologists at KU Leuven were inspired by the FGC scheme in New Zealand. Indeed, in order to familiarise the mediators with using FGC in practice a mediator from New Zealand was invited to Belgium for one month (May 2000). However, as Belgium has a different legal system academic experts together with a number of other actors adapted the development and implementation of FGC to the Belgian context, as an academic expert indicates:

'Yes, we really had to invent it. We had a steering group with a number of lawyers and two juvenile judges who had been in New Zealand and looked at the New Zealand practice. We realised that this was not possible in Belgium due to a different legal system. So we asked ourselves "How can we do it as much as possible?" And then we had our own practice ... But we have retained the idea that in principle every case was eligible for FGC. The fact that the police must be present was very important to us. That has been scaled down in the Bill on FGC. However, I learned that mediators are still able to involve the police in Flanders, whereas in the French-speaking part of Belgium the police is often not involved. […] For me, it is not a soft model. For me, it is a model that shows young people their responsibilities in a constructive way. Whatever the mitigating circumstances are, they did it and they need to have the opportunity to do something to make it right, to realise that they have harmed the society and the victim. But in a constructive way, in a respectful way, with all the support they need.'

(academic expert, RJ 1)

The Belgian FGC scheme differed in a number of ways from the New Zealand scheme. In the common law system of New Zealand the police has the legal opportunity to prosecute; a mandate which is only attributed to the public prosecutor in Belgium. In that sense, a police officer can be present in a FGC meeting in Belgium but solely as an actor who symbolises the

public authority in the crime. In the French-speaking part of Belgium there was some resistance towards the involvement of the police in an FGC meeting, as a practitioner indicates:

> *'In Wallonia there was also a lot of protest against this because they are still more focused on youth protection so they were scared of how the young offender would react when a police officer was involved in the meeting. So there was some doubt about that. And I do not really know whether they still involve the police in practice because according to the law it is not required. I do not really know that.'*
>
> (academic expert, RJ 3)

Another difference is that in Belgium the young offender is offered to take part in the FGC meeting voluntarily whereas in New Zealand it is imposed on him or her. In that sense, the joint letter of intent, which is the result of a successful FGC meeting, needs to be submitted to a Belgian youth judge for confirmation. Moreover, there were some difficulties in translating FGC to Dutch, as an academic expert indicates:

> *'We were in one of our preparatory meetings and someone said: "I do not see myself referring to an English word in writing a verdict so we have to come up with a Dutch translation." […] So at that time I launched the concept of "herstelgericht groepsoverleg", but that was only a first attempt. So not family as in New Zealand, but "group" because in New Zealand "family", which is slightly inspired by the Maoris, is much broader than what we call "a family". On the other hand, we introduced "overleg" instead of "conference" and we added the "herstelgericht" part as FGC has no restorative connotation ...'*
>
> (academic expert, RJ 1)

In 2006 a new legal framework for Belgian youth justice was introduced which included the use of FGC for young offenders in more serious cases. Somewhat similar to what we discussed above regarding the development of mediation for adults it seems clear that Belgium has made its own choices concerning the operationalisation of FGC for juvenile offenders. This leaves us again with the impression that despite the close interactions between academics from KU Leuven and actors in New Zealand it were mainly ideas, ideologies and attitudes that were being transferred, that is, so-called 'soft transfers'. We found no evidence of 'hard transfer', that is, the transfer of programmes or policies.

4.4.4 From where are lessons drawn?

Dolowitz and Marsh (2000: 12) identify several levels of governance where the search for lessons may start: the international, the national and the local. As we discussed above (see section 4.4.2) in the case of RJ in Belgium the search for lessons abroad did only start after academics from the KU Leuven discovered the idea of mediation in the international scientific literature. In the initial phase academics experts did not visit RJ projects abroad: access to knowledge about mediation was mainly limited to reading and information that had been gathered over time and that had been circulating through academic channels. An academic expert indicates:

> *'We actually discovered RJ on the basis of foreign literature, scientific literature in criminology. It was thus not the case that this idea was suggested by someone from the KU Leuven or someone from Belgium in general.'*
>
> (academic expert, RJ 2)

It was only after academic experts at KU Leuven discovered the idea of RJ in the international scientific literature that they started to search for lessons abroad. In the early 1990s there was not that much experience with mediation in Europe. Moreover, in most countries where mediation was present it was mainly applied for less serious offences. Against that background researchers at the department of criminology and criminal law who, as we discussed above, were interested in using mediation for more serious offences, were somehow forced to start testing themselves. As we already discussed in a previous section (see section 4.3.1) from the 1980s onwards criminologists at KU Leuven developed a large network of contacts with fellow academics and practitioners in Belgium but also abroad. Indeed, there were close contacts with both academics and practitioners in Canada. A practitioner expresses it as follows:

> *'There was more exchange with Canada. With Ezzat Fattah and practitioners like Dave Gustaffson[66]. Inspiration was achieved, I think, especially for mediation in cases of serious offenses which has also been from the beginning a characteristic of the practice of mediation in Belgium. I think that also distinguishes us from many other countries and then of course you get inspired by practices that also work with serious offenses and you end up with people like Dave Gustaffson and Mark Umbreit, an American who has worked a lot on humanistic mediation and who also gave a training to a group of*

[66] It is interesting to note that Dave Gustafson started a PhD project on restorative justice (Encountering 'The Other': victim offender dialogue in serious crime) in that period. He defended this thesis on 19 September 2018. Tony Peters (initially), and later on Ivo Aertsen, were promotors of the PhD project. It illustrates the close interactions between academics at KU Leuven and in Canada.

mediators when we started in Belgium. So I think they looked at practices in Canada and America, especifically those who work with serious offenses because that could also inspire the start-up practice in Belgium but entire policies or laws have not been transferred to Belgium. Certainly not.'

(practitioner, RJ 7)

Not only academics but also practitioners have travelled to Canada to get inspired by the practice of mediation, as a former practitioner indicates:

'There are mediators, especially from the first pioneering team in Leuven, who have followed a course on mediation in Canada at one point. The organisation had partly paid for that. I think that has certainly been the case.'

(former practitioner, RJ 12)

Besides Canada, academic experts also had close contacts with fellow academics in a number of European countries. Researchers developed strong ties with a number of pioneers in the field of RJ, such as Nils Christie, and visited mediation practices in other European countries. Indeed, as an academic expert indicates there have been visits to mediation practices in Norway, Finland and France:

'I went to Norway, to Finland, to France to visit those first mediation projects. I have been at different places in France, but these were all fragmentary projects. There was no RJ movement in those countries yet.'

(academic expert, RJ 2)

In the early 1990s there were also mediation practices being developed in England and Wales which were visited by academics experts from KU Leuven. An academic expert expresses it as follows:

'In 1993-1994 I visited a project abroad because we thought it was important to see how it was done somewhere else. At that time there were some pilot projects in England and Wales and I went to Coventry, Leeds and Edinburgh. So I actually wanted to learn from these mediation projects about how it was done. How that process of mediation worked. How the perpetrator and the victim were contacted. Which kind of letters were being send to them. The concrete methodology of the practice. We have been influenced a bit by that process, I think, but not very fundamentally.'

(academic expert, RJ 2)

As we discussed above (see section 4.3.2) throughout the 1990s also youth criminologists at KU Leuven became interested in the concept of RJ. They observed that neither the repressive

approach nor the rehabilitative approach proved satisfactory in responding to youth delinquency. It was argued therefore that the youth justice system needed a 'third way', a RJ way, in which young offenders should repair the harm that had been done to the victim and society. Against that background, youth criminologists became interested in the practice of FGC which could be used to cope with more serious juvenile offences. As there was hardly any experience with FGC in Europe youth criminologists at the KU Leuven travelled to New Zealand and Australia in the spring of 1999 to be present at FGC meetings and learn more about the practice (see also section 4.3.2). The FGC practice in Australia was perceived more as an extensive form of mediation so youth criminologists became more inspired by the FGC practices in New Zealand when setting up the pilot project on FGC in Belgium. Moreover, not only youth criminologists but also youth judges have travelled to New Zealand to get inspired by the practice of FGC. A youth judge explains:

> *'I had the opportunity to do an internship abroad as a magistrate which was funded by the King Baudouin Foundation. I did an internship of three weeks or a little longer in New Zealand. I saw a future in that pilot project which has proved to be good as FGC is now in the law. So through the King Baudouin Foundation I had the opportunity to do that internship in New Zealand. The big advantage was that the criminology department at KU Leuven already had a magnificent plan. So I already knew who I was going to contact in New Zealand. I had received a number of contacts so I could actually work in a targeted way. In New Zealand I have had a lot of contacts with magistrates, but also a lot of cooperation with the university. But then I also did a bit of an amateurish self-study on the spot, for example, I entered the Quick one time and asked questions like: "do you know that?" So that I actually had a complete overview of what it is in New Zealand. You must, of course, take into account that in Belgium we have an entirely different vision of society. A completely different image of society, but I thought it was certainly worth trying here.'*
>
> (youth judge, RJ 13)

In the following years, academic experts at KU Leuven visited a number of European countries where projects of FGC had been initiated, such as, Northern Ireland, the Netherlands and England and Wales.

Next to such field visits Belgian academic experts also got (and still get) in touch with academics, policy makers and practitioners from other countries at conferences and seminars abroad. In the early 1990s there was not that much experience with RJ practices in Europe. One academic expert in the field of youth criminology, for example, heard for the first time about RJ at a private seminar in Italy:

'In the early 1990s I was invited to a private seminar and that has been the most captivating experience of my career. It was in a hotel in the mountains of Tuscany, Italy. Thirty kilometers from Luca. A hotel which was totally isolated. There were thirty people from all over the world who were there to think about "what to do instead of punishing?" "Restoring?". That is where I heard the word "RJ" for the first time in my life. Elmar Weitekamp was there too. There were others too, of course. Because the hotel was isolated we could not even leave in the evening. So from the early morning until late at night we talked about RJ. In the bar and at lunch, and so on. I came home with a lot of ideas. We have to do something. And that is where I started thinking about RJ, but still RJ for juveniles and still with the idea of a legal system that is restoring.'

(academic expert, RJ 1)

In that sense an initiative was taken by the academic expert at KU Leuven to launch an International Network for Research on Restorative Justice for Juveniles (INRRJJ). Initially this network focused on RJ and juveniles but over time the focus became much broader. Over a period of five years, from 1997 until 2001, there were annual meetings (Leuven, Vancouver, Fort Lauderdale, Tübingen and Canberra) of the INRRJJ where academic experts from various countries worldwide got together to discuss the scientific progress of RJ. It was mainly about academic research and the development of the theory, philosophy and legal framework of RJ, but there were also discussions about the development of RJ in practice. An academic expert expresses it as follows:

'At these meetings ideas were exchanged about the state of affairs of RJ in each country. How far has the restorative dimension been integrated in criminal law? [...] What does RJ do to a person in a psychological way, from a victim's perspective and from an offender's perspective? […] In Fort Lauderdale it was mainly about the function of "the community". That was the big discussion there. Another time it was predominantly about the function of criminal law. In Canberra the discussion was mainly about the relationship between RJ and the republican theory of Braithwaite and Pettit. […] In Leuven we also discussed the ethical dimension of RJ. [...] We had these kinds of topics then. That was always three or four days and there was also a two- or three-day meeting in advance with a small group of people. We always produced an official publication in addition to the reports of the meeting. Tony Peters was always present and I invited him a few times as a key note speaker.'

(academic expert, RJ 1)

At the end of the 1990s there were also discussions taking place between academics and practitioners from a number of European countries to establish a permanent European forum

for RJ. As we discussed above, throughout the 1990s a number of European countries were experimenting with RJ practices which resulted in interactions between academics and practitioners of these countries. Indeed, academic experts at KU Leuven developed close connections with representatives of umbrella mediation organisations in Germany, France, Finland, Norway, etc. In 1996, representatives of these countries, as well as experts from a number of others countries, were members of the Committee of Experts on Mediation in Penal Matters that was set up by the CoE to draft a Recommendation on mediation in penal matters. The Committee held five meetings between November 1996 and April 1999. During that period, academic experts, policy entrepreneurs as well as practitioners from a number of European countries worked closely together to prepare this Recommendation which was adopted by the Committee of Ministers of the CoE on 15 September 1999. These formal encounters between a small group of people somehow formed the basis for the establishment of the EFRJ in 2000. As an academic expert clarifies:

> *'The expert committee formed the basis for the establishment of the EFRJ. We approached various people from that group of experts to set up this European Forum. You can attribute the establishment of the EFRJ to academic experts in Leuven. At a certain moment we heard that European projects could be financed by the Directorate-General of Justice. […] We submitted a project which was approved afterwards. We received funding from the Grotius project with which we could work for one year. We were able to bring together eight or ten people from eight different countries to reflect on questions like: "Is it desirable to set up a European organisation? Yes or no? And why?." And if it is desirable, what kind of structure should it have? We met three or four times that year with a core group in Leuven. In 2000 the EFRJ was officially established as a non-profit organisation under Belgian law with its own statutes.'*
>
> (academic expert, RJ 2)

The EFRJ has been influential in the further development of RJ in Belgium and Europe. The European Forum was (and still is) not just a meeting place for academics but also attracts practitioners, public prosecutors, (youth) judges, policy makers and politicians from a variety of countries. The European Forum organises biennial conferences where people meet and share expertise, exchanges views and reflect upon new and innovative topics. The Forum also organises summer schools and workshops for mediators and other practitioners. Such close contacts may be helpful in building support and back-up for participants when they return to their own country. Indeed, as a former practitioner indicates:

> *'The added value for us, practitioners, is that you are part of a European network which gives your practice a certain authority. Local actors are taken a bit more seriously, I*

think. People who participated in the seminars or trainings, or attended conferences, or the research that was conducted at that level all provide useful information with which you can work. You can make a translation to the practices of local actors as you are provided with input and inspiration to get started on a local level. It is important that you can feed your local partners in this way. If Suggnomè (now Moderator) aspires to further develop a RJ policy within the justice system, but also with regard to the welfare services, for example, it is important that you can nourish and keep your local actors and partners on the move. In that sense, the input or interaction with other countries and the research that is being done at the European level is very important. Also for the Belgian government. The fact that you have European and international regulation which says something about mediation and RJ, and the fact that Belgium, as a member state of the European Union, has a certain mandate in this. The fact that Suggnomè (now Moderator) gets the opportunity to play a role and show itself on an international level, you can take that with you in your contacts with people at the political level. The fact that Belgium is indeed taken seriously by other countries in this field fortifies your negotiations at the federal and the Flemish level.'

(former practitioner, RJ 12)

The EFRJ has also played an important role in conducting scientific research on a variety of topics in the field of RJ. Members of the Forum exchanged views and ideas, and further spread the RJ approach. These research projects often involved (and still involve) a variety of partners from a number of countries and were (and still are) often funded by action grants provided by the European Commission (see section 4.2). Indeed, over the years, the Directorate-General of Justice has introduced funding schemes which often included calls for research projects on topics in the field of RJ. In that sense, the EU has had a major influence on the development of RJ in Europe. This was highlighted as follows by an academic expert:

'There has actually been a form of policy influencing from the EU and from the European Commission to the field of RJ. This has created an enormous dynamic of European projects on RJ. That has been impressive: there have been about 40 or 50 European projects in 15 years concerning RJ alone and then I am not even talking about victim assistance and so on. Or about probation in prisons. This has created large, well-connected networks of people who are working in this research domain. So the policy of the EU has certainly had an important impact.'

(academic expert, RJ 2)

The EU and the CoE have also been somewhat inspiring for and guiding the development of policy and practice[67] in the field of RJ because of the drafting of the 1999 Recommendation on mediation in penal matters, the 2001 Council Framework Decision on the standing of victims in criminal proceedings[68] and the 2018 Recommendation concerning RJ in criminal matters. The 1999 Recommendation of the CoE, in particular, has often been used as a manual by countries that are interested in developing a RJ approach, as a practitioner indicates:

> *'The main thing of what I learned from it is that it is really soft law and it is not always easy to point out how that exactly has an influence. It is mainly people who know the instrument who use it as an instrument when they are developing or negotiating a local practice with the government. It is also encouraged by the CoE. If something that is clearly promoted at the international level then that is something that you take with you when you develop a practice on a local level. Or nationally.'*
>
> (practitioner, RJ 7)

The explanatory memorandum of the 2005 Belgian law on mediation explicitly mentions the international frameworks that have provided a framework for the Belgian legislation on mediation. The basic principles of mediation which are strongly emphasised in the 2005 law are inspired by the 1999 Recommendation of the CoE. In that sense, as an academic expert indicates, the soft law of the CoE has been influential in the drafting of the Belgian law on mediation[69]:

> *'The definition has been taken over from the 1999 Recommendation on mediation in penal matters from the CoE. When you compare the definition of the 1999 Recommendation from the CoE with the definition in the 2005 Belgian law on mediation then you will see where we got our inspiration. That is a small example of policy transfer. Yes absolutely.'*

[67] It is of course a bit of a 'chicken and egg' story: if the expert committee for the Recommendation consists of (national) academic experts then of course these (national) experts are the ones who 'become' the European influence.

[68] This Council Framework Decision 2001/220/JHA is now replaced by the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

[69] See supra (reference nr. 50), the 'chicken and egg' story: the Recommendation was prepared by experts from the member states of the CoE (as we mentioned earlier). This is therefore not something 'strange', something 'extraterrestrial' that came our way. Indeed, KU Leuven criminologists also participated in the development of the Recommendation.

(academic expert, RJ 2)

Interestingly, the 1999 Recommendation of the CoE has also been a source of inspiration for the drafting of the UN Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters in 2000[70]. If you compare the Declaration of the UN with the Recommendation of the CoE you see that a number of sentences or articles are very much alike.[71] This means that apparently there was a common understanding of what RJ actually meant and what it was about.

