



Study on minimum sanctions in the EU Member States

Final report

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July 2015*

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Contact: Jeroen Blomsma

E-mail: just-notifications-b2@ec.europa.eu

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July 2015

Prof. Dr. Robert Kert

Dr. Brigitte Slot

Dr. Gisele Vernimmen

Dr. Andrea Lehner

Joachim Schellekens



ECORYS Nederland BV

Watermanweg 44

3067 GG Rotterdam

The Netherlands

T +31 (0)10 453 88 00

netherlands@ECORYS.com

www.ECORYS.nl

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Preface

ECORYS Nederland and ECLAN are pleased to submit this final report for the Study on minimum sanctions in the EU Member States (JUST/2013/JPEN/PR/0047/A4) commissioned by the European Commission (EC) Directorate-General for Justice and Consumers.

This report builds upon desk research (May and June 2014), field research in the 28 EU MS (July, August, September and October 2014) and analysis of all information gathered (October, November, December 2014). We thank all contributors for their willingness to cooperate and their time.

The study involved a close cooperation between ECORYS Nederland and the European Criminal Law Academic Network (ECLAN) and its country correspondents in 28 European Union (EU) Member States (MSs). The core team for this study consisted of:

- Robert Kert, Vienna University of Economics and Business, Institute for Austrian and European Economic Criminal Law;
- Brigitte Slot, ECORYS Nederland BV;
- Andrea Lehner, Vienna University of Economics and Business, Institute for Austrian and European Economic Criminal Law; and
- Gisele Vernimmen, Institute for European Studies, Université Libre de Bruxelles.
- Joachim Schellekens, ECORYS Nederland BV.

The network of EU-28 rapporteurs was composed of local ECLAN researchers, contact persons and independent experts. Austria: Christian Mahler; Belgium: Inès Gallala; Bulgaria: Miroslava Manolova; Croatia: Maja Munivrana Vajda and Aleksandar Marsavelski; Cyprus: Theodora Christou; Czech Republic: Ivo Slosarcik; Denmark: Jorn Vestergaard; England and Wales: John R. Spencer; Estonia: Jaan Ginter; Finland: Samuli Miettinen; France: Céline Cocq; Germany: Frieder Dünkel and Nicholas Mohr; Greece: Valsamis Mitsilegas and Niovi Vavoula; Hungary: Imre Szabo; Ireland: Maire Duffy; Italy: Giovanni Grasso and Valeria Scalia; Latvia: Kristina Strada Rozenberga and Ārija Meikališa; Lithuania: Gintaras Svedas; Luxembourg: Katalin Ligeti; Malta: Leonard Caruana; The Netherlands: Karin Veegens; Poland: Adam Lazowski and Anna Labedzka; Portugal: Antonio Pedro Nunes Caeiro and Miguel João Costa; Romania: Florin Streteanu and Daniel Nitu; Slovakia: Anna Ondrejova; Slovenia: Katja Sugman Stubbs and Mojca Mihelj Plesničar; Spain: Marta Munoz de Morales Romero; Sweden: Christoffer Wong.

Country codes

Short name (English)	Code
Belgium	BE
Bulgaria	BG
Czech Republic	CZ
Denmark	DK
Germany	DE
Estonia	EE
Ireland	IE
Greece	EL
Spain	ES
France	FR
Croatia	HR
Italy	IT
Cyprus	CY
Latvia	LV
Lithuania	LT
Luxembourg	LU
Hungary	HU
Malta	MT
Netherlands	NL
Austria	AT
Poland	PL
Portugal	PT
Romania	RO
Slovenia	SI
Slovakia	SK
Finland	FI
Sweden	SE
United Kingdom	UK
England and Wales	E & W

Summary

Minimum sanctions are understood as minimum levels of fines and imprisonment that should be imposed by a court when a person is held liable for a criminal offence. The study is concentrating on minimum sanctions depending on the severity of the offence. Apart from NL, all Member States provide for minimum sanctions in their laws. There are big differences between the Member States, both between the sanctioning systems and the levels of minimum sanctions. In the majority of the Member States minimum imprisonment sanctions are foreseen for many offences and form an integral part of the sanctioning system. Some states, however, regard minimum sanctions as a far-reaching restriction of the free discretion of judges and provide for minimum sanctions only for a few offences. Only a few Member States provide for specific minimum levels for financial penalties.

In all Member States there are various mechanisms to impose penalties below the minimum level provided for by law. For this purpose, there are in many Member States different sentencing regimes for special groups. These regimes provide for lower or no minimum levels for imprisonment sanctions. In some Member States minimum sanctions are inadmissible for juveniles in certain cases. Furthermore, all legal systems contain specific/general provisions according to which judges may or have to impose a lower sentence than the minimum penalty. Such provisions are mostly found in substantive law (e.g. provisions on mitigating circumstances), but a few Member States also have such provisions in procedural law. Mitigating circumstances taken into consideration are largely the same in all Member States, but they are not always listed in the laws. If they are, the list is often not exhaustive or there is a "catch-all clause" allowing for more flexibility. Systems, which do *not* know a "catch-all clause" and have a list of exhaustive mitigating circumstances, are EE, DE, HR, HU, PL and SK. In some Member States there is a wide discretion as to the individualisation of penalty where mitigating circumstances are present, but in many Member States the criminal code itself determines the level of reduction.

Another way to avoid the (full) execution of minimum sanctions are alternatives to (the execution of) imprisonment sentences. The most common option is to suspend the execution of the sentence. Other alternatives include fines, community services or home confinement. Furthermore, almost all prisoners have a possibility to be released before the end of their imprisonment term.

The statistical analysis has been based on a mixture of statistical data, samplings of court judgements and perception of practitioners. For most offences no clear relation between the level of minimum sanctions and the imposition of sanctions across Member States can be seen. In relation to deterrence, there is a wide agreement among experts that there is no relation between minimum sanctions and deterrence. It has also been noted that the implementation of minima by politicians is mainly motivated by a desire to demonstrate a tough line in the fight against crime.

1. Introduction

1.1 Background

For more than 15 years the European Union (EU) works on the approximation of substantive criminal law. It started under the third pillar of the Maastricht Treaty with the Convention on the protection of the European Community's financial interests (1995), the Convention on the fight against corruption (1997) and the different joint actions adopted at the time in the field of participation in a criminal organisation, trafficking in human beings, racism and xenophobia, corruption in the private sector, etc. Work was then pursued under the third pillar of the Amsterdam and Nice Treaties when the EU Council adopted on the basis of the EU Treaty ("third pillar": justice and home affairs) several legal instruments (Framework Decisions) involving an approximation of the elements of certain criminal offences. The main objective was the establishment of a minimum level of criminalisation for more serious offences and offences against the financial interests of the Community. The standard text on sanctions in such instruments required that the offences concerned are punishable by "effective, proportionate and dissuasive" sanctions.¹

The European Council of Tampere in 1999 advocated "efforts to agree on common definitions, incriminations and sanctions" in respect of a limited number of criminal offences. This conclusion was related to the pronounced commitment that mutual recognition of judicial decisions (both criminal and civil) should in the future be a cornerstone of the proclaimed "Area of Freedom, Security and Justice".

After the entry into force of the Amsterdam Treaty (1999) the Council, on the basis of Articles 31 and 34 TEU, adopted Framework Decisions, which lay down minimum levels for the upper limit (maximum) of (prison) penalties. These "minimum maximum sanctions" require a number of years imprisonment to be provided by national law in respect of specified offences. Such minimum maximum sanctions are for example foreseen in the Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro², Framework Decision 2002/475/JHA on combatting terrorism³, Framework Decision 2002/629/JHA on combating trafficking in human beings⁴, Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking⁵, or the Framework Decision 2005/222/JHA on attacks against information systems⁶. Also the legislative instruments adopted after the Treaty of Lisbon contain such minimum maximum sanctions, as for example the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims⁷, Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography⁸, and Directive 2014/57/EU on criminal sanctions for market abuse⁹.

Due to the fact that the approximating effect of minimum maximum sanctions in the EU legal instruments was limited, in the Proposal for a Directive of the European

¹ See Klip, *European Criminal Law*, 2nd ed. (2012) p. 71 ff. and 316 ff.

² OJ, no. 140, 14 June 2000, p. 1.

³ OJ, no. L 164, 22 June 2002, p. 2.

⁴ OJ, no. L 203, 1 August 2002, p. 1.

⁵ OJ, no. L 335, 11 November 2004, p. 1.

⁶ OJ, no. L 69, 16 March 2005, p. 1.

⁷ OJ, no. L 101, 15 April 2011, p. 1.

⁸ OJ, no. L 335, 17 December 2011, p. 1.

⁹ OJ, no. L 173, 12 June 2014, p. 179.

Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law¹⁰ from July 2012 the Commission for the first time proposed to adopt – beside minimum maximum penalties – minimum imprisonment levels for several serious offences as fraud and corruption. The minimum penalties (for serious cases of fraud) shall be at least six months imprisonment (the minimum maximum penalty 5 years) (Art 8 paragraph 1 of the Proposal). According to the reasoning by the European Commission the introduction of such minimum sanctions should "ensure consistency across the Union in terms of sanctions that apply in any Member State for a given type of conduct, with the effect that the Union's financial interests will be protected in an effective and equivalent manner throughout the Union". The introduction of minimum sanctions is regarded necessary to ensure that an effective deterrence all over Europe can be achieved. Moreover the minimum sanction of six months shall ensure that a European Arrest Warrant can be issued and executed for the offences listed in Article 2 of the Framework Decision on the European Arrest Warrant which would make the judicial and law enforcement cooperation more efficient.

In February 2013, in the Proposal for a Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law¹¹ the Commission also proposed minimum sanctions. For certain serious offences a minimum penalty of at least six months of imprisonment shall be introduced by the Member States. However, the adopted Directive 2014/62/EU of 15 May 2014¹² does not contain any minimum sanctions, but only minimum maximum sanctions.

The establishment of minimum sanctions in EU legislative instruments would be a completely new approach, since not (only) for the upper limits of the penalties minimum levels are foreseen in an EU legal act, but also for the minimum levels. EU legal acts would oblige the Member States to provide certain minimum levels for specific offences. As a consequence this would limit the discretion of the national courts, which in principle would be obliged to impose sentences which are not below this minimum level.¹³

1.2 Research objective

The general objective of this study is **'to achieve a better understanding of the basic legislative structure and – based on statistics – of the practice of national criminal law systems on minimum sanctions in 28 EU Member States.'** The results of the study will assist the EU legislator in ensuring added value and improving consistency and coherence whenever the adoption of minimum criminal sanctions will be considered.

Minimum sanctions can be described as mandatory minimum levels of sanctions which limit the judicial discretion of courts in the sentencing proceeding. In principle, courts are not allowed to go below these limits, except certain exceptions are foreseen in law. People who are convicted of certain criminal offences must be punished with at least a minimum time in prison or a minimum amount of a fine. Systems of mandatory

¹⁰ Doc COM(2012) 363 final.

¹¹ Doc COM(2013) 42 final.

¹² OJ, no. L 151, 15 May 2014, p. 1.

¹³ See the considerations of the Commission in the Proposal for a Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law, Doc COM(2013) 42 final, p. 7 and recital 22.

sentencing vary from country to country. For a more detailed definition of minimum sanctions see below under 2.1.

The study should therefore analyse in each of the 28 MS, legislation and prosecutorial court practice. It should also identify relevant EU legislation and case law. The following questions should be answered for each of the 28 EU MS:

- Does the legal system provide for minimum sanctions?
- For which offences?
- What is the level of the minimum penalty?
- Does the legal system provide for minimum sanctions that are applicable to all offences? Does it apply a categorization of offences with different levels of minimum sanctions?
- Is the level of minimum sanctions regulated in the pertinent office?
- Why did the legislator use or not use minimum sanctions?
- Has there been a shift in attitude towards minimum sanctions in the last decades?
- Are there legislative limitations to the imposition of minimum sentences?
- Do courts have discretion to go below the minimum sanctions? If so, under what conditions?
- Are the possibilities to go below a minimum sanction provided for in law? If so, procedural or substantive law? In general law of provision or a specific offence? If not, is the application of minimum sanctions mitigated or avoided in other ways?
- What can be said about the execution of minimum sanctions? What role do practitioners play here? If a minimum sanction is imposed, is it also executed in full? Are mechanisms in place to mitigate the application of minimum sanctions, such as conditional sentencing or replacing a custodial with a non-custodial sentence?
- Does the application of minimum sanctions have other implications on substantive or procedural criminal law?
- Do the above-mentioned provisions also apply to legal persons or does the national legislation provide special rules on minimum sanctions for, as far as possible, also in relation to legal persons?

1.3 Research approach

The study has been conducted between April 2014 and February 2015. It was split into five phases: desk research, field research pilot in 2 EU MSs, field research in all 28 EU Member States, comparative analysis of the findings and conclusions and finalisation:

Table 1.2 Research activities

Phase		Timing
I	Inception phase	April - May 2014
II	Field-research pilot phase	May - June 2014
III	Field-research in 28 EU MS	July – October 2014
IV	Comparative analysis	October – December 2015
V	Conclusions and finalisation	January – February 2015

We have collected data of the 28 Member States concerning the legislation on minimum sanctions and the practice of prosecutors and courts. We also identified relevant EU legislation and case law in each EU Member States.

The field research was conducted by national experts in all Member States. The national experts had to describe the national legal provisions, policy documents, academic literature, jurisprudence and court reports and had to conduct a certain number of interviews with judges, prosecutors and officials dealing with the execution of sanctions to learn about the practice of minimum sanctions. They also had to collect cases and statistical material on sanctions for different categories of offences, if such statistics are available. If not, this should be compensated by an increased number of interviews or a sampling of a number of court judgements over a given time. All findings collected by were compared and analysed by the core team. An overview of the core team and team of 28 national rapporteurs is presented in annex C. The questionnaire is presented in annex D.

2. Legal situation on minimum sanctions

2.1 Scoping and definition

For the purpose of this study, minimum sanctions are to be understood as the minimum levels of fines and imprisonment that should be imposed by a court when a person is held liable for a criminal offence. The study is limited to fines and imprisonment. A precise definition is difficult to give, as it differs in the legal systems. However, different sorts of minimum sanctions can be divided:

- The study aims at mandatory minimum sanctions which are introduced by the Member States' legislator to set limits to the courts' discretion in the sentencing proceeding. The legislator uses these minimum levels to express the gravity of the offence and of the protected interest. Such minimum sanctions show – beside maximum sanctions – how the legislator evaluates the weight and importance of the unlawfulness of an illegal behaviour. Therefore these minimum sanctions are an instrument of the legislator to show how certain offences are weighted. In principle, courts are not allowed to go below these limits, except certain exceptions are foreseen in law. People who are convicted of certain criminal offences in "ordinary cases" must be punished with at least a minimum time in prison or a minimum amount of a fine. If the legislator provides for a minimum sanction, it is shown that the gravity of any behaviour which is covered by the statutory definition of an offence is seen as so important that it requires the imposition of a certain penalty, even if it is a less serious case. However, since there are reasons where the gravity of the specific commission of the offence is lower, most legal systems foresee the possibility to go under these minimum sanctions in cases of (exceptional) mitigating circumstances. Within this group also mandatory (life) sentences as they are foreseen in some Member States are included, since also these mandatory life sentences show the gravity of the offence as it is evaluated by the legislator. This study is focused on minimum sanctions that meet the criteria just described. In most of the Member States such minimum sanctions are provided for each specific offence in the special part of the criminal codes.
- In several Member States (BE, BG, EL, ES, FR, LU) minimum sanctions as described in the previous paragraph are not provided for each specific offence, but are foreseen as "general" minimum sanctions in the general part of the criminal codes. These minima are different depending on the categorisation of an offence as e.g. misdemeanour or felony. These "general" minimum sanctions fulfil the same function as minimum sanctions foreseen for each specific offence. The legislator makes a general decision which minimum levels must be respected, if offences are seen as felonies or misdemeanours. Such general minimum levels can be quite high, as e.g. in BE and EL five years for felonies. As in the first group these minimum levels depend on the gravity of the unlawfulness of the offence. Under certain circumstances it is possible to go under these levels.
- In a lot of Member States general "technical" minima are foreseen. They mostly have another function than minimum limits for specific offences. These general "technical" limits refer to all offences or at least groups of offences. Such minima have more practical and technical reasons to avoid very short imprisonment sentences or very low financial penalties, since such low sentences are neither useful nor effective, but only cause costs. They shall avoid that only very short imprisonment sentences are imposed. Whereas in cases of limits of only one or

some days considerations on the practicability and cost efficiency may be relevant, longer general limits may also have the background that very short imprisonment sentences should be avoided due to reasons of criminal policy. For “technical” minimum sanctions it is typical that the courts have no possibility to go below, even if mitigating circumstances outweigh. Since they are of a more technical nature, they are independent from the seriousness of the criminal offence or the gravity of the perpetrator’s fault. Such minimum levels are not in the focus of this study. However, under point 2.3 the national provisions are presented, since in some Member States the distinction between these “technical” minima and the other groups is fluent, particularly the second group of general minimum levels. If the general minimum level is low (e.g. for misdemeanours), it is similar to a “technical” minimum; whereas high “technical” minima can (also) fulfil the function to avoid too low penalties, if the offence is of a certain severity.

2.2 Minimum sanctions – general overview

A first overview shows that all Member States except NL provide for minimum sanctions at least for some criminal offences. NL only provides for low general “technical” minima; however certain minimum limits are provided for in sentencing guidelines. General minimum limits exist in most of the Member States (for details see under 2.3).

2.2.1 Minimum imprisonment sanctions

In principle, three **models of minimum limits** for imprisonment sanctions can be differed. However, even if these different models exist, in some Member States combinations of different models exist (therefore some Member States are not only mentioned once):

1. In most of the Member States (20) the minimum sanctions are foreseen in the special part of the criminal code for each offence: AT, BE, CZ, DE, EE, EL, ES, FI, HR, HU, IT, LT, LV, MT, PL, PT, RO, SE, SI, SK. In these countries minimum sanctions serve – in a similar way as the maximum limits – as an indicator as how severe the unlawfulness of the offence is regarded by the national legislator. In the same way as upper limits are foreseen, the minimum limits show that there are – under ordinary circumstances – no cases of this offence which should be punished with a lower sanction:
 - In AT minimum sanctions are foreseen for specific more serious offences, in general where the maximum is more than 3 years¹⁴;
 - The BG legal system provides for a minimum of 3 months for all criminal offences which is applicable to all criminal offences, if the relevant provisions in the Special Part do not contain specific minimum levels.¹⁵
 - In CZ for some crimes or aggravated forms of crimes minimum limits are provided for;

¹⁴ There is the possibility to impose a financial penalty instead of a minimum imprisonment sanction imposed, if the maximum level is not more than five years (in specific cases ten years) and if no reasons of general and special prevention require imprisonment.

¹⁵ In case of (aggravated) active corruption, Article 304 (1), (2) Criminal Code, and passive corruption, Article 301 (1) Criminal Code, a fine can be imposed as an alternative to the 3-month minimum imprisonment. Furthermore, a rule from the General Part of the Criminal Code provides that the court has to impose an administrative fine instead of the prescribed imprisonment sanction, if certain prerequisites are met. This provision is applicable to offences punishable with imprisonment up to 3 years (in case of intention) and for offences punishable with imprisonment up to 5 years (in case of negligence), if the offender has not been sentenced for a common crime and has not been previously released from criminal liability and if damages to property, which were caused by the crime, have been restored.

- In DE the law provides for minimum levels for each specific offence;
 - In EE minimum imprisonment sentences are provided for more serious crimes; e.g. for all crimes with a maximum of 7 years or more, a minimum is provided for. But there are four offences with a maximum of 3 years for which also a minimum of 1 year is foreseen;
 - In EL minimum sanctions are provided for specific offences. However, minimum limits for specific groups of offences are also foreseen in the General Part (e.g. five years imprisonment for felonies). There is no typology as to which offences have a specific minimum sanction.
 - ES provides for a quite complex system of minimum and maximum levels of penalties. Minimum sanctions are foreseen for each criminal offence. However, the level of the minimum does not only depend on the specific offence, but also different degrees of punishment exist.¹⁶
 - The FI legal system provides for nominal minimum sanctions, typically in the context of a penalty range expressed for a particular offence;
 - In HR there are – beside a general minimum of 3 months – specific minima of 3 months, 6 months, 1 year, 3 years, 5 years and 10 years. For juveniles the general minimum for imprisonment is 6 months and reserved only for cases of serious offences.
 - In HU the Criminal Code defines minimum sanctions for particular offences;
 - IT law foresees different general minimum levels for felonies and misdemeanours for imprisonment, but the legislator provides for specific criminal offences higher or lower minimum levels;
 - In LT specific minima for imprisonment are provided for in the Special Part of the Criminal Code, but also a general minimum of three months (e.g. sanctions up to seven years means from three months to seven years);¹⁷
 - In LV in the majority of cases the minimum level of the sanction is defined in the Special Part of the Criminal Code which envisages the liability of the offence. In those cases, when the particular section does not define a minimum, a general minimum limit of fifteen days, which is foreseen in the General Part of the Criminal Code, should be followed;
 - MT law provides for minimum levels for some specific offences;
 - In PT minimum sanctions are foreseen for each offence. However, there might be exceptions, where a certain kind of offence, in a particular moment, requires a (modestly) higher minimum limit;
 - The PL legal system provides for minimum sanctions for almost each offence in the Criminal Code as well as in the Code of Minor Offences;
 - In RO specific minimum limits for each individual offence are provided for;¹⁸
 - In SE the legislator may foresee minimum limits for certain offences; there is no general legal provision which requires that minimum levels are foreseen;
 - SI provides for specific minimum sanctions for each criminal offence; as a general rule there is no specific minimum prescribed by law for criminal offences with a maximum sentence of up to 2 years imprisonment;
 - SK law provides for minimum sanctions for specific criminal offences.
2. In some Member States the minimum sanctions depend on the types of offences, e.g. different minimum limits for felonies or misdemeanours or on the maximum

¹⁶ Since it is a mixed system, for details please see below.