Our discussion so far makes clear that Belgian academic experts maintained close relationships with representatives from other countries in the course of the development of RJ. Academic experts regularly visited RJ practices abroad and systematically attend conferences of the EFRJ. As the development of mediation in Belgium differed somehow from developments in other countries the Belgian practice attracted foreign interest which resulted in multiple visits to Belgium. Academic experts at KU Leuven were regularly contacted by people in other countries who, for instance, also played with the idea of introducing mediation in cases of serious offences or were interested in the close ties between practitioners, policy makers and the university that had developed to implement mediation in Belgium. Indeed, the range of countries was very diverse, as a practitioner illustrates:

> *'From Germany to France. Who has already been here? There have also been people from Hawaii. From Brazil and Nepal, but especially I think Germany, France and then also Poland and the Czech Republic. They mainly look at us for the practice of mediation in prison and with detainees in the most serious cases.'*

(practitioner, RJ 8)

As Belgium was one of the front-runners in the development of RJ in Europe it frequently happened that people visited the Belgian model of mediation, as a former practitioner indicates:

> *'In fact, in all those years I worked at Suggnomè we received every year a delegation of foreign people. We called it a "tour de la Belgique". That was in collaboration with Prof. Dr. Aertsen and Prof. Dr. Peters, and with the EFRJ. These were representatives*

[70] https://www.un.org/ruleoflaw/blog/document/basic-principles-on-the-use-of-restorative-justice-programmes-in-criminal-matters/

[71] Both the Declaration and the Recommendation have a common understanding of what restorative justice is (see article 3 Declaration and the section 'definition' in the Recommendation). They both acknowledge that restorative justice should be used only with the free and voluntary consent of the parties involved (see article 7 Declaration and article 1 Recommendation) and that a legal framework for the operation of restorative justice practices should be available (see articles 11 and 12 Declaration and articles 6, 7 and 8 Recommendation).

of European countries where mediation had just been introduced and they sometimes came to Belgium to visit projects over here. And I think that we received a group of nine to twelve foreigners twice a year who were then guided by us throughout Flanders or the French-speaking part of Belgium. Those people visited Suggnomè projects but also the RJ practices for juvenile offenders and the houses of justice. We organised a sort of "tour de la Belgique", so to speak. In this way there was a sort of mutual enrichment. That was indeed always in consultation with the people at the university. For example, people who came to visit the institute of criminology at KU Leuven and also visited the RJ models in practice. I think that concept has often taken place and there is always a mutual enrichment.'

(former practitioner, RJ 12)

More recently there have been intense contacts with people in France as they are very eager to implement RJ practices for both adult and juvenile offenders. In the early 1990s, Belgian policy makers visited France as they were interested in the French model of mediation in penal matters which was implemented in Belgium in 1994 (see also 4.3.1).[72] In the following years, however, RJ would develop in a more dynamic way in Belgium than in France which resulted in the 2005 law on mediation. It is interesting to observe, therefore, that in recent times French policy makers have become interested in the development of RJ in Belgium and have used the 2005 law on mediation as a source of inspiration to the French law in 2014[73]. Policy makers in France became interested in the Belgian model of mediation for serious offences because it is a directly accessible instrument in the hands of both victim and offender which provides for a face-to-face meeting between the parties involved. A representative of the criminal justice system expresses it as follows:

'I know that people in neighbouring countries are very interested in our system, especially in France. For example, in 14 days, a delegation from the French prison administration will attend a seminar on this topic at the houses of justice in the French-speaking part of Belgium. I will present the Belgian legal system there. And they look at us like: "You dare to do that?" Because in France mediation is used between a detainee and other victims or people representing the actual victim of the offence. So

[72] The visits of Belgian policy makers to France in the early 1990s were not related to RJ but took place in their search for an appropriate answer to the overburdening and non-functioning of the criminal justice system. Indeed, Belgian courts failed to respond adequately to both serious and complex cases as well as what Wathelet referred to as small and mediocre city delinquency.

[73] http://www.justice.gouv.fr/loi-du-15-aout-2014-12686/

they are very interested in a face-to-face mediation between an offender and a victim of the same offence in a very serious case which is what is happening in Belgium.'

(representative of the criminal justice system, RJ 5)

Belgian academic experts and practitioners were (and still are) also regularly invited to present and explain the operation of the Belgian model of mediation at seminars or conferences abroad. They were (and still are) very active in contributing to the exchange of views in the field of RJ by publishing policy-relevant scientific articles and presenting at the conferences of the EFRJ and others. There have been many invitations from countries inside and outside of Europe to present the set-up of the pilot project on mediation in the initial period and the Belgian experiences with the further development of RJ practices later on. An academic expert puts it as follows:

'We were lucky that with the help of the university we were constantly in interaction with foreign colleagues. We had a lot of contacts worldwide which made the pilot project on mediation well-known. We could publish about it in English and we were asked a lot to talk about it abroad. So it has always been that interaction, those contacts. The exchange with foreign countries. Tony Peters has talked numerous times about that project on VOM. The philosophy behind it, the collaboration and the method of mediation. And how we discovered it from the perspective of victimology and penology, and so on. He has often talked about this abroad, in Spanish-speaking countries, in English-speaking countries, in Germany and in Scandinavian countries.'

(academic expert, RJ 2)

Belgium therefore also came to be perceived somehow as a pioneer in the field of RJ which attracted the attention of policy makers in other countries. Moreover, as we discussed before, Belgian academics were also actively involved at a European level, for example, as members of the expert committee of the CoE to prepare the 1999 Recommendation on mediation in penal matters.[74] An academic expert clarifies:

'I was involved in the work of the European Forum. In terms of transfer, at this level, a lot of work has been done. I don't know if we can call that transfer or exchanges but certainly exchanges. What I know is that the Belgian people hold a very powerful position because they created the European Forum and they were really active, much

[74] Christa Pelikan (Austria) was elected Chair of the Committee. The Committee was composed of experts from Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, France, Germany, Greece, Hungary, Ireland, Italy, Liechtenstein, Norway, Slovenia, Spain and Turkey. Prof. Dr. Ivo Aertsen joined the Committee as the Belgian representative.

more than other European countries. And they had a very strong influence on all that happened in Europe and on the definition of what the good way is to envision this because many projects started in Leuven. The European Forum is based in Leuven. They were also present at the European level because they had European projects. Ivo Aertsen was invited to many discussions at the European level. They participated in the 1999 Recommendation of the CoE. I think that Belgium has a very strong position.'

(academic expert, RJ 25)

In October 2018, the 1999 CoE Recommendation on mediation in penal matters was supplemented by a new one.[75] The UN is currently (since November 2018) reviewing the 2000 Declaration of Basic Principles on the Use of Restorative Justice Programs in Criminal Matters and again Belgium has delegated a representative (Dr. Inge Vanfraechem) as a member of the expert committee. Such an international presence as well as RJ in Belgium being a pole of attraction for other countries may imply that it has more to offer to other countries and European policy making than the other way around.

4.4.5 Are there different degrees of transfer?

Dolowitz and Marsh (1996: 351) identify four strategies to sort and assess different degrees of transfer: copying – when a country adopts an entire programme in use elsewhere without any changes; emulation – when a country rejects copying in every detail but accepts that a particular programme in use elsewhere provides the best standard for designing a policy at home; hybridisation and synthesis – these involve a combination of two or more models or programmes into a new one; and inspiration – when looking at how different countries solved one common problem inspires new and fresh solutions at home but the eventual policy outcome does not resemble the original in any detail.

This section explores in more detail the processes via which policy transfer in the area of RJ in Belgium occurred. Like in the previous chapter on EM we did not found evidence of direct copying, hybridisation and synthesis regarding the development of RJ in Belgium. Academic experts and youth judges did not directly adopt a programme in use elsewhere in setting up mediation or FGC. Nor did they combine elements of different policies or programmes in initiating a new policy on mediation and FGC. An academic experts expresses it as follows:

'As far as the Belgian situation is concerned it is not just copy-paste. There is a whole dynamic going on and there are many levels and aspects to it. There is also a lot being

[75] Recommendation CM/Rec (2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters, https://rm.coe.int/cm-rec-2018-8-concerning-restorative-justice-in-criminal-matters-03-10/16808e3b08

developed over here and transferred abroad. It is not a simple picture of policy transfer as if you could transfer a certain method or technique.'

(academic expert, RJ 2)

However, there does seem to have been a significant degree of inspiration in the development of these RJ practices in Belgium. As discussed above (see section 4.3 and section 4.3.1) the RJ approach was first mentioned in the early 1990s by criminologists at KU Leuven. At the end of the 1980s, criminologists at the KU Leuven were increasingly involved in conducting research on victims of crime and their needs in the criminal justice process. Indeed, they started to explore the phenomenon of violent crime and hold-ups, and were looking at it from a victim's perspective. From the interplay between interest in victimological research and a renewed interest in questions of criminal justice reform (Peters, 1996), criminologists at KU Leuven discovered the idea of RJ on the basis of international scientific literature which referred to foreign experiences and examples. Academic experts were inspired by these international developments and have thus been looking across borders for inspiration but not in a literal sense. Indeed, in the initial period, a large part of the inspiration for introducing RJ in Belgium seemed to be based upon what we referred to as 'desk research' (see section 4.4.1.1). In that sense, the initiation of the research project on VOM in 1993 was inspired by developments abroad. A criminal justice professional indicates:

'I think we just became familiar with projects or initiatives abroad and thought we could use that in a research project. We have designed the research project for the King Baudouin Foundation ourselves based on foreign influences.'

(criminal justice professional, RJ 20)

We found no clear evidence in our study that there was a degree of emulation involved in what happened. Criminologists at KU Leuven did not draw on one particular example of mediation abroad in order to inform their thinking on this. As a practitioner clarifies:

'So I think they looked at practices in Canada and the US, specifically those projects that used mediation for more serious offenses because that could inspire the start-up of the practice in Belgium, but these were not complete policy packages or laws that have been imported. Certainly not.'

(practitioner, RJ 7)

In initiating the research project on VOM for more serious offences academic experts were thus looking at developments abroad and how to translate these approaches into the Belgian context. Once the decision had been taken to set up this research project on VOM the search

for best practices abroad by visiting RJ practices in other countries started. Criminologists at KU Leuven entertained close and frequent contacts with fellow academics and practitioners in the US, Canada, Australia, New Zealand, England and Wales and Northern Ireland with whom experiences were exchanged on the development of mediation. These interactions were, however, merely inspirational in nature as the way in which mediation came to be designed in Belgium has been peculiar and different from mediation in other countries.

> *'There are a number of aspects in foreign countries, in foreign developments that have always been interesting for us but which have certainly not been integrated in a thorough way over here. We wished to do something concerning those serious offenses and I think that, indeed, we got a lot of inspiration and that there has been some transfer of that policy but perhaps more a transfer of knowledge and practical experience.'*
>
> (practitioner, RJ 7)

It has become clear throughout this chapter that criminologists at KU Leuven have been inspired by developments abroad in introducing RJ practices in Belgium. However, the development of RJ practices in Belgium has been very diversified with different layers and different aspects that have to a greater or lesser degree been transferred in one or the other direction. Even though we did not found any clear evidence in our study that there was a degree of emulation involved in the development of VOM this seems to be different for FGC where New Zealand indeed provided for the best standard for designing a FGC policy in Belgium. As we already discussed above (see section 4.4.1.1) youth criminologists at KU Leuven visited FGC schemes in New Zealand and Australia before setting up the pilot project on FGC in Belgium. They were charmed by the FGC schemes in New Zealand which offered inspiration to initiate a Belgian FGC scheme.

Somewhat similar to the development of EM we discussed in the previous chapter (see section 3.4.5) we also found strong evidence for the role of elite networking and the development of transnational policy networks involving academic experts. These networks have been (and still are) crucial in spreading policy ideas and principles about RJ throughout Europe and the world. People within these international and European networks are almost considered family because of their shared ideas and backgrounds. An academic expert states it as follows:

> *'RJ is more of a philosophy, a critical approach and around these ideas an international community has developed, with its own relationships, its own manners, its own dynamics. That has been very important in the development of RJ. […] You certainly see those dynamics also in other cases. I see, for example, the dynamics that now develop in the case of family justice centers. These are really transferred from the US. They have tried this in Antwerp and at a number of other locations in Europe. They now*

also have a European organisation. That is also more of a family. You feel that. If the initiators of the project talk about that, then you also have the same kind of familial atmosphere. They are reformers. The context, the people who transfer it, the actors who are involved in policy transfer, the characteristics thereof. One of those characteristics is in any case also their culture, their spirit, their philosophy, the way, the ideas behind it.'

(academic expert, RJ 2)

In addition, international conferences played (and still play) a role in promoting the general ideas and principles of RJ. The conferences of the EFRJ, for example, involved a range of academic experts, practitioners, criminal justice professionals and policy entrepreneurs and did have (and still have) a large influence in terms of sharing ideas across national boundaries.

4.4.6 Limits to policy transfer

In the previous sections we have tried to investigate which role policy transfer has played in the development of RJ in Belgium. It became clear that RJ in Belgium has been developed in a somewhat distinctive way in comparison to other jurisdictions in Europe. Such variations are important because they highlight the constraints and limitations of policy transfer, and they help us draw attention to the enduring importance of domestic influences. In this section we first pay attention to the role of practical and legal structures in Belgium in the context of the development of RJ. We then consider the role of cultural differences in the development of RJ in Belgium. Finally, we pay attention to the important role played by the agency of key policy actors and more specifically to the prudence and skepticism of various actors towards the RJ approach.

4.4.6.1 Practical and legal obstacles

As we discussed above (see section 4.3), RJ has developed in a dynamic way in Belgium. Since the end of the 1980s a number of initiatives have been taken to develop and implement RJ practices for both adults and juveniles. Belgium has gone quite far in implementing RJ practices and is therefore well-known across the globe. Interestingly, however, notwithstanding the fact that RJ has continuously developed in Belgium since the early 1990s there have not been that many cases of mediation and FGC in practice. The numbers do not seem to have followed the attention RJ has attracted in academic (more specifically, predominantly 'Leuven' academic) and policy discourse. As we discussed in section 4.3.1 the usage of VOM in Flanders and Brussels increased significantly between 2005 and 2011 after which the numbers stabilised. The number of cases involving FGC went up until 2012 and has significantly decreased afterwards (see section 4.3.2). It is clear that mediation and FGC have not been

applied on a very large scale in Belgium which can in part be explained by a number of practical obstacles. Indeed, mediation and FGC are very time- and labour-consuming. It requires a lot of time and effort from the public prosecutor's office, for example, to select cases for mediation and refer them to the mediation service. As an academic expert indicates:

> *'In the beginning we also thought that the public prosecutors should have the reflex to select cases for mediation. This turned out to be an exaggerated expectation. You will not get that done. Not in Belgium and not in other countries, in my view. We have long thought that it could work. Meanwhile, we have to admit that the process is one with ups and downs. What you see is that it is going well for a while and then it decreases again. When mediators bring mediation to the attention of the public prosecutors again you will see that the number of cases will increase. The weeks thereafter when there are less meetings between mediators and public prosecutors the numbers decrease again. This has to do with the fact that there is very little room within the criminal justice process to think about it and to refer cases to victim support services or mediation services. And that has to do with practical circumstances with time constraints. A public prosecutor has no time to think about a case for a very long time. He has to process files at a fast pace. Decisions have to be made. Requests for further investigation from the police, dismissals, prosecutions, etc. This takes place at a very fast pace so there is actually no mental space to reflect on the case. Of course, a public prosecutor has no time to examine the file again in detail to see whether there are any needs of the victim. And whether the case is one that could be referred to a mediation service.'*
>
> (academic expert, RJ 2)

Professionals working in the criminal justice system are often confronted with high caseloads and a lack of time and shortage of staff so everything has to be done at a faster pace. As mediation is a very time-consuming and labour intensive activity it is often a major challenge to integrate it in the day-to-day operation of the system. Indeed, selecting cases for and referring cases to VOM often results in an additional workload for public prosecutors because they need to take into account the complexity of the case which is different in penal mediation cases which can be settled in a more straightforward way (see section 4.3.1). Moreover, people in the public prosecutor's office are also often uncertain about the timing to notify the victim of his or her possibility to take part in VOM. This constant balancing between what is possible in terms of capacity and what is actually being done is not only an issue at the level of the public prosecutor's office but also within the mediation services. VOM, as it is implemented by Moderator, is a very labour-intensive activity. This implies that VOM cannot become a mainstream activity unless sufficient resources are made available. The reason why the investment in a further development of RJ practices in Belgium is rather insufficient might have

to do with the fact that not everyone in Belgium is convinced of the added value of RJ practices. Indeed, there is a certain tension noticeable between a local (Leuven) enthusiasm and the broader Belgian policy and/or academic context which is not always equally enthusiastic (for more details see section 4.4.6.2).

A lack of resources has also hampered the further development of FGC for juvenile offenders in Belgium. Also youth judges are confronted with an extensive caseload resulting in a somewhat routine way of working which makes it more difficult to invest a lot of time in selecting cases for FGC. In that sense it seems more attractive to settle cases in a more straightforward way, that is, by imposing house arrest, through supervision by the social service or placement in an institution. FGC is even more time- and labour- consuming because people close to victim and offender, the so-called 'community of care', also need to be informed and persuaded to take part in the meeting. Moreover, involving family members or other people in a meeting is not only very challenging for the mediators but also for the actors involved themselves (for more details see section 4.4.6.2). This organisational difficulty became even more noticeable with the set-up of the pilot project on PMC in 2013 as it was focused on involving not only the 'community of care' but also representatives of the local community, the wider community. A practitioner expresses it as follows:

> *'I think there may be eight or seven cases in which PMC are being used on an annual basis. I think it is even a bit less now. There are always new methodologies and we try to do that but that also requires a bit more time and resources so we always need to search for a balance. A mediation service must always continue to sensitise people, continue to train magistrates and keep them updated. If a magistrate leaves and someone new is taking his or her place you have to do it all over again so it requires a lot of time, in addition to your case work.'*
>
> (practitioner, RJ 12)

Our discussion so far demonstrates that implementing RJ practices is a very time- and labour-consuming process. In practice this means that you need a relatively large workforce to handle a relatively small number of cases. In the initial phase of VOM this created a certain tension between the Houses of Justice, which are responsible for implementing penal mediation, and the mediation services which are responsible for the implementation of VOM. As a criminal justice professional clarifies:

> *'The Houses of Justice have always paid a lot of attention to managing the workload*[76] *to handle cases and then there was VOM where mediators got plenty of time to look at*

[76] Concerning the management of the workload and the way in which this became a point of attention within the Houses of Justice, see e.g. Bauwens, A. & Roose, R. (2017). 'Justitieel sociaal werk', In: K.

things in-depth. This created a certain tension. They got time to mediate in-depth whereas penal mediation was taking place within the Houses of Justice. […] There has never really been a conflict, I think, but it has caused some tension from time to time. After the law on penal mediation was passed in 1994 the College of public prosecutors drafted a Circular including the idea of involving victim and offender, and returning the conflict to the parties involved in the execution of penal mediation, but penal mediation was (and still is) mainly just a modality to handle cases in the pre-sentencing phase. They added a RJ 'colour' to penal mediation in that Circular Letter. Practitioners were therefore a little bit worried because they could never fully carry out the RJ approach as they had a certain framework to work with and an extensive caseload. And then, in parallel, you had an emerging practice (VOM) where restorative principles moved center stage as there was time and space to do this. […] So I think there has always been tension between those two practices.'

(criminal justice professional, RJ 11)

Next to this tension between VOM and penal mediation there has also been (and still is) a different kind of tension between VOM and FGC in juvenile cases. Indeed, in the initial phase of the pilot project the composition of FGC meetings was similar to FGC meetings in New Zealand. However, the initial composition of participants in such meetings was questioned, in particular because not everyone was convinced that the police should be present during the meeting. However, when the police is not represented in the FGC meeting (as it is not required by the law) or when the 'community of care' cannot be convinced to take part in the meeting the question pops up whether FGC still has an added value. A practitioner expresses it as follows:

'I do not think that there is any added value. There is already mediation going on between victim and offender. It is very difficult than to say to your parties: "Well ok, we are going to stop this process now because we think that the conflict is more suitable for a FGC". FGC assumes that parties meet each other directly, that you also involve the community in the process. However, involving the community is very difficult. Mediation is possible in all cases. Mediation can be used in less serious cases, but also in more serious cases. It has never been clearly defined when FGC is needed. It is difficult to make a distinction between FGC and mediation because mediation can also be used in more serious cases. The law says that FGC should be used for more serious

Beyens & S. Snacken (Eds.), *Straffen: een penologisch perspectief* (pp. 647-662). Antwerpen: Maklu about the role of BPR (business process reengineering).

cases or cases in which there is recidivism, but you can also use mediation in those cases. So when is FGC to be preferred and when is it not? That is a very difficult exercise. It is easier, I think, to offer VOM in all cases. It is more easy, I think, for a public prosecutor to think about VOM than about FGC.'

(practitioner, RJ 19)

Moreover, there is also an organisational issue present at the level of the public prosecutor. Indeed, since 2015 the procedure of VOM is automatically initiated for juvenile offenders and victims are therefore notified at an early stage. This means that when the public prosecutor refers the case to a mediation service which at that stage argues that FGC would offer a better way to resolve the conflict the invitation letters for VOM have already been sent. This makes it difficult to stop the mediation procedure in order to start a FGC process. In that sense it has proven to be very demanding to implement an additional RJ model when mediation is already available. Indeed, as we discussed above (see section 4.2), European countries have mainly continued to work with VOM instead of implementing the community oriented practice of FGC in the juvenile justice system. An academic expert argues that this can be explained by the idea of institutionalisation:

'The fact that people have not just implemented the model of FGC in Europe is another example of something that has not been transferred from abroad. Indeed, European countries have essentially continued to use VOM. Belgium has made attempts to develop FGC for juvenile offenders but this is only being applied in small numbers. […] There are about 50 cases a year, or even less. Which is unfortunate, I think. It is much more used in England and Northern Ireland. Conferencing, but also VOM. So FGC has not been transferred successfully to a European context. Why not? The explanation is also pragmatic in nature. Why? What I have seen in many countries is that once a certain model of VOM or another form of mediation for juvenile offenders is available it is very difficult to change that, to put a second model of FGC or PMC next to it. […] It is not easy to broaden or change these techniques or basic models once they have been introduced. They become institutionalised with their own trainings, their own mediators, their own funding. Some countries succeed. Norway has been able to do this, for example, but some countries find it very difficult. That is actually also understandable because once you have a model that is introduced in a certain country and that seems to work well, that is positively evaluated and everyone is satisfied with it, you feel less inclined to put another model next to it.'

(academic expert, RJ 2)

In other words, as a representative of the criminal justice system suggests, FGC might have been a victim of the success of VOM.[77]

> *'The explanation that some people gave was that when VOM was offered and it did not succeed people did not have the automatic reflex to propose FGC instead. It is like: "Well, we have made a RJ offer so it is ok." In fact, FGC is a bit the victim of the success of VOM. Making a VOM offer is the most simple way, so voila.'*
>
> (academic expert, RJ 18)

From the above it became clear that RJ practices are very time- and labour-consuming and that there are practical difficulties with involving the 'community of care' or the wider community in implementing FGC and PMC. The use of VOM and FGC is therefore still limited and, as a result, these innovations fail to take up an important place in the criminal justice system in Belgium. A number of respondents indicate that the limited use of RJ in Belgium can also be explained by a lack of knowledge about its existence and what it can offer. Indeed, there is a lack of awareness in society at large regarding VOM and citizens usually are not well informed about its existence. Citizens can direct themselves to a VOM service free of charge. However, because a lot of people are unaware of this offer they only get to know about mediation when someone informs them. This explains why VOM mediation services invest a lot of energy in informing public prosecutors about the existence and added value of VOM. However, as mediation services cannot only depend on the goodwill and effort of these judicial gatekeepers they increasingly trying to inform people directly, victims in particular, about VOM and its content via information campaigns in the press. Moreover, a number of respondents also point at the role of the universities and the Institute for Judicial Training to better inform (future) lawyers and (youth) judges of the existence of RJ practices.

Next to such practical obstacles there have also been legal obstacles, in particular with respect to FGC in Belgium. Throughout the 1990s most developments in the field of RJ were taking place in Anglo-Saxon countries, such as Canada and New Zealand, and these developments were often used as a source of inspiration for other countries, including Belgium. However, as Belgium is a civil law system there have been some obstacles that have limited or impeded the transfer of policies from Anglo-Saxon countries with a common law system. Indeed, there have been some difficulties with the implementation of FGC for juveniles in Belgium as it was inspired on the FGC model in New Zealand. The difficulties were in particular related to

[77] With this note that 'success' is also relative: VOM numbers in Belgium remain rather limited compared to the number of judicial files, as we stated earlier.

differences in how public prosecutor and the police operate in New Zealand. As an academic expert indicates:

> *'I first think about the legal system. We could not transfer FGC in a literal sense which had to do with the fact that in New Zealand the police is the public prosecutor in juvenile cases. When a case is transferred to the juvenile judge the police is the public prosecutor. They have a specialized police section over there and police officers are also trained very differently than in Belgium. So we could not do that.'*
>
> (academic expert, RJ 1)

4.4.6.2 Cultural differences

Not only practical and legal structures have had an impact on the development of RJ in Belgium but also cultural differences may have played an important role. According to some of the respondents, Belgium is a somewhat closed and individualised society where the willingness and openness to talk about private topics and to share feelings with other members of the community may be rather low. In that sense a number of victims and offenders are not very open to the idea of involving other people in resolving the conflict. According to some of the respondents, Belgians may have a different mentality towards involving so-called support people and are not used to consulting others which may explain why it is often difficult to convince them to take part in a FGC meeting, as a representative of the criminal justice system makes clear:

> *'What I do notice is that you cannot just transfer something. That everything is also culture-related. So we have much less a culture of talking to each other, to involve other people. For example, FGC is something that is very difficult. We do not have the mentality to really convince people to operate in a certain context. You will have that much more in other countries, also in other communities. We are rather individualistic. FGC is something of which you say it is very good in terms of the idea, but people really need to cross thresholds.'*
>
> (representative of the criminal justice system, RJ 17)

It seems clear that you cannot simply transfer programmes from abroad without taking into account the local culture. Involving the 'community of care' in the implementation of FGC proves to be rather difficult in Belgium, but it is even more challenging to involve the wider community as part of the implementation of a PMC. A practitioner puts it like this:

> *'You have the immediate environment, the people who are really there for you as a support figure. We call this the "community of care" and it is not too difficult to involve*

these people. Then you have the larger community and that is often the most difficult group to get involved because victim and offender often have less connection with these people or are afraid of them. They are afraid that people would join the circle as a way of voyeurism. A man once said: "You can add strangers or people from within society to the circle as long as these are not people from my village or the village next door". We also noticed that when we were looking to involve the broader community the overall population usually did not have a problem with it. However, involving people who could potentially meet the victim or offender or people who were much closer to them that was much more difficult.'

(practitioner, RJ 15)

Such cultural differences also exist at an operational level. In relation to what we discussed in section 4.4.6.1 it has proved to be a challenge for mediators to involve the 'community of care' or the wider community in the implementation of FGC or PMC. In that sense, implementing FGC and PMC requires a very different way of interacting than mediation as mediators in FGC and PMC have to work with a group of people instead of leading a one-to-one conversation between victim and offender. As VOM is more often used than FGC and PMC it may be that some mediators are not that confident to involve other people in the meetings and to work with a group of people. Implementing FGC and PMC requires a cultural switch and an adaptation of the conversation techniques that are usually being used during VOM. An academic expert expresses it as follows regarding the practice of PMC:

'You also have an organisational resistance because mediators have to change things again. We have seen this very clearly with the European project on PMC that we have done together with colleagues from Hungary and Germany a few years ago and in which we actually wanted to involve the broader community in RJ. Not only the "community of care" as in FGC, but also representatives of the local community, of the wider community. But you actually see that this is very difficult for mediators. Victim-offender mediators are great at working with victims and offenders. With that interpersonal dynamic. […] However, if you ask them to work with the local community, not the families or the "community of care", they do not have sufficient methodologies or starting points to do that. The mediators justify their hesitation to work with the community a little as follows: "We have our mandate from victim and perpetrator and those are the people who say what we have to do. We should not say what needs to be done in a process of mediation or who should be involved and what should be discussed. We receive our mandate from victim and perpetrator. We work for them and if they want to involve other people we make a call." […] Mediators are trying to involve the local community in PMC in Canada and the US. There are all kinds of variants of

PMC, sentencing circles etc. in which it happens but we found it very difficult to do this in the three countries that were part of the European project. We were actually confronted with mediators who had developed their own methodologies and who actually only worked for perpetrators and victims.'

(academic expert, RJ 2)

Interestingly, such cultural differences do not only exist at the level of society in general but also across the Communities in Belgium. As RJ practices are organised at the level of the Communities there is, as in the case of EM (see chapter three), the possibility that cultural differences between Flanders and the Walloon region will influence how RJ develops in both parts of the country. Policy makers in Flanders are more Anglo-Saxon oriented whereas policy makers in the Walloon region are more attracted to developments in French-speaking parts of the world. In that sense, Walloon practitioners in the field of RJ have more contacts with people in France, Italy, Switzerland, Luxemburg and Québec (Canada). As they share a common language it can in part facilitate their communication and in that sense also facilitate the transfer of policies. However, non-English-speaking people tend to get somewhat isolated in the field of RJ as they are less involved in international partnerships and meetings because English is often the lingua franca. In that sense sharing a common language can sometimes become a limit to policy transfer. As an academic expert indicates:

'French-speaking people have always had a harder time with English, of course, and the contacts with the Anglo-Saxon world. This is better in Wallonia than in France. I think that France is isolated in many ways, also in the field of RJ, simply because they do not speak English. Although they probably have very good initiatives and interesting developments in France they entirely miss the opportunities of international cooperation. Well not quite. There are always exceptions that confirm the rule, but still.'

(academic expert, RJ 2)

As we discussed in section 4.4.1.1 there was also less academic support in the Southern part of Belgium for the idea of RJ as there was in Flanders. Academic experts in the Walloon region were less involved in the development of mediation and as a result they were also less involved at the European and international level. Magistrates in the French-speaking part of Belgium have also expressed their doubts about the development of mediation as judicial actors in the French-speaking part of Belgium, inter alia, were not used to work with non-profit organisations such as Médiante. They were afraid that the fact that members of Médiante would look into and select cases for VOM would be a forerunner of a form of privatisation, as a respondent indicates:

'At the time the law on mediation came into force there was also a strong resistance from certain colleagues. Their resistance - I remember it was mainly the case in Liège - was based on their fear for privatisation. Médiante was seen as a private association that was looking for clients. This idea was partly based on the procedure that was followed in the experimental phase where people from Suggnomè went to the public prosecutor's office to select files for VOM. So I know that the colleague from the public prosecutor's office in Liège was very reluctant towards it.'

(representative of the criminal justice system, RJ 5)

In the history of VOM in Belgium there were regular contacts between the Flemish and Walloon representatives who were responsible for the general implementation process in both parts of the country. However, there have been (and still are) cultural differences in the development of mediation in both parts of the country. Practitioners in the French-speaking part of Belgium were more focused on setting-up a real communication process between victim and offender which could take place as a supplement to the criminal justice system. In addition, the implementation process of VOM in the French-speaking part of Belgium has not been based upon the method of the steering groups as it was done in Flanders. In that sense there is a certain distance between practitioners in Flanders and the Walloon region, as a Flemish practitioner argues:

'It is true that there is a certain distance between Flanders and the Walloon region, and between Moderator and Médiante too, also in the field of mediation. There are collaborations in the sense that we sometimes have joint cases but there are only few occasions of substantive exchange. Personally, I feel that there are already two different practices. I sometimes have the feeling that, on the basis of the questions we receive from Médiante, that they have a different way of working and that they make the offer based on a different way of thinking.'

(practitioner, RJ 15)

Practitioners in the French-speaking part of Belgium also had a different view on the introduction of FGC. Indeed, in the debates that were taking place in the French-speaking part of Belgium about the juvenile justice system practitioners were afraid that the implementation of FGC would result in a recriminalisation or re-penalisation of the juvenile justice system. Practitioners in the French-speaking part of Belgium were more focused on protecting young offenders instead of calling him or her to account for the committed crime.

4.4.6.3 Agency and prudence

Variations in institutional and cultural structures do not in themselves determine the outcomes of penal policies. This requires the agency of key actors who take advantage of the opportunities and overcome the obstacles that such structures impose. The importance of agency in shaping the trajectory of RJ has been apparent at every stage of the developmental process. The particular efforts of academic experts at KU Leuven outlined in one of the previous sections (see section 4.4.1.1) were crucial in placing the idea of RJ, in particular mediation and FGC, on the political agenda in Belgium. The concept of mediation was first developed in a pilot project on VOM in 1993. This pilot project mentioned mediation as a possible new approach for penal reform and a vehicle to respond to the needs of victims of crime. Researchers at the department of criminology and criminal law have been decisive in setting-up this pilot project and thus initiating the idea of mediation. Based on their conviction that the RJ approach would be beneficial for both victim and offender academic experts at KU Leuven created a certain openness towards the idea of using mediation to solve conflicts on a more interpersonal level.

The general climate of the mid-1990s, as we also discussed in the previous chapter on EM, was a climate that seemed to be open to penal reform and mediation became one of the new initiatives on this broader reform agenda. The idea of mediation became nationally implemented from 1998 onwards. However, it became clear that not all actors involved were as fast in taking up the challenge of moving forward with mediation. Indeed, in some judicial districts there were mixed feelings about, and a lukewarm reception of, mediation and at times even some resistance towards introducing mediation. Some magistrates questioned the confidentiality of the process and were worried that mediation would interfere with the judicial investigation. They argued that mediation would subvert the conflict model whereas the result of the meeting between victim and offender would potentially affect the punishment of the offender. Indeed, the conflict model indicates that criminal justice is a competitive process in which victim and offender are opponents of each other and are not cooperative. So when a magistrate would take part in a specific project such as VOM he or she would still think very much from the idea: does my client have an interest in taking part in this process? A practitioner expresses it as follows:

> *'We are indeed very dependent on people. If you have a liaison magistrate who is in favour of RJ then you know that you will receive a lot of cases from the public prosecutor's office and vice versa. You have the law on mediation from 2005 which states that the public prosecutor's Office must inform people but this formulation is so vague that you do not see much of it in practice. In 2014 you had the Circular Letter of*

the College of public prosecutors which provides a minimum standard of how people should be informed. You have a number of public prosecutor's offices which argue that the minimum standard is not even feasible so they are doing less and you have other public prosecutor's offices which argue that the minimum standard is very minimal so they are doing more. You are permanently dependent on who is the public prosecutor in your judicial district and what his views on policy are? But it is not only the public prosecutor: it is also the people in his office. To what extent are they overburdened with their daily work and to what extent do they see mediation as an additional burden?'

(practitioner, RJ 15)

There was also some skepticism from lawyers who were not eager to let victims and offenders solve the conflict themselves. Like the magistrates we discussed above, some lawyers were worried that mediation would interfere with their daily work arguing that mediation may not be beneficial for their clients. A lawyer puts it like this:

'There was a lot of skepticism in the beginning. The legal profession was much more conservative than it is now. This was a conservative thinking based on the conflict model. It proved to be difficult for a lawyer to imagine that RJ and criminal justice could occur separately although you can have a VOM that has been successful and still have a process afterwards. Of course, a lawyer thinks in terms of what is beneficial for his client. We must defend the interests of our client whether he or she is victim or offender. So when we advise a client to take part in VOM we will still think predominantly from the perspective of: "Is this in the interest of my client?" We shall think from that perspective. So there was often the idea among many lawyers that one would recommend VOM to an offender, for example, if victim and offender came to an agreement and the process therefore could be avoided or it would have a positive influence on the outcome of the process. A lawyer starts from the idea: "My client has a problem and how can I solve this problem for him?" So what is his or her interest, not the interest of society, to take part in VOM. That is the approach of any lawyer. I think this is still the case today.'

(lawyer, RJ 21)

Besides magistrates and lawyers some victims are also hesitant to take part in mediation as it is sometimes perceived as a service to the offender. In addition, also particular victim support organisations, such as the Association for Parents of Children who died in Traffic Accidents, were reluctant towards VOM in the beginning. According to them it would be too confronting

for the victim. Indeed, they were afraid that the victim would be victimised a second time, as a practitioner indicates:

> *'One of the limitations that we often encounter, in my view, is that there is a certain resistance towards mediation from support organisations for victims. That there is often a certain shame in the sense that: "Can we inform people about mediation without shocking them or without victimising them again?" So it is very hard to emphasise that there is a difference between informing people about their right to mediation and to push people towards a certain offer that they definitely have to take part in. These two views are often looked at in the same way.'*
>
> (practitioner, RJ 15)

Skepticism and even resistance were also present in the development of FGC in 2001. In parallel with VOM some youth judges questioned the confidentiality of the FGC process and were worried about the erosion of legal guarantees for the juvenile offender. In addition, some youth judges were also not eager to hand over the case to the parties involved as they argued that only a youth judge can impose measures to the juvenile offender. Indeed, they want to be in control and to decide themselves. In the French-speaking part of Belgium FGC was criticised because it was (and still is) perceived to pay insufficient attention to protecting young offenders. An academic expert expresses it as follows:

> *'The law states that if the letter of intent is submitted after a FGC meeting the youth judge is somewhat obliged to approve it. He may add something but actually the youth judge is obliged to approve it. In that sense you actually ask the youth judge to pass on the case to the mediation service and, I think, that is one step too far for a number of youth judges, that that is one of the reasons why they do not forward enough cases. It also has to do with the fact that if you draft a law it is crucial that you also inform people, the staff, and that often happens too little in Belgium. "The law is ready, bon, we are done" while you have to set-up an advisory committee including experts, but also practitioners and magistrates to assist you with implementing that law in practice. This did not happen in Belgium after the law of FGC in 2006. FGC is still done, of course, but far too little.'*
>
> (academic expert, RJ 1)

At first glance, the development of RJ in Belgium can be considered a success story. Since the early 1990s, RJ practices have been developing somewhat at a fast pace, even outside the criminal justice system. Indeed, in the meantime RJ has also been introduced at school, at the level of the police and for solving disputes between neighbours. In that sense, a criminal

justice professional argues that it has almost become a fad to label every new initiative as being ‘restorative’:

> *‘At a certain moment it was also a trend to apply the label “RJ” to everything that was a little bit innovative. In the long run everything was restorative. And then it was like: "What does that mean?" And I think it has also become a kind of “container concept” at a certain moment and mediation has always been the most specific expression of this. That was clear. You have a victim and a perpetrator, and you can hardly do more than that. But other developments such as restorative detention and other RJ initiatives that was always a bit vague and difficult, I think. And then RJ also takes off in the non-judicial world, in education. It is actually a way of dealing with conflicts.’*
>
> (criminal justice professional, RJ 11)

However, as we discussed above, not everyone is in favour of using RJ practices and some respondents have the impression that the enthusiasm for RJ has declined along the way. Indeed, as the figures indicate (see section 4.4.1 and 4.4.2) mediation and FGC still remain small-scale in comparison to the overall functioning of the criminal justice system. A criminal justice professional puts it like this:

> *‘At some point Leo Van Garsse has argued that the RJ approach is like a small bike with a big bell which has made a lot of noise and which has received a lot of attention, and which has caused a lot, I also think at a political level. Indeed, since the beginning it has been introduced in policy texts. But if you look at it from a distance it is a small bicycle. It remains something small within the whole system. Especially if you compare it with the judiciary or with the Houses of Justice. It is indeed relatively limited and that is a fascinating question.’*
>
> (criminal justice professional, RJ 11)

Keeping this in mind it seems that there is a difference between discourse, that is, academic experts who write about RJ and talk about it, the Ministers of Justice who use the terms, and the research projects and networks that are set up and practice, that is, what the figures show (see also Tonry, 2001). In that sense, we might argue that the success in Belgium (and the reason why we 'deserve' a pioneering role in Europe regarding the development of RJ) is perhaps more of a success at the level of discourse rather than at the level of practice. A professional of the criminal justice system even refers to RJ as being a ‘hype’:

'Nowadays I have to fight to keep it (RJ) in the training programme of lawyers. 18 years ago it was imposed on me and now I have to fight to keep it in. The word "fashion" may not be the right word, but I do not find the right word. […] Sometimes people have to be able to surf on a hype.'