¹⁷ Currently, the Ministry of Justice is working on a draft to amend the Criminal Code, aiming at reducing the application of imprisonment. One of the aspects of this draft is the introduction of a fine as an alternative penalty to the sanctions of offences against property (theft, robbery, fraud, etc.).

¹⁸ Some offences carry a fine as an alternative sanction next to a minimum imprisonment sanction. These are, for example, Theft (Article 228 Criminal Code), Collection, transport or disposal of dangerous waste (Article 63 (1) of the Law no. 211/2011), Perjury (Article 273 (1) Criminal Code) and Driving under the influence (Article 336 (1), (2) Criminal Code).

limit: BE, BG, ES, FR, EL, LU. In these countries there is a link between the minimum sanction and the classification of the offence. In some Member States there are specific minima for felonies and misdemeanours. In other Member States there is a fixed connection between the maximum limit and the minimum limit. That means that a certain maximum sanction is automatically linked with a certain minimum, for example, if the maximum is 20 years, the minimum is automatically 10 years. There are Member States from the first group where there is not such a fixed link between maximum and minimum, but where the legislator is geared to the maximum when establishing minimum sanction without the existence of any binding provision:

- BE has a mixed system, which foresees minimum sanctions of incarceration and imprisonment depending on the specific offence on the one hand. On the other hand, there are different minimum levels foreseen for different types of offences.¹⁹ For felonies incarceration of a minimum of five years is foreseen, for misdemeanours and infractions imprisonment is provided for and the respective minima are 8 days for misdemeanours and 1 day for infractions;
- In a similar way also EL provides for a mixed system which contains minimum sanctions in the General Part which depend on the categorization of the offence. E.g. a minimum sanction of five years imprisonment is foreseen for felonies.²⁰ Minimum sanctions are provided for in the Special Part, too. These sanctions are prescribed in regard to specific offences. Thus, in some cases the Greek legislator has foreseen a minimum sanction in the Special Part which is different (higher) from the one foreseen in the General Part. There is no typology as to which offences have a specific minimum sanction;
- ES provides for a quite complex system of minimum and maximum levels of penalties. Minimum sanctions are foreseen for each criminal offence. The level of the minimum does not only depend on the specific offence, but also different degrees of punishment exist: The minimum level to the upper degree is the maximum penalty for the felony concerned (plus one day). The maximum level of the lower degree shall be the minimum penalty of the felony concerned (minus one day); e.g. for manslaughter imprisonment of 10 to 15 years is foreseen; the penalty being higher by one degree is 15 to 20 years; the penalty being lower by one degree is 5 to 10 years.
- The Code Pénal of FR provides that if an offence committed is punishable of a maximum of life sentence (reclusion/detention criminelle à perpétuité"), the minimum is two years of imprisonment and if the maximum sanction is a specific period of time of imprisonment (from 10 to 30 years; reclusion /detention à temps), the minimum is one year. According to this article, the law does not offer to the judge the possibility to go below the minimum²¹;
- In LU different levels of minimum sanctions are provided for different types of criminal offences depending on the seriousness of the offence. It is divided between 'crimes' and 'délits'. For crimes different minimum levels of réclusion depending on the seriousness of the crime are foreseen: 5 years, if the maximum is 10 years; 10, if the maximum is 15; 15, if the maximum is 20, and 20, if the maximum is 30 years. For délits a general level of 8 days as minimum imprisonment sanction is provided for, unless otherwise foreseen by law.

¹⁹ According to BE law felonies are offences punishable by a criminal sanction; offences punishable by a correctional sanction are misdemeanours; and offences punishable by police sanctions are infractions.

²⁰ According to EL law felonies are considered the crimes which are punishable by life imprisonment or incarceration (fixed term incarceration). Misdemeanours are offences which are punishable by imprisonment or a pecuniary penalty or confinement in a special institution for minors.

²¹ FR had a system of minimum sanctions linked to the maximum sanctions in case of recidivism, which was abolished in October 2014.

3. Some legal systems in principle do not foresee minimum sanctions except for a few specific offences which are considered to be very serious: CY, DK, IE, E&W. In these Member States the number of offences for which minimum sanctions are foreseen is much lower than in the other Member States, since minimum sanctions are seen as exception to the complete discretion of courts:
- In CY minimum sanctions are only foreseen for murder, treason and driving under influence;
 - DK only provides for minimum sanctions for homicide, high treason and an aggravated perpetration of the Act on weapons and explosives;
 - In IE minimum sanctions for murder or treason, drug sale/trafficking over the value of Euro 13.000, certain firearms offences and the case of a second or subsequent serious offence within five years of the law;
 - In E&W mandatory minimum levels are provided only in a limited number of specific cases. There are mandatory life sentence for murder, the automatic life sentence for those convicted of a second serious offence, mandatory minimum sentences for certain recidivists (offenders in drug trafficking, domestic burglary, knives offences), mandatory minimum sentences – even for first offenders – convicted of offences involving firearms and offensive weapons.

Even in these countries with only a few offences for which minimum offences are provided for significant differences exist.

2.2.2 Minimum sanctions for financial penalties

2.2.2.1 Financial penalties against natural persons

Regarding financial penalties against natural persons, most Member States only provide for general minimum limits (AT, CZ, DE, EE, ES, FI, HR, HU, LT, MT, PL, PT, SE, SI, SK), but do not provide for different limits for specific offences. These general limits are more or less practically relevant, particularly for the determination of financial penalties against poor people.²²

Only BE, BG, EL, IT, LU, LV, PT and RO foresee (some of them besides general technical minima) different limits depending on the offence, the group of offences or the level of the imprisonment sanctions. In some Member States there are general minima which are different following the different types of offence (e.g. for misdemeanours or felonies other minima than for petty offences (as in BE or EL). Some of them regulate that in the special part, some (for certain groups of offences) in the general part:

- BE provides for a minimum of 6 EUR for infractions and of 156 EUR for misdemeanours and felonies;
- In EL a distinction is made between pecuniary sanctions, which are imposed in petty offence-cases and may not be less than 150 EUR, and fines which are imposed in petty offence-cases and may not be less than 29 EUR, unless otherwise provided in special provisions (a minimum level of financial sanctions imposed in felonies-cases is defined in Greek legislation);
- In IT beside general minimum sanctions for felonies (Delitti) and misdemeanours (Contravvenzioni) also minimum sanctions for specific offences which can be lower than the general minimum limits are foreseen;
- In LU for crimes and délits the minimum sanction is 251 EUR, for contraventions it is 25 EUR;

²² Regarding these general minimum levels for financial penalties see *infra* under 2.3.2.

- In LV different minimum fines are foreseen for various groups of offences: for criminal violations a minimum of three monthly wages, for less serious crimes five minimum monthly wages, for serious crimes ten minimum wages and for especially serious crimes 101 minimum wages;
- PT law provides for financial minimum sanctions for specific offences beside general minima;
- In RO the level of the minimum fines depends on the special limits of imprisonment: If only a fine is provided for, the minimum is 60 daily fines, in the case of not more than two years imprisonment 120 daily fines, in case of more than two years imprisonment it is 180 daily fines. If the purpose of the offender was to obtain a financial benefit, the limits can be raised by a third.

CY, DK, FR, IE, NL and E&W do not contain any provisions on minimum limits for fines against natural person.

2.2.2.2 *Financial penalties against legal persons*

Regarding minimum sanctions for legal persons, six Member States (BG, DE, EL, IT,²³ LV,²⁴ SE,²⁵ SK) do not provide for criminal liability of legal persons. As can be seen from the table below, there are minimum for administrative fines imposed on legal entities in IT and LV. In BG, DE, EL, IT, LV and SE sanctions against legal persons are foreseen as administrative or civil sanctions; in SK a liability of legal persons does not exist. Eleven Member States provide for minimum sanctions for financial penalties against legal persons (AT, BE, CZ, ES, FI, HR, HU, LT, PT, RO, SI). Even if they are not criminal there are minima for pecuniary sanctions against legal persons in IT

Only in BE, ES, HR, PT, RO these limits depend on the seriousness of the offence. In the other Member States only general technical limits are foreseen:

- In BE the minimum for infractions is 150 EUR, for felonies and misdemeanours in the case a life sentence a maximum amount of 1,440.000 EUR, if imprisonment or a fine is foreseen the minimum is 3.000 EUR multiplied by the number of months of the minimum imprisonment sanctions. However, it must not be lower than the minimum fine provided for the specific offence;
- The ES law provides for – beside a general minimum of 10 daily rates – minimum levels in the Special Part. The minimum level for a legal person in the case of day-fines is 6 months. The minimum level in the case of proportional fines is twice the profit obtained;
- In HR (beside a general minimum) the minimum sanction for each criminal offence depends on the penalty for natural persons. If a fine or imprisonment up to 1 year is foreseen, the minimum is 5.000 kuna (650 EUR), if imprisonment up to 5 years is foreseen, the minimum is 15.000 kuna (1.950 EUR), if imprisonment up to 10 years is foreseen, the minimum is 30.000 kuna (3.000 EUR) and in the case of imprisonment up to 15 years it is 50.000 kuna (6.500 EUR);
- In PT the minimum limits are determined with reference to imprisonment penalties foreseen for natural persons;
- In RO the minimum level of daily rates also depends on the extent of imprisonment penalties foreseen in the Special Part: If only a fine is provided for, the minimum is 60 daily fines, in case of no more than five years imprisonment 120 daily fines, in case of more than ten years imprisonment it is 180 daily fines,

²³ Italy labels the liability of legal persons as administrative, however, it should be considered criminal, according to "Liability of legal persons for offences in the EU", Antwerpen: Maklu 2012.

²⁴ In Latvia, measures can be taken against legal persons, including fines, liquidation, limitation of rights and confiscation of property. Some consider these to be of a criminal character.

²⁵ In Sweden, corporate fines are considered as a "special legal consequence of a crime". They are regulated in the Penal Code and an action to pay corporate fines is handled in criminal proceedings.

in case of more than 20 years imprisonment it is 240 daily fines. If the purpose of the perpetrated offence was to obtain a financial benefit, the limits can be raised by a third.

No minimum fines for legal persons are foreseen in CY, DK, EE, FR, IE, LU, MT, NL, PL and E&W.

Table 2.1 Minimum sanctions general overview

MS	Minimum imprisonment	Min fines nat. persons	Min. fines legal persons
Austria	General limits and specific minimum sanctions for more serious offences	General minimum sanctions	General minimum sanction: 1 daily rate EUR 50 minimum daily rate
Belgium	Minimum sanctions of incarceration and imprisonment depend on the offence Minima for types of offences: Felonies: incarceration minimum 5 years Misdemeanours: imprisonment minimum 8 days Infractions: imprisonment minimum 1 day	Different minima for each offence Minima for types of offences: Infractions: EUR 6 Misdemeanours and felonies: EUR 156 €	General minima for types of offences: Infractions: EUR 150 Felonies, misdemeanours: In case of life sentence: EUR 1,440.000 Imprisonment and fine: EUR 3.000 multiplied by number of months of the minimum imprisonment sanction (must not be lower than the minimum fine provided for the specific offence)
Bulgaria	In general part and special part	In general part and special part	No criminal liability
Croatia	General minimum sanction of 3 months; For specific offences: 3 months, 6 months, 1 year, 3 years, 5 years or 10 years	Only a general limit: 30 daily rates 20 kuna (EUR 2,59) minimum daily rate	General limit of 5.000 kuna (EUR 649) Minimum sanction for each criminal offence depending on penalty for natural persons: Fine, imprisonment up to 1 year: 5.000 kuna (EUR 649); imprisonment up to 5 years: 15.000 kuna (EUR 1.947); imprisonment up to 10 years: 30.000 kuna (EUR 3.893); imprisonment up to 15 years: 50.000 kuna (EUR 6.489)
Cyprus	In principle no minimum sanctions (constitutional reasons) except for murder, treason and driving under influence	No.	No
Czech Republic	Minimum sanctions for some crimes or aggravated versions of crimes	Yes, one general minimal limit for all criminal offences – 2.000 CZK (EUR 72,13)	General minimum of 20.000 CZK (approx. EUR 721,30)
Denmark	Minimum sanctions only for very few offences (homicide, high treason, aggravated perpetration of the Act on weapons and explosives) General limit: 7 days	No minimum fines	No minimum sanctions
Estonia	General and specific minimum sanctions Specific minimum sanctions for some more serious crimes	General limit, but no limits in the Special part	No minimum sanctions
England & Wales	Minimum sanctions for some specific offences (murder, firearms, offensive weapons) and for specific recidivist offenders (Class A drug trafficking, domestic burglary, knives, list of 40 serious offences)	No minimum limits	No minimum limits
Finland	General limit and minimum sanctions for particular offences	General limit of 1 daily rate	General limit of amount of EUR 850
France	Depending on maximum sanction (Article 132-	No	No

MS	Minimum imprisonment	Min fines nat. persons	Min. fines legal persons
	18); Life imprisonment: 2 years Determined period of time: 1 year		
Germany	Minimum sanctions for each offence	General minimum limits	No criminal liability
Greece	Minimum sanctions in General and Special Part Minimum duration of incarceration: 5 years Minimum duration of imprisonment: 10 days	Pecuniary sanctions imposed in misdemeanours: EUR 150 Fines imposed in petty offences: EUR 29 No minimum level of financial sanctions for felonies	No criminal liability
Hungary	Minimum sanctions in the general part for all criminal offences (3 months) and specific minimum sanctions for particular offences	General limit	General minimum amount of fine
Ireland	Minimum sanctions in relation to specific categories of offences (murder or treason, drug sale/trafficking, certain firearms offences, recidivism within 5 years)	No minimum sanctions	No distinction is made between legal persons and non legal persons in the legislation.
Italy	General minimum sanctions for felonies (Delitti) and misdemeanours (Contravvenzioni) and specific minimum sanctions for offences which can be lower than the general minimum limits	General minimum sanctions for felonies (Delitti) and misdemeanours (Contravvenzioni) and specific minimum sanctions for offences which can be lower than the general minimum limits	Administrative pecuniary and interdictive sanctions: general limit Pecuniary sanctions: quota system: minimum number of quota 100; minimum amount of a quota EUR 258 Absolute minimum of EUR 10.329.
Latvia	minimum limits defined for each offence in the Special Part General minimum sanction 15 days for temporary imprisonment (can be imposed only in cases particularly identified in the special part of CL. 3 month general minimal sanction in other cases.	General limit depending on the type of criminal offence: - Criminal violation: 3 minimum monthly wages (MMW) - less serious crime: 5 MMW - serious crime in some cases: 10 MMW, serious crime in some cases and especially serious crime: 201 MMW	No financial penalties, only coercive measures, but one of them is monetary levy (fine) in the amount of ten to hundred minimal monthly salaries established in the Republic of Latvia
Lithuania	Minimum limits for specific offences and general minimum depending on the kind of punishment (3 months)	General limit of 1 MSL (1 MSL – 130 LTL / EUR 37,65)	General limit of 1 MSL
Luxembourg	Different levels of minimum sanctions for different types of criminal offence: Crimes: different levels of minimum sanctions of <i>réclusion</i> according to the seriousness of the crime Délits: general level of minimum sanctions of <i>emprisonnement</i> , unless otherwise foresee by law	General limit depending on the type of criminal offence	General limit of EUR 500
Malta	No general minimum; minimum sanction (where	General limits:	General limits:

MS	Minimum imprisonment	Min fines nat. persons	Min. fines legal persons
	applicable) is specified for each offence	Fine (Ammenda) for less serious offences: EUR 6,99 Fine (Multa) for more serious offences: EUR 23,29	Fine (Multa): EUR 1.164,69
Netherlands	No minimum sanctions provided by law, but provided in some sentencing guidelines	No	No
Poland	General minimum sanctions and minimum sanctions for specific offences	General limits in Criminal Code and Code of Minor offences	No minimum penalties
Portugal	Different minimum sanctions for offences and general minimum limit in general part (1 month)	Different minimum sanctions for offences and general minimum limit in general part (10 daily rates)	Different minimum sanctions for offences (determined either directly or with reference to imprisonment) and general minimum limit in general part (10 daily rates)
Romania	Special limits for each offence	Depends on whether fine only or also imprisonment Level depends on special limits of imprisonment: Only fine: 60 daily fines No more than 2 years imprisonment: 120 daily fines More than 2 years imprisonment: 180 daily fines Purpose of perpetrated offence: limits can be raised by a third	Depends on whether fine only or also imprisonment. Level depends on special limits of imprisonment: Only fine: 60 daily fines No more than 5 years imprisonment: 120 daily fines More than 10 years imprisonment: 180 daily fines More than 20 years imprisonment: 240 daily fines Life imprisonment: 360 daily fines Purpose of perpetrated offence: limits can be raised by a third
Slovakia	No general minimum sanction, but minimum sanctions for each specific criminal offence	General minimum limits	No criminal liability (law under preparation)
Slovenia	General minimum sanction: 1 month Specific minimum sanctions for each criminal offence: no specific minimum if maximum is up to two years	General minimum limit of 10 daily rates	General minimum limit of EUR 10.000
Spain	Specific minimum sanctions for each criminal offence Different degrees of punishment: The minimum level to the upper degree is the maximum penalty for the felony concerned (plus one day); The maximum level of the lower degree shall be the minimum penalty of the felony concerned (minus one day).	General minimum level: 10 daily rates	General minimum level: Fines: 10 daily rates, also minimum levels in special part when it is not possible to calculate a proportional fine according to the profit obtained (e.g. 6 months for day-fines) Proportional fines: the profit obtained (the profit obtained is multiplied by one).
Sweden	General minimum sanction: 14 days Minimum sanctions for specific offences, no	General minimum limits: 30 daily rates	No criminal sanctions, but "corporate fine": minimum of 5.000 SEK (EUR 525)

MS	Minimum imprisonment	Min fines nat. persons	Min. fines legal persons
	general principle whether lower limit is given	50 SEK (EUR 5,25) minimum daily rate	

2.3 General “technical” minimum limits

2.3.1 General minimum limits of imprisonment sanctions

Regarding general minimum limits of imprisonment sanctions, three groups of Member States can be distinguished:

(Low) general minimum sanctions are foreseen – as explained supra – for more practical and technical reasons or reasons to avoid sanctions which are neither useful nor effective, but only cause costs. Such minimum levels are foreseen in 18 Member States (AT, BG, DE, DK, EE, ES, FI, HR, HU, IT, LT, LV, NL, PL, PT, RO, SE, SI). These minima range from 1 to 7 days (AT, DK, NL) to 3 months (BG, ES, HR, HU, LT). In detail the following minimum levels are foreseen:

Table 2.2: Level of general “technical” minimum limits in the Member States

Imprisonment	Country
1 day	AT, NL
5 days	IT (misdemeanours), PL (Code of Minor Offences)
7 days	DK
14 / 15 days	FI, IT (felonies), LV, RO, SE
30 days / 1 month	EE, PL (Criminal Code), PT
1 month	DE (6 months for juveniles), SI
3 months	BG (if no specific minimum in the Special Part provided for), ES, HR, HU, LT
No general „technical“ minimum	BE, CY, CZ, FR, IE, MT, SK, E&W

In three Member States higher minimum sanctions are provided for juveniles (DE, HR, SI). Such minimum sanctions shall avoid that only very short imprisonment sentences are imposed. Whereas in cases of limits of only one or some days considerations on the practicability and cost efficiency may be relevant, higher general limits may also have the background that very short imprisonment sentences should be avoided due to reasons of criminal policy.

In a few Member States also general minimum sanctions depend on the seriousness of a specific offence or a group of offences (BE, EL, LU) or on the maximum imprisonment sanction (FR). In these Member States the minimum sanctions – at least for certain groups of offences – are significantly higher than in other Member States (between 5 and 20 years). Even if these limits are ruled in the general part, their function is similar to limits, which are provided for specific offences, as they depend on the seriousness of the offence. See supra p. 15.