(representative of the criminal justice system, RJ 5)

4.5 Conclusion

In this chapter we have explored in detail the role of policy transfer in the development of RJ in Belgium. RJ has been introduced in Belgium in the mid-1980s as the result of the coexistence of a number of developments, that is, a growing dissatisfaction with the criminal justice system, the fact that a number of studies on violent crime gained insight into the concept of 'victimisation', and the perceived need to develop new approaches, from both a penological and victimological point of view, that could structurally influence the (re)orientation of the criminal justice system. Reference was therefore made to the notions of RJ and the practice of mediation. From the end of the 1980s onwards a number of experiments were initiated which led to the gradual introduction of RJ practices in Belgium, first in the field of juvenile justice and later in the field for criminal justice for adults. Indeed, Oikoten introduced the practice of community service in 1987 and systematically contacted victims about their needs and expectations throughout the process. In addition, in the course of the development of a new Youth Justice system RJ was suggested by academic experts as a possible 'third way' between the old approach of helping and protecting the offender on the one hand, and punishing the offender on the other hand. Furthermore, in the spring of 1993 the Research Group on Penology and Victimology at KU Leuven initiated an action research on the introduction of VOM for adult offenders who committed more serious offences. After an experimental period of three years, the project adopted a more definitive status in the beginning of 1996 when VOM became part of the prevention service of the city of Leuven. In 2000, VOM was implemented on a national scale and in 2005 it received a legal basis.

Next to VOM, in 2000 conferencing was introduced in the youth justice system where it is used as a restorative and reparative measure for serious forms of juvenile delinquency. In the set-up of the pilot project on conferencing it was decided to develop a Belgian conferencing practice reflecting very closely the FGC practice in New Zealand. In 2006, FGC was included in the new youth law as a restorative practice that can be applied in cases of serious juvenile offending. Moreover, in 2013 a research project was set up to explore whether it would be possible to implement PMC in a RJ context in three civil law countries in Europe.

In our study we have been able to identify four categories of actors who have been particularly important in initiating, implementing and further developing RJ and who have, to differing degrees, drawn on foreign examples in the area of RJ. The first category consists of academic experts who have been influential in initiating, implementing and promoting RJ in Belgium. The criminological school in Leuven, in particular, has to some degree been able to look across borders for inspiration to prepare the introduction of RJ practices in Belgium at the beginning of the 1990s. However, they have not been looking across borders for inspiration in a literal sense, that is, not so much in terms of travelling to other countries, but a large part of the inspiration for introducing RJ in the debate on penal policy reform in Belgium seemed to be based upon what one might call 'desk research'. Exchanging best practices in the initial phase was therefore mainly limited to reading and writing behind their desk on the basis of information that had been gathered over time and that had been circulating through academic and policy. Academic experts from the KU Leuven had built up strong networks with a variety of people. They had close contacts with fellow academics, people within the private office of the Minister of Justice, professionals working in the criminal justice system (e.g. lawyers, prosecutors and (youth) judges), as well as with practitioners. The short links between the department of criminology and criminal law and the practitioners or organisations in the field, and eventually the policy makers, have been of vital importance to carefully convince people of the idea of RJ and to create a context to proceed with its development and afterwards its implementation in the law.

Throughout our research it became clear that practitioners also have played a key role in the development of RJ practices in Belgium, in particular through taking part in the pilot projects on mediation and FGC and implementing the aforementioned practices as well as through promoting the further development of RJ in Belgium. In addition, practitioners have also been influential in the process of the drafting of the law on mediation.

Once the decision had been taken to set up a pilot project on VOM practitioners and professionals working in the criminal justice system (e.g. lawyers and public prosecutors) were asked to take part in this pilot project in order to develop mediation in practice. Many of these professionals maintained close contacts with academic experts from the KU Leuven and had academic backgrounds in criminology or law which facilitated access to the international literature. Professionals working in the criminal justice system have also been of vital concern for the further development of RJ for adults in Belgium (VOM and FGC).

As we discussed in chapter three Belgium is a small country which resulted in close ties between the Minister of Justice and the people in his private office, and the KU Leuven in the development of EM in the mid-1990s. Interestingly, these close interactions between the policy level and the academic level have also been important for the development of RJ. The federal government was supportive of the further development of RJ in the criminal justice

system as it was perceived as an inspiring practice providing an added value for both victim and offender. However, there were at the same time some mixed feelings about this small project as it became clear that the mediators in the judicial districts had a rather limited caseload in comparison with the justice assistants at the houses of justice. In that sense, political support has always been crucial in the further development of RJ in Belgium. Politicians have also been influential in the development of RJ practices for young offenders.

The question of why engage in policy transfer cannot be reduced to a single, fixed answer. Indeed, the process of developing RJ practices in Belgium has been influenced by a concurrence of circumstances which boosted its initiation in the early 1990s. Firstly, for a long period of time there was a growing dissatisfaction with the criminal justice system, especially imprisonment. Secondly, a number of studies on violent crimes gained insight into the concept of 'victimisation', victim-oriented interventions and victims' needs. Thirdly, based on the developments outlined above and more specifically from the perceived need to develop new approaches, from both a penological and victimological point of view, that could structurally influence the (re)orientation of the criminal justice system, the research equipe led by Tony Peters searched for others ways to deal with crime in which both victim and offender were actively involved. The KU Leuven has been an important catalyst in the development of RJ practices in Belgium under the influence of the perceived need to involve the victim more and an eagerness for penal reform for both juveniles and adults. The presence of a university was probably one of the reasons why the idea of RJ gained momentum in Leuven. In conducting their research projects, criminologists at LINC worked at the theoretical level but also in cooperation with practitioners in the field. There were also close links with the Minister of Justice and his private office. As Leuven is a small judicial district the ties between academic experts, practitioners and professionals of the criminal justice system were very close. In that sense, the judicial district of Leuven has always had a certain openness towards new developments. These intense contacts between practitioners in the field and criminologists at KU Leuven have been of tremendous importance for the initiation and implementation of RJ in Belgium. As politicians and policy makers (at least some politicians and policy makers) in the mid-1990s were also open to the idea of bringing together victim and offender of a crime this resulted in the development of a legal framework for mediation in 2005 and FGC for juvenile offenders in 2006. In the following years, criminologists at KU Leuven have conducted several studies and research projects in order to provide for a better theoretical understanding of the concept of RJ and to widen the scope via studying the potential implementation of new RJ practices (e.g. PMC).

As we already discussed above, academic experts discovered the idea of RJ via reading the international scientific literature. As they were very eager to set up a Belgian pilot project on

mediation researchers at the department of criminology and criminal law visited mediation practices in both Canada and the US, and Europe and met with fellow academics and practitioners. Criminologists from KU Leuven visited, for example, projects in Kitchner (Canada), Leeds, Edinburgh and Coventry (England and Wales), Finland, Norway and France. However, notwithstanding the frequent contacts between academic experts at the KU Leuven and fellow academics or practitioners abroad, it seems clear that Belgium has made its own choices regarding the operationalisation of mediation (e.g by making mediation available for serious offences; by fostering close partnerships with actors in the field; and by its peculiar implementation process with the establishment of steering groups). This leaves us with the impression that in these interactions between academics from the KU Leuven and practitioners and academics abroad it were mainly ideas, ideologies and attitudes that were being transferred, that is, so-called 'soft transfers'. We found no evidence of 'hard transfer', that is, the transfer of programmes or policies. Indeed, VOM, as developed in Belgium, seems to be different in a number of ways from mediation practices in other countries.

In the course of the 1990s, the idea of RJ also emerged in the juvenile justice system. During the 1990s, youth criminologists at the KU Leuven observed that neither the repressive approach nor the rehabilitative approach really worked well as a response to juvenile delinquency. In that sense, a number of youth criminologists at the KU Leuven started to explore how to implement RJ practices as part of a reform of the juvenile justice system. Indeed, youth criminologists at the KU Leuven explored new and innovative practices and became familiar with the practice of FGC which could be used to cope with more serious juvenile offences. From the above it has become clear that youth criminologists at KU Leuven were inspired by the FGC scheme in New Zealand. The Belgian FGC scheme, however, differs in a number of ways from the New Zealand scheme. In the common law system of New Zealand the police has the legal opportunity to prosecute; a mandate which is only attributed to the public prosecutor in Belgium. Another difference is that in Belgium the young offender is offered to take part in the FGC meeting voluntarily whereas in New Zealand it is imposed on him or her. In that sense, the joint letter of intent, which is the result of a successful FGC meeting, needs to be submitted to a Belgian youth judge for confirmation. Moreover, there were some difficulties in translating FGC to Dutch. The above leaves us again with the impression that despite the close interactions between academics from KU Leuven and actors in New Zealand it were mainly ideas, ideologies and attitudes that were being transferred, as we found no evidence of the transfer of programmes or policies.

As we discussed above (see section 4.4.2) in the case of RJ in Belgium the search for lessons abroad did only start after academics from the KU Leuven discovered the idea of mediation in the international scientific literature. In the initial phase academics experts did not visit RJ

projects abroad: access to knowledge about mediation was mainly limited to reading and information that had been gathered over time and that had been circulating through academic channels. It was only after academic experts at KU Leuven discovered the idea of RJ in the international scientific literature that they started to search for lessons abroad. In the early 1990s there was not that much experience with mediation in Europe but there were close contacts with both academics and practitioners in Canada. Besides Canada, academic experts also had close contacts with fellow academics in a number of European countries. Researchers developed strong ties with a number of pioneers in the field of RJ, such as Nils Christie, and visited mediation practices in other European countries. Indeed, as an academic expert indicates there have been visits to mediation practices in Norway, Finland and France. In the early 1990s there were also mediation practices being developed in England and Wales which were visited by academics experts from KU Leuven.

As we discussed above (see section 4.3.2) throughout the 1990s also youth criminologists at KU Leuven became interested in the concept of RJ. As there was hardly any experience with FGC in Europe youth criminologists at the KU Leuven travelled to New Zealand and Australia in the spring of 1999 to be present at FGC meetings and learn more about the practice (see also section 4.3.2). The FGC practice in Australia was perceived more as an extensive form of mediation so youth criminologists became more inspired by the FGC practices in New Zealand when setting up the pilot project on FGC in Belgium. In the following years, academic experts at KU Leuven also visited a number of European countries where projects of FGC had been initiated, such as, Northern Ireland, the Netherlands and England and Wales.

Next to such field visits Belgian academic experts also got in touch with academics, policy makers and practitioners from other countries at conferences and seminars abroad such as the conferences of the international network for research on RJ or the EFRJ. As the development of mediation in Belgium differed somehow from developments in other countries the Belgian practice attracted foreign interest which resulted in multiple visits to Belgium. Academic experts at KU Leuven were regularly contacted by people in other countries who, for instance, also played with the idea of introducing mediation in cases of serious offences or were interested in the close ties between practitioners, policy makers and the university that had developed to implement mediation in Belgium.

Like in the previous chapter on EM, we found no evidence of direct copying hybridisation and synthesis regarding the development of RJ in Belgium. Academic experts and youth judges did not directly adopt a programme in use elsewhere in setting up mediation or FGC. Nor did they combine elements of different policies or programmes in initiating a new policy on mediation and FGC. However, there does seem to have been a significant degree of inspiration

in the development of these RJ practices in Belgium. From the interplay between interest in victimological research and a renewed interest in questions of criminal justice reform (Peters, 1996), criminologists at KU Leuven discovered the idea of RJ on the basis of international scientific literature which referred to foreign experiences and examples. Academic experts were inspired by these international developments and have thus been looking across borders for inspiration based upon what we referred to as 'desk research'. Furthermore, we found no clear evidence in our study that there was a degree of emulation involved in what happened. Criminologists at KU Leuven did not draw on one particular example of mediation abroad in order to inform their thinking on this.

Even though we did not found any clear evidence in our study that there was a degree of emulation involved in the development of VOM this seems to be different for FGC where New Zealand indeed provided for the best standard for designing a FGC policy in Belgium. Youth criminologists at KU Leuven visited FGC schemes in New Zealand and Australia before setting up the pilot project on FGC in Belgium. They were charmed by the FGC schemes in New Zealand which offered inspiration to initiate a Belgian FGC scheme.

Somewhat similar to the development of EM we discussed in the previous chapter (see section 3.4.5) we also found strong evidence for the role of elite networking and the development of transnational policy networks involving academic experts. These networks have been (and still are) crucial in spreading policy ideas and principles about RJ throughout Europe and the world. In addition, international conferences played (and still play) a role in promoting the general ideas and principles of RJ. The conferences of the EFRJ, for example, involved a range of academic experts, practitioners, criminal justice professionals and policy entrepreneurs and did have (and still have) a large influence in terms of sharing ideas across national boundaries.

In the last section of this chapter we payed attention to the limits of policy transfer. It became clear that mediation and FGC have not been applied on a very large scale in Belgium which can in part be explained by a number of practical obstacles. From the above it became clear that RJ practices are very time- and labour-consuming and that there are practical difficulties with involving the 'community of care' or the wider community in implementing FGC and PMC. The use of VOM and FGC is therefore still limited and, as a result, these innovations fail to take up an important place in the criminal justice system in Belgium. A number of respondents indicate that the limited use of RJ in Belgium can also be explained by a lack of knowledge about its existence and what it can offer. Indeed, there is a lack of awareness in society at large regarding VOM and citizens usually are not well informed about its existence. Next to such practical obstacles there have also been legal obstacles, in particular with respect to FGC in Belgium. As Belgium is a civil law system there have been some obstacles that have limited

or impeded the transfer of policies from Anglo-Saxon countries with a common law system. Indeed, there have been some difficulties with the implementation of FGC for juveniles in Belgium as it was inspired on the FGC model in New Zealand. The difficulties were in particular related to differences in how the public prosecutor and the police operate in New Zealand.

Not only practical and legal structures have had an impact on the development of RJ in Belgium but also cultural differences may have played an important role. According to some of the respondents, Belgium is a somewhat closed and individualised society where the willingness and openness to talk about personal issues and to share feelings with other members of the community may be rather low. In that sense a number of victims and offenders are not very open to the idea of involving other people in resolving the conflict. It seemed clear that you cannot simply transfer programmes from abroad without taking into account the local culture. Involving the 'community of care' in the implementation of FGC proves to be rather difficult in Belgium, but it is even more challenging to involve the wider community as part of the implementation of a PMC. Such cultural differences also exist at an operational level in the sense that implementing FGC and PMC requires a very different way of interacting than VOM as mediators in FGC and PMC have to work with a group of people instead of leading a one-to-one conversation between victim and offender. As VOM is more often used than FGC and PMC it may be that some mediators are not that confident to involve other people in the meetings and to work with a group of people. Implementing FGC and PMC requires a cultural switch and an adaptation of the conversation techniques that are usually being used during VOM. Interestingly, such cultural differences do not only exist at the level of society in general but also across the Communities in Belgium. As RJ practices are organised at the level of the Communities there is, as in the case of EM (see chapter three), the possibility that cultural differences between Flanders and the Walloon region will influence how RJ develops in both parts of the country. There was also less academic support in the Southern part of Belgium for the idea of RJ as there was in Flanders and, in addition, practitioners in the French-speaking part of Belgium were more focused on setting-up a real communication process between victim and offender which could take place as a supplement to the criminal justice system. Practitioners in the French-speaking part of Belgium also had a different view on the introduction of FGC. Indeed, in the debates that were taking place in the French-speaking part of Belgium about the juvenile justice system practitioners were afraid that the implementation of FGC would result in a recriminalisation or re-penalisation of the juvenile justice system. Practitioners in the French-speaking part of Belgium were more focused on protecting young offenders instead of calling him or her to account for the committed crime.

At first glance, the development of RJ in Belgium can be considered a success story. Since the early 1990s, RJ practices have been developing somewhat at a fast pace, even outside the criminal justice system. However, not everyone is in favour of using RJ practices

and some respondents have the impression that the enthusiasm for RJ has declined along the way. Indeed, as the figures indicate (see section 4.4.1 and 4.4.2) mediation and FGC still remain small-scale in comparison to the overall functioning of the criminal justice system. Keeping this in mind, it seems that there is a difference between discourse, that is, academic experts who write about RJ and talk about it, the Ministers of Justice who use the terms, and the research projects and networks that are set up and practice, that is, what the figures show (see also Tonry, 2001). In that sense, we might argue that the success in Belgium (and the reason why we 'deserve' a pioneering role in Europe regarding the development of RJ) is perhaps more of a success at the level of discourse rather than at the level of practice.

Chapter five

Discussion and general conclusion

5.1 Introduction

In this dissertation we have explored the contribution of policy transfer to penal policy making in the areas of EM and RJ in Belgium. The general conclusions of our research derive from a literature review, a documentary analysis and interviews with key actors who either were closely involved in different aspects of policy making or have observed various policy processes within these penal domains. Dolowitz and Marsh's model of policy transfer has been used as a conceptual framework in order to explore the processes of policy transfer in the development of EM and RJ in Belgium.

This final chapter of the dissertation is a concluding chapter in which the research questions are answered and some further discussion is provided.

5.2 Answering the research questions

The main research question of our study is: "*What has been the contribution of policy transfer to penal policy making in the two selected areas of study, that is, electronic monitoring and restorative justice?*" In order to examine the contribution of policy transfer to policy making the focus of the dissertation was on two case studies within criminal justice, that is, EM and RJ. For each of the two cases the general research question fell apart in six sub-questions which have been addressed throughout the research. They go as follows:

RQ1.1. Who is involved in the transfer of policies, practices and ideas?

RQ1.2. Why are policies, practices or ideas being transferred?

RQ1.3. What is being transferred?

RQ1.4. From where are policies, practices and ideas being transferred?

RQ1.5. Are there different degrees of policy transfer?

RQ1.6. What are the constraints on the transfer of policies, practices and ideas?

In the following sections we will summarise the answers to these research questions and point at similarities and differences in the processes of policy transfer for both case studies.

5.2.1 Electronic monitoring

This section will summarise the answers to the research questions in the area of EM.

RQ1.1. Who is involved in the transfer of policies, practices and ideas?

As we discussed in chapter one, the 'policy transfer' – literature has identified several categories of actors that can be involved in transferring policies, including: politicians (elected officials), political parties, bureaucrats/civil servants, pressure groups, policy entrepreneurs/experts, academic experts, international organisations and supranational institutions (see section 1.3.2.1). In our study we have been able to identify five categories of actors who have been particularly important in initiating, implementing and further developing EM in Belgium.

The *first category* consists of (former) policy entrepreneurs who have been influential in initiating and creating a certain openness to the idea of EM. Indeed, a number of policy advisors to former Minister of Justice De Clerck (1995-1998) have been decisive in drafting the 1996 White Paper on 'Penal policy and prison policy' which offered an in-depth analysis of several of the problems the penal system was facing at that moment, in particular prison overcrowding. This White Paper has been very important for future developments in penal policy, including EM, as it referred to EM as one of the possible measures to reduce the number of custodial sentences. Based on their conviction that alternatives to prison were necessary, two policy entrepreneurs in particular stimulated the idea of using EM to serve sentences within the community. As these policy entrepreneurs had built up strong networks with a variety of people, such as, people from the administration of the Justice Department, prison directors, practitioners as well as fellow policy entrepreneurs it was mainly through meetings and consultation with people in their own networks that knowledge was obtained and new ideas and projects were initiated. In addition, these policy entrepreneurs also had close contacts with academic experts from various universities in Belgium, in particular with those based in criminology departments at KU Leuven and VU Brussels, which have proven to be influential in the further development of the idea of EM in Belgium. Indeed, academic experts provided these policy entrepreneurs with useful international scientific literature which referred to foreign experiences and examples of electronic surveillance. As they were inspired by these international developments policy entrepreneurs consulted academics which resulted in stimulating the (cautious) introduction of EM at the political level. Moreover, policy entrepreneurs were not only indispensable for introducing the idea of EM in the Belgian penal context; they also were important during the phase of policy development, helping ideas to rise to the political agenda.

The *second category* consists of academic experts who have played a key role in the development of EM in Belgium, in particular through feeding the debate on (the limits of) EM as well as through maintaining close contact with those in power. The *zeitgeist* of the mid-1990s provided for a platform for academics to disseminate their ideas. Many academic experts had elaborate international networks and contacts with fellow academics abroad which resulted in a constant stream of information going back and forth. Academics from both KU Leuven and VU Brussels inspired politicians and policy entrepreneurs to search for and develop new ideas. A number of penal policy developments during that period were inspired by ready-made 'packages' that had been prepared at the universities, that is, through studies that academics had conducted or proposals that they had already formulated. Academic experts were often consulted by policy entrepreneurs to provide feedback about certain new developments or policy proposals. Academics were, however, not only prominent actors because of the inspiration they offered to policy entrepreneurs; they were at the same time critical and cautious about EM. Indeed, during the mid-1990s, academic experts from KU Leuven and VU Brussels, in particular, wrote about the use of EM but also about its potential side-effects and its limits. They warned, for example, for the effects of *net-widening*, that is, that the use of EM would result in more people being supervised and controlled for longer periods of time than would have been the case without EM. They also drew attention to some of the risks involved in using EM (e.g. EM should not become a virtual prison and the privacy of the people under supervision had to be respected) and have in that sense contributed to the somewhat prudent and hesitant development of EM in Belgium.

The *third category* consists of politicians who have been key figures in the promotion of EM as a positive and future-oriented alternative to prison. Former Minister of Justice Stefaan De Clerck was one of the key figures who was convinced that EM could become a viable alternative for imprisonment. Indeed, notwithstanding his previous cautious stance towards EM the Minister firmly believed in using technology as a means to improve the functioning of the justice system in general and, indeed, as a means to supervise detainees in particular. He therefore defended the use of EM as an alternative to imprisonment and he was very motivating in expressing his views to members in his team as well as fellow politicians. The former Minister of Justice created a certain openness towards the idea of EM which he perceived as being a small but significant element in a much larger story of penal reform. EM was seen as a convenient solution which he believed to be efficient and effective, and not too expensive. But the use of technology was also attractive because it has obvious links to the idea of innovation; EM contributed to expressing a message that the time had come to move the penal system into the 21st century. De Clerck was therefore forward-looking in appreciating the possibilities of technology as a tool in a number of other fields within the criminal justice system. The political level has also been playing a (small) role in building up relationships with

people from the private sector. In close cooperation with a number of criminal justice professionals networks have been built up with the industrial world. Indeed, there have been talks with representatives from Keyware Technologies NV, which licensed the voice verification technology from Lernout & Hauspie Speech Products, about the opportunity of developing electronic supervision and linking it with the existence of an innovative technology in the vicinity to the home of the Minister of Justice. In terms of the next phase of policy development, politicians have further expanded the use of EM as a means to control the problem of overcrowding in prison. Indeed, since the introduction of EM all Ministers of Justice have presented EM as a panacea for the crisis in the Belgian prison system.

The *fourth category* consists of (former) criminal justice professionals who have been vital in implementing EM and actively promoting it. Indeed, once the decision had been taken to set up an experimental scheme with EM people from the prison administration were recruited to in order to further develop the scheme. The way in which EM developed further in Belgium and, in particular, the peculiar way in which the scheme came to be designed (back-end, from within the prison administration), was largely influenced by some key civil servants in the Justice Department. There was a criminal justice professional recruited to implement EM and to promote it actively. This person can therefore also be regarded as a key transfer agent. People within the administration were reasonably fast in taking up the challenge of moving forward with EM. The then Director-General of the Prison Administration played an important role in this. Indeed, as an engineer he was particularly interested in the use of technology. The implementation in practice, however, was the almost exclusive concern of the management team of the prison of Saint-Gilles (that is, the prison where the experimental scheme was introduced) together with the Director-General of the Prison Administration and a number of people trained in logistics who had to manage the purchase of the devices. In that sense, the management team of Saint-Gilles has played a vital and defining role in the substantive elaboration of the EM scheme. These criminal justice professionals were inspired by the available international scientific literature on electronic surveillance. Many of them entertained close contacts with academic experts and had academic backgrounds in criminology which facilitated access to the international literature. Some also wrote scientific and policy-relevant articles themselves about the early experiences with the EM scheme. It was only after Belgium had initiated its own pilot scheme that criminal justice professionals at the centre of this project started to search for best practices abroad. This resulted in frequent contacts between a number of people who exchanged experiences and who met on a regular basis to see what EM could mean in the context of the execution of sentences. As it was expected that EM would further grow and expand throughout Europe an initiative was taken to formalise the rather informal contacts that existed at that time between criminal justice professionals from the pioneering countries (England and Wales, Sweden and the Netherlands), including Belgium.

Indeed, Belgian criminal justice professionals have played an active role in the organisation of the first CEP conferences on EM at which the development of EM in Europe was (and still is) being discussed.

The *fifth category* consists of commercial companies who have played some role in helping to transfer the more concrete aspects of policy into the Belgian context mostly through their involvement in commercial contracts in EM schemes. In the initial phase, companies played a major role in setting up the experiment by providing the necessary equipment. From the very beginning it was clear that an EM scheme could only be initiated in a close partnership between the public and the private sector. The involvement of commercial companies was (and still is) indispensable in setting up an EM scheme because governments usually cannot design and produce the necessary technological devices. But the private sector was (and is) in turn depending on the public sector to create a demand for its goods and services. In our study we did not find evidence of commercial companies influencing, or even attempting to influence, penal policy in Belgium. However, there is some evidence of the involvement of commercial companies in stimulating the ongoing development of EM over the years, though respondents differed on how significant this has been in bringing about policy change. There is some evidence that commercial companies lobby to present new and innovative equipment to policy makers and criminal justice professionals. Commercial companies often detect new markets for which EM could be a solution and request a meeting to talk about the existing technical possibilities. However, other respondents played down the importance of commercial lobbying.

RQ1.2.Why are policies, practices or ideas being transferred?

The question of 'why engage in policy transfer in the area of EM?' cannot be reduced to a single, fixed answer. Indeed, the process of developing an EM scheme in Belgium has been influenced by a set of factors. The past quarter of a century policy makers in Belgium have been searching various ways to deal with prison overcrowding: introduction of community sanctions, construction of new prisons, non-execution or reduction of prison sentences, transfer of foreign prisoners, and, indeed, the introduction of EM. EM was seen as an alternative to prison which could potentially reduce prison overcrowding and which was also perceived to be less expensive than imprisonment. Moreover, it was assumed that introducing and expanding EM could happen quicker and more flexible than the construction of new prison facilities. One of the reasons why the idea of EM in Belgium gained momentum had probably to do with the atmosphere of reform that we discussed earlier. Indeed, the mid-1990s proved to be a time when a lot of new ideas and projects were being introduced in order to address the existing problems in the criminal justice system, including prisoners' rights, houses of

justice and victim policy. This eagerness for innovation was also present in a number of criminal justice professionals who took up the responsibility to implement EM. Another supporting factor is the attractiveness of EM as a future-oriented technological tool. Indeed, EM as a technological innovation with potentially wide-ranging applications fascinated (and still fascinates) policy makers and politicians.

RQ1.3. What is being transferred?

As we discussed above, the emergence and growth of EM in Belgium was the result of a dynamic set of processes in which a number of policy entrepreneurs, academic experts, politicians and criminal justice professionals were involved. At the time when Belgian civil servants were thinking of initiating the pilot project on EM only a small number of European countries had an EM scheme. In the mid-1990s EM schemes were being developed in the Netherlands, England and Wales, and Sweden resulting in limited experience with its operationalisation. As we discussed in section 3.4.1.4 it was only after the decision had been taken to set up an experiment with EM that criminal justice professionals started to look across borders for inspiration. This resulted in frequent contacts between Belgian civil servants and represenatives of England and Wales, Sweden and the Netherlands who exchanged experiences and who met regularly to see what EM could mean in the context of the execution of sentences. These rather informal meetings came to be formalised somehow under the umbrella of the CEP, with the organisation of the first CEP conference on EM in Egmond aan Zee (the Netherlands) in 1998. Despite the frequent contacts between the people of that small group it seemed clear that each country made its own choices regarding the operationalisation of EM. This leaves us with the impression that in these interactions between representatives of these countries it were mainly ideas, ideologies and attitudes that were being exchanged, that is, so-called ‘soft transfers’. We found no evidence of ‘hard transfer’, that is, the transfer of programmes or policies. Indeed, it were mainly shared ideas about the need for more so-called community-based alternatives and alternatives to prisons that could potentially reduce prison overcrowding that were being transferred. In practice, however, the operation of the Belgian EM scheme seemed to be significantly different in a number of ways from schemes in other European countries. One of these differences was that the Belgian EM scheme was initiated from within the prison system and was not operationalised by the probation service (as in Sweden) or outsourced to the private sector (as in England and Wales). The central role of support provided by social assistants also typified the Belgian EM scheme in the initial period. EM became operationalised as an alternative to prison with special emphasis on individual support from social assistants to facilitate reintegration in society. EM came therefore to be introduced as a back-door measure; as a transition measure between prison and

freedom. The Belgian EM scheme was also distinctive in terms of the selection of inmates. Although the selection of prisoners eligible for EM was very strict in the early days of the experiment, over the next months and years the eligibility criteria were gradually extended. As a result also people convicted of more serious crimes became eligible for EM. This inclusion of more serious cases in the scheme differs from the approach taken in some other countries where often only short-term prisoners or offenders who committed less serious crimes are eligible for EM.

Interestingly, from a policy transfer perspective, this somewhat different approach towards EM would soon attract the attention of people abroad. The Belgian EM scheme was perceived as an outsider in Europe and people in the field of EM even started talking about the 'Belgian model'. Belgian criminal justice professionals also tended to use the phrase 'Belgian model' in meetings to draw attention to the system and emphasise its distinctiveness. Belgian civil servants were also often contacted by civil servants from other countries who showed interest or played with the idea to operationalise the EM scheme from within the prison system. However, as the 'Belgian model' was hyper-customised and hyper-individualised it was at the same time very labour intensive. As the number of people under supervision steadily rose it was no longer feasible from an operational point of view to offer the intensive individual follow-up and support that was typical for the 'Belgian model'. Over time the integrated and people-oriented vision of the 'Belgian model' shifted towards a more 'managerialistic' vision of EM as a technical means to constrain the constant influx of people in prison.

RQ1.4. From where are policies, practices and ideas being transferred?

In the initial phase of the operation of the EM scheme policy entrepreneurs and criminal justice professionals rarely visited EM schemes abroad. Policy entrepreneurs were aware of the international scientific and policy literature regarding EM and they had intense contacts with academics, in particular criminologists from VU Brussels and KU Leuven, who knew about the international developments regarding electronic surveillance. Access to knowledge about EM was therefore mainly limited to consulting reading materials on EM that had been gathered over time and that had been circulating through academic and policy channels. Indeed, a lot of insights were gained from 'desk research' in the initial phase. This is a somewhat remarkable finding, given the international context of policy making. Indeed, in those days it was also common practice for Belgian policy entrepreneurs to attend conferences abroad or to visit institutions or projects around the world in other areas of criminal justice policy, such as victim support, internment, sentencing, or the prison system in general. But no such physical visits seemed to have taken place for EM.

It was only after Belgium had initiated its own pilot scheme that criminal justice professionals at the centre of this project started to search for best practices abroad (if we can even call it a 'search' as we found no evidence of deliberate expeditions to learn from other jurisdictions). When Belgian criminal justice professionals started setting up the EM pilot project in the prison of Saint-Gilles there was not that much experience with EM in Europe. England and Wales, the Netherlands and Sweden started with EM but most of these schemes were still in their infancy and rather modest in terms of the number of supervisees. This implied that there was not so much to learn from these countries when questions concerning the monitoring technology needed to be addressed. Criminal justice professionals involved in the Belgian EM scheme were therefore to some extent obliged to start testing themselves. As we already discussed above, at the time when the scheme was being set up there were intense contacts between Belgian criminal justice professionals and commercial companies. In this initial period there was a small link with the US: representatives of telecom company Belgacom flew to the US to visit an EM scheme in order to see how the equipment was being used in practice. In a later phase in the development of the EM scheme criminal justice professionals also started to visit other EM schemes abroad. At the end of the 1990s, for instance, a criminal justice professional visited Canadian EM schemes in Alberta, British Colombia and Nova Scotia. As the 'Belgian model' devoted a great deal of attention to support and follow-up of the supervisee it had some similarities with the Canadian EM scheme. In that sense, one could assume that there has been some Canadian influence on the way the 'Belgian model' came to be shaped in that period.

At the end of the 1990s there were regular contacts between representatives from Sweden, the Netherlands, England and Wales, and Belgium. They found each other somehow in their search for developing and managing an EM scheme and out of these rather informal encounters it became clear that most countries experimenting with EM were facing similar problems and difficulties in reaching that goal. Against that background Belgian criminal justice professionals visited EM schemes in the Netherlands, England and Wales, and later on also in France. In the latter case, for example, Belgian criminal justice professionals visited an EM scheme in Rijsel when the idea of introducing GPS to reduce the number of people in pretrial detention in Belgian prisons was on the table. Interestingly, as Belgium consists of three language communities, (that is, the Flemish community, the French community and the German-speaking community), the direction of the encounters differed. It became clear that the northern part of the country was and still is more Anglo-Saxon oriented and therefore looks at penal developments in countries such as Canada, the Netherlands, Sweden, and England and Wales. The southern part of the country feels closer to South-European countries such as France or communities in which French is the main language such as Québec (Canada).

Besides field visits Belgian criminal justice professionals also got (and still get) in touch with representatives from other countries at conferences and seminars abroad, in particular at the CEP conferences. The CEP conferences were rather small-scale in the beginning but over the years there were more and more people coming from various corners of the world, including Eastern Europe, Australia, New Zealand, Argentina, Japan, and even the US. As the CEP conferences were the only forum where people could exchange views and discover comparative developments these conferences had (and still have) a lot of influence. Best practices were (and are) exchanged both during official encounters such as presentations or workshops and on informal occasions, that is, during dinner, receptions or, indeed, an informal chat at one of the exhibition boots.

As the Belgian prison-based EM scheme was somehow considered to be an outsider in the field it attracted foreign interest which resulted in multiple visits to Belgium. Belgian criminal justice professionals were regularly contacted by people in other countries who, for instance, also played with the idea of introducing EM from within the prison system. Moreover, Belgian criminal justice professionals were also regularly invited to present and explain the operation of the 'Belgian model' at seminars or conferences abroad. In addition, Belgian criminal justice professionals were also very active in contributing to these exchanges of views by publishing policy-relevant scientific articles on EM and presenting at CEP conferences and elsewhere. This research finding easily breaks through the image of policy transfer being 'one directional' or 'one dimensional' as criminal justice policies seem to move in various directions. It seems clear that criminal justice policies do not solely take a one way road, from the hegemonic centre to the periphery, but also vice versa.

RQ1.5.Are there different degrees of policy transfer?

In our study we found no evidence of direct copying, hybridisation and synthesis regarding the development of EM in Belgium. Belgian policy entrepreneurs or criminal justice professionals did not adopt an EM programme in use elsewhere in setting up the Belgian EM scheme. Nor did they combine elements of different policies or programmes in initiating a new EM policy. However, there has been a significant degree of inspiration in the development of EM in Belgium. The initiation of the Belgian EM scheme was inspired by information that had been gathered through contacts (such as with academics in criminology departments in Brussels and Leuven) as well as by reading what was available in the literature.

Whereas policy makers in the initial period were mainly inspired by what they read in international (scientific) literature or what they heard from those with expertise in their networks the search for best practices abroad by visiting other EM schemes only started after Belgium had already initiated its own pilot scheme. The interactions at the end of the 1990s between

civil servants in England and Wales, Sweden, the Netherlands and Belgium were, however, merely inspirational in nature as the way in which EM further developed in Belgium and, in particular, the way in which the scheme came to be designed, has been peculiar and different from EM schemes in other countries. In all instances Belgian criminal justice professionals did not simply emulate or take inspiration, but followed a process of adaptation to ensure a fit with the Belgian context.