However, between these groups there are “grey zones”, since the “technical” minimum of 3 months is quite high, whereas the general minima depending on the seriousness of the offence for certain groups of offences might be very low (e.g. in BE for infractions 1 day or misdemeanours 8 days). On the other hand in some Member States the general minimum is only applied, if in the special part no specific minima are provided for (e.g. BG). IT provides different minimum levels for misdemeanours and felonies, but both are quite low (5 and 15 days).

No general minimum limits for imprisonment sentences are provided for in CY, CZ, IE, SK, MT, E&W. These countries only provide for minima for specific offences.

2.3.2 General minimum limits for financial penalties

2.3.2.1 *Natural persons*

General minimum limits for fines against natural persons are foreseen in 23 Member States. In five Member States (CY, DK, FR, IE, E&W) no general minimum limits for fines are provided for. Systems to administer financial penalties in the Member States are very different and more diverse than the system for custodial sentences. 13 Member States provide for a system of day fines, whilst 15 Member States operate fines based on absolute amounts. In these states different circumstances influence the amount of the financial penalties. Even if Member States have a similar system of fines, there are significant differences in the determination of financial penalties.

Following these different systems, the limits are different in the absolute amount and also in the way how they are defined, depending on the way of determining financial penalties (system of daily fines, or absolute amounts of fines). In most Member States which have a system of daily fines, a minimum number of daily rates and a minimum amount per daily rate are foreseen (AT, DE, HR, HU, PL, PT, RO, SE). In some Member States only a minimum number of daily rates is provided for (EE, ES, FI, SI) or the minimum amount of one daily rate is limited. In systems which provide for fines in absolute amounts also the minimum limits are established in absolute amounts (e.g. BE, BG, CZ, LT, LU, MT, NL, SE, SK).

However, the minimum limits for fines range from 3 EUR to more than 250 EUR or are bound to a certain number of minimum monthly wages (LV) (more details see in table 2.3).

In some Member States the minimum amounts of financial penalties are differentiated according to the groups of offences, e.g. for misdemeanours or felonies (BE, EL, IT, LU, LV, MT) or for financial penalties against adults and juvenile offenders (SK).

2.3.2.2 *Legal persons*

12 Member States (AT, BE, CZ, ES, FI, HR, HU, IT, LT, PT, RO, SI) provide for general limits for financial penalties against legal persons. The other Member States which contain provisions on the criminal liability of legal persons, do not provide general minimum sanctions.

In AT, ES, IT and PT minimum numbers of daily rates and minimum amounts of daily rates are foreseen. In BE, CZ, FI, HR, HU, LT, RO and SI absolute amounts of minimum fines are provided for. In BE the general minima differ according the various types of offences: Independent from the system the minimum amounts of financial penalties against legal persons reach from 30 EUR (AT) to 25.800 EUR (IT). In LV the minimum is ten minimal monthly salaries. BE provides for a minimum limit of 1,440.000 EUR for the most serious offences (life imprisonment). However, the Belgian system of minimum sanctions differs according to the seriousness of the offence. Therefore, these general minimum sanctions are to be seen as minimum sanctions, which do not have only a technical function.

Table 2.3 General minimum limits

MS	General minimum limits imprisonment	General min fines nat. persons	General min. fines legal persons
Austria	1 day	2 daily rates 4 Euro minimum daily rate	1 daily rate EUR 50 minimum daily rate
Belgium	No general minima. Minimum provided for each offence determine the classification of offence: Minima for types of offences: Felonies: incarceration minimum 5 years Misdemeanours: imprisonment minimum 8 days Infractions: imprisonment minimum 1 day	Minima for types of offences: Infractions: EUR 6 Misdemeanours and felonies: EUR 156	General minima for types of offences: Infractions: EUR 150 Felonies, misdemeanours: In case of life sentence: EUR 1,440.000 Imprisonment and fine: EUR 3.000 multiplied by number of months of the minimum imprisonment sanction (must not be lower than the minimum fine provided for the specific offence If the offence is only punishable by a fine: the minimum as is set for that specific offence by the BCC.
Bulgaria	3 months, applied if no specific minimum in special part	100 BGN (EUR 50,92)	No criminal liability
Croatia	3 months	30 daily rates 20 kuna (EUR 2,59) minimum daily rate (minimum 600 kuna)	5.000 kuna (EUR 649)
Cyprus	No	No	No
Czech Republic	No, minimal sanction stipulated for some offences only	2,000 CZK (approx. EUR 72,13)	20,000 CZK (approx. EUR 721,30)
Denmark	7 days If a fine is transformed into a prison term: 2 days	No limits	No limits
Estonia	30 days	30 daily rates	No limits
England & Wales	No general minimum limit	No minimum limit	No minimum limit
Finland	14 days	1 daily rate	850 Euros
France	Depending on maximum sanction: Life imprisonment: 2 years Determined period of time from 10 to 30 years: 1 year	No limits	No limits
Germany	1 month Juveniles: 6 months	5 daily rates 1 Euro minimum daily rate	No criminal liability
Greece	Minimum sanctions in General and Special Part Minimum duration of incarceration: 5 years Minimum duration of imprisonment: 10 days	General limits for all offences, due to their categorisation in groups of offences (petty offences, misdemeanours, felonies) Special minimum sanctions for numerous offences (no	No criminal sanctions

MS	General minimum limits imprisonment	General min fines nat. persons	General min. fines legal persons
		typology)	
Hungary	3 months	30 daily rates, HUF 1.000 (EUR 3,26) minimum daily rate	HUF 500.000 forint (EUR 1.631)
Ireland	No general minima	No general minima	No general minima
Italy	Felonies (Delitti): 15 days Misdemeanours (Contravvenzioni): 5 days	Felonies (Delitti): EUR 50 Misdemeanours (Contravvenzioni): EUR 20	quota system: minimum number of quota 100; minimum amount of a quota EUR 258 (pecuniary sanction must not be lower than EUR 10.329)
Latvia	15 days	Criminal violation: 3 minimum monthly wages Less serious crime: 5 minimum monthly wages Serious crime: 10 minimum monthly wages Especially serious crime: 101 minimum monthly wages	No financial penalties, only coercive measures; one of them is monetary levy (fine) in the amount of ten to hundred minimal monthly salaries established in the Republic of Latvia
Lithuania	3 months	1 MLS	1 MLS
Luxembourg	Crimes: Fixed relation between minimum and maximum: 5 years (to 10) 10 years (to 15) 15 years (to 20) 20 years (to 30) Délits: 8 days	Crimes, délits: EUR 251 Contraventions: EUR 25	General limit of EUR 500
Malta	No general minimum	Fine (Ammenda) for less serious offences: EUR 6,99 Fine (Multa) for more serious offences: EUR 23,29	Fine (Multa): EUR 1.164,69
Netherlands	1 day	EUR 3	EUR 3
Poland	Criminal Code: 1 month Code of Minor Offences: 5 days	Criminal Code: 10 daily rates 10 PLN (EUR 2,40) minimum daily rate Code of Minor Offences: minimum of 20 PLN (EUR (4,80)	No minimum penalties
Portugal	1 month	10 daily rates EUR 5 minimum daily rate	10 daily rates EUR 100 minimum daily rate
Romania	15 days	30 daily rates 10 lei (EUR 2,28) per day	100 lei (EUR 22,81) per day
Slovakia	No general limits	EUR 160 for adults; EUR 20 for juvenile offenders	No criminal liability at the moment
Slovenia	1 month	10 daily rates	EUR 10,000
Spain	3 months	10 daily rates	Fines: 10 daily rates Proportional fines: the profit obtained multiplied by one
Sweden	14 days	Day fines:	No criminal sanctions, but "corporate fine":

MS	General minimum limits imprisonment	General min fines nat. persons	General min. fines legal persons
		30 daily rates 50 SEK (EUR 5,25) minimum daily rate Reduction possible, absolute minimum 750 SEK Fixed fines: 200 SEK	minimum of 5.000 SEK (EUR 525)

2.4 Categorisation of offences²⁶

Only in a minority of the Member States (BE, ES, EL, DE, FR, HU, LU) the law contains **categories** of offences with defined levels of minimum sanctions. BE and EL differentiate between three different categories – petty offences (EL) or infractions (BE) next to misdemeanours and felonies. In other states (FR, HU and LU) a fixed link between the minimum and the maximum level applies. For example, if the maximum is 5 years, the HU legislator has to set a minimum of 1 year. In FR, for example, an offence with a maximum sentence of lifetime has a minimum of two years. Next to these categorisations, legislators set minimum levels in the special parts of the criminal codes.

All other Member States do **not** provide for such categorisation with defined levels of minimum sanctions. These states provide for minimum sanctions, if any, in the **special part** of their criminal codes together with the **definition of each offence**. The mentioned Member States can be divided into two groups: one where the Member States belonging to these group do provide for minimum sanctions only for very few (DK, E&W, IE and SE) or no (NL) offences and the other where the states provide for minimum sanctions for many offences and minimum sanctions therefore, and also from an historical point of view, form an integral part of their sentencing systems. AT, HR and SI – belonging to the latter group – as well have certain **links** between the minimum and the maximum levels. These links however are not established by law, but result from the minima stipulated in each specific offence. The legislator may provide for other penalty bands and is not bound to lay down a certain minimum together with a certain maximum.

²⁶ Please also refer to chapter 2.2.1 for supplementary information.

Table 2.4 Categorisation of offences

MS	Categorisation	Minimum sanction for each specific offence
Austria	<p>Mostly, the following links exist between the min. and the max. (exceptions):</p> <ul style="list-style-type: none"> - An upper limit of 20 years is linked to a minimum level of 10 years imprisonment; - An upper limit of 10 years is usually linked to a minimum level of one year imprisonment; - An upper limit of 5 years is usually linked to a minimum level of 6 months imprisonment; - If the offence provides for a maximum sanction of three years or below, no minimum sanctions are foreseen in the Criminal Code. 	The level of a minimum sanction is provided for each specific offence. However, there is a certain link between the maximum limit and the minimum level of the sanction.
Belgium	Differentiation between felonies, misdemeanours and infractions. Felonies have a minimum sanction of 5 years and misdemeanours and infractions have a minimum level of 8 days.	Different minima for each offence. The minimum level determines to which group of offences the offence belongs to.
Bulgaria	No	The level of minimum sanction is regulated in each specific offence in a different way. It depends on the characteristics of the crime (type and nature of the crime; the way and the means of its commission; the personality of the offender – clean criminal record, emotional state; form of guilt; motives for commission, etc.).
Croatia	<p>There is no categorisation of offences with defined levels of sanctions.</p> <p>Fines: A general minimum and maximum fine is prescribed for.</p> <p>Imprisonment: Usually, imprisonment sentences range between the following minimum and maximum levels:</p> <ul style="list-style-type: none"> - from 3 months to 1 year; - from 3 months to 2 years; - from 3 months to 3 years; - from 6 months to 5 years; - from 1 year to 8 years; - from 1 year to 10 years; - from 1 year to 12 years; - from 3 years to 12 years; 	<p>Fines: Fines are not prescribed for each offence. A general minimum and maximum applies.</p> <p>Imprisonment: The sentencing range is prescribed for each specific offence.</p>

MS	Categorisation	Minimum sanction for each specific offence
	<ul style="list-style-type: none"> - from 5 years to 20 years; - from 10 years to 40 years. 	
Cyprus	No	Minimum sanctions are provided for only for two specific offences.
Czech Republic	No	Minima are prescribed differently for the specific offences.
Denmark	No. Danish criminal law does not apply a categorisation of offences with defined levels of minimum sanctions, neither a maximum coupled with a mandatory minimum, nor a mandatory minimum where the offence was committed in a specified way or in particular circumstances.	Specific minima are foreseen in the provisions of few offences.
England & Wales	No	The minimum level is regulated in each specific offence.
Estonia	No	Minimum sanctions for some specific crimes.
Finland	No. The Finnish system is based on a categorisation of offence gravity that is also reflected in the nominal sentence bands for specific offences but which is not expressly laid out in the criminal code as such.	The nominal tariff band is specified in the context of an individual offence. Aggravated or mitigated offences are typically expressed as separate offences with individualised penalty bands.
France	Minimum sanctions are linked with the maximum sanctions provided by the law for specific offences. The penalty ranges depend on the gravity of the offences. Offences which carry a maximum sentence of lifetime imprisonment do carry a minimum of two years imprisonment. When the maximum sanction is a specific period of time of prison (from 10 to 30 years), the minimum is one year.	No
Germany	German criminal law distinguishes between felonies and misdemeanours according to the minimum sanction (offences with a minimum sanction of less than one year are misdemeanours, offences with a minimum sanction of one year or more are felonies [section 12 CC]).	Each offence has its own penalty range. This leads to a vast variety of different penalty ranges.
Greece	Yes, the general part of the Criminal Code provides for a categorisation of offences in regard to their minimum sanctions. Felony: life imprisonment or fixed-term imprisonment (5 years minimum)	In addition to the mentioned minima which are foreseen in the general part of the Criminal Code, specific minimum sanctions are foreseen in the specific offences.

MS	Categorisation	Minimum sanction for each specific offence
	Misdemeanour: minimum of 10 days of imprisonment Petty offence: minimum of 1 day	
Hungary	HU criminal law recognizes specific categories regarding minimum levels of sanctions: such as 1 to 5 years, 2 to 8 years, 5 to 15 years, and so on. These ranges are fixed, and legislators shall not depart from them.	The legislator can in addition define specific minima for single offences.
Ireland	No	Minimum sanction only for four specific offences where the maximum sentence is life imprisonment
Italy	A categorisation of offences is made by the legislator, but only in regard to very low general minimum sanctions: General minimum sanctions for imprisonment: a) Felonies min. 15 days/max. 24 years; b) Misdemeanours min. 5 days/max. 3 years. General minimum sanctions for fines: a) Felonies min. € 50/max. € 50.000; b) Misdemeanours min. € 20/max. € 10.000.	The specific minimum level, if any, is regulated in each offence. If there is no specific minimum level regulated, the general minimum applies.
Latvia	Criminal offences shall be divided into criminal violations and crimes according to the nature and harm of the threat against the interests of a person or the society. Crimes shall be divided as follows: less serious crimes, serious crimes and especially serious crimes. <ul style="list-style-type: none"> - Criminal violation: minimum of more than 15 days (temporary deprivation of liberty), or a type of lesser punishment. - Less serious crime: intentional offence for which a minimum of more than 3 months imprisonment is provided for - Serious crime: minimum of more than 3 years - Especially serious crime: is an intentional offence for which this law provides for deprivation of liberty for a term exceeding eight years or life imprisonment. The general minimum and maximum limits of a monetary fine are defined in accordance with the classification of the corresponding criminal offences.	Specific minimum levels are regulated in the single offences.
Lithuania	No. A categorisation of offences is provided for, however this categorisation is only dependent on maximum levels.	Yes

MS	Categorisation	Minimum sanction for each specific offence
Luxembourg	In LU different levels of minimum sanctions are provided for different types of criminal offences depending on the seriousness of the offence. It is divided between crimes and délits. For crimes different minimum levels of réclusion depending on the seriousness of the crime are foreseen: 5 years, if the maximum is 10 years; 10, if the maximum is 15; 15, if the maximum is 20, and 20, if the maximum is 30 years. For délits a general level of minimum sanctions of imprisonment is provided for, unless otherwise foreseen by law.	The levels of minimum sanctions are regulated in each specific offence.
Malta	No	Minimum sanctions are provided for in each specific offence.
Netherlands	N/A	N/A
Poland	A general distinction between crime and misdemeanour is drawn: For crimes a minimum sanction of at least 3 years imprisonment is foreseen. For misdemeanours a minimum sanction of 30 daily rates of financial penalty is foreseen.	In addition, specific minimum sanctions are provided for in the single offences.
Portugal	No	The provision where the offence is defined sets the minimum sanction, if any.
Romania	No	Minimum levels are provided for in the specific offences.
Slovakia	No	Minimum levels are defined in relation to each offence.
Slovenia	Mostly, the following links between minimum and maximum sanctions exist: <ul style="list-style-type: none"> - Minimum of 6 months is linked to a maximum of 5 years - Minimum of 15 years is linked to a maximum of 30 years 	Minimum sanctions are regulated in the specific offences.
Spain	ES provides for a quite complex system of minimum and maximum levels of penalties. Minimum sanctions are foreseen for each criminal offence. The level of the minimum does not only depend on the specific offence, but also different degrees of punishment exist: The minimum level to the upper degree is the maximum penalty for the felony concerned (plus one day). The maximum level of the lower degree shall be the minimum penalty of the felony concerned (minus one day).	The level of a minimum sanction is provided for in each specific offence separately depending on the seriousness of the offence (action/omission and result) and the value of the legally protected interest.
Sweden	No	The applicable penalty is regulated in each specific offence.

2.5 Minimum sanctions for specific offences

2.5.1 Preliminary remarks

Before listing and comparing minimum sanctions for specific offences two aspects have to be considered: The statutory definitions of the chosen offences and the system of the offences or groups of offences in the Member States. As both elements are very different throughout the Member States, minimum sanctions are in general difficult to compare. There are Member States, which already provide for high maximum sanctions and minimum sanctions for the basic offence, but do not provide for aggravating circumstances which change the range of penalties, and there are others, which provide for low sanctions for the basic offence and foresee aggravating circumstances for which higher penalties are provided for. The term "murder" for example is also understood in different ways in the various Member States. Thus, the offence "murder" in Member State "A" does not necessarily mean the same as in Member State "B" with regard to the contents. Murder may be defined as wilful homicide, but without premeditation, in Member State "A", but Member State "B" for example provides for three different levels of penalties for certain other types of murder. And for each type specific minimum sanctions are foreseen. In spite of a definition of murder in the questionnaire, there are Member States which provide for two or more different levels of penalties for certain types of murder.

Similar definitions of offences exist when there are EU legislative acts which contain definitions of the offences. However, even in these cases Member States are free how they transpose these EU instruments into national law and they adapt the provisions to their national systems.

2.5.2 Collected data

Data on minimum sanctions provided for 23 criminal offences have been collected. The following list shows the number of Member States, which provide for minimum sanctions for the various offences. There is no difference made between basic offence and aggravating/mitigating circumstances in this list, but only counted whether for one form of commission of the offences (e.g. under certain aggravating circumstances) minimum sanctions are provided for. For more details see table 2.5.

- Murder: 27 Member States;
- Treason: 26 MS;
- Illicit drug trafficking: 24 MS;
- Robbery: 23 MS;
- Trafficking in human beings: 23 MS;
- Rape: 23 MS;
- Grievous bodily injury: 23 MS;
- Sexual abuse of children: 22 MS;
- Participation in a terrorist organisation: 22 MS;
- Passive Corruption: 22 MS;
- Active Corruption: 22 MS;
- Counterfeiting currency: 22 MS;
- Theft: 22 MS;
- Money laundering: 22 MS;
- Armed robbery: 22 MS;
- Participation in a criminal organisation: 21 MS;
- Arms trafficking: 21 MS;
- Fraud: 20 MS;
- Counterfeiting means of payment: 20 MS;

- Perjury: 18 MS;
- Handling of dangerous waste: 15 MS;
- Driving under the influence: 12 MS;
- Trafficking in stolen vehicles: 9 MS.

Looking at the minimum levels of the 23 offences, as a general remark it can be said that there are **significant differences** between the minimum sanctions for the chosen offences between the Member States.

Table 2.5 Minimum sanctions overview**Explanatory Remarks:**

- ✓ **A tick** in a column shall mean that there is a specific minimum sanction foreseen either for the basic offence or for the aggravating or mitigating circumstance for first-time offenders. General minimum limits, which do not refer to the severity of the offence are not considered.
- No tick** in the column indicating the basic offence shall mean that there is no specific minimum sanction foreseen for the basic offence or that there is no such offence in the Member State.
- If the basic offence carries a specific minimum sanction, no tick in the column "aggravating" shall either mean that there is no aggravating circumstance for this offence and/or that the minimum sanction of the basic offence is also applicable to the aggravating circumstance.
- No tick in the column "mitigating" shall mean that there is either no mitigating circumstance for this kind of offence or there is such a circumstance, but no specific minimum sanction for this circumstance.
- ✓* A specific minimum sanction for a mitigating circumstance which relates to / is derived from an aggravating circumstance.
- ✓¹ The law prescribes a minimum imprisonment sanction or a fine. However, the threat of an alternative fine does not exclude that there is a minimum imprisonment sanction. Penalties containing a minimum imprisonment sanction or a fine (as an alternative to the imprisonment sanction) are considered as minimum sanctions for the purpose of this study.
- ✓² This minimum sanction is derived from the General Part of the respective Criminal Code; however, it relates to the severity of the offence and therefore has been taken into consideration.