In the initial period of the development of EM in Europe we found strong evidence for the role of elite networking and the development of transnational policy networks composed of criminal justice professionals from a small number of European countries. This European network has been crucial in spreading policy ideas and principles about EM throughout Europe. In addition, international conferences played a role in promoting the general ideas and principles of EM. The CEP conferences, for instance, gather together a range of commercial companies, policy entrepreneurs and criminal justice professionals had a large influence in terms of sharing ideas across national boundaries.

RQ1.6. What are the constraints on the transfer of policies, practices and ideas?

Throughout our study it became clear that there are differences in the ways in which EM developed in different jurisdictions throughout Europe. Such variations are important because they highlight the constraints and limitations of policy transfer, and emphasise the enduring importance of domestic influences.

First, the lack of experience in Europe with EM in the mid-1990s has had some influence on the distinctive way in which EM has developed in Belgium. As EM was a new penal measure and there was only limited experience with its operationalisation in Europe English and Dutch civil servants visited EM schemes in the US for inspiration. However, as there was a certain antipathy in Europe towards developments with EM in the US (the focus on control and management in the US did not connect with the more individualised welfare approach in Europe), the US experiences rather came to serve as 'negative lessons'. In a certain way the 'negative lessons' that were drawn from US experience helped to shape a distinctive Belgian EM scheme. As there was only little experience with the operationalisation of EM in Europe and the American EM schemes were assumed to be bad examples policy transfer at that time was rather limited and Belgian civil servants were somehow obliged to start setting up their own EM scheme. Interestingly, the operationalisation of the EM scheme in Belgium differed in a number of ways from the schemes that were being developed in other European countries illustrating the importance of domestic influences. Moreover, the development of EM in Belgium has to a large extent been determined by the ways in which EM was used to fight prison overcrowding. Indeed, this enduring predicament has at least in

part influenced the way in which policy entrepreneurs and criminal justice professionals have been taking future decisions on the further development of EM.

Second, Belgium's complex institutional structures also played a role in the development of EM. As EM in Belgium has been initiated from within the prison administration it was considered to be a federal matter under the responsibility of the Minister of Justice for several years. However, it has long been unclear where EM could be placed in the organizational chart of the prison administration. The operationalisation of the EM scheme throughout the years happened by means of consecutive ministerial circulars as there was no legal basis for EM. The absence of a legal basis for EM resulted in EM being a matter subjected to continuous changes. As a result of the sixth state reform in 2014, the Flemish and French communities have become responsible for the operationalisation of EM as it is no longer a federal matter. The national EM centre has been divided into a Flemish and a Walloon EM centre, and the Flemish and Walloon Minister for Welfare, Public Health and Family have become responsible for the operationalisation of EM. This 'defederalisation' has further complexified EM in Belgium as the number of people at the negotiation table has further increased which increased the risk that there will be differences in the way EM will be operationalised in the future. In that sense there is the additional hazard of the cultural differences between Flanders and the Walloon region.

Third, there has been the important role of political agency shaping the trajectory of EM and the unpredictability of the policy process. At key 'policy windows' (Kingdon, 1995) in the trajectory of EM key agents took crucial decisions that could have been very different. The particular efforts of two key policy entrepreneurs outlined above were crucial in placing the idea of EM on the political agenda in Belgium. As policy entrepreneurs these people had some progressive ideas about what punishment and the execution of punishment should look like and stimulated the Minister of Justice to search for new objectives. Based on their conviction that alternatives to prison were needed, these policy entrepreneurs created a certain openness towards the idea of using electronic surveillance methods to serve sentences within the community. Moreover, former Minister of Justice De Clerck was also referring to EM as a positive and future-oriented alternative to the prison and, being a charismatic figure, he was very enthusing in expressing his beliefs in using technology as a means to improve the functioning of the justice system. People within the administration were also reasonably fast in taking up the challenge of moving forward with EM. The then Director-General of the Prison Administration played an important role in this as his appointment proved to be refreshing after a period of stagnation in the prison administration. However, the way in which EM was initiated in Belgium was also informed by a certain prudence from academic experts and policy entrepreneurs concerning the potential negative side effects of this new measure. In the mid-1990s, academic experts wrote about the use of EM but also about its potential side-effects

and its limits. In addition, as the trade unions are important and powerful actors in penal policy making in Belgium they may also have been influential in the development of EM. Because of their strong resistance towards every form of privatisation they may have contributed to restrict the involvement of the private sector in the privatisation of punishment in general, and in EM in particular. Such constraints to policy transfer were successful in so far as there are to date no private prisons in Belgium and there is no privatised EM scheme. Such opposing forces have therefore restricted the role of policy transfer and helped to shape penal policy in distinctive ways. At each of these moments, it is quite plausible that if some of these key players had chosen to act differently the development of EM in Belgium could have been very different.

5.2.2 Restorative justice

This section will summarise the answers to the research questions in the area of RJ.

RQ1.1. Who is involved in the transfer of policies, practices and ideas?

As we discussed in chapter one, the 'policy transfer' – literature has identified several categories of actors that can be involved in transferring policies, including: politicians (elected officials), political parties, bureaucrats/civil servants, pressure groups, policy entrepreneurs/experts, academic experts, international organisations and supranational institutions (see section 1.3.2.1). In our study we have been able to identify four categories of actors who have been particularly important in initiating, implementing and further developing RJ in Belgium.

The *first category* consists of academic experts who have been influential in initiating, implementing and promoting RJ in Belgium. Indeed, the idea of RJ was initiated in Belgium by criminologists at KU Leuven in the early 1990s. At that time, the need for reform in the penal system for both adults and minors encouraged some researchers at the department of criminology and criminal law to look for alternative ways of thinking about punishment and to write articles about the use of RJ as a solution for the problems within the penal system. They were inspired by developments abroad which made reference to the idea of bringing together the victim and offender of a crime in order to repair the harm that had been done. As academics they were aware of the international scientific literature regarding RJ so exchanging best practices in the initial phase was mainly limited to reading and writing behind their desk on the basis of information that was gathered over time and that circulated through academic and policy channels. As these criminologists had built strong networks with a variety of people, such as, practitioners, people within the private office of the Minister of Justice, professionals working in the criminal justice system (e.g. lawyers, prosecutors and (youth) judges), as well

as with fellow academics, it was mainly through meetings and consultation with people in their own networks that knowledge was obtained and new ideas and projects were initiated. Academic experts were not only indispensable for introducing the idea and the practice of RJ in the Belgian penal context but they also played a crucial role in its further development and promotion. Indeed, academic experts in Leuven have constantly fed the debate on the use of restorative measures and conducted studies to further expand its use. As a result, criminologists at KU Leuven, together with practitioners in the field and some key professionals working in the criminal justice department, set up a pilot project on VOM in 1993 which was implemented nation-wide from 1998 onwards. Interestingly, in the initial phase of the development of RJ there was not such a strong academic support in the southern part of Belgium as there was in Flanders. In Wallonia, reflection about RJ emerged from within youth justice when practitioners started to think about how to deal with young people in a different way. This reflection started bottom-up and was not that much supported by academics at the universities in the French-speaking part of Belgium. Academic experts in Wallonia have been interested in the concept of RJ but at the same time they have been somewhat critical and cautious. In that sense, academic experts in Wallonia were afraid that mediation would legitimise the existing system and not provide sufficient legal guarantees for the people involved in the process.

The *second category* consists of practitioners who have played a key role in the development of RJ practices in Belgium, in particular through taking part in the pilot projects on mediation and FGC and implementing the aforementioned practices as well as through promoting the further development of RJ in Belgium. Already since the late 1980s criminologists from KU Leuven developed strong ties with local organisations providing assistance to victims and offenders which resulted in a permanent close and constructive relationship between the university and people in the field. This academic interest in and support of the work of practitioners was of vital concern for the further development of these practices. Firstly, academic experts provided for a theoretical background. Secondly, these practices were also taken more seriously by the political level when academic experts expressed their support. This proved to be a case of mutual support and reinforcement: practitioners were (and still are) also important for academics as they need them to put their theoretical work into practice. Practitioners have also been of tremendous value for the (further) implementation of RJ practices in Belgium as they have worked closely together with academic experts to develop the practice of mediation and expand it across all judicial districts Belgium. Moreover, practitioners have also been influential in the process of the drafting of the law on mediation.

The *third category* consists of (former) key professionals of the criminal justice system (e.g. lawyers, public prosecutors and (youth) judges). Once the decision had been taken to set

up a pilot project on VOM criminologists at KU Leuven, practitioners and professionals working in the criminal justice system worked closely together in order to develop mediation in practice. In setting-up and taking part in this pilot project on mediation the professionals working in the criminal justice system in the judicial district of Leuven were provided with the available international scientific literature on RJ. Many of these professionals maintained close contacts with academic experts from KU Leuven and had academic backgrounds in criminology or law which facilitated access to the international literature. Professionals working in the criminal justice system have also been important for the further development of RJ for adults, as well as for young offenders. Indeed, in setting up a pilot project on FGC, academic experts had developed close relationships with a number of youth judges who were expected to play a vital role in the development of FGC in Belgium as they went to New Zealand and informed their colleagues of the added value of this practice.

The *fourth category* consists of politicians whose initial response towards the idea of RJ was rather positive. In the mid-1990s Belgium was confronted with a severe penal crisis. The Dutroux case resulted in a call for structural changes in the criminal justice system and more attention to be paid to the victims of crime. In that sense, then Minister of Justice De Clerck was very much interested in the idea of RJ in order to meet victim's needs instead of looking at more repressive measures. As Belgium is a small country there were close interactions between the Minister of Justice and the people in his private office on the one hand, and academics at KU Leuven on the other hand. The federal government was supportive of the further development of RJ in the criminal justice system as it was perceived as an inspiring practice providing an added value for both victim and offender. However, there were at the same time some mixed feelings about this small project as it became clear that the mediators in the judicial districts had a rather limited caseload in comparison with the justice assistants at the houses of justice. In that sense, political support has always been crucial in the further development of RJ in Belgium. Furthermore, politicians have also been influential in the development of RJ practices for young offenders.

RQ1.2.Why are policies, practices or ideas being transferred?

The question of 'why engage in policy transfer?' can also not be reduced to a single, fixed answer in the area of RJ. Indeed, the process of developing RJ in Belgium has been influenced by a concurrence of circumstances which boosted its initiation in the early 1990s. Firstly, at the end of the 1980s there was an emerging interest in victims of crime and their needs at the academic level. Criminologists at KU Leuven started to explore the phenomenon of violent crime and hold-ups, and they were looking at it from a victim's perspective. These studies gained insight into the concept of 'victimisation', victim-oriented interventions and victim's

needs and have played an important role in the introduction of RJ in Belgium. Secondly, for a long period of time there was a growing dissatisfaction with the criminal justice system, especially imprisonment, and a subsequent need for penal reform. Researchers in the department of criminology and criminal law at KU Leuven had experience with the penitentiary context, both at a theoretical and practical level, as a number of academic experts had also worked with offenders in prison. In that sense, these academics brought together the two perspectives, the victim-oriented perspective and the offender-oriented perspective. RJ proved to be an attractive, new way of thinking about responding to crime which linked this interest in victim and offender perspectives with a commitment to work towards penal reform. A supportive factor for the initiation and implementation of RJ in Belgium have also been the intense contacts between practitioners in the field and criminologists at KU Leuven. Indeed, in conducting their research projects, criminologists from KU Leuven worked at the theoretical level but also in cooperation with practitioners in the field. The presence of a university was probably one of the reasons why the idea of RJ gained momentum in Leuven.[78] As Leuven is a small judicial district the ties between academic experts, practitioners and professionals of the criminal justice system were very close. In that sense, the judicial district of Leuven has always had a certain openness towards new developments. There were also close links with the Minister of Justice and his private office. As politicians and policy makers (at least some politicians and policy makers) in the mid-1990s were also open to the idea of bringing together victim and offender of a crime this resulted in the development of a legal framework for mediation in 2005 and FGC for juvenile offenders in 2006.

RQ1.3. What is being transferred?

As we discussed above, the emergence and growth of RJ in Belgium was the result of a concurrence of circumstances in which a number of key academic experts, practitioners, key professionals of the criminal justice system and politicians were involved. The need for reform in the penal system for both adults and minors, and the emerging interest in the plight of the victim and his or her needs encouraged researchers at the department of criminology and criminal law to look for alternative ways of thinking about punishment. In the early 1990s, criminologists at KU Leuven discovered the practice of RJ in the international scientific literature and visited mediation practices in Canada, the US and Europe, and met with fellow academics and practitioners. However, notwithstanding the frequent contacts between

[78] Some authors argue that there is a direct link between RJ and religion, that is, RJ having a direct link with the Catholic values and that its implementation is largely supported by religiously inspired actors. As we stated in section 4.4.2 we acknowledge that the link between RJ and religion has somewhat been overlooked in the interviews.

academic experts at KU Leuven and fellow academics or practitioners abroad, it seems clear that Belgium has made its own choices regarding the operationalisation of mediation. Indeed, VOM, as developed in Belgium, seems to be different in a number of ways from the mediation practices in other countries. *Firstly*, in 1993 criminologists at KU Leuven initiated a pilot project on VOM making mediation available in cases of more serious offences and not solely for less serious offences as was often the case for mediation projects abroad. *Secondly*, the researchers created a welcoming context for this practice by fostering close partnerships with actors in the field (e.g. practitioners in the field of victim and offender assistance in Leuven, the public prosecutor's office in Leuven supplemented with a lawyer and a mediator who was responsible for implementing mediation in practice) which have been of vital concern for the progress of the pilot project. *Thirdly*, in 1998, when VOM was implemented nation-wide, a peculiar implementation process was set up including the establishment of steering groups in each judicial district in Flanders to embed it structurally in a local context. The findings from our study leave us with the impression that in the interactions between academics from KU Leuven and practitioners and academics abroad it were mainly ideas, ideologies and attitudes that were being transferred, that is, so-called 'soft transfers'. We found no evidence of 'hard transfer', that is, the transfer of programmes or policies. Indeed, it was mainly a shared discourse, a shared language on RJ, restoration and victims' needs that was being transferred. In practice, there were differences in the choices that were made in Belgium when it comes to projects, practices, working methods, etc. (e.g by making mediation available for serious offences; by fostering close partnerships with actors in the field; and by its peculiar implementation process with the establishment of steering groups).

In the course of the 1990s the idea of RJ also emerged in the juvenile justice system as youth criminologists at KU Leuven observed that neither the repressive approach nor the rehabilitative approach really worked well as a response to juvenile delinquency. As they explored new and innovative practices they became familiar with the practice of FGC which could be used to cope with more serious juvenile offences. As there was not much experience with FGC in Europe criminologists at KU Leuven travelled to New Zealand and Australia to attend FGC meetings and learn more about the practice. In 2000, inspired by their visits abroad, they initiated an action research focusing on introducing FGC in the Belgian juvenile justice system. However, notwithstanding the contacts between academic experts at KU Leuven and fellow academics or practitioners in New Zealand and Canada, it seems clear that Belgium made its own choices regarding the operationalisation of FGC. Indeed, FGC, as developed in Belgium, seems to be different in a number of ways from FGC practices in New Zealand and Australia. *Firstly*, in the common law system of New Zealand the police has the legal opportunity to prosecute; a mandate which is only attributed to the public prosecutor in Belgium. In that sense, a police officer can be present in a FGC meeting in Belgium but solely

as an actor who symbolises the public authority in the official response to crime. *Secondly*, in Belgium the young offender is offered to take part in the FGC meeting voluntarily whereas in New Zealand it is imposed on him or her. In that sense, the joint letter of intent, which is the result of a successful FGC meeting, needs to be submitted to a Belgian youth judge for confirmation. The above leaves us again with the impression that despite the close interactions between academics from KU Leuven and actors in New Zealand it were mainly ideas, ideologies and attitudes that were being transferred, that is, so-called 'soft transfers'. We found again no evidence of 'hard transfer', that is, the transfer of programmes or policies. Indeed, it was mainly a transfer of new ideas of responding to juveniles, shared ideas about the role of offenders (taking up responsibility, etc …). In practice, however, the Belgian FGC practice developed in a different way than in New Zealand (see above).

RQ1.4. From where are policies, practices and ideas being transferred?

In the case of RJ in Belgium the search for lessons abroad did only start after academics from KU Leuven discovered the idea of mediation in the international scientific literature. In the initial phase academic experts did not visit RJ projects abroad: access to knowledge about mediation was mainly limited to reading the information that had been gathered over time and that had been circulating through academic channels. It was only after they discovered the idea of RJ in the international scientific literature that academic experts started to search for lessons abroad. From the 1980s onwards criminologists at KU Leuven developed a large network of contacts with fellow academics and practitioners in Belgium but also abroad. Indeed, there were close contacts with both academics and practitioners in Canada. Besides Canada, academic experts also had close contacts with fellow academics in a number of European countries. Researchers developed strong ties with a number of pioneers in the field of RJ, such as Nils Christie, and visited mediation practices in other European countries. Indeed, as an academic expert indicates there have been visits to mediation practices in Norway, Finland and France. Moreover, academic experts from KU Leuven also visited mediation practices in England and Wales in the early 1990s.

As discussed above throughout the 1990s also youth criminologists at KU Leuven became interested in the concept of RJ. Indeed, they became interested in the practice of FGC which could be used to cope with more serious juvenile offences. As there was hardly any experience with FGC in Europe youth criminologists at KU Leuven and two youth judges travelled to New Zealand and Australia in the spring of 1999 to be present at FGC meetings and learn more about the practice. In the following years, academic experts at KU Leuven also visited a number of European countries where projects of FGC had been initiated, such as, Northern Ireland, the Netherlands and England and Wales.

Next to such field visits Belgian academic experts also got in touch with academics, policy makers and practitioners from other countries at conferences and seminars abroad such as the conferences of the International Network for Research on Restorative Justice for Juveniles or the conferences of the EFRJ. The latter has in particular been influential in the further development of RJ in Belgium and Europe. The European Forum was (and still is) not just a meeting place for academics but also attracts practitioners, public prosecutors, (youth) judges, policy makers and politicians from a variety of countries who share expertise, exchange views and reflect upon new and innovative topics. Moreover, the EFRJ has also played an important role in conducting scientific research on a variety of topics in the field of RJ. Members of the Forum exchanged views and ideas, and further spread the RJ approach. These research projects often involved (and still involve) a variety of partners from a number of countries and were (and still are) often funded by action grants provided by the European Commission (see section 4.2). Indeed, over the years, the Directorate-General of Justice has introduced funding schemes which often included calls for research projects on topics in the field of RJ. In that sense, the EU has had a major influence on the development of RJ in Europe.

As the development of mediation in Belgium differed somehow from developments in other countries the Belgian practice attracted foreign interest which resulted in multiple visits to Belgium. Academic experts at KU Leuven were regularly contacted by people in other countries who, for instance, also played with the idea of introducing mediation in cases of serious offences or were interested in the close ties between practitioners, policy makers and the university that had developed to implement mediation in Belgium. Moreover, Belgian academic experts and practitioners were also regularly invited to present and explain the operation of the Belgian model of mediation at seminars or conferences abroad. They were (and still are) very active in contributing to the exchange of views in the field of RJ by publishing policy-relevant scientific articles and presenting at conferences of the EFRJ and other venues. As Belgium came to be perceived somehow as a pioneer in the field of RJ it also attracted the attention of policy makers in other countries. Moreover, Belgian academics were also actively involved at a European level, for example, as members of the expert committee of the Council of Europe to prepare the 1999 Recommendation on mediation in penal matters. Like in the case of EM, it seems clear that criminal justice policies in the area of RJ also do not solely take a one way road, but seem to move in various directions. Again, also in the area of RJ the image of policy transfer being ‘one directional’ or ‘one dimensional’ is easily broken through.

RQ1.5.Are there different degrees of policy transfer?

Like in the area of EM we found no evidence of direct copying, hybridisation and synthesis regarding the development of RJ in Belgium. Academic experts did not directly adopt a

programme in use elsewhere in setting up VOM or FGC practices in Belgium. Nor did they combine elements of different policies or programmes in initiating a new policy on VOM or FGC. However, there has been a significant degree of inspiration in the development of these RJ practices in Belgium. From the interplay between a burgeoning interest in victimological research and a renewed interest in questions of criminal justice reform, criminologists at KU Leuven discovered and felt attracted the idea of VOM in the international scientific literature which referred to foreign experiences and examples.

Whereas academic experts in the initial period were mainly inspired by what they read in the available literature or what they heard from those with expertise in their networks the search for best practices abroad by visiting other RJ practices only started when the decision had been taken to set up a research project on VOM. Criminologists at KU Leuven entertained close and frequent contacts with fellow academics and practitioners in the US, Canada, Australia, New Zealand, England and Wales and Northern Ireland with whom experiences were exchanged on the development of mediation. These interactions were, however, merely inspirational in nature as the way in which mediation came to be designed in Belgium has been peculiar and different from mediation in other countries. In all instances, like in the area of EM, Belgian academic experts did not simply take inspiration, but followed a process of adaptation to ensure a fit with the Belgian context.

As we found no clear evidence in our study that there was a degree of emulation involved in the development of VOM (criminologists at KU Leuven did not draw on one particular example of mediation abroad in order to inform their thinking on this), this seems to be different in the development of FGC where New Zealand indeed offered direct inspiration to design a FGC policy in Belgium. Youth criminologists at KU Leuven visited FGC schemes in New Zealand and Australia but as the FGC practice in Australia was perceived more as an extensive form of mediation youth criminologists became more inspired by the FGC practices in New Zealand when setting up the pilot project on FGC in Belgium.

Somewhat similar to the development of EM we also found strong evidence for the role of elite networking and the development of transnational policy networks involving academic experts. These networks have been crucial in spreading policy ideas and principles about RJ throughout Europe and the world. In addition, international conferences played (and still play) a role in promoting the general ideas and principles of RJ. The conferences of the EFRJ, for example, involved a range of academic experts, practitioners, criminal justice professionals and policy entrepreneurs and did have (and still have) a large influence in terms of sharing ideas across national boundaries.

RQ1.6. What are the constraints on the transfer of policies, practices and ideas?

Out of the above it became clear that RJ practices developed in a rather peculiar way in Belgium in comparison to other jurisdictions in Europe. The empirical research identified a number of constraints and limitations of policy transfer in the area of RJ, emphasising the enduring importance of domestic influences.

First, some practical and legal obstacles have had some influence on the distinctive way in which RJ practices have developed in Belgium. Notwithstanding the fact that RJ has continuously developed in Belgium since the early 1990s the numbers do not seem to have followed the attention RJ has attracted in academic (more specifically, predominantly 'Leuven' academic) and policy discourse. Indeed, from a quantitative perspective there have not been that many cases of mediation and FGC in practice. This can partly be explained by a number of practical obstacles with the operationalisation of VOM and FGC. Mediation and FGC are very time- and labour-consuming activities which makes it challenging to integrate them in the day-to-day operation of an overburdened criminal justice system. Indeed, professionals working in the criminal justice system are often confronted with high caseloads and a lack of time and a shortage of staff so everything has to be done at a faster pace. This implies that VOM cannot become a mainstream activity unless sufficient resources are made available. The reason why the investment in a further development of RJ practices in Belgium is rather insufficient might have to do with the fact that not everyone in Belgium is convinced of the added value of RJ practices. Indeed, there is a certain tension noticeable between a local (Leuven) enthusiasm and the broader Belgian policy and/or academic context which does not necessarily share this enthusiasm about RJ. This lack of resources has also hampered the further development of FGC. FGC is even more time- and labour- consuming because people close to victim and offender, the so-called 'community of care', also need to be informed and persuaded to take part in the meeting. As youth judges are also confronted with an extensive caseload this often results in a somewhat routine way of working which makes it more difficult to invest a lot of time in selecting cases for FGC. This organisational difficulty became even more noticeable with the set-up of the pilot project on PMC in 2013 as it was focused on involving not only the 'community of care' but also representatives of the local community, the wider community. In addition, a number of respondents indicated that the limited use of RJ in Belgium can also be explained by a lack of knowledge about its existence and what it can offer. Indeed, there is a lack of awareness in society at large regarding VOM and citizens usually are not well informed about its existence. Next to such practical obstacles there have also been legal obstacles, in particular with respect to FGC in Belgium. As Belgium is a civil law system there have been some obstacles that have limited or impeded the transfer of policies from Anglo-Saxon countries with a common law system. Indeed, there have been some difficulties

with the implementation of FGC for juveniles in Belgium as it was inspired on the FGC model in New Zealand. The difficulties were in particular related to differences in how the public prosecutor and the police operate in New Zealand.

Second, cultural differences have also played an important role in the development of RJ in Belgium. According to some of the respondents, Belgium is a somewhat closed and individualised society where the willingness and openness to talk about personal issues and to share feelings with other members of the community may be rather low. In that sense, a number of victims and offenders may not be very open to the idea of involving other people in resolving the conflict. Indeed, involving the 'community of care' in the implementation of FGC proves to be rather difficult in Belgium, but it is even more challenging to involve the wider community as part of the implementation of a PMC. Such cultural differences also exist at an operational level in the sense that implementing FGC and PMC requires a very different way of interacting than VOM as mediators in FGC and PMC have to work with a group of people instead of leading a one-to-one conversation between victim and offender. As VOM is more often used than FGC and PMC it may be that some mediators are not that confident to involve other people in the meetings and to work with a group of people. Implementing FGC and PMC requires a cultural switch and an adaptation of the conversation techniques that are usually being used during VOM. Interestingly, such cultural differences do not only exist at the level of society in general but also across the Communities in Belgium. As RJ practices are organised at the level of the Communities there is, as in the case of EM, the possibility that cultural differences between Flanders and the Walloon region will influence how RJ develops in both parts of the country. Policy makers in Flanders are more Anglo-Saxon oriented whereas policy makers in the Walloon region feel more attracted to developments in French-speaking parts of the world. In that sense, Walloon practitioners in the field of RJ have more contacts with people in France, Italy, Switzerland, Luxemburg and Québec (Canada). As they share a common language this can facilitate communication and therefore also facilitate the transfer of policies. However, non-English-speaking people tend to get somewhat isolated in the field of RJ as they are less involved in international partnerships and meetings because English is often the lingua franca. In that sense sharing a common language can sometimes become a limit to policy transfer. There was also less academic support in the Southern part of Belgium for the idea of RJ as there was in Flanders. Academic experts in the Walloon region were less involved in the development of mediation and as a result they were also less involved at the European and international level. Indeed, magistrates in the French-speaking part of Belgium were afraid that the fact that members of Médiante would look into and select cases for VOM would be a forerunner of a form of privatisation. Practitioners in the French-speaking part of Belgium were also more focused on setting-up a real communication process between victim and offender which could take place as a supplement to the criminal justice system. In addition, the

implementation process of VOM in the French-speaking part of Belgium has not been based upon the method of the steering groups as it was done in Flanders. As for FGC, in the debates that were taking place in the French-speaking part of Belgium about the juvenile justice system practitioners were afraid that the implementation of FGC would result in a recriminalisation or re-penalisation of the juvenile justice system. Practitioners in the French-speaking part of Belgium were more focused on protecting young offenders instead of calling him or her to account for the committed crime.

Third, similar to what we concluded for our case study on EM, the role of political agency has been important in shaping the trajectory of RJ and the unpredictability of the policy process. At key 'policy windows' (Kingdon, 1995) in the trajectory of RJ key actors took crucial decisions that could have been very different. The particular efforts of academic experts at KU Leuven outlined above were crucial in placing the idea of RJ, in particular mediation and FGC, on the political agenda in Belgium. Indeed, researchers at the department of criminology and criminal law have been decisive in setting-up the pilot projects on VOM and FGC and thus initiating the idea of RJ in Belgium. However, it became clear that not all actors involved were as fast in taking up the challenge of moving forward with mediation. Indeed, in some judicial districts there were mixed feelings about, and a lukewarm reception of, mediation and at times even some resistance towards introducing mediation. Some magistrates questioned the confidentiality of the process and were worried that mediation would interfere with the judicial investigation. There was also some skepticism from lawyers who were not eager to let victims and offenders solve the conflict themselves as they were worried that mediation would interfere with their daily work arguing that mediation may not be beneficial for their clients. Moreover, some victims were also hesitant to take part in mediation as it is sometimes perceived as a service to the offender. This prudence and skepticism of various actors was also apparent towards the development of FGC practices in Belgium. So even though some consider the development of RJ in Belgium to be a success story the numbers indicate that mediation and FGC still remain small-scale initiatives in comparison to the overall functioning of the criminal justice system. Against this background it seems that there is a tension between discourse on RJ (that is, academic experts who write about RJ and talk about it, Ministers of Justice who use the terms, and research projects and networks that are set up) and practice (that is, what the figures show) (see also Tonry, 2001). In that sense, we might argue that the success of RJ in Belgium (and the reason why Belgium is sometimes considered to be a pioneer in Europe with respect to RJ) is more a success at the level of discourse rather than at the level of practice.

5.3 Further discussion

In chapter one of this dissertation we elaborated on the criminological debate on the determinants of penal policies in which various scholars have explored (historically) the dynamics of development in practices of punishment. We referred to the two major streams of literature that have developed in international penological research: one group of scholars who argues that similarities and processes of convergence between different Western societies can be explained against the background of similar broader structural, economic, social and cultural shifts that have taken place in contemporary societies. Another group of authors who tends to reject this claim of 'penal convergence' and points at enduring differences in penal policy between various countries. Such divergences, so they argue, are the product of a continuing strong influence of national political institutions, cultures and historical traditions. Most of the scholars in this field, however, acknowledge and accept that it is a complex set of local, national and international factors that will result in the initiation of particular policy outcomes. The findings of our research indicate that it has indeed been a complex set of factors that have led to the initiation and further development of EM and RJ in Belgium. The peculiar way in which the EM scheme came to be designed in Belgium (back-end and from within the prison administration) and the unique interplay between academics and practitioners in the development of RJ indicate that national features, and in the case of RJ even regional (Leuven) features, have been important in explaining changes in penal policy in these areas (see e.g. Lacey, 2008; Melossi, 2001). Indeed, the mid-1990s proved to be a time when a lot of new ideas and projects were being introduced in Belgium in order to address the existing problems in the criminal justice system, including prisoners' rights, houses of justice and victim policy, and activities of key actors have served to set up, adjust, mediate but also oppose policy ideas and innovations. However, despite the divergences there have at the same time been similarities and processes of convergence taken place between different Western societies indicating the apparent existence of similar processes of social, economic and cultural changes, as Garland, argues. Indeed, once the decision had been taken to set up a research project on VOM and an EM scheme in Belgium the search for best practices abroad by visiting RJ and EM practices in other countries started. There have been entertained close and frequent contacts with representatives from other countries with whom experiences were exchanged on the development of EM and mediation. The establishment of the EFRJ and the CEP conferences on EM indicated that a variety of countries were facing the same difficulties, having the same questions and looking for the same answers or solutions.

In this third section of the final chapter we focus on discussing three broader issues of the policy process, that is, (1) the role of policy transfer and its limitations, (2) the role of science in penal policy making, and (3) penal policy making in small countries.

5.3.1 The role of policy transfer and its limitations

In recent times, globalisation, developments in communication technologies and the increasing influence of supra-national institutions (Dolowitz, 2000b) have made it much easier for policies to travel across national boundaries. It has become more common for individuals and institutions functioning beyond the borders of nation states to influence domestic public policies (Bernstein & Cashore, 2000). That was the point of departure of our study. Interestingly, however, our research revealed that in the initial phase of policy development in the areas of EM and RJ in Belgium the role of policy transfer has been rather limited. Indeed, access to knowledge about EM and RJ was mainly limited to reading the information that had been gathered over time and that had been circulating through policy and academic channels. In that sense, policy actors have been looking across borders for inspiration but not in a literal sense, that is, not so much in terms of travelling to other countries for inspiration or welcoming foreign visitors to prepare the introduction of EM and RJ. A large part of the inspiration for introducing EM and RJ in Belgium seemed to be based upon what one might call 'desk research'. It was only in a later phase that academic experts (in the case of RJ) and criminal justice professionals (in the case of EM) started to search for best practices abroad. Interestingly, in our study we found no evidence of direct copying, hybridisation and synthesis regarding the development of EM and RJ in Belgium. Belgian policy actors did not simply adopt an EM programme or RJ practice in use elsewhere, nor did they combine elements of different policies or programmes in initiating a new EM or RJ policy. However, there does seem to have been a significant degree of inspiration in the development of EM and RJ in Belgium. Indeed, the initiators of the Belgian EM scheme and mediation practices were inspired by what they read in the available (scientific) literature, by the information that had been gathered through contacts as well as by visiting other EM schemes or mediation practices abroad. These interactions were, however, merely inspirational in nature as the way in which EM further developed in Belgium and, in particular, the way in which the scheme came to be designed (back-end, from within the prison administration), has been peculiar and different from EM schemes in other countries. The same is true for RJ. Indeed, notwithstanding the frequent contacts between academic experts at KU Leuven and fellow academics or practitioners abroad, it seems clear that Belgium has made its own choices regarding the operationalisation of mediation (e.g. by making mediation available for serious offences; by fostering close partnerships with actors in the field; and by its peculiar implementation process with the establishment of steering groups). This leaves us with the impression that, in general, transfer occurred primarily at the level of policy ideas, symbols and discourse as there was less evidence of substantive transfers in terms of concrete manifestations of policy such as policy content, instruments and institutions. And, moreover, even the 'soft transfers' seem to have occurred only to a limited extent as the way in which EM and RJ have been developed in

Belgium seems to be different in a number of ways from mediation practices and EM schemes in other European countries illustrating the importance of domestic influences and the enduring importance of the local context.

Notwithstanding the limited evidence of policy transfer in both case studies it is striking to observe that in both cases there has been considerable exchange on an international level. Indeed, our research revealed that a great deal of communication has been taken place within and beyond formal and informal transnational networks. It has become clear that academic experts, in particular the criminological schools (in the case of RJ), and policy entrepreneurs (in the case of EM) had elaborate international networks and contacts with fellow academics and policy entrepreneurs abroad which resulted in a constant stream of information and exchange of ideas going back and forth. Moreover, they were also taking part in transnational policy networks involving a range of academic experts, practitioners, criminal justice professionals and policy entrepreneurs which have been (and still are) crucial in spreading policy ideas and principles about RJ and EM throughout Europe and the rest of the world. This research finding is interesting as it reveals that although there is not much evidence for policy transfer in the areas of EM and RJ in Belgium this does not imply that policy making is an autarkic, closed-off process. Indeed, Belgian policy transfer agents regularly visited RJ and EM practices abroad and systematically attend conferences of the EFRJ and the CEP. They were also taking part in national and transnational policy networks in which ideas, best practices, information, … were shared. The research finding that things 'move' without a certain direction (from Belgium to other countries or form other countries to Belgium), in global, European or local networks, as well as personal or direct connections between policy entrepreneurs, academic experts, politicians, practitioners, etc … brings us to the conclusion that, indeed, it may be more useful to speak in terms of ‘mobilities’ or ‘flows’ rather than in terms of ‘transfer’ (see section 1.5.1). Indeed, we tend to agree with Newburn et. al (2018) who argue that policies do not simple exist and move around freely as ‘ready-made packages’ waiting to be selected by policy makers on the basis of perfect information. Instead, the circumstances under which - and the spaces within - policy actors move around and function are structured by conditioning fields and institutions, existing pathways and trajectories. Policy formation is therefore looked at as a socially constructed process that involves an ‘intrinsic politics’, that policy actors are not ‘lone learners’ but rather are members of wider epistemic communities.

In chapter one we argued that a major advantage of using a policy transfer framework in empirical research is that it draws attention to the role of political agency in policy-making. Indeed, the policy transfer approach ‘… acknowledges the role played by a wide range of agents, including not only politicians and bureaucrats, but also policy entrepreneurs, experts

and epistemic communities' (Dolowitz & Marsh, 2000: 9) and '... recognises the existence and role of a policy transfer network that links the activities of transfer agents operating at various levels, including the local, national, international and inter-organisational' (Evans & Davies, 1999: 369). Our empirical research showed that a variety of actors (ranging from academic experts, policy entrepreneurs and criminal justice professionals to politicians, practitioners and commercial companies) have played a role in the development of EM and RJ in Belgium and have been involved in the process of transferring policies in these areas. Some respondents referred in this context to a policy entrepreneur being the 'god father' of EM and a practitioner being the 'founding father' of RJ in Belgium. So, despite the fact that our research revealed only little evidence of policy transfer in the areas of EM and RJ in Belgium, studying penal developments from a policy transfer perspective ensured a focus on the role played by actors in the process of penal policy making. Although one might object that focusing too much on different categories of actors will result in too strong focus on the agents and not agency, identifying who is concerned with the process of transferring policies has the benefit of 'mapping' the landscape and the interrelational connections. By focusing on who is involved in the process of transferring policies in the areas of EM and RJ in Belgium we demonstrated the added value of such an approach in the debate about penal change. However, although the objective of the policy transfer theory is to focus on the role of individual actors in policy making we do acknowledge that our focus on the agents has come at the cost of the attention given to the role of the political or institutional context in which these individuals operate. Indeed, in hindsight, questions such as: '… would the development of EM in Belgium been different if it had occured in an other context than the prison context?', or '… what has been the role of the political context of the early 1990s in the development of RJ in Belgium?' have not been touched upon in detail in this study.