Minimum imprisonment sanctions in EU Member States for selected offences																												
Offence	AT	BE	BG	CY	CZ	DE	DK	E&W	EE	EL	ES	FI	FR	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK
Murder	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓ ²	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
aggravating		✓	✓		✓	✓			✓				✓ ²	✓	✓		✓	✓		✓			✓	✓	✓		✓	✓
mitigating						✓			✓	✓	✓			✓			✓		✓		✓		✓	✓	✓	✓	✓	
Rape	✓	✓	✓		✓	✓			✓	✓ ²	✓	✓	✓ ²	✓	✓		✓		✓	✓	✓		✓	✓	✓	✓	✓	✓
aggravating	✓	✓	✓		✓	✓			✓	✓	✓	✓	✓ ²	✓	✓		✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
mitigating						✓								✓										✓			✓	
Grievous bodily injury		✓	✓		✓	✓			✓	✓	✓	✓		✓			✓		✓		✓		✓	✓	✓	✓	✓	✓
aggravating	✓	✓	✓		✓	✓				✓	✓		✓ ²	✓	✓		✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
mitigating						✓																		✓				
Theft		✓	✓							✓	✓			✓			✓		✓		✓		✓		✓ ¹			
aggravating	✓	✓	✓		✓	✓			✓	✓	✓	✓	✓ ²	✓	✓		✓		✓	✓	✓			✓	✓	✓	✓	✓
mitigating			✓			✓*				✓ ²																		
Fraud (incl against financial interests of		✓	✓							✓	✓			✓			✓		✓		✓		✓	✓	✓		✓	✓

Minimum imprisonment sanctions in EU Member States for selected offences																												
the EU)																												
aggravating	√		√		√	√				√	√	√		√	√		√			√	√			√	√	√	√	√
mitigating			√			√*				√ ²				√														
Participation in a terrorist organisation in the sense of Art 2 (2) (b) FD 2002/475/JHA	√	√	√			√			√	√ ²	√	√	√ ²	√	√		√	√	√	√	√		√	√	√			√
aggravating		√			√					√	√		√ ²	√			√	√	√	√			√	√			√	
mitigating			√			√					√				√									√				
Sexual abuse of children in the sense of Art 3 (4) Directive 2011/92/EU	√	√	√		√	√				√	√	√		√	√		√		√	√			√	√	√		√	√
aggravating	√	√	√		√	√			√	√	√	√	√ ²	√	√				√	√	√			√	√	√	√	√
mitigating						√*								√														
Trafficking in human beings	√	√	√		√	√			√	√ ²	√	√		√			√	√	√		√		√	√	√	√	√	√
aggravating	√	√	√		√	√			√	√	√	√	√ ²	√	√			√	√	√	√			√	√		√	√
mitigating									√																			
Illicit drug trafficking	√	√	√		√					√	√		√ ²	√	√	√	√	√	√ ¹					√	√		√	√
aggravating	√	√	√		√	√			√	√	√	√	√ ²	√	√		√	√	√ ¹	√	√		√	√	√	√	√	√
mitigating			√			√*				√ ²					√						√*			√			√	
Money laundering		√	√			√				√ ²	√			√	√		√		√		√		√	√	√			√
aggravating	√		√		√	√			√	√ ²	√	√	√ ²	√	√				√	√			√	√		√	√	√
mitigating																									√			
Active Corruption in the sense of Art 3 (1) EU Corruption Convention 1997		√				√			√	√	√			√			√		√		√		√	√	√		√	√
aggravating	√	√			√	√			√	√ ²	√	√	√ ²		√			√	√	√	√		√	√		√		√
mitigating									√		√									√				√		√		
Passive Corruption in the sense of Art 2 (1) EU Corruption Convention 1997		√				√			√	√	√		√ ²	√	√		√		√		√		√	√	√		√	
aggravating	√	√	√		√	√			√	√ ²		√			√				√	√	√		√	√	√	√		√
mitigating						√*			√																√			
Counterfeiting currency	√	√	√		√	√				√	√	√	√ ²	√	√		√		√		√		√	√	√		√	√

Minimum imprisonment sanctions in EU Member States for selected offences																											
aggravating		√			√	√					√	√ ²		√			√		√					√	√	√	
mitigating						√				√	√		√				√		√								
Forgery/counterfeiting of means of payment	√	√	√							√	√		√			√		√		√		√	√	√		√	
aggravating					√	√			√		√	√		√					√				√		√	√	
mitigating										√																	
Participation in a criminal organisation in the sense of Art 2 (a) FD 2008/841/JHA	√	√	√		√				√	√ ²	√		√ ²		√		√	√	√	√	√		√	√	√		√
aggravating		√	√		√	√				√	√		√			√	√	√	√	√		√	√			√	
mitigating			√					√	√ ²									√		√							
Trafficking in stolen vehicles		√																	√		√						
aggravating					√							√	√ ²		√					√	√					√	
mitigating																											
Robbery	√	√	√		√	√			√		√	√		√	√		√		√		√		√	√	√	√	√
aggravating	√	√	√		√	√			√	√	√	√	√ ²	√	√			√	√	√			√	√	√	√	√
mitigating	√					√			√		√																
Armed robbery	√	√	√		√	√			√	√	√	√	√ ²	√	√		√	√	√	√	√		√	√	√		√
aggravating					√					√	√	√	√ ²	√								√		√			
mitigating									√		√																
Arms trafficking		√	√		√	√	√			√	√	√			√	√	√				√		√	√	√		√
aggravating			√		√	√			√	√			√ ²	√	√			√			√			√	√		√
mitigating										√ ²	√													√			
Treason	√	√	√	√	√	√			√	√ ²	√	√	√ ²	√	√	√	√	√	√	√	√		√	√	√	√	√
aggravating		√					√				√	√		√													
mitigating						√			√				√ ²								√				√		
Collection, transport, disposal of dangerous waste			√							√	√						√					√			√ ¹		
aggravating	√		√		√	√				√	√	√		√	√					√				√		√	
mitigating						√*																					
Perjury	√	√				√				√	√			√	√		√		√		√		√		√ ¹		√
aggravating		√			√					√	√	√		√	√				√		√			√	√	√	√
mitigating						√					√								√		√						
Driving under the										√	√						√				√				√ ¹		

Minimum imprisonment sanctions in EU Member States for selected offences																												
influence																												
aggravating					√					√				√	√			√			√		√		√	√		√
mitigating																												

Disclaimer: This table has been done with the greatest possible diligence. However, due to the different definitions of offences in the various EU Member States, indications of minimum sanctions may not be fully accurate.

2.5.3 Case studies

2.5.3.1 Introduction

In the following eight offences (murder, sexual abuse of children, trafficking in human beings, fraud, counterfeiting currency, armed robbery, active corruption, treason) have been selected to demonstrate the divergences between the minimum levels. The difficulty to compare the levels of minimum sanctions is that the systems of penalty ranges in the Member States are quite different. Some Member States provide for one (broad) penalty range and it is up to the judge to determine the penalty within this broad range of penalties considering the existence of aggravating or mitigating circumstances. In other Member States the legislator establishes various levels of sanctions depending on the severity of the offence, on the amount of the damage or on the way of commission. To compare the levels of minimum sanctions the most serious form of the offence has been selected and therefore the highest minimum sanction. In some Member States this is the minimum for the basic offence, since there is only one basic offence with a large range of penalty. In other Member States this is the minimum for the most serious form of the offence, since for the basic offence no or only a low minimum sanction is provided for. A minimum sanction or a higher minimum sanctions does only exist in case of an aggravating circumstance.

2.5.3.2 Murder

Although it seems at first sight that murder is a "standard" offence throughout the Member States, there are a number of different models of murder and homicide in the Member States. FI, FR, HU, LT and SI for instance distinguish between manslaughter and murder or even assassination, but others do not. ES, for example, indicates that there is no minimum sanction for "ordinary" murder. In all Member States except NL minimum sanctions are foreseen at least for the most severe forms of murder. However, a comparison of those states, which provide for minimum levels, shows significant divergences among the minimum imprisonment sanctions: They reach from 2 to 20 years. In 10 Member States even life imprisonment is foreseen as a minimum. Details are provided for in the following table:

Table 2.6 Minimum sanctions for murder

Minimum levels for „Murder“ (most serious cases)	
No minimum	NL
2 years	FR
5 years	DK
8 years	EE, LT
10 years	AT, ES, HR, HU, SE, SI
12 years	PL, PT
15 years	CZ, LV, RO
20 years	BG
Life (mandatory)	BE, CY, DE, EL, E&W, FI, IE, IT, LU, MT, SK

2.5.3.3 Sexual abuse of children

A similar picture as in the case of murder can be seen with regard to the offence of Sexual abuse of children in the sense of Article 3 (4) of Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography.²⁷ For such offences the directive provides for a minimum maximum sanction of 5 years, but does not provide for any minimum levels. The minimum levels in the Member States reach from 1 year to 15 years, six Member States do not provide for any minimum sanction. It can be seen that seven Member States foresee minimum sanctions between 4 and 6 years and a group of eight Member States provides for a minimum level of 10 years.

Table 2.7 Minimum sanctions for sexual abuse of children

Sexual abuse of children (most serious cases)	
No minimum	CY, DK, E&W, IE, LT, NL
1 year	FI, FR, SE
2 years	PL
3 years	PT
4 years	MT
5 years	BG, HU, IT, RO, SI
6 years	EE
10 years	AT, BE, CZ, DE, EL, HR, LU, LV
13 years	ES
15 years	SK

2.5.3.4 Trafficking in human beings

Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA²⁸ aims at approximating the Member States' criminal provisions on trafficking in human beings. It provides for minimum maximum penalties of ten years in the most serious cases, but does not provide for any minimum sanctions. The Member States' laws show huge differences with regard to minimum sanctions. Six Member States do not foresee any minimum levels, the minimum levels in the other 22 Member States reach from 1 year to 20 years. Most Member States (15) provide for minimum sanctions of 5 years or less. Compared to the sexual abuse of children, where the minimum maximum penalty foreseen in Directive 2011/92/EU is 5 years, it can be seen that there is no correspondence between minimum maximum sentences in the EU legal instruments and the minimum sanctions in the Member States' laws.

²⁷ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ 2011, L 335/1.

²⁸ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ 2011, L 101/1.

Table 2.8 Minimum sanctions for trafficking in human beings

Trafficking in human beings (most serious cases)	
No minimum	CY, DK, E&W, EL, IE, NL
1 year	AT, DE
2 years	FI, FR, SE
3 years	EE, HR, LT, PL, SI
4 years	PT
5 years	BG, HU, LV, RO
6 years	MT
8 years	IT
10 years	CZ, LU
12 years	ES
15 years	BE
20 years	SK

2.5.3.5 *Fraud (including fraud against the EU financial interests)*

Eight Member States do not provide for minimum sanctions for fraud, in the other 20 Member States the minimum sanctions range from 15 days in BE to 10 years in BG and SK. A group of nine Member States provides for minimum levels between 1 and 2 years. As this offence also covers fraud against the financial interests of the EU, it is interesting to compare these limits with the minimum penalties the European Commission proposed in the Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law.²⁹ There, minimum penalties of at least 6 months imprisonment were proposed for serious cases (advantage or damage of at least EUR 100.000). For 12 Member States such a provision would mean that on the one hand minimum sanctions had to be introduced or the level of the minimum sanctions had to be raised. On the other hand in 14 Member States (at least for certain serious cases) the existing minimum sanctions would be significantly higher.

Table 2.9 Minimum sanctions for fraud

Fraud (most serious cases)	
No minimum	CY, DK, EE, E&W, FR, IE, LT, NL
15 days	BE
2 months	MT
4 months	FI, LU
6 months	PL, SE
1 year	AT, DE, IT, HR, SI
2 years	EL, LV, PT, RO
3 years	ES
5 years	CZ, HU
10 years	BG, SK

²⁹ Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law, COM(2012) 363.

2.5.3.6 Counterfeiting Currency

Regarding counterfeiting currency, six Member States do not provide for any minimum sanctions. In those Member States which provide for minimum sanctions the minimum sanctions range from 1 year to 12 years for the most serious cases. In four Member States the minimum level is 1 year, in five it is 2 years, in four Member States it is 3 years and 5 years. Five Member States provide for significantly higher minimum levels.

In the Proposal for a Directive on the Protection of the Euro and other currencies against counterfeiting by criminal law the Commission proposed for the most serious cases (involving notes and coins of a total nominal value of at least EUR 10.000 or involving particularly serious circumstances) a minimum penalty of at least 6 months of imprisonment. This means that in all Member States which already provide for minimum sanctions the minimum levels are significantly higher. Only in those Member States which do not provide for minimum sanctions, an amendment of their laws would have been necessary. However, in those States this would have meant a fundamental change, since in most of them minimum sanctions are exceptions.

Table 2.10 Minimum sanctions for counterfeiting currency

Counterfeiting Currency (most serious cases)	
No minimum	CY, DK, EE, E&W, IE, NL
1 year	AT, FR, HR, SI
2 years	DE, FI, LV, MT, SE
3 years	IT, LT, PT, RO
5 years	BG, HU, LU, PL
8 years	CZ, ES
10 years	BE, EL
12 years	SK

2.5.3.7 Armed Robbery

Armed robbery is a criminal offence which is not influenced by EU law, but where Member States have different models how the offence is structured. In some Member States it is a separate offence, in others it is an aggravating circumstance and in some of them this circumstance can be combined with other aggravating factors. That may be a reason why the level of minimum sanctions is very different.

Table 2.11 Minimum sanctions for armed robbery

Armed Robbery (most serious cases)	
No minimum	CY, DK, E&W, IE, NL
9 months	MT
2 years	FI, FR, LT
3 years	EE, PL, RO
4 years	SE
4,5 years	ES, IT
5 years	AT, DE, HR, HU, LV, (SI)
10 years	CZ, EL, PT
15 years	BE, BG, LU, SK

However, in 23 Member States minimum sanctions are foreseen. They range from 9 months in MT to 15 years in BE, BG, LU, SK. The overview table shows that there are big differences between the various Member States. In SI there is no specific offence of robbery, but is covered by the provisions on theft.

2.5.3.8 Active corruption

For Active corruption minimum levels are lower by trend. 6 Member States do not provide any minimum levels. Regarding the others, the minimum levels range from 4 months to 10 years. In the majority of Member States the minimum level is up to one year. However, 9 Member States provide for minimum sanctions of 2 or more years, with the maximum in LU and SK which provide for minima of 10 years, which is higher than the maximum in some other Member States.

Table 2.12 Minimum sanctions for active corruption

Active Corruption (most serious cases)	
No minimum	BG, CY, DK, E&W, IE, NL
4 months	FI
6 months	HR, SE
1 year	AT, BE, CZ, DE, FR, EL, HU, MT, PL, SI
2 years	EE, LT, LV, PT
3 years	ES, RO
4 years	IT
10 years	LU, SK

2.5.3.9 Treason

In the case of Treason the comparison of the minimum sanctions is easier than in the other cases, as most Member States have only one provision without any aggravating circumstances. Therefore, the offence is more or less similar throughout the Member States. 25 Member States provide for minimum sanctions for treason. Minimum levels range from 1 year to life imprisonment. Three Member States do not provide for any minimum levels.

Table 2.13 Minimum sanctions for treason

Treason (most serious cases)	
No minimum	EL, NL, UK
1 year	SI
2 years	FR
4 years	FI
5 years	HR, LT, LV
6 years	DK, EE
10 years	AT, BG, DE, HU, LU, PL, PT, RO, SE
15 years	CZ, SK
20 years	BE, ES

2.5.3.10 Preliminary conclusions

The examples demonstrate that the existence of minimum sanctions for one offence in several Member States does not mean that the levels of minimum sanctions are similar. There is a broad range of minimum sanctions for one and the same offence. The systems of penalties in general and the system of minimum sanctions in particular differ significantly in the Member States. The picture is quite heterogeneous. There are groups of Member States which have similar levels of minimum sanctions. Moreover, there are Member States which mostly provide for minima on a lower level, and others which provide for minima on a higher level.

Differences in minimum sanctions cannot be seen between offences where EU legal instruments provide for an approximation of offences and sanctions and other offences where no approximation on EU level has taken place. It seems that EU approximation instruments do not have any influence on the establishment of minimum sanctions. This is not really surprising, since EU instruments have not foreseen any minimum levels of sanctions until now. Directive 2014/62/EU on the protection of the Euro and other currencies against counterfeiting by criminal law³⁰ did not contain any minimum sanctions, the directive on the protection of the financial interests has not yet been adopted. Therefore the Member States did not adapt their minimum sanctions to a common standard. It could be only thought of Member States which had to adapt (raise) their maximum sanctions and due to their sanctioning system also adapted the minimum levels. However, an approximating effect cannot be observed. On the contrary, the examples demonstrate that minimum sanctions are deeply linked to the national systems of criminal sanctions.

2.6 Sources of minimum sanctions

Minimum sanctions are provided for in the **criminal codes** of the Member States. In one third of the Member States additional sources, such as **sentencing guidelines**, exist. They do exist in BG, DK, E&W, FI, HU, IE, LT, LV, NL and RO and have different characteristics. However, they do not always contain rules on minimum levels, but on other sentencing issues. They can be grouped into two categories:

In BG, IE, FI, HU, LT, LV and RO sentencing guidelines are **issued by a court** (BG, HU, LT, LV, RO: Supreme Court; IE, FI: Appeal Court) and consist of a **set of recommendations** for sentencing decisions of the courts **in general**. For example recommendations in which situations judges should go below minimum sanctions etc. The sentencing guidelines of the HU Supreme Court contains example-based and non-comprehensive assessment schemes for aggravating and mitigating circumstances to prevent disproportionate sentencing. However, they do not include range of sentences with minimum and maximum limits and are only binding in HU and IE. In FI there have been quite recent attempts³¹ to determine typical penalties for particular criminal offences. But they are also no comprehensive formal guidelines, which indicate ranges of sentences.

On the contrary, in DK, NL and E&W sentencing guidelines for prosecutors (DK) and judges (NL, E&W) **with certain minimum** (and maximum) **limits** exist. For example, in DK the prosecutor should plea for a minimum of 12 years of imprisonment in case of intentional killing of a spouse. For intentional killing of a child s/he shall plea for a minimum of 14 years imprisonment and for sexually molesting and killing a child s/he shall plea for life imprisonment. Furthermore, there are sentencing positions on

³⁰ OJ 2014 L 151/1.

³¹ Project on sentencing at the Helsinki Court of Appeal; see reference in the Finnish report at Fn 70.

aggravated weapon offences. In NL there exist various sentencing guidelines, which serve to help judges in their sentencing decisions. However, they do not contain minimum limits as such. The following numbers only provide for so called focus-points and are not binding for the judge. For example, rape offenders should be sentenced to more than 24 months of imprisonment, offenders of illicit drug trafficking should be sentenced between 1 week of imprisonment to 72 months of imprisonment and fraud offenders should be sentenced between 1 week and 24 months of imprisonment. Next to these sentencing guidelines, separate guidelines in different courts exist. The guideline of the Maastricht district court for example contains a minimum limit of 12 years for first-degree murder (with premeditation) and a minimum limit of 6 years for manslaughter. However, the judges are not bound to these limits either. In E&W comprehensive sentencing guidelines exist, which suggest minimum (and maximum) limits, which the court is normally obliged to respect, unless it is contrary to the interests of justice to follow the guidelines.

Thus, in DK, NL and E&W additional sources other than the law for minimum levels exist. However, these guidelines are only binding in E&W. Furthermore, English sentencing guidelines differ from legislation in that way as they are “soft law” consisting of recommendations from a delegated body rather than parliament and the sentencing court is granted a much wider discretion to refuse to follow them.

Table 2.14 Minimum sanctions – sentencing guidelines

Sentencing guidelines in the EU MS			
	Yes / No	Binding	Content (concern minimum sanctions?)
Austria	No		
Belgium	No		
Bulgaria	Yes, issued by Supreme Court	Yes, for judges	Content does not concern minimum sanctions
Croatia	No		
Cyprus	No		
Czech Republic	No		
Denmark	Yes, issued by Director of Prosecutions	Not binding for the court	Intentional killing a spouse: plea of 12 years imprisonment; intentional killing a child: plea of 14 years imprisonment; sexually molesting and killing a child: plea of life imprisonment; Further sentencing positions on aggravated weapon offences
England & Wales	Yes, issued by the Sentencing Council	Yes, for judges, unless it is contrary to the interests of justice to follow the guidelines	For those offences for which an official Guideline has been published, a range of sentence is proposed, with a suggested upper and lower limit. Insofar as there is a lower limit, which the court is normally obliged to respect, these Guidelines perform a function that is rather similar to mandatory minimum sentences. However, they differ in that (i) they are “soft law”, consisting of recommendations from a delegated body rather than “hard law” in the form of primary or secondary legislation; (ii) they are far more detailed, and (iii) the sentencing court is granted a much wider discretion to refuse to follow them.
Estonia	No		
Finland	Yes		Project on sentencing at the Helsinki Court of Appeal
France	No		
Germany	No		
Greece	No		
Hungary	Yes	Yes, for judges	Opinion No 56 of the Criminal Department of the Hungarian Curia serves as binding guideline in the assessment of mitigating circumstances. This opinion, adopting

Sentencing guidelines in the EU MS			
			recommendation R (92) 17 of the Council of Europe Committee of Ministers concerning consistency of sentencing, and without dismissing decades of judiciary custom, has set up an example-based and non-comprehensive assessment scheme for aggravating and mitigating circumstances to prevent disproportionate sentencing.
Ireland	Yes, issued by the Court of Criminal Appeal and also provided for in the legislation governing each offence.	Yes	The Courts are enabled by the legislation to go below the mandatory in instances of: (i) Guilty plea; the court will take account of the stage the plea was entered at and the circumstances surrounding it; (ii) Material assistance; this generally relates to more than just the accused's involvement in the offence; (iii) Any matters the Court considers appropriate; the list is not exhaustive and generally refers to matters which mitigate the seriousness of the offence and matters which mitigate the severity of the sentence.
Italy	No		
Latvia	Yes, issued by Supreme Court	No	Example: The existence of aggravating circumstances <i>per se</i> prohibits the court from applying the minimum sanction envisaged by the particular Section. Upon identifying even a single circumstance aggravating criminal liability, the court may not determine a lesser punishment than the one set out in law.
Lithuania	Yes, issued by Supreme Court	No	Recommendations not only regarding the rules on minimum limits for sentencing but also concerning the application of all sentencing rules provided in the CC.
Luxembourg	No		
Malta	No		
Netherlands	Yes; also separate guidelines for different courts	No	Guideline for Maastricht district court: for manslaughter minimum prison sentence of 6 years; for first-degree murder (with premeditation) minimum prison sentence of 12 years Further examples: - Rape > 24 months prison - Insulting another person > 150 euro fine

Sentencing guidelines in the EU MS			
			<ul style="list-style-type: none"> - Simple assault > 500 to 750 euro fine - Severe assault > 3 months to 1 year prison - Shoplifting > 200 euro fine to 5 months prison (depending on recidivism) - Burglary > 90 hours community service to 12 months prison - Illicit drugs trafficking > 1-3 weeks prison to 72 months prison - Fraud > 1 week to 24 months prison
Poland	No		
Portugal	No		
Romania	Yes, issued by Supreme Court	No	Content does not concern minimum sanctions; limited to corruption offences!
Slovakia	No		
Slovenia	No		
Spain	No, but judges have <i>not</i> much room for discretion for assessing penalties since the SCC foresees general rules on application of penalties		
Sweden	No		

2.7 Limitations to minimum sanctions

In the vast majority of the Member States (BE, BG, CY, CZ, DE, DK, E&W, EL, ES, FI, HR, HU, IE, IT, LT, LU, LV, MT, PL, PT, RO, SE, SK) minimum sanctions in principle are foreseen **for all cases**, meaning there is no restriction to certain groups of offenders or groups of offences. Often, minimum sanctions are provided for aggravating circumstances, which constitute separate offences and for the most serious crimes. However, minimum sanctions are not only foreseen for these cases; they could be foreseen in less serious cases as well.

In E&W the application of minimum sanctions is not exclusively, but largely restricted to recidivist offenders. Only the mandatory life sentence for murder and the minimum sanctions for firearm and offensive weapons offences in principle apply to all offenders. In CY, DK, E&W and IE minimum sanctions do apply only to very few offences; however, in those Member States, if they are foreseen for a certain offence, they apply to all groups of offenders.

In a few Member States (AT, BE, EE, FR, LU and SI) minimum sanctions are **limited to offences with a certain maximum punishment**. In EE minimum sanctions are indicated for all crimes punishable by at least 7 years of imprisonment. If the maximum sanction is less than 3 years, minimum sanctions are not applied. In SI only offences with a maximum level of more than 2 years have minimum sanctions and in AT only offences with a maximum level of more than 3 years have minimum sanctions. In AT this limitation is not prescribed by law, but the legislator usually foresees minimum sanctions only for offences carrying a maximum penalty of more than 3 years. In FR only offences with a maximum level of at least 10 years have minimum sanctions.

2.8 Situations in which minimum sanctions fall below their levels

2.8.1 Introduction

Even if Member States provide for minimum sanctions in their laws, at the same time there are ways or situations in which minimum sanctions can fall below their level or do not exist due to certain circumstances. There might be a different sentencing regime in the Member States' laws for certain cases, or judges may or have to impose a lower sentence than the minimum penalty due to specific provisions. However, the fact that minimum sanctions can be in some way circumvented³² does not mean that they lose their significance. The distinctions between the various possibilities how minimum sanctions can fall below their level are somehow blurred due to the different sanctioning rules in the Member States. However, two types of categories can be identified:

- For some cases a completely **different sanctioning regime** exists, mostly in cases of **juveniles** and/or **young adults**. In these cases, the law prescribes that different rules (others than for adults) shall be applicable from the very beginning of the trial or already during the pre-trial investigations. If the prerequisites are met – if the perpetrator is a juvenile or a young adult – the judge has to apply the specific rules laid down for juveniles or young adults. These rules do not only

³² For further ways how judges or other actors may circumvent minimum sanctions, please refer to chapter 3. ("Individualisation of Sanctions"). The present chapter focuses on the legal aspects how minimum sanctions can fall below their level; the chapter on Individualisation of Sanctions focuses more on the practical aspects how judges actually impose sentences and how the sentences are implemented.

cover sentencing issues, but also other issues like jurisdiction or rules on excluding the public from the trial;

- Provisions in the Member State's laws, which are applicable to all cases and according to which **judges** may or are obliged to go below the minimum level (prescribed by law) in their sentencing decisions.. Very few Member States have sentencing guidelines where minimum and maximum penalty levels can be found.³³ However, sentencing guidelines are only binding for the judges in E&W. Judges may or are obliged to go below the minimum level, if specific prerequisites – mostly the existence of mitigating circumstances – are met.

Another differentiating factor is whether the options to go below minimum sanctions derive from **substantive** or **procedural law**. Most EU Member States derive their options to go below the minimum level from substantive law (e.g. the existence of mitigating circumstances). Some Member States show mechanisms to go below minima via procedural law, e.g. via plea-bargaining (BG, HR, SI, SK). Some mechanisms may also be designed either as mechanism deriving from substantial and/or procedural law. The co-operation with law enforcement authorities for example is a mitigating circumstance derived from substantive law as well as a procedural mechanism in some Member States (e.g. AT).

The following analysis is concentrating on imprisonment sanctions.

2.8.1 Different sanctioning regimes

2.8.2.1 General remarks

Most Member States have different sanctioning regimes including rules on minimum sanctions when the perpetrator is a **juvenile**, and few Member States provide for another system for **young adults** as perpetrators. In AT and DE, for example, juveniles and young adults are sentenced according to separate laws (Jugendgerichtsgesetz – Juvenile Court Act) which also contain different sanctioning regimes for juveniles (and young adults)³⁴. Other Member States contain such sentencing rules in their Criminal Codes (e.g. LT). Definitions what a juvenile or a young adult is slightly differ between the Member States. In AT or DE, for example, juveniles are persons between 14 and 18 years and young adults are persons between 18 and 21 years. BG, for example, differentiates between juveniles under 16 years and juveniles who are between 16 and 18 years old. As the exact definition of a juvenile or a young adult is not essential for the purpose of this study, a juvenile shall be a person between 14 and 18 years old and a young adult a person between 18 and 21 years old. No further efforts in regard to a definition shall be made, however more specific indications of the relevant ages shall be given in footnotes where deemed necessary. However, one has to keep in mind when reading this paper that the persons who are referred to as juveniles or young adults may be of slightly different age in the various Member States.

If Member States' laws prescribe a different sanctioning regime for **juveniles**, the majority of these laws prescribe either **no** (AT, BG³⁵, ES, HU, IE, LU³⁶, SK) or **lower** (AT, BG, CZ, DE, E&W, EL, ES, FI, FR, HR, IT, LT, LV, MT, SI, SK) **minima** for imprisonment sanctions for juveniles than for adults. LV also provides for lower limits for fines in juvenile cases, if the juvenile has own income. In cases of **young adults**

³³ See also chapter 2.6.

³⁴ In AT the different rules on sentencing for young adults are contained in the Austrian Penal Code itself.

³⁵ For juveniles under 16 years.

³⁶ Except serious offences.

only few Member States provide for **no** (AT) or **lower** (AT, DE, LT) minima for imprisonment sanctions.

BE, BG (for less serious offences), DE, EL, IT (if the juvenile offender is not mentally capable of committing an offence), LV (for less serious offences), PT, RO, SI (for young minors³⁷) apply (as well) **educational or therapeutic measures** to juveniles; imprisonment sanctions are inadmissible in these cases. In IE juveniles under 15 years cannot be sentenced to any term of imprisonment, they are instead detained in a certified school. In SK the court may fully refrain from punishment in juvenile cases. Juvenile offenders in IT are assessed on a case-by-case basis, if they have been mentally capable of committing an offence. If they have not been declared mentally capable to commit an offence, it is not admissible to impose a prison sentence on the juvenile.

SI³⁸ and SK foresee the possibility to replace the imprisonment sentence by a **fine** in **juvenile cases**. In SI this is true only for offences which carry a imprisonment sentence of up to 5 years. Furthermore, the judge has to apply a lower minimum, if s/he decides to impose a fine. However, some Member States, as e.g. SI, explicitly provide that fines should only be imposed on juveniles, if they already have their own income.

Many Member States **combine** the various possibilities described above. For example, AT prescribes for no minimum levels for less serious cases and lower minima for serious cases. SI distinguishes between younger and older minors, foreseeing only educational measures for younger minors, but lower imprisonment sanctions or fines for older minors. Whether either an (lower) imprisonment sanction or a fine is admissible for the older minor, depends on the severity of the offence. According to the DE Juvenile Court Act the judge imposes an imprisonment sanction on the juvenile, if educational measures are not sufficient. However, imprisonment sanctions for juveniles in general carry a lower minimum level than imprisonment sanctions for adults.

Some Member States **do not foresee** different sanctioning systems for juveniles and young adults. That is the case in CY, DK, EE, NL, PL and SE. In CY and DK, for example, juveniles and young adults are subject to the same sentencing regime as adults, thus the same minimum levels apply. However, many of these Member States foresee possibilities to mitigate the minimum levels for juvenile and young adult offenders via the application of mitigating circumstances by the judge.

2.8.2.2 *Juveniles*

2.8.2.2.1 *Non-application of (any) minima to juveniles*

As mentioned above, the following Member States foresee that minimum levels of imprisonment sanctions shall not be applicable to juveniles: AT, BG³⁹, ES, HU, IE, LU⁴⁰, PL and SK. According to these systems it is admissible to impose prison sentences on juveniles, however, no minimum level applies. In HU a general minimum of 1 month applies to all offences committed by juveniles. As the technical minimum level for adult offenders amounts to 3 months in HU, this rule also reduced the "technical" minimum for juveniles.

³⁷ Young minors are persons between 14 and 16 years old.

³⁸ Only for older minors (= persons between 16 and 18 years old).

³⁹ Juveniles who are under 16 years.

⁴⁰ Except serious offences.

Rules which abolish minimum levels for juveniles, are sometimes restricted to **less serious offences** (AT, ES, SK). At the same time, these states foresee rules that in more serious offences a lower minimum is applicable. HU law, on the contrary, provides for the non-application of minimum levels to all kinds of offences committed by juveniles.

2.8.2.2.2 Lower minima for juveniles

Lower minima for imprisonment sentences are foreseen in the following Member States: AT, BG, CZ, DE, E&W, EL, ES, FI, FR, HR, IT, MT, LT, LV, SI, SK. In FI perpetrators between 15 and 17 years may be sentenced to a so-called "youth penalty" instead of an unconditional sentence. In IT the judge has to impose a reduced sanction, if a juvenile offender has been declared to be mentally capable of committing an offence. SI law prescribes that in cases of offences carrying a prison sentence of more than 5 years, the general minimum for adults (1 month) does not apply to older minors; however, a fixed lower limit of 6 months prison sentence applies. Thus, in effect the imposed prison sentence may be harsher for older minors⁴¹ than for adults in some cases; namely in cases where no specific minimum which is higher than 6 months applies for adults. The Slovenian legislator justifies this with the argument that the purpose of a prison sentence for a juvenile is education and not punishment. 6 months would be the minimum length in order to ensure a proper personal development and education. DE and HR law foresee similar rules. In DE and HR the general minimum level for adults does not apply to juveniles. However, the minimum level for penalties shall be 6 months for juvenile offenders in order to allow an educational effect. Furthermore, this rule wants to avoid that very short imprisonment penalties (under 6 months) will be imposed on juveniles. As the minimum length for a prison sentence that can be imposed on a juvenile is 6 months, prison sentences under 6 months are inadmissible.

Reduced lower limits for juveniles are often half of the "ordinary"⁴² minimum (CZ, FR⁴³, LT, SK) or "ordinary" minima are for example reduced to a certain length, e.g. 2 years (EL for serious crimes), 1 year (ES for serious crimes, AT for murder cases) or 6 months (AT for serious crimes, DE, EL, HR, SI). The reduced lower limit shall still reflect the severity of the offence. In CZ, for example, the reduced minimum limits for juveniles are **new minimum limits** and the judge might go below this new minimum level in his/her sentencing decision.

In IT the new lower limit for juveniles amounts to a reduction of **up to one-third** of the ordinary minimum provided for the offence in question. The concrete reduction however lies in the discretion of the judge.

2.8.2.3 Young adults

Only **three Member States** foresee no or lower minimum limits for young adults. AT, DE and LT have special provisions in their laws, which prescribe that minimum sanctions ex-lege do not exist or are lower, if the offence is committed by a young adult. According to the LT provision, the judge has to take into consideration the nature and reasons for the committed offence as well as other circumstances of the case, and, where necessary, to seek clarifications or conclusion of an expert who has to decide whether such a person is equal to a juvenile with regard to his social maturity. If this is the case, the new minimum level for the young adult offender shall be half of the ordinary minimum level. In DE the minimum level for young adult offenders is 6 months, if the young adult is equal to a juvenile according to his social

⁴¹ Older minors are persons between 16 and 18 years old.

⁴² "Ordinary" meaning when an adult would have committed the offence.

⁴³ For juveniles between 13 and 16 years old.

maturity. In AT, a minimum level of 10 years is reduced to 5 years, minimum sanctions of more than 1 year are reduced to one year for young adult offenders; minimum sanctions of exactly 1 year are reduced to 6 months. Minimum sanctions are even inapplicable, if for the offence no maximum imprisonment penalty of more than 5 years is foreseen.

In DK, EE, CZ and SE the fact that the offender is a young adult is “only” a general mitigating circumstance. In LU young adults are likely to receive a milder sanction in practice, although this is not even explicitly foreseen as a mitigating circumstance.

2.8.3 Mechanisms to go below minimum sanctions

2.8.3.1 *General remarks*

Although minimum sanctions provided for by law have an obligatory character, judges can go below the minimum level in their sentencing decisions in order to find a proportionate and adequate sentence in each specific case. The various options to go below minimum levels are **provided for by law** in the Member States. In a few states such options to go below the minimum level can also be found in sentencing guidelines. Rarely, judges also go below the minimum level prescribed by law without a legal basis (e.g. in LU in the case of young adults). The application of the various possibilities to go below minimum sanctions is either optional or obligatory for the judge. **Obligatory** means that if the judge considers that certain prerequisites (e.g. some mitigating circumstances) are met, the judge has to go below the minimum level. **Optional** means that if the judge considers that certain prerequisites are met, s/he still can decide whether s/he mitigates the sentence or not. If the judge mitigates the sentence, either a **fixed lower minimum** limit or a **percentage of reduction** applies. However, according to some Member States’ laws it is completely up to the judge to impose a penalty below the minimum level or judges may even decide that the perpetrator remains unpunished.⁴⁴

The various options throughout the Member States to go below minimum sanctions can be divided into two categories:

- The application of mitigating circumstances including the cooperation with law enforcement authorities;
- Guilty pleas and plea bargains.

2.8.3.2 *Mitigating circumstances to go below minimum sanctions*

As the application of mitigating circumstances is described in detail later, only a short introduction will be given at this stage.⁴⁵ Judges may or are obliged to go below the minimum sanction in cases in which even the provided minimum sanction would be too harsh for the concretely realised guilt. Beside the application of such mitigating circumstances that especially relate to the **gravity of the offence and the personal circumstances of the offender**, the **cooperation with law enforcement authorities** plays an equal important role. If the perpetrator of a specific type of crime (especially organised crime, but also corruption cases etc.) provides the authorities with information they would not have been able to obtain in another way and helps them to mitigate the effects of the offence, prevent further offences or identify other offenders, courts have the possibility or are obliged to go below the minimum level of the prescribed sanction for that offence. However, the exact

⁴⁴ Please refer also to chapter 3.1.1. (“Mitigating circumstances and reduced sanction”) regarding the last two aspects.

⁴⁵ See chapter 3.1.1. Refer as well to Annex A for detailed information.

prerequisites for applying this type of extraordinary mitigation differ across the Member States.

There are different **prerequisites** in the Member States for the mitigation of a sentence. This depends on the type of the mitigating circumstance. If mitigating and aggravating circumstances concur, mitigating circumstances in principle must prevail over the aggravating ones that the judge is allowed to go below the minimum. However, that does not mean that more mitigating than aggravating circumstances have to be present, in most states the weight of the individual circumstance is decisive (e.g. AT, HU). On the contrary, according to LV law, aggravating circumstances must not be present in order to go below the prescribed minimum level. However, the mitigating circumstance of cooperation with law enforcement authorities typically represents a stand-alone mitigating circumstance that will not be weighed against other mitigating or aggravating circumstances. Further prerequisites, next to the presence of mitigating circumstances, differ among the Member States, for example in AT it has to be reasonably expected that the offender will not continue to commit offences despite a lower minimum limit applies.⁴⁶

2.8.3.3. Guilty pleas and plea bargains

Some states foresee mechanisms to go below minimum sanctions via guilty plea in exchange for a reduced sanction and/or via so called plea bargaining between the parties of the criminal proceedings. Such mechanisms can be found in BG, E&W, HR, IE, IT, SI and SK.

The possibility of a **plea of guilty** in exchange for a reduced sanction is provided for in BG, E&W, IE, IT, SI and SK. In E&W a guilty plea reduction – which is discretionary – is possible in domestic burglary and Class A drug trafficking cases. A 20% reduction of the sentence is foreseen by law and also restated in the Sentencing Guidelines Council Guideline on the matter. However, that does not automatically mean that a sentence below the minimum will be imposed. Also in IE the courts are enabled by the legislation to mitigate the sentence in instances of a guilty plea (this is for example explicitly provided for in the Misuse of Drugs Act). Thereby the judge has to take into account the stage the plea was entered at and the circumstances surrounding it. The amount of reduction constitutes up to 33% for an early plea. In BG there is an instrument of so called “expedited procedure”. If the defendant completely confesses the facts described in the bill of indictment during the judicial inquiry and agrees that no evidence will be collected, the court is obliged to reduce the previously determined punishment by one third. Again, this does not necessarily mean that the court determines a penalty below the prescribed minimum level. In IT and SK a reduction of one third applies to the sentence, if the defendant pleads guilty. In SI there are special reduction rules if the defendant pleads guilty the first time s/he is faced with the charges or during a plea agreement. If the defendant admits guilt according to the Criminal Procedure Code, lower minimum levels apply than foreseen in the provisions containing the specific offences. To sum up, BG, E&W, IE, IT and SK provide for the instrument of a guilty plea in exchange for a reduced sanction of up to one third of the level which has been determined by the judge. This does not necessarily mean that the imposed sanction will be lower than the prescribed minimum. The only exception is SI where in case of a plea of guilty lower minimum levels apply than foreseen for the single offences.

In BG, HR, IT and SI the instrument of **plea bargaining** is provided for, which is an additional mechanism to go below the minimum level deriving from procedural law. While the instrument of the guilty plea can be classified as a general rule of criminal

⁴⁶ For further information please refer to chapter 3.1.1.

procedure in the Member States mentioned above, plea-bargaining is characterised by a discussion and following mutual agreement between the parties of the proceedings. In BG a criminal proceeding can be concluded by mutual agreement between the prosecutor and the defence lawyer, approved by the court. In this case a sentence may be imposed following the provisions on extraordinary mitigation of sentences according to which a lower minimum level applies. However, the approval of the agreement and the sentence reduction lie in the discretion of the judge. In HR the sentence may be reduced by up to half of the minimum sentence in case of agreement between the public prosecutor and the defendant, but cannot be any shorter than 3 months imprisonment. SK law provides for a so-called "proceedings on guilt" and punishment in which a court may impose a reduced imprisonment sentence up to one third below the minimum level foreseen for the specific offence.

Table 2.15 Imposition below minimum level

Going below minimum sanctions (individualisation of sanctions)					
Different sanctioning regimes			Possibilities of judges to go below minimum sanctions		
	Minimum sanctions do not exist	Minimum sanctions are lower	In which cases?	Optional / Obligatory	Consequences
Austria	Juveniles, exceptions Young adults: in case of penalties with max. levels of 5 years	Juveniles: lifelong / lifelong or 10-20 years → 1 year 10-20 years → 6 months Young adults: minimum of more than 1 year → 1 year minimum of 1 year → 6 months Lifelong / lifelong or 10-20 years → 5-20 years	1. Extraordinary reduction of the sentence if mitigating circumstances prevail: not necessary that there are more mitigating than aggravating circumstances present, the decisive factor is the weight of the single mitigating circumstances; 2. Extraordinary reduction of the sentence if perpetrator (organised crime) cooperates with law enforcement authorities.	Optional	Fixed lower limit
Belgium	Juveniles → alternative sanctions Person of age → admission of the perpetrator to a psychiatric institution, duration will be assessed on case by case basis.	n/a	A) The vindication bases: 1. Provocation in cases of manslaughter, assault and battery; 2. Denunciation of drug related offences; 3. Failing of an attempt to attack the king. B) Mitigating circumstances.	A) Vindication bases are obligatory; B) Mitigating circumstances are optional.	A) Applicable sanction must be lowered; B) Court may diminish the sanction.
Bulgaria	Juveniles under 16 years:	Juveniles under 16 years:	1. Mitigating circumstances:	1. Obligatory;	1. Technical minimum

	<p>in case of max. levels of 5 years/ more than 5/ more than 10 years→ general minimum (3 months) applies.</p> <p>E.g. normal penalty of robbery 3-10 years → for juveniles up to 3 years.</p> <p>In case of release from criminal liability: Juveniles → educative measures.</p> <p>Optional Person of age → administrative penalty – a fine from BGN 1,000 to BGN 5,000. Obligatory.</p> <p>In some cases of cooperation with law enforcement authorities, explicitly provided in CC→ no sanction shall be imposed. Obligatory.</p>	<p>lifelong→ 3 years;</p> <p>Juveniles aged 16-18: Lifelong/in case of max. levels more than 15 years→ 5 years;</p> <p>in case of max. levels more than 10 years→ 2 years</p>	<p>exceptional mitigating circumstance:⁴⁷ presence of only this circumstance is enough; in case of “ordinary” mitigating circumstances great number is required;</p> <p>2. Attempt;</p> <p>3. Accessory;</p> <p>4. Cooperation with law enforcement authorities (not only for organised crime).</p> <p>5. Reduced trial (expedited procedure) (derived from Procedural Law);</p> <p>6. Plea bargaining (derived from Procedural Law).</p>	<p>2. Optional;</p> <p>3. Optional;</p> <p>4. Obligatory (if explicitly stated in CC)/ Optional (in all other cases);</p> <p>5. Obligatory;</p> <p>6. Optional.</p>	<p>applies;</p> <p>2. Technical minimum applies;</p> <p>3. Technical minimum applies;</p> <p>4. Technical minimum applies;</p> <p>5. Determined penalty reduced by one third.</p> <p>6. Amount of reduction lies in the discretion of the judge.</p>
Croatia	n/a	Juveniles → a general minimum for juveniles (6 months) applies	<p>1. Mitigating circumstances;</p> <p>2. Agreement between public prosecutor and defendant;</p> <p>3. Cooperation with law enforcement authorities.</p>	1. Obligatory.	Fixed lower limit.
Cyprus	n/a	n/a	n/a	n/a	n/a
Czech	Minimal sanctions exist only	Juveniles: minimum	1. Mitigating circumstances;	1. Optional;	1. Fixed lower limit

⁴⁷ The numbering (1. etc.) in the first column relates to the numbering in the second and third column.

Republic	for some offences (or aggravated versions thereof).	reduced by 50% and cannot exceed 1 year.	<ol style="list-style-type: none"> 2. Cooperation with law enforcement bodies; 3. Separate rules on repentant offenders; 4. Diminished sanity (but the offender is still liable for its actions). 	<ol style="list-style-type: none"> 2. Obligatory; 3. Optional; 4. Optional. 	<p>(lower minimal incarceration sanction);</p> <ol style="list-style-type: none"> 2. No minimal incarceration sanction; 3. Withdraw sentence. 4. Sanction: combination of imprisonment and medical treatment.
Denmark	No	No	<ol style="list-style-type: none"> 1. Mitigating circumstances; 2. Unsuccessful criminal attempt; 3. Criminal participation of a lesser kind; 4. Cooperation with law enforcement authorities. 	Optional	Punishment reduced or completely remitted.
England & Wales	n/a	Detention during Her Majesty's Pleasure for juveniles: however, in essence, this is the same thing as a life sentence imposed on adults; in reality it is just the name that differs – and a different piece of legislation that prescribes it.	<p>depends very much on the offence for which minimum sanctions are provided for:</p> <ol style="list-style-type: none"> 1. In case of automatic life sentences (list with 40 offences, offender is recidivist): if court is of the opinion that there are particular circumstances which relate to the offence or to the offender and would make it unjust to apply an automatic life sentence, may not apply the automatic life sentence; 2. In case of mandatory minimum custodial sentences for recidivist 	Optional	

			<p>offenders (Class A drug trafficking and domestic burglary):</p> <p>a. Guilty plea reduction;</p> <p>b. Court need not apply the minimum prescribed by law, if it is of the opinion that there are particular circumstances which relate to the offence or to the offender and would make it unjust to apply the minimum;</p> <p>c. Operation of the principle of totality could mean that it is unjust to impose the minimum in all the circumstances.</p> <p>3. In case of mandatory minimum custodial sentences for all offenders (firearms):</p> <p>Court can choose not to impose the minimum if there are exceptional circumstances relating to either of the offences, or to the offender, which justifies it not doing so.</p>		
Estonia	There is no minimum sanction if an accomplice lacks the specific personal characteristics, which pursuant to law constitute prerequisites for the	n/a	<p>1. Mitigating circumstances relating to specific circumstances of the offender and the offence;</p> <p>2. Other mitigating circumstances: Omission, aiding, attempt of instigation to a criminal offence,</p>	<p>1. Optional</p> <p>2. Optional</p>	<p>1. Technical minimum applies;</p> <p>2. Technical minimum applies.</p>

	liability of the principal offender.		(impossible) attempt, diminished mental capacity, error.		
Finland	<p>'Waiver' Ch6s12:</p> <p>(1) the offence of minor significance,</p> <p>(2) the perpetrator has committed under the age of 18 years and the act is deemed to be the result of lack of understanding or of imprudence,</p> <p>(3) due to special reasons related to the act or the perpetrator the act is to be deemed comparable to an excusable act,</p> <p>(4) punishment is to be deemed unreasonable or pointless [wide range of factors]</p> <p>(5) the offence would not have an essential effect on the total sentence due to the provisions on sentencing to a joint punishment.</p>	A wide range of reasons for employing mitigated penal latitude (categorically lowest possible in that category, i.e. 14 days of imprisonment), ch6 ss6-8.	Ch6ss6-8 'mitigated penal latitude' in wide range of circumstances that include broad exceptions.	Optional	<p>1. Mitigated penal latitude (According to this rule at most three fourths of the maximum sentence of imprisonment or fine and at least the minimum sentence provided for the offence may be imposed on the perpetrator. If the offence is punishable by life imprisonment, the maximum punishment is instead twelve years of imprisonment and the minimum punishment is two years of imprisonment);</p> <p>exceptionally substitution of imprisonment with fine;</p> <p>2. Waiving of punishment.</p>

France	n/a	"Minority defence" (13-16 years): sanctions are divided by two. It still be applied between 16 and 18 years old but it is not an obligation anymore.	<ol style="list-style-type: none"> 1. Mitigating circumstances relating to the personal circumstances of the offender. The judge can always decide to go below the minimum level provided by the law (based on Art 132-18-1, 132-19-1 and 132-19-2 Criminal Code); 2. "Minority defence" and for minors older than 16 years, court decides if sanctions are divided by two. 	Mandatory for minors between 13 and 16 and optional in other circumstances.	
Germany	Juveniles and young adults (there only exist general minimum sanctions for each sanction, but no minimum sanctions for different crimes)	Juveniles and young adults	<ol style="list-style-type: none"> 1. Mitigating circumstances (exhaustive list of mitigating circumstances provided for in law); 2. Less serious cases, where provided for in law; 3. Cooperation with law enforcement authorities. 	<ol style="list-style-type: none"> 1. Obligatory / optional, depends on circumst; 2. Obligatory; 3. Optional. 	Fixed lower limit or no minimum sanction at all.
Greece	Educational and therapeutic measures for juveniles	Juveniles: confinement in a special penitentiary for juveniles who have committed a felony with certain characteristics (minimum term: six months, two years depending on the crime committed).	<ol style="list-style-type: none"> 1. Lower penalty framework according to general part of CC: in case of: Self-defence, emergency situation, deaf-mute person, derangement of conscience, disturbance of mental capacities or of conscience, attempt, unfit attempt, voluntary obstruction of the results of the crime, agent 	Obligatory, except young age	Fixed lower limit or offender may remain unpunished (e.g. in case of unfit attempt)

			<p>provocateur, simple accessory, (non-)existence of special capacities or relations, mitigating circumstances, young age.</p> <p>If more than one reason for a reduced criminal penalty exists, the court may only lower the penalty once;</p> <p>2. Lower penalty frameworks found in the special part of CC</p> <p>Provocation and offer to commit a misdemeanour</p> <p>Terrorist acts</p> <p>Collaboration with national authorities in fight against organised crime, terrorism and corruption.</p>		
Hungary	Juveniles: general minimum of one month applies; (the minimum term of imprisonment to be imposed upon juvenile offenders (those between 14 and 18 years of age) shall be one month for all types of criminal acts. This means that regardless of the offense committed, for juvenile offenders,	n/a	<p>Mitigating the sentence:</p> <p>unlimited – limited mitigation</p> <p>limited mitigation: first degree – second degree</p> <ul style="list-style-type: none"> - first degree: for example: If the minimum sentence to be imposed for a criminal act is: ten years of imprisonment, it may be reduced to a minimum of five years of imprisonment; - second degree in case of attempt, and if offender is accessory to the 	Optional	Fixed lower limits; in case of unlimited mitigation the general minimum for imprisonment penalties apply or the sentence can be substituted with another type of penalty or a measure.

	mitigating need not apply for the judge to legally impose a minimum sentence of one month imprisonment.		<p>offence;</p> <p>unlimited mitigation: Unlimited mitigation is applicable only if the HCC explicitly allows it for example: diminished capacity, failed attempt, calumny;</p> <p>The gravity of the mitigating circumstance(s) and not the quantity is decisive.</p>		
Ireland	Juveniles: all prescribed minima and the mandatory life sentence does not apply to juveniles	Where the sentencing judge believes the justice of the case requires them to deviate from the presumptive mandatory minimum	<ol style="list-style-type: none"> 1. Guilty plea; 2. Material assistance; 3. Any matters the Court considers appropriate (especially in case of mitigating circumstances). 	Optional	Court can deviate from prescribed sentencing ranges: exception: mandatory life sentence for murder.
Italy	There is no criminal responsibility for juveniles younger than 14 years (art. 97 CC) and for people affected by a mental illness so serious, that it eliminates the capacity of the person to understand and will the commission of a crime (art. 88 CC). In such cases when the juvenile or the mental ill person is considered socially dangerous by the		<ol style="list-style-type: none"> 1. Attempt; 2. Mitigating circumstances: <ol style="list-style-type: none"> a. 1st differentiation: common (for all offences) and specific mitigating circumstances (e.g. for petty offences against the public administration); b. 2nd differentiation circumstances Efficaciacomune – circumstances Efficaciaspecial. 3. Juveniles older than 14 years and younger than 18 years, when the judge ascertains their capacity to understand and will their actions 	The application is compulsory for the judge, when the conditions required by law exist. The reduction of the sanction may vary, within the range of percentage provided by law, on the basis of	<p>Attempt: reduced minimum: from one third to two-thirds of ordinary sentence</p> <p>Efficaciacomune: decrease up to one third of the sanction provided for by law</p> <p>Efficacia special: decrease by more than one third or it can be provided the application of a different type of sanction (e.g. fine instead of</p>

	judge a security measure is to be applied.		<p>and behaviours: reduction of sanction up to one-third;</p> <p>4. Offender affected by a mental ill, which has the effect to seriously diminish the capacity of understand and will: reduction of sanction up to one-third;</p> <p>5. Cooperation with law enforcement authorities.</p> <p>Offenders' choice for a special procedure of the criminal trial</p>	the discretionary power of the judge.	<p>imprisonment).</p> <p>General rules:</p> <p>more mitigating circumstances lead to a greater decrease of the penalty than only one mitigating circumstance; if mitigating circumstances combine with aggravating circumstances, the judge has to balance them.</p>
Latvia	Juveniles: for less serious offences, imprisonment penalty shall not apply to juveniles (obligatory)	Juveniles: lower limits for fines (obligatory)	<p>1. Court takes into account mitigating circumstances and personality of the offender: there must not be any aggravating circumstances! (except in cases of minors);</p> <p>2. If rights of a person to terminate criminal proceedings within a reasonable term have not been observed, court may determine a lower penalty or a lesser type of penalty;</p> <p>3. Cooperation with law enforcement authorities.</p>	Optional	Fixed lower limits (however not possible to go below the technical minimum) or lesser types of punishment (e.g. a fine).
Lithuania		Juveniles and young adults: minimum shall be equal to one half of the ordinary	<p>1. Art 54 para 3 CC: If ordinary penalty provided for in the sanction of the article of the CC is</p>	Optional	<p>The judge may impose either:</p> <ul style="list-style-type: none"> • A penalty below the

		minimum	<p>evidently in contravention with the principle of justice;</p> <p>2. Art 62 CC: a) Report about committed act, and b) confession and/or cooperation with law enforcement authorities, and c) full or partial compensation of damage;</p> <p>3. Art 62 CC: a) at least two mitigating circumstances, and b) at least partial compensation of damage, and c) one special circumstance provided in law;</p> <p>4. Art 62 CC: Special rules in cases of premeditated murder.</p>		<p>ordinary minimum;</p> <ul style="list-style-type: none"> • A lower penalty for dangerous recidivists; • A more lenient type of penalty (community service, fine, restriction of liberty, arrest, fixed-term imprisonment and life imprisonment); the "more lenient types of penalties" are regulated in the General Part of the CC (Article 42).
Luxembourg	Juveniles	n/a	<p>1. "Causes d'excuse atténuantes": provocation in cases of murder and personal injuries; and trespassing one's property at night;</p> <p>2. "Circonstances atténuantes": no list in law;</p> <p>3. Special rules on lowering fines;</p> <p>4. Cooperation with law enforcement authorities.</p>	<p>1. Obligatory;</p> <p>2. Optional;</p> <p>3. Optional;</p> <p>4. Optional.</p>	Fixed lower limits.
Malta	n/a	Minors: the punishment for the completed offence is reduced by one or two degrees	Article 21 of the Criminal Code stipulates that the Court may, for special and exceptional reasons to be expressly stated in detail in the	Optional	The Court may impose any lower punishment according to its discretion.

		<p>Attempted offences: the punishment for such attempted offence is calculated on the punishment for the completed offence but is then reduced by one or two degrees</p> <p>Conspiracy: the punishment awarded for the conspirator is based on the punishment applicable to the offence subject to the conspiracy but shall be reduced by two to three degrees</p>	<p>decision, apply in its discretion any lesser punishment which it deems adequate, notwithstanding that a minimum punishment is prescribed in the article contemplating the particular offence.</p>		
Netherlands	n/a	n/a	n/a	n/a	n/a
Poland	penalty of imprisonment shall not be imposed on juveniles	n/a	<ol style="list-style-type: none"> 1. Mitigating circumstances; 2. Cooperation with law enforcement authorities (in cases where the penalty provided for by law exceeds 5 years imprisonment). 	Optional	extraordinary mitigation of sentence (fixed lower limit only, if the penalty provided for by law exceeds 25 years of imprisonment → imposed penalty shall not be lower than 8 years) or conditionally suspended sentence.
Portugal	In the case of juveniles the acts are not considered as	n/a	Mitigating circumstances: general clause of special mitigation (significant	Obligatory / optional	Reduction of minimum provided for by law (to $\frac{1}{5}$,

	a crime: criminal liability in Portugal starts at 16 years old		<p>decrease of blameworthiness of the offender, of the unlawfulness of the act or of the need for punishment) / mitigating circumstances explicitly provided for (either with a general character, or with regard to specific offences).</p> <p>If there is more than one mitigating circumstance, the decrease of the minimum is more significant than if there is only one mitigating circumstance (accumulation of circumstances leads to as many mitigations).</p>	depending on the mitigating circumstance	if it is 3 years or higher, or to the technical minimum limit of 1 month, if it is lower than 3 years), depending on the case.
Romania	Juveniles: special system of educational measures	<p>Legal mitigating circumstances:</p> <ol style="list-style-type: none"> 1. Attempt (reduction of penalty provided for by law by half); 2. Provocation (reduction by third); 3. Exceeding the limits of self-defence or state of necessity (reduction by third) <p>Perpetrator removes the result of the offence or repairs the</p>	<p>Judicial mitigating circumstances:</p> <ol style="list-style-type: none"> 1. Article 75 para 2: <ol style="list-style-type: none"> a) The efforts of the perpetrator to remove or diminish the consequences of the crime; b) Other aspects regarding the crime, which diminish the gravity of the crime or the danger of the perpetrator. 	Obligatory	Reduction of minimum provided for by law by one third; not possible to go below the technical minimum.

		<p>damage caused no latter than the first appearing in court, if this circumstance has not been applied in the case of the defendant in the last 5 years (there is a long list of crimes where this circumstance is from the start precluded) – its effect, reduction by third</p>			
Slovakia	Juveniles: For less serious offenses lower limit is not determined	Juveniles: minima provided for by law reduced by half	<ol style="list-style-type: none"> 1. Extraordinary reduction of a sentence in case of reduced of legal responsibility, premeditation of an offence, attempted of an offence, mitigating circumstances; 2. Extraordinary reduction of sentence in case of cooperation with law enforcement authorities (in organized crime and corruption cases; however this rule does not apply to organizers and abettors of the offence); 3. An Agreement on Guilt and Punishment. 	Optional	<p>Fixed lower limits:</p> <ol style="list-style-type: none"> 1. For premeditated murder, genocide, terrorism, cruelty, injustice war cannot be reduced sentence by 20 years, except for juveniles; 2. Otherwise, the court may, in the agreement on guilt and punishment imposes custodial sentence reduced by one-third below the lower limit. In other cases hold

					<p>generally, that if the lower limit is at least 15/10/5 years, the penalty can not be reduced below 8/5/2/ years if the lower limit is of the five years, the penalty can not be reduced below 6 months;</p> <p>3. The punishment of Disqualification, the Prohibition of Residence and Deportation cannot be reduced below six months. "</p>
Slovenia	Young minors: only educational measures admissible	Older minors: Prison sentences of up to 5 years can be replaced with a fine (in case of a fine, a lower minimum applies); Prison sentence of more than 5 years prescribed by law: fixed lower limit of 6 months for prison sentence → in some cases prison sentence for old minors can be harsher than for adults	<ol style="list-style-type: none"> 1. Special mitigating circumstances which justify the imposition of a reduced sentence: assessment of the mitigating circumstances and their effect on the sanction is at the judge's discretion; 2. Offences committed out of negligence; 3. First guilty plea of offender at the time s/he is faced with the charges during the pre-trial; 4. Plea bargaining. 	Optional	<ol style="list-style-type: none"> 1. Fixed lower limits or remittal of sentence; 2. Remittal of sentence; 3. Fixed lower limits; 4. Fixed lower limits.

		for whom the general minimum of 1 months applies (if no specific minimum), because of educational reasons			
Spain	Juveniles, in cases of less serious crimes	Juveniles, in cases of serious crimes minimum level is one year	<p>Mitigating circumstances: Some mitigating circumstances lower the minimum because of their existence, thus they do not have to predominate aggravating circumstances; these are: Mental anomaly or alteration, attempted offences, complicity, mistake of law or prohibition mistake.</p> <p>According to a general rule judges shall go below the minimum, when two or more mitigating circumstances concur, or one or several highly qualified ones, and there are no aggravating circumstances.</p>	Obligatory	Fixed lower limit (penalties lower by one or two degrees).
Sweden	No minimum sentence	No minimum sentence	Mitigating circumstances and a lower sanction is called for on account of specific reasons.	Obligatory	Sentence below the prescribed range.

3. Individualisation of sanctions

While the level of sanctions prescribed by law must be proportionate in the sense that it has to reflect the relative seriousness of the offence concerned, and thereby ensure global and internal coherence within each criminal law system, the punishment actually imposed and enforced on the particular offender will be determined thanks to a process of individualisation. This takes place at different phases and through various mechanisms.

The following analysis deals with the possibility to provide for a more lenient sanction than the legal minimum and/or a more flexible enforcement regime. It concentrates on sanctions consisting in deprivation of liberty.

3.1 Sentencing: imposition of sanction

3.1.1 Mitigating circumstances and reduced sanction

In the first place, the judge or court will examine whether the particular case submitted deserves a lower sanction than the specific mandatory minimum because of particular circumstances. The possibility to pronounce another sanction or to commute imprisonment into an alternative measure will be dealt under 3.1.2.

Imposing a prison sanction below the minimum is not allowed in FR or in CY, but there are only few minimum sanctions provided by law in these Member States (in FR, 2 or 1 year(s) where the offence is punishable respectively by a maximum of life imprisonment or criminal confinement, in CY life imprisonment for murder or treason).

The mitigating circumstances allowing departing from the specific legal minimum sanction may be listed in the criminal code or left entirely to the court's discretion. There is for instance no list of mitigating circumstances in BE, BG, LU, MT. Where the law provides for a list of mitigating circumstances, that list may be exhaustive (e.g. in EE, DE, HR, HU (unlimited mitigation), PL, SK) or non-exhaustive, as in AT, CZ, DK, ES, EL, FI, HU (limited mitigation), IE, IT, LT, LV, PL, PT, RO, SE or SI.

As an alternative, or in combination, the list may contain a general clause allowing the court to impose a more lenient penalty when even the lowest penalty stipulated by law would be incommensurate or inadequately severe: this is for example the case in BE, BG, CZ, EE, ES, FI, LU, PL, LT, SK, or PT. Thus the sanction may be reduced in the presence of (as reported in the PT report) "any circumstance, prior, contemporary or posterior to the crime, that considerably diminishes the gravity of the offence, the blameworthiness of the perpetrator, or the need for punishment". The SK code provides that "If, given the circumstances of the case or personal situation of the offender, the court believes that the imposition of a custodial penalty pursuant to this Act would be inappropriately harsh, and that a shorter-term imprisonment would be sufficient to protect the society, it may reduce the term of imprisonment below the minimum rate set out in this Act". Similarly, the BG code provides that "In case of exceptional or a great number of attenuating circumstances, where even the mildest punishment provided by law proves disproportionately severe, the court shall fix a punishment under the lowest limit" (or substitute another sanction or measure).

Where mitigating circumstances exist, reducing the level of sanction is in most of the cases an option for the court, with appropriate justification, as is reminded in several national reports (e.g. FR, HU, IT, MT). In MT, there is discretion unless otherwise

provided: mitigation may be prohibited for certain drug offences, or on the contrary mandatory as in the case of attempt. Imposing a lower sanction being optional does not mean the court has complete discretion, in the sense that it is the court's responsibility to take into account all the circumstances, to weight their respective value and to make a global assessment (this is particularly underlined in HR, SE, HU for instance, or in EL, where the new range (minimum and maximum, is wide enough to cope with the particular features of each case). On the other hand, when courts decide not to recognise exceptional mitigating circumstances and abide to the limits (i.e. not mitigating below the minimum), they tend to give very little explanation (according to BG, CZ and LU reports).

There are nevertheless examples of circumstances compelling the court to go below the minimum. An example is provocation in case of manslaughter in BE or of murder in ES, or limited capacity of the offender in ES and EL, or limited participation in DE, EL, PT or young age or attempt in MT. The case of cooperation with law enforcement bodies is interesting in this respect: while imposing a lower sanction in such a situation remains optional in most MS (AT, BE, DE, DK, ES, FI, FR, IE, IT, HR, LT, LU, LV, MT, SI, SK, PT or PL), it is mandatory in BG, CZ, and EL. Only in a few Member States (CY, RO, SE) reducing the level of sanction is, as a principle, an obligatory consequence of mitigating circumstances whatever they are.

The mitigation process may be framed by the law, either by providing a specific lower minimum, like in AT, BE, CZ (but not when the offender "significantly contributed to exposure of an organized criminal group": since 2012, in such cases jJudge can go even below the lower thresholds), DE, EE, ES, HR, SI or EL (where the normal minimum is 10 years or more), or by determining a percentage of reduction, like in BG (in case of confession and expedited procedure), in E&W (guilty plea), in IT, LV, PT (for offences punishable by more than 3 years), in RO or SK (except for more severe crimes). Sometimes, it is the general minimum which becomes applicable, such as in EL (when the specific normal minimum does not exceed 10 years), EE (when the specific minimum is less than 5 years, or PT (when the specific minimum is below 3 years). Normally this general minimum remains the lowest minimum when imprisonment is imposed, as is confirmed i.a. in DK, FI, LT, LU, SE. In DE, Art 49 StGB permits, depending on the kind of mitigating circumstances, (§1), to impose a sanction of at most three fourth of the maximum (i.e. still within the range between minimum and maximum), or to reduce the increased minimum term of imprisonment to a lower minimum, or (§2) to reduce the sanction to the statutory minimum.

The ES law establishes a precise "deescalating" system, where the presence of mitigating circumstances leads, as an option or sometimes compulsorily, to a reduction by one or two degrees of the minimum and maximum of penalties (and similarly, in case of aggravating circumstances, the range is increased by one or two degrees). In HU, where a sentence of imprisonment is delivered for a fixed term, the median (i.e. half of the sum of the lowest and highest penalties provided by law) is applicable. However mitigating circumstances entail a first degree mitigation, which means the minimum is reduced (and automatically the median), while second-degree mitigation may be applicable if the lower end of the sentence range, following first-degree mitigation, is still too high relative to the offence when every mitigating circumstance has been taken into account. In IT, the variation of the sanction can be stated in a fixed measure, but more frequently it is a variable and the exact sanction is discretionarily decided by the judge.

In MT (for all offences unless otherwise expressly stipulated), or IE (except for "true mandatory sentence for murder"), the court has full discretion as to the level of the

sanction below the minimum. In some other Member States, only in specific cases is there no fixed lower limit (e.g. in HR, only where the court may remit the sentence, in CZ when the offender significantly contributed to exposure of an organized criminal group, in LU, for misdemeanours but not for felonies).

It is worth mentioning the possibility of “re-qualifying” the offence, which is explicitly mentioned by rapporteurs in some Member States. For instance, in BE, felonies, for which the competent court is the Cour d’Assises are often transformed by prosecutors into misdemeanours. The same possibility exists in LU, in FI or in CZ, where there is a possibility to re-allocate an illegal behaviour to a lower level of crime. Also in E&W, the jury could turn murder into manslaughter in order to avoid imposing a life sentence verdict.

Table 3.1. provides an overview of typical mitigating circumstances allowing to go below the specific legal minimum sanction, indicating in each Member State whether they are explicitly stipulated in the law (1) or not (2). The precise circumstances as well as the exact wording of the circumstances belonging to a particular type may obviously differ from one Member State to the other. Also the existence of a type of mitigating circumstances is indicated as soon as they are regarded as such in the Member State concerned: in some cases however, they are only accepted with respect to certain offences, or in combination with other mitigating circumstances. Tables A1 and A2 in the annex provide more details in those respects. Where typical circumstances are not explicitly provided in the law as mitigating circumstances, but nevertheless invoked to reduce the sanction below the minimum (2), it is either because there is no list of mitigating circumstances (BE, BG, LU, MT), or the list is not exhaustive (AT, CZ, DK, ES, EL, FI, HU (limited mitigation), IE, LT, LV, PL, PT, RO, SE, or SI), or the law contains a global clause (BE, BG, CZ, EE, ES, FI, LU, LV, MT, PT, SK, or PT). When nothing is mentioned, nor does the law explicitly offer the possibility to impose a sanction below the minimum, nor is the circumstance mentioned as regularly leading to mitigation. Moreover no mitigating circumstance of that nature is indicated when there is no minimum sanction provided by the law (NL), or no possibility to mitigate below the minimum (FR, CY).

Table 3.1 Mitigating circumstances to go below minimum sanctions

Countries:	AT	BE	BG	CY	CZ	DE	DK	E&W	EE	EL	ES	FI	FR	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK
Small or no harm	1	2	2		2	1			2		1	1		2	2	2	1	2	2	2	2		1	2	1	2	1	2
Attempt	1	1	1		1	1	1		1	1	1	1		1	1		1	2	1	2	1			1	1	2	2	1
Limited participation	1	2	1		2	1	1		1	1	1	1		1	1	2	1	1	1	2				1		2	2	2
Age of offender	1	2	1		2	1	1	1	2	1	1	1		1	1	1	1	2	2	1	1		1	1		2	1	2
Diminished responsibility	1	2	2		1	1		1	1	1	1	2		1	1	2	1	2	1	1	1			2	1	2	2	1
Unavoidable error	1	2			1	1	1		1		1	2		1	2		2	2			1			2		2	2	2
Offence committed out of distress / tempting opportunity	1	2			1	1	1		2	1	1	1			2		2	1	1	1	1			1	1	2	2	2
No crime record	1	2	2		2	1			2	1		2		2	2	2	1	2	2		2		2		1	2	1	2
Efforts to compensate damage	1	2	2		2	1	1		2	1	2	1		1	2		1	1		1	2		1	1	1	2	1	2
Cooperation with authorities	1	2	1		1	1	1			1	1	2		2	2	2	1	1	2	1	2		1	2	2		1	2
Guilty plea / Confession	1	2	1		2		1	1	2	2	2	1		1	2	1	1	1		1	2				1	2	1	1
Offence committed	1	2					1		2			2			2			2			2			1		1	2	2

Countries:	AT	BE	BG	CY	CZ	DE	DK	E&W	EE	EL	ES	FI	FR	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK
long time ago																												
Reasonable delay of proceedings	1	2	2				1		1		2	2			2		2	2	2	1	2					1	2	2

Legend:

1 = specifically mentioned in legislation

2 = General exception clause or permitted in practice

There is a good level of similarity among the factors taken into consideration for possible mitigation in the various Member States. Incidentally moreover, the same kind of circumstances are actually taken into consideration in order to adapt the level (and type, as will be seen in the following section) of sanction to the particular features of the case in all Member States, regardless to the existence or non-existence of minimum sanctions. Thus in NL, for instance, where no minimum is provided, or in Member States where sanctions imposed are in general above the minimum (see e.g. in the statistical part: in 70 % or more of the sentences for the six selected offences in AT, BE, FI, DE, PL, PT, RO and SE), or in MT, where interviewees have indicated that it would only be in exceptional cases that a number of serious and grave reasons will cumulatively convince the adjudicator to go below the minimum, individualisation on the basis of mitigating circumstances means normally fixing a sanction, between the minimum and the maximum, which is considered suitable, fair and efficient.

Mitigating circumstances may relate (a) to the importance of the damage it has caused, (b) to the way the offence was perpetrated, or (c) to the personality of the author. They may also be linked (d) to the offender's behaviour after the offence has been committed, or (e) to his or her personal or family situation. Sometimes however, the circumstance leading to a reduced sentence is neither directly connected with the offence, nor with the offender (f). In several Member States, the existence of aggravating circumstances may prevent mitigation or reduce the relative weight of mitigating circumstances (g):

- (a.) **Small harm** is a mitigating circumstance allowing to impose a sanction below the minimum in the vast majority of Member States (AT, BG, CY, CZ, DE, EE, ES, FI, HR, HU, IE, IT, LT, LU, LV, MT, PL, PT, RO (where the judge may even exempt the offender for petty crimes, i.e. finding him/her guilty but only issuing a warning), SE, SI, SK). In DE, it is not a mitigating circumstance, but can be regarded as a less serious crime (if the offence committed has a statutory rule for a less serious case);
- (b.) The manner the offence was perpetrated is normally taken into consideration. Hence **attempt** is almost everywhere a mitigating circumstance (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, EL, HR, HU, IT, LT, LU, LV, MT, PT, RO, SE, SK). While not considered as a mitigating circumstance in IT, it leads nevertheless to a reduction of the sanction by 1/3 or 2/3. In SI attempts are typically punishable within the same sentencing ranges, and can only be mitigating when the crime was wilfully aborted. In HU, a distinction is made between attempt and failed attempt, and the margin of reduction is different. The **behaviour of the victim**, in particular provocation, is an explicit mitigating circumstance in DK, ES, LU, LV, PT and RO, and may lead to mitigation in several other Member States. Again, in IT it is not a mitigating circumstance, but the situation is taken into consideration in establishing criminal liability;
- (c.) Personality of offender is obviously an essential element in the individualisation process. With regard to the **age of the offender**, as has been explained, minors normally benefit from a special regime, and to a limited extent, it is also the situation of young adult offenders. Even without any special sanctioning regime, age is nevertheless a circumstance taken into account and potentially leading to mitigation (AT, BE, BG, CZ, DE, DK, E&W, EE, EL, ES, FI, HR, HU, IE, IT, LT, LU, LV, MT, PT, SE, SI, SK). **Diminished capacity** is another example in this category of mitigating circumstances, which is provided explicitly or not almost everywhere (but not in DK and PL). If the crime was committed due to an **unavoidable error**, the consequence will be acquittal in RO or in PT (other, avoidable, errors regarding the prohibition of the act could lead in PT to reduced sanction). In DK or FI it could justify waiving the punishment. In HU, it opens the possibility of a wider reduction. In ES, reduced sanction is mandatory. Otherwise, it is normally an optional mitigating circumstance either

explicitly provided (as in AT, CZ, EE, ES, MT, HR), or covered by a more general clause, or available as the code provides for a non-exhaustive list. In LU however, it is not a factor of mitigation. In IT it is not a mitigating circumstance, but rather an element taken into consideration when assessing the culpability. A **clear criminal record**, or the fact that the offender did not commit any crime before is also a reason to be more indulgent, and mentioned as a mitigation factor in some Member States (AT, EL, IT, RO, SI) but covered by a general clause or taken into consideration thanks to the non-exhaustive character in most other Member States. In DE, it is not a mitigating circumstance, but can be regarded as a less serious crime (if the offence committed has a statutory rule for a less serious case). On the other hand, recidivists or habitual offenders may be deprived from the benefit of softened regimes (e.g. in EL, MT), as will be seen in the following sections, or subject to more severe sentences. In EL, for instance, if the offender commits an offence for the fourth time and for any recidivism after that, and the committed crime is punishable by imprisonment of more than a year, the sanction imposed must be imprisonment of at least 18 months. For habitual and dangerous criminals, also confinement of indefinite duration is possible in theory, but not applicable due to their highly contested nature. In IT recidivism is a compulsory aggravating circumstance for particularly serious offences, otherwise it is considered on a case by case basis;

- (d.) Also the behaviour after the commission of the offence plays a role in assessing the personality of the offender, his or her will to abstain from further offences and perspectives of rehabilitation. Two main situations could be examined here: the efforts to repair the damage, and the cooperation with the law enforcement bodies. **Efforts to compensate the damage** is a reported mitigating factor in many Member States, explicitly provided by law (AT, DE, DK, EL, FI, HR, IT, LT, LV, PL, PT, RO, SI) or not (BE, BG, DK, EE, ES, HU, MT, SE, SK). In ES, it is possible to lower the punishment by one or two degrees if this circumstance concurs with another one or where it is a highly qualified mitigating circumstance and there is no aggravating one. **Cooperation with law enforcement** is in some Member States a mitigating factor only for specific offences (e.g. in AT for organised crime, in EL, it is a compulsory mitigating circumstance specific to terrorism, organised crime or corruption, in BG, only for organised crime is it a compulsory mitigating circumstance, in other cases, it is left to the court's discretion, in ES too, this circumstance applies in certain cases only such as drug trafficking, while in CZ, since 2013, there is an obligation to reduce sanction below minimum if offender significantly contributed to reduce exposure to criminal organisation. It has recently been introduced in FI (as from 1st of January 2015.) In several others, it is also explicitly provided (e.g. DE, DK, IT, LV, LT, PL, SI, and, covered by a general clause (e.g. BE, LU, SK), or available as the list of mitigating circumstances is not exhaustive (e.g. LU, PT). It is not mentioned only in E&W and SE. **Confession** is similarly a circumstance which may lead to mitigation in almost all Member States (despite the fact that a few reports do not mention it), as an indication of amended behaviour and sometimes as a qualification for simplified procedure of plea bargaining or guilty plea (BG, HR, IE, SI, E&W, IT, SK). It is not possible for violent intentional crimes in BG;
- (e.) Mitigation may be linked to the **offender personal or family situation**, when the mandatory minimum is simply too harsh given the situation of the offender. For instance in IT individual, familiar and social life conditions of the offender must be taken into account to establish the sanction to be applied in a concrete case, or in LU where desperate situation of the offender may be invoked. In LT the Supreme Court held in a series of rulings that in exceptional circumstances (which may include of changes in the family life of offender) outweighing the

dangerous character of the crime committed, a court may impose a lower sanction. This kind of circumstances is also mentioned in the PL, RO, SI, SK, E&W reports, for instance. In CZ, since 2012, if the person is under alimony duty, imprisonment is only imposed to protect the society;

- (f.) **Delay in criminal procedure** is perhaps not exactly a mitigating circumstance, however it may lead to a lower sanction in a number of Member States (AT, BE, BG, DK, EE, ES, FI, HU, IT, LT, LU, LV, MT, SE, SI). Justification is more related to the requirement of fair trial and good administration of justice;
- (g.) Individualisation implies the **consideration of all relevant circumstances**. In some Member States more than one mitigating factors must exist in order to reduce the level of the sanction (e.g. LT, BG, unless it is an exceptional situation, ES, or EE, where the absence of a criminal record would not be sufficient). In IT, when there are more than one mitigating circumstances, the judge determines the reduction with regard to one of them, then on the penalty resulting from the first decrease, he will decide about further reductions. A common requirement is that mitigating circumstances must be more numerous, prevailing or more significant, than aggravating ones (HR, HU, IE, IT, LT). In ES, some mitigating circumstances (e.g. efforts to compensate, guilty pleading, and unreasonable delays in proceedings) are only taken into account where there is no aggravating circumstance. In LV, provisions covering lesser punishment are not applicable if the criminal offence was committed in aggravating circumstances. In RO, the mitigating circumstances have effect (compulsory effect) first, then the aggravating ones, the effect of which is optional. In other words, the limits are reduced and then possibly increased. In PT, mitigating and aggravating circumstances are applied in the reverse order: the level of sanction is first increased, and then reduced.

3.1.2 Mitigation: alternative sanctions

Some reports mention the possibility, in their Member State, for the prosecution services not to pursue the procedure, in particular PT. In HU also, for instance, when the offence is punishable by less than 3 years maximum, the prosecutor may decide to postpone the indictment by one or two years. Despite its general relevance, as this is not an option for the deciding court, and because it was slightly beyond the scope of the survey, the present section does not deal with this aspect.

As an incidental remark, it is repeated here that the same kind of circumstances under which judges would be able to impose a penalty below the mandatory minimum are also those which they would consider in order to adapt the sentence by pronouncing an alternative sanction. One is entitled to say that the court's response is depending upon the degree, intensity or quantity of these mitigating circumstances.

Table 3.2 Alternative measures to imprisonment

	Sentence not pronounced	Execution of sentence suspended	Sentence commuted into a fine	Sentence commuted into a community service	Electronic monitoring
Austria		Execution of prison term of less than 2 years may be fully suspended, partial suspension also possible, probation period of 1 to 3 years	Option where maximum of up to 5 years and imprisonment pronounced of less than 6 months, but rarely used		Possible
Belgium	Possible	Possible		Possible, with a maximum of 300 hours community service	Possible
Bulgaria	Possible when the circumstances of releasing from criminal liability, fixed in CC are available	Conditional sentencing mostly applied for first-time offender if imprisonment pronounced does not exceed 3 years		Possible, the imprisonment can be replaced with the community service as one of the probation measures in case of exceptional or of a great number of mitigating circumstances if the specific minimum for imprisonment is not provided for.	
Croatia		Conditional sentencing is the most frequent alternative		Possible	

	Sentence not pronounced	Execution of sentence suspended	Sentence commuted into a fine	Sentence commuted into a community service	Electronic monitoring
Cyprus	Wide catalogue of alternatives	Court may suspend a sentence when penalty of up to 3 years is imposed if justified by all personal circumstances of the convicted and of the case	Wide catalogue of alternatives	Wide catalogue of alternatives	Wide catalogue of alternatives
Czech Republic	Possibility in minor cases and account taken of circumstances of withholding the sentence	Conditional sentencing possible if imprisonment pronounced does not exceed 3 years	Possible, depends on seriousness of the offence and situation of the offender	possible	possible in connection with home confinement
Denmark	Possibility in minor cases and account taken of circumstances of remitting punishment	Possible, but rarely used in cases concerning the few serious offences carrying minimum sentences		Community service used in a vast number of cases, normally as an alternative to sentences neither exceeding 1 year, nor involving violent crime	Electronic monitoring not a sentence option, but may be ordered as a condition for parole
England and Wales	Possibility in minor cases and account taken of circumstances of deferring sentence	Possibility for any prison sentence of up to 2 years			Prisoners who are near the end of a prison sentence, with 135 days or less to run, may be prematurely released, at the discretion of the Home Secretary, on what is called "home detention curfew" – which involves electronic tagging. Certain categories of prisoner are excluded from

	Sentence not pronounced	Execution of sentence suspended	Sentence commuted into a fine	Sentence commuted into a community service	Electronic monitoring
					this scheme – in particular, those sentenced to 4 years' imprisonment or more.
Estonia	Possibility in the cases of minors.	Possible		Possible if imprisonment pronounced does not exceed 2 years	Possible if imprisonment pronounced does not exceed 6 months
Finland	Possibility in minor cases and account taken of circumstances of waiving punishment	Conditional sentencing in most circumstances if imprisonment pronounced does not exceed 2 years	Any defined term of imprisonment may be commuted into a fine if there are "especially weighty reasons"	An option for practically all non-lethal crimes (penalty of up to 8 months). A term of up to 6 months must be imposed if community service is not possible	

	Sentence not pronounced	Execution of sentence suspended	Sentence commuted into a fine	Sentence commuted into a community service	Electronic monitoring
France	JAP (<i>juge d'application des peines</i>) can always decide to adapt the sanction pronounced	JAP (<i>juge d'application des peines</i>) can always decide to adapt the sanction pronounced	JAP (<i>juge d'application des peines</i>) can always decide to adapt the sanction pronounced but in this case is usually not the case. Any sanction decided is not commuted into a fine. However, it can be a part of the SME (<i>sursis avec mise à l'épreuve</i>) to ensure that the damage suffered by the victim is repaired.	JAP (<i>juge d'application des peines</i>) can always decide to adapt the sanction pronounced. It can be an associated measures to control the person in a SME (<i>sursis avec mise à l'épreuve</i>) procedure.	JAP (<i>juge d'application des peines</i>) can always decide to adapt the sanction pronounced. It can be an associated measures to control the person in a SME (<i>sursis avec mise à l'épreuve</i>) procedure.
Germany		Conditional sentencing in more than 60% of cases if imprisonment pronounced does not exceed 2 years	No option to replace a custodial sentence with a non custodial sentence	No option to replace a custodial sentence with a non custodial sentence	No option to replace a custodial sentence with a non custodial sentence
Greece	Possible in minor cases after taking into account the specificities of a case	Conditional sentencing if imprisonment pronounced does not exceed 3 years (mandatory unless the judge explains why the execution is necessary) - Conditional sentencing under supervision if the offender has been sentenced to 3-5 years (mandatory unless the	Pecuniary sanctions always replace imprisonment of up to 1 year, even 2 years unless offender is a recidivist and court adopts a reasoned decision explaining why replacement is not granted. Imprisonment between 1-5 years may be replaced by a fine	Possible, also may be asked if person cannot pay the fine	Possible (home detention) in case of early release

	Sentence not pronounced	Execution of sentence suspended	Sentence commuted into a fine	Sentence commuted into a community service	Electronic monitoring
		judge explains why the execution is necessary)			
Hungary	The court may defer the imposition of a sentence conditionally if it is for an infraction or felony punishable by imprisonment of up to three years if there are reasonable grounds to believe that probation will serve the purpose of rehabilitation.	A term of imprisonment of two years or less may be suspended conditionally. Execution of a sentence of imprisonment may not be suspended if the perpetrator a) is a repeat offender; b) committed the crime in the framework of a criminal organization, or c) committed a criminal offense intentionally before he has finished serving his sentence, or during the probation period of a conditional sentence.	No option to replace a custodial sentence with a non custodial sentence	No option to replace a custodial sentence with a non custodial sentence	
Ireland	possible	possible	possible	possible	Not in use in Irish law in practice

	Sentence not pronounced	Execution of sentence suspended	Sentence commuted into a fine	Sentence commuted into a community service	Electronic monitoring
Italy	Judicial pardon for juveniles	Conditional sentencing possible if imprisonment pronounced does not exceed 2 years and the judge believes that the offender is not socially dangerous. For offenders younger than 18 years, even for imprisonment not exceeding 3 years. For offenders older than 18 years, but younger than 21 years, and offenders older than 70 years, even for imprisonment not exceeding 2 years and 6 months.	Option for imprisonment up to 6 months.	May be applied to offenders punished by maximum 3 years, provided they spend at least one month in prison	Semi-detention (at least 10 hours a day in penal institution) may replace a prison sentence of up to 2 years for first-time offender, monitored liberty may replace up to 1 year, home detention applicable to prison term pronounced of up to 4 years
Latvia	Possibility account taken of circumstances of waiving from the imposition of the penalty	Conditional sentencing possible if imprisonment pronounced is above 3 months but does not exceed 5 years, more frequent in connection with offences against property and minor drug crimes			

	Sentence not pronounced	Execution of sentence suspended	Sentence commuted into a fine	Sentence commuted into a community service	Electronic monitoring
Lithuania	Possibility in cases for negligent, minor or less serious cases and account taken of circumstances of releasing from criminal liability	Suspension possible (about 25 % of cases in 2011-2012) for imprisonment term up to 3 years, or 6 years if committed through negligence	Normally for first-time offender and negligent, minor or less serious crimes, non custodial sentence is pronounced	Normally for first-time offender and negligent, minor or less serious crimes, non custodial sentence is pronounced	This measure may be imposed as a condition when suspension of a sentence or early release was applied
Luxembourg	Possible for juveniles	Possible as "suspension du prononcé de la condamnation" if the sentence to be imposed does not exceed 2 years of imprisonment correctional or, even beyond this limit, as "sursis simple" or "probatoire"	Possible for <i>délits</i> according to Art. 20 Code Pénal	Possible if: the imprisonment to be pronounced does not exceed six months and the defendant agrees. The judge may replace the penalty with community work between 40 and 240 hours.	Possible if: the imprisonment (pronounced or as a residual part of a longer custodial sentence) does not exceed 2 years, the offender is not socially dangerous, has a domicile in Luxembourg and a certified income (or an ongoing programme for vocational training)
Malta	Not possible	Awarded for an imprisonment period of maximum 2 years, which is suspended for 4 years (the execution period).	Fines can be awarded instead of an imprisonment period and also together with an imprisonment period, depending on the particular article of the law.	May be given instead of an imprisonment period where the period of imprisonment is less than 7 years.	Not possible

	Sentence not pronounced	Execution of sentence suspended	Sentence commuted into a fine	Sentence commuted into a community service	Electronic monitoring
Netherlands	Judge can pronounce someone guilty of a crime without imposing a sentence taking into account the relatively mild nature of the criminal act, the personal circumstances of the perpetrator or the circumstances under which the criminal act has been committed or circumstances that occurred after the criminal act	The execution of the sentence can be suspended in whole (in case of sentences of maximum 2 years) or in part up to a maximum of 2 years (in case of sentences between 2 years and 4 years). General conditions will be attached to the suspended sentence and specific conditions may be attached to the suspension	The judge will impose either a fine, a prison sentence, community service or a combination of the three. A fine may be commuted into a prison sentence if the fine is not paid (on time).	The judge will impose either a fine, a prison sentence, community service or a combination of the three. Community service may be commuted into a prison sentence if the community service has not been executed (sufficiently)	Both electronic monitoring as well as electronic detention is possible.
Poland	Possibility in minor cases and account taken of circumstances of waiving from the imposition of the penalty	Possible	Possible		Possible
Portugal	Suspension of the procedure can be applied in procedures for offences punishable with imprisonment of up to 5 years. Possibility to exempt the person from executing the penalty	Conditional sentencing possible if imprisonment pronounced does not exceed 5 years	Fines can be applied in substitution of imprisonment of up to 1 year	Community work can replace imprisonment of up to 2 years	Possibility to serve part of imprisonment at home with electronic bracelet

	Sentence not pronounced	Execution of sentence suspended	Sentence commuted into a fine	Sentence commuted into a community service	Electronic monitoring
Romania	Possibility in minor cases and account taken of circumstances of exempting the first-time offender	Criminal sanction may be postponed or sentence may be conditionally pronounced	No	When imposed sanction is fine and the convicted person has no financial possibilities, it is possible to commute the fine into community service. The convicted's consent is mandatory. If the consent is not given, then it will be commuted into imprisonment.	
Slovakia	Possibility in minor cases and account taken of circumstances of refraining from imposing sanction	Possibility for imprisonment of up to 2 years or 3 years with probation	For less serious offenses (misdemeanour), if permitted by financial circumstances of the offender	With the consent of the offender, from 40 to 300 hours, for a misdemeanour with a rate up to 5 years imprisonment	Possible in the punishment by House Arrest
Slovenia	only in specific cases explicitly listed in the Penal Code	Conditional sentencing by far the most common sentence if imprisonment pronounced does not exceed 3 years	Not possible	Possible to convert imprisonment of up to 2 years into community work, but seldom used	Possible to convert imprisonment of up to 9 months into home detention, but seldom used. Recently possibility to come to prison on specifically set days for sentence below 3 years

Sentence not pronounced	Execution of sentence suspended	Sentence commuted into a fine	Sentence commuted into a community service	Electronic monitoring
Spain	Conditional sentencing possible for first-time offender and if imprisonment pronounced does not exceed 2 years	Fine may replace imprisonment which does not exceed 1 year, exceptionally 2 years, not available for habitual offenders i.e. those who have committed three or more offences under a same heading within a term not exceeding five years and who have been convicted thereof. In order to carry out such calculation, on one hand, the moment of possible suspension or substitution of the sentence pursuant to Article 88 shall be considered and, on the other hand, the date on which the offences taken as the basis to appraise the habitual nature thereof were committed.	A sentence can be commuted into a community service in cases of imprisonment not exceeding 1 year, exceptionally 2 years, not available for "habitual offenders".	Possible, as well as permanent traceability, where term of prison does not exceed 6 years. Electronic monitoring is not an alternative measure to prison under Spanish law but a way of controlling the execution of some penalties as permanent traceability or probation (e.g. Art. 37,4 SCC: In order to guarantee effective serving, the Judge or Court of Law may order use of mechanical or electronic resources to allow the convict to be located").

	Sentence not pronounced	Execution of sentence suspended	Sentence commuted into a fine	Sentence commuted into a community service	Electronic monitoring
Sweden		Suspended sentence is classified as an independent sanction given by the court. It is not subject to conditions.	The court will make an overall assessment of the appropriate sanction; it is not a matter of commuting.	The court will make an overall assessment of the appropriate sanction; it is not a matter of commuting.	Possible; this is a means of enforcing a prison sentence, not an independent sanction.

A first possibility of mitigation via alternatives to imprisonment is simply **not to pronounce the sentence or not to impose any sanction** in minor cases and in view of the circumstances: the court's decision amounts to a severe warning. Several reports refer to this option (BE, CY, CZ, DK, IE, EL, HU, LV, LT, PL, PT, RO, SK, and E&W). In BG, the person may be released from criminal liability and an administrative penalty may be imposed instead if certain cumulative conditions are met: the legal maximum may not exceed 3 years (when crime committed intentionally) or 5 years (if committed by negligence), the offender must not have committed crime before, and the damage has been restored. In SI, this option is available only for specific listed cases, as well as in FI, but the provision is worded there in relatively broad terms. In EE, the option exists only for minors.

The following possibilities are optional for the convicting judge, but sometimes they may also be decided after the conviction: in other words, a sanction, which may be above the specific legal minimum or not, as explained under section 3.1.1., has been pronounced, but it is not enforced, or is replaced, or its execution is made conditional thanks to another, subsequent decision. In FR, for instance, the JAP (*juge d'application des peines*) can always decide to adapt the sanction pronounced, including not to impose any. In BE, the Criminal execution Court can adjust, suspend or specify conditions at any time after conviction. If not specifically stated below, however, the situations dealt with in the following paragraphs are exclusively decided upon by the convicting judge. The possibilities to review the execution when it has already been partially enforced will moreover be covered under section 3.2. on early release mechanisms.

A second option is to suspend the execution of the sentence or to make it conditional. It is largely used and in some Member States it has almost become the rule. In BG, conditional sentencing is mostly applied to first-time offender, if imprisonment pronounced does not exceed 3 years. 3 years is also the upper limit in CY, CZ, EL, SI (where it is by far the most common sentence), LT (but 6 years if the crime was committed through negligence). By contrast, the upper limit is 2 years in AT (3 in exceptional cases), HU, DE (where it is applied in more than 60 % of such cases), in FI (where low minimum sentences typically qualify for suspension), in ES, in E&W, in IT (but higher for young offenders), in SK (but 3 years if accompanied with probation) or in MT, but 5 years in PT, and in LV (where it applies more frequently in connection with offences against property and minor drug cases). Sometimes this option is not available for re-offenders (HU, ES). In SE suspended sentence is classified as an independent sanction given by the court which is not subject to conditions. In MT, courts may also order probation or conditional discharge where the imprisonment period does not exceed 7 years. Suspension of execution may be decided after conviction in FR, FI, DK, PL and LV, in DE in the context of parole, but not for probation. In IT, it is decided upon by the "Tribunale di sorveglianza".

A prison sentence may also be **commuted into a fine**. It is possible in most Member States (but not in BG, DE, EE, HU, RO, or SI), however under various conditions. In LT, normally for first-time offender and negligent, minor or less serious crimes, non custodial sentence is pronounced. In IT, it is an option for imprisonment of less than 6 months, also in AT, but it is rarely used there. In CZ, it depends on the seriousness of the offence and of the personality and situation of the offender. Also in SK, it is conditioned by the financial means of the offender. In PT, a fine may replace imprisonment which does not exceed 1 year. It is the same in ES, even exceptionally for imprisonment of 2 years, but is not available for habitual offenders (multirecidivists). In EL, pecuniary sanctions always replace imprisonment up to 1 year, and even up to 2 years, unless the offender is a recidivist and the court adopts a reasoned decision explaining why replacement is not granted. In FI, by contrast, any

defined term of imprisonment may be commuted into a fine after conviction, subject to "especially weighty reasons". In FR, the sanction decided is not commuted into a fine, but a fine can be part of the SME (*sursis avec mise à l'épreuve*) to ensure that the damage suffered by the victim is repaired: it may be decided by the convicting judge or by the JAP. In IT, it is decided upon by the "Tribunale di sorveglianza".

Replacing imprisonment by a community service is widely known but unevenly applied. It is mentioned in several reports, i.a. LT, DK (for sentences not exceeding 1 year and not involving violence), ES (in cases of imprisonment not exceeding 1 year, exceptionally 2 years, but not available for "habitual offenders"), PT and EE (for imprisonment up to 2 years), SK (for misdemeanours punishable by up to 5 years, with the consent of the offender), FI (where it is an option practically for all non-lethal crimes), EL, IT (where it may be applied to offenders punished by up to 3 years, provided they spend at least one month in prison), BE (where it cannot exceed 300 hours, as in SK), SI (for imprisonment of up to 2 years, but it is nevertheless seldom used), MT (if the imprisonment period does not exceed 7 years), BG (where imprisonment can be replaced with community service as one of the probation measures in case of exceptional or of a great number of mitigating circumstances). In SE or NL, it is not a matter of commuting the imprisonment sentence, but community service is part of the panoply of sanctions which the judge may consider. It is however not possible to replace a custodial sentence with a non-custodial sentence in DE or in HU. In EL and RO if the person cannot pay the fine, he or she may also ask to serve a community service instead. In NL, when the community service is not satisfactorily executed, it may be commuted into a prison sentence. In FR, community service may be an associate measure imposed by the JAP to control a person placed under probation (*sursis avec mise à l'épreuve*). In DE it may be decided after conviction but only in case of imprisonment for default of payment. In IT, it is decided upon by the "Tribunale di sorveglianza".

Finally, one should mention other **control measures which limit the liberty of the convict, but outside penitentiary institutions**, such as home confinement with or without electronic bracelet (possible in AT, BE, CY, CZ, EE, PL, PT, NL, SE, SK, but not in DE, and not of practical use in IE). In IT, semi-detention (at least 10 hours a day in penal institution) may replace a prison sentence of up to 2 years for first-time offenders, monitored liberty may replace imprisonment of up to 1 year, while home detention is applicable to prison term pronounced of up to 4 years. In SI it is possible to convert imprisonment of up to 9 months into home detention, but it is seldom used. Recently possibility was also introduced in SI to come to prison on specifically set days for sentences below 3 years. In ES home confinement is possible for terms of prison not exceeding 6 years, and electronic monitoring is not an alternative measure to prison but a way of controlling the execution of some penalties as permanent traceability or probation. Similarly, electronic surveillance or home confinement may be imposed as a condition when suspension of a sentence or early release is applied in CZ, EL, DK or LT. In FR it may be an associate measure imposed by the JAP to control a person placed under probation (*sursis avec mise à l'épreuve*). In E&W, it is a possibility for prisoners near the end of their term. It may equally be decided after conviction by another authority than the convicting judge in BE, DE, DK, HU, PT. In IT, it is decided upon by the "Tribunale di sorveglianza".

The purpose of replacing imprisonment with an alternative measure varies. Suspending the sentence with a probation period has a function of warning and may be particularly well-adapted to first-time offenders, community service plays an educational role, imposing a fine may be more appropriate with regard to some offences, and some offenders. In principle, an individual assessment dictates the decision. However, other considerations, political and economic, impact on the general

trend: the same observation can be made regarding full or partial service of the prison term, which is covered by the following section.

3.2 Mitigation: early release mechanisms

In most of the cases, there is a mechanism under which convicts do not spend their entire term in prison, or at least a possibility of early release. This is not to say that the sentence is not enforced, or not fully enforced, as the person released generally remains under control: there may be, and often are, conditions to be respected, and in such case if he or she breaches them, or commits a new offence, the enforcement of the prison sanction will be pursued.

Table 3.3 Conditions for early / conditional release

Offender/offence		Length of period to be served and conditions	Supervised or decided by judiciary or administration?	With conditions / probation/licence or not?	Amnesty/Pardon
Austria	In all cases	After ½ is served subject to condition that further enforcement not needed for prevention of further crimes, after 2/3 without this condition	Decision taken by the court competent for the enforcement of the sentence.	With accompanying measures.	
Belgium	A) convicted to 3y imprisonment/less; B) convicted to 3y imprisonment/more.	A) no time would be served. Immediate provisional release. Possibility of conditions to be linked to it; B) after 1/3 of the sentence (more in case of recidivism). Conditional release. Always conditions linked to it.	Decided by the prison warden. Notified by the prison warden 6 months prior to date of eligibility. Written request submitted by the prisoner. Decision made by the Criminal Execution Court.	A) possible conditions imposed by the prison warden. Not necessarily the case. If so, follow-up by justice assistant; B) Always conditions imposed. Follow-up by justice assistant.	Convicted may request mercy and sanction may be reduced.
Bulgaria	In all cases	After ½ (2/3 in case of dangerous recidivism) is served subject to proof of correction; in both cases a testing period is established. Early release after 1/3 for juveniles without testing period.	At the discretion of the District court at the enforcement of the penalty. The proposals are made by the district prosecutor or by the board at the prisons.	One of the probation measures during the testing period may be imposed by the court.	Amnesty or pardon are possible
Croatia	In all cases	Court may release after ½ of sentence served, minimum 3 months prison, if it can be expected that individual will not		With conditions	Amnesty by Parliament, or pardon by President are possible.

Offender/offence		Length of period to be served and conditions	Supervised or decided by judiciary or administration?	With conditions / probation/licence or not?	Amnesty/Pardon
		commit further crime and accept conditions.			
Cyprus	In all cases provided he/she is imprisoned for more than 2 years.	Release may be requested after ½ of sentence served, If sentenced to life imprisonment, after 12 years, or 25 if convicted twice for life. Percentage of reduction established by law: for sentences of between 2 and 5 years, reduction of 8 days/month, for sentences of 5 to 8 years, reduction of 10 days/month, for sentences of 8 to 12 years, reduction of 12 days/month, for sentences of more than 12 years, reduction of 14 days/month.	Parole Board	On licence	President of Republic may remit, suspend or commute on recommendation of Attorney General. Convicted for drug offences and sexual offences excluded from the list.
Czech Republic	In all cases	Conditional release after 1/3, ½ or 2/3, depending on seriousness of the offence (1/3 for less serious, ½ standard and 2/3 for the most serious offences). Also possible to transform in home confinement, typically after serving 50% of the incarceration sentence.	Decision taken by courts with general jurisdiction over the prison where the offender is located.	Possibly.	Broad amnesties from time to time for minor offences. Possibility of individual pardons.
Denmark	In all cases	Convicted eligible for conditional parole after 2/3 and minimum 2 months. Under special circumstances, after ½ (limited if offender part of a gang)	Correctional authorities must make a decision on their own initiative		

Offender/offence		Length of period to be served and conditions	Supervised or decided by judiciary or administration?	With conditions / probation/licence or not?	Amnesty/Pardon
England and Wales	In all cases	If indeterminate sentence, subject to favourable ruling of Parole Board. If determinate sentence less than 1 year, automatic after ½, no condition, if sentenced to more than 1 year, released after ½, subject to licence.		Where sentenced to more than 1 year	<p>Home Secretary's power, under s.30 of the Crime (Sentences) Act 1997, to order "compassionate release" for those serving life sentences. This potentially applies to any type of life sentence – even a mandatory life sentence, imposed together with a "whole life" tariff period.</p> <p>Exceptionally: Royal Prerogative of Mercy to remit all or part of the sentence on compassionate grounds, to release prisoners who have provided information helping others to be brought to justice, and to release prisoners who have courageously intervened</p>

Offender/offence	Length of period to be served and conditions	Supervised or decided by judiciary or administration?	With conditions / probation/licence or not?	Amnesty/Pardon