Moreover, the policy transfer approach of our study has also been useful to disclose and document the unpredictability in policy making. Indeed, our research finding that, in practice, transnational policy transfer is less likely than one might expect in view of living in an inter-connected world can in part be explained by the complex and unpredictable nature of criminal justice policy making. Contingency, happenstance and unintended effects are central to the stories of policy development in both our case studies. Indeed, the policy histories that we documented in chapters three and four demonstrate in some detail that even in an increasingly globalised world, national and local political institutions and cultures still exert a crucially important effect on policy outcomes, and provide significant limitations on the possibilities for 'hard transfer' into different socio-political contexts. Of course, they do not do so independently, but through the actions of key political actors who operate within the constraints and opportunities that they provide. Indeed, at key 'policy windows' (Kingdon, 1995) in the trajectory of EM and RJ key agents took crucial decisions that could have been

different. The particular efforts of two key policy entrepreneurs in the area of EM and criminologists from KU Leuven in the area of RJ outlined above were crucial in placing the idea of EM and RJ on the political agenda in Belgium. At each of these moments, it is quite plausible that if some of these key players had chosen to act differently the development of EM and RJ in Belgium could have been very different.

As Jones and Newburn (2007) have argued, specific national and cultural differences and the views of political actors themselves act as important constraints on policy transfer. Policy making is not an overly rational and government-driven process in which the global market for policy programmes is actively scoured in search of 'best practices'. As Muncie (2001: 33) states '… what works in some contexts may not work in others'. As we discussed above, both EM and RJ have developed in a somewhat distinctive way in Belgium in comparison to other jurisdictions in Europe. Interestingly, in the area of RJ it was not just national culture that played a role but rather the specific local context of the city of Leuven and its university. We therefore agree with Melossi (2004: 84) when he states that '… a genealogy of punishment cannot be a genealogy of punishment in general, as punishment is deeply embedded in the national/cultural specificity of the environment which produces it'. This also means that theses such as an 'Americanization' of criminal justice or a 'neoliberal revolution' that is conquering the world, as for example Loïc Wacquant (1999) put forward for zero tolerance policing, are too facile to capture the complexities of policy making (see als Gudders & Daems, 2018). Indeed, it turned out that the local or national context is of great importance and therefore - somewhat paradoxically our study on penal policy transfer provided us with a better insight into the functioning of local actors and institutions and the context in which they operate.

In conducting the empirical research the policy transfer framework provided for a clear structure using six sub-questions which have been at the centre of research agendas on policy transfer within political science and public policy analysis over the past fifteen years. In that sense, the policy transfer framework has been useful for conducting this study as it provided for a clear-cut format in order to set-up the empirical research and tell the story in a well-structured way. However, although the research findings make clear that the policy transfer framework has been a useful and fitting framework for understanding developments in penal policy making in the areas of EM and RJ in Belgium we also touched upon and discussed a lot of issues which are not directly related to the policy transfer framework in itself. Indeed, the role of policy transfer in the development of EM and RJ in Belgium is not always equally been clear in our study indicating that the overall picture is not limited to but broader than what is included in the policy transfer framework. The overall picture happened to be more complicated than we initially assumed it to be. In hindsight, we should have added an additional research

question about ‘what happened?’ as the produced series of detailed narratives of how policy changed in the areas of EM and RJ have provided a context and background in which policy making in the areas of EM and RJ took place and have proven to be an essential part of the explanation for the developments in the areas of EM and RJ.

5.3.2 The role of science in penal policy making

In both of our cases academic experts were key agents of change and acted as transfer agents. Indeed, scholars in the field of criminology have influenced the RJ movement considerably through their participation in conceptualising and setting up pilot projects on VOM and FGC, and through active involvement in policy making at the federal and regional level. Criminologists have also played a key role in the development of EM in Belgium, in particular through feeding the debate on (the limits of) EM (e.g. with reviews of the international literature and empirical research) as well as through maintaining close contacts with those in power. In both areas, academic experts had built strong networks with a variety of people in Belgium but also abroad. Indeed, they had close contacts with practitioners, people within the private office of the Minister of Justice, professionals working in the criminal justice system (e.g. lawyers, prosecutors and (youth) judges), as well as with fellow academics. Knowledge about EM and RJ was obtained by reading the available scientific literature that had been gathered over time and that had been circulating through academic channels as well as through visiting other EM schemes or RJ practices abroad. In his study *Helping victims of crime*, Paul Rock (1990: 282-300) referred to the personal role of ‘pilgrim criminologists’ who constantly travel the world in search of new ideas. In the development of FGC in Belgium, Prof. Lode Walgrave could be referred to as a ‘pilgrim criminologist’ as he visited Australia and New Zealand for several months in the spring of 1999 in preparation of the set-up of a conferencing pilot project in Flanders which focused on offering a RJ settlement in cases of serious youth offending. During his stay in New Zealand and Australia he visited fellow academics, scientific institutions as well as practitioners working in the area of conferencing on a daily basis. Moreover, besides field visits he also got in touch with representatives from other countries at conferences and seminars abroad.

Interestingly, some of the most significant developments in RJ in Belgium are the direct result of a close collaboration between researchers, practitioners and policymakers. Indeed, researchers and practitioners collectively acquired funding, lobbied with policy makers and senior practitioners, developed referral pathways, implemented pilot projects and conducted action research for the purpose of evaluating and further developing RJ policy and practice. The active involvement of academics in the set-up of the action research projects on VOM and

FGC resulted in an additional asset. Indeed, it made sure that enough attention was being paid to theory and methodology, and it offered various possibilities in terms of a scientific evaluation of the pilot projects. Moreover, this scientific input and support has considerably promoted the establishment and dissemination of mediation in Belgium (Dominicus, 2010: 97). We tend to agree with Vanfraechem (2011: 59) when she states that the relationship between practice, research and policy in Belgium is quite unique in that they influence each other mutually, in part thanks to the uprise of criminologists to the higher policy levels.

Academic support has therefore contributed significantly to the unique way in which RJ and EM have been developed in Belgium. As for Put, Vanfraechem & Walgrave (2012: 93), the academic contribution to the introduction of RJ, for example, has been possible only because '… the academics did not "buy into" punitive rhetoric, but autonomously reflected on better ways of responding to (youth) crime, supported pilot projects and undertook independent research'. At the same time, it kept the line of communication to the policy makers open.[79] In fact, Belgian criminologists in the RJ field have acted as both 'players and as 'floaters' (Put, Vanfraechem & Walgrave, 2012: 93; Sparks, 1997).[80] According to Loader and Sparks criminologists can take up a number of different public roles (scientific expert, policy advisor, observer-turned-player, social movement theorist/activist, lonely prophet). (Flemish) academics involved in the development of EM and RJ seem to fit best the description of the 'policy advisor'[81] (Loader & Sparks, 2011: 25-26):

> *' … I think it is a professional responsibility to try to use research to inform debate and improve policy and practice. So when I am asked to give evidence to a parliamentary*

[79] This is also facilitated by the fact that Belgium is a small country. Consequently, the communication lines between the private office of the Minister of Justice and the academic world are rather short which facilitates access to policy makers (see section 5.3.3 for more details).

[80] Players identify problem areas in the existing ways of dealing with crime and they try to design, implement and evaluate appropriate remedies. Floaters, on the other hand, try to interpret and explain the developments they observe. In doing so, they aspire to 'float' over rather than to 'play' in the fields they study (Aertsen, Daems & Robert, 2006, xv).

[81] For some, however, RJ is too much a movement that is insufficiently supported by empirical research. As a result, because of their strong focus on RJ, the ongoing promotion of its use and the close relationships between theory, practice and policy Flemish researchers at the department of criminology and criminal law were sometimes perceived more as activists or social movement theorists (in a different way than with French-speaking criminologists) than researchers. Pratt (2006) refers in this context to the concept of 'evangelical criminology' in which criminology is more perceived as a movement than a science.

committee, or become a member of an advisory body – and feel I am equipped to contribute something – then I will show up and give my best. I have also made efforts to cultivate working relationships with practitioners in the criminal justice system, especially at senior levels. I find them for the most part a receptive audience, willing to talk (and listen), open to ideas, and insulated a bit from the pressures that make it so difficult for politicians to 'do the right thing' in our field. By the way, this is not a one-way street – I have learned a terrific amount from the people I engage with.'

However, our research revealed that there has been less academic support in the Southern part of Belgium for the idea of RJ. Academic experts in Wallonia have been interested in the concept of RJ but at the same time they have been somewhat critical and cautious. In Wallonia, reflection about RJ emerged from within youth justice when practitioners started to think about how to deal with young people in a different way. This reflection started bottom-up and was not that much supported by academics at the universities in the French-speaking part of Belgium. Academic experts in Wallonia were afraid that mediation would legitimise the existing criminal justice system and not provide sufficient legal guarantees for the people involved in the process. There was also a certain degree of skepticism from lawyers, magistrates and victim organisations about the process of mediation. As a result RJ developed differently in the French-speaking part of Belgium.[82] Against this background those French-speaking criminologists who have been most vocal in this debate are best described as 'social movement theorists/activists' (Loader & Sparks, 2011: 28):

'… for me, the institutional-critical and normative dimensions of the subject are integral parts of its task. This involves refusing to take the social arrangements, that we happen to have at present, for granted, and retaining a space for utopian thinking about possible futures. […]. A critical sensibility – the inclination to question the terms in which the social world is conventionally apprehended – ought to be part of what it means to be a criminologist – or any kind of social scientist.'

This decision has been supported by the research finding that there seemed to be a lot of discussion amongst criminologists in the French-speaking part of Belgium whether to promote RJ or to keep a distance. Indeed, the French-speaking criminologists have always been more critical, more focused on theory-building and less policy-oriented (see Mary, Kaminiski, etc.).

[82] On the differences in the development of criminology in the North and South of Belgium, see Daems & Parmentier (2018).

As a result, the relationships between universities in the French-speaking part of Belgium and policy seemed to rather distant.

The influence of academic experts was not limited to the development of EM and RJ in Belgium. Policy entrepreneurs involved a number of academic experts to initiate and further co-develop policy developments. For instance, professor Lieven Dupont (KU Leuven) has been of tremendous importance in the process of drafting the first Belgian prison law. Moreover, academics have also been indispensable as members of a number of parliamentary committees of inquiry in the area of police and criminal justice. Indeed, academic experts such as Cyrille Fijnaut, Raf Verstraeten, Brice De Ruyver, Tom Vander Beken, Gert Vermeulen, etc. have played a vital role in parliamentary commissions of inquiry on inter alia the Bende van Nijvel I (1988-1991) and II (1995-1999), human trafficking (1992-1995), the Dutroux case (1996-1998), etc. (see e.g. Fijnaut, Huyse & Verstraeten, 1998; Staelrave, 2003). The close relations between the worlds of academia and policy making, which were discussed in our two case studies, may therefore be a feature of policy making in Belgium in the final decades of the 20th century. In that sense we tend do disagree with Pratt when he argues that '…states prefer to implement penal policies that reflect the public's common sense, rather than taking into account the scientific rationalities of its own experts' (Pratt, 2005: 185).

However, at the same time we have to be careful not to overestimate the influence of academic experts. Indeed, our research demonstrates that politicians did not always await the results of research that they had commissioned (e.g. research reports on EM as an alternative to pre-trail detention and EM as an autonomous sanction) or ignored the available research findings and policy recommendations and went their own way (on this, see also Beyens & Roosen, 2017b). In the area of RJ it became clear that there is a discrepancy between discourse (that is, academic experts who write about RJ and talk about it, Ministers of Justice who use restorative terminology in speeches and policy documents, and the research projects and networks that are set up) and practice (that is, the actual impact of RJ in the field in terms of the number of victims / offenders participating in RJ practices such as VOM and FGC) (see also Tonry, 2001). In that sense, we might argue that the success in Belgium (and the reason why Belgium 'deserves' to be referred to as a pioneer in Europe regarding the development of

RJ) is perhaps more of a success at the level of discourse rather than at the level of practice.[83][84] Nevertheless, we tend to believe in an 'embedded' criminology as we argue that academic experts have a professional responsibility to try to use research to inform debate and improve policy and practice. Indeed, academic experts can play a leading role in defining the causes, consequences, scale and scope of a certain problem and identify plausible solutions. They can provide for an objective analysis of the problem and inform policy makers as a result. As we assume that academic experts can learn a lot from engaging with fellow academics and from building up close relationships with other actors in the policy process we also tend to believe that elite networking and the development of transnational policy networks is something that deserves recommendation. In the areas of EM and RJ they have been crucial in spreading policy ideas and principles, and have had a large influence in terms of sharing ideas across national boundaries. However, as the focus of this study is based upon a past period the question arises whether this will continue to take place in today's society and in the future. Will there still be enough willingness of future governments to rely on informed advice provided by experts or will they increasingly take into account the input of a number of other social players such as, for example, citizens as they are confronted with a growing number of so-called 'wicked problems'[85], such as climate change or poverty? And should we then agree with Pratt when he argues '… the authority of the state increasingly weakens which results in a shift

[83] The analysis that RJ in Belgium is perhaps more of a success at the level of discourse rather than at the level of practice is mainly based upon quantitative figures indicating that the number of mediation cases in Belgium is relatively low compared to the number of judicial files. Some authors might not (totally) agree with this analysis as they argue that although there are less mediation cases than judicial cases values and principles related to RJ are indeed disseminated to a wider audience, that is, people working in an educational context, the police, community work, practitioners working in organisations providing assistance to victims and offenders, etc. indicating that the RJ practice has found fertile soil in Belgium.

[84] As there is no integrated national data recording system for all types of restorative justice programmes in Belgium statistical data are collected by the organisations at federal and regional level and they cannot easily be compared between restorative justice programmes since the counting criteria can differ. Our analysis is based upon the number of closed mediation cases (mediation cases that result in an agreement) for adults (and not for juveniles) in Flanders between 2005-2017 as this was the focus of our research. Unfortunately, data on the number of mediation cases in the Walloon region could only be partially collected. The number of cases referring to penal mediation were not included in the analysis as we argue that penal mediation developed in a different political and social context than VOM.

[85] Wicked problems are '… a class of social system problems which are ill-formulated, where the information is confusing, where there are many clients and decision makers with conflicting values, and where the ramifications in the whole system are thoroughly confusing' (Churchman, 1967, 141-142).

towards ‘a new axis of penal power’ in which the public’s common sense progressively becomes more important?’

5.3.3 Penal policy making in small countries

For both case studies it is striking to note that there were such close contacts between academics, practitioners, key professionals of the criminal justice system, as well as policy entrepreneurs and politicians. This short distance between theory, practice and policy has played a vital role in the development of both RJ and EM in Belgium. This interwovenness between theory and practice has been a peculiar feature of the historical development of RJ in Belgium. Indeed, it was mainly through meetings and consultation in their own formal and informal networks that academic experts obtained knowledge about RJ and new ideas and projects were initiated by means of action research. The same holds for EM. The two policy entrepreneurs, who have been decisive in drafting the White Paper and initiating the idea of EM, had built up strong networks with a variety of people. They had close contacts with people from the administration of the Justice Department, prison directors, practitioners, academic experts as well as with fellow policy entrepreneurs.

In recent years criminologists have drawn attention to the distinctive dynamics of policy making in small countries, which may be useful for our findings too. While it is unlikely that size in itself represents a key determinant of penal policy, the influence of elites over policy may be easier to achieve in a smaller jurisdiction (Hamilton, 2014: 14). In that sense, McAra (2005: 293) argues that in smaller penal systems ‘… key decision-makers are well known to each other; the professional links between different institutions are made easier by constant interaction between the same groups of individuals; the lines of communication are generally simple; there are fewer groups to consult; and the geographical proximity facilitates collaborative ventures and joint-working.’ Penal policy making in small jurisdictions offers the advantage for academic experts and practitioners to almost directly express their views to policy makers and politicians in the field as people are better accessible and relationships are rather informal. Indeed, as Belgium is a small country people are rather accessible and relationships are rather informal so it has been easier for criminal justice professionals to develop tight relationships with inter alia academic experts who provided them with the necessary international scientific literature on EM and RJ. Hamilton (2014: 6) argues that ‘… the way in which these close networks and collaborative working cultures operate within small-scale systems can act as a resistance towards larger transformative processes. Moreover, existing policy networks can act to shield the penal system from radical change.’ In Snacken’s view (2007: 179) several features of the ‘culture of control’ are not present in Belgian penal policy as ‘… the system has retained a commitment to rehabilitation; expert views on criminal justice continue to be respected by policymakers; and crime reporting to date has avoided

excessive emotionalism'. As for Hamilton (2014: 6) the explanation for this relative stability may well lie in a number of 'protective' factors such as '… the consensus political system and a firm view that criminal justice policymaking should be informed by experts and professionals.' Lappi-Seppälä (2007: 284–285) has also touched upon this profound importance of policy networks in smaller countries as he noted the influence of personal and political actors over the determination of penal policies in Finland. Indeed, a number of like-minded experts who held key positions in the judiciary, prison administration, and the universities have strongly influenced criminal justice policy in Finland. These individuals went on to hold even more senior posts in the private offices of Ministers, civil service, and judiciary, thereby creating conditions for consistency and consensus that may have been much easier to achieve in a small country.

Against this background it seems plausible that the small scale of Belgium and the direct contacts between academia, policy and practice also helped ensure that people feel more inclined to consult each other than to look across borders for inspiration or solutions. Indeed, in both cases obtaining knowledge and initiating new ideas was mainly done through meetings and consultation with people in domestic networks, including academics at the universities.

5.4 Further research

This dissertation explored the role of policy transfer in penal policy making in the areas of EM and RJ in Belgium. To date there have been only a few detailed empirical studies in criminology concerning the role of policy transfer in penal policy making so we hope that this study encourages future researchers to focus more on how changes in criminal justice policy come about and the role that policy transfer plays in this process. Although this study has contributed to a better understanding of developments in penal policy in Belgium and the role of policy transfer herein it also raised some additional questions. The findings emerging from this dissertation can already be considered as a starting point for this future research and in what follows we formulate a few interesting avenues for follow-up research.

First, we would suggest that future research uses similar methods of study to an additional range of specific policy areas within criminal justice. The area of prisoner's rights would be an interesting case study as the focus could be on the role of policy transfer in policy making at a European level. Indeed, European institutions have come to play an increasingly important role in the area of the regulation of punishment. In addition, we would suggest to explore the role of policy transfer in policy making in the area of conditional release, internees or sex offenders. As EM and RJ are 'non-controversial' cases which have not attraced a lot of attention we acknowledge that it is possible, indeed likely, that different insights about the nature and extent of policy transfer might arise when focusing on a more 'controversial' case study.

Second, future studies can build on our research findings to further elaborate on the role of policy transfer in penal policy making in small countries.

Third, as the role of religion in the development of RJ in Belgium has somewhat been overlooked in our empirical study we would suggest future work to explore it in more detail.

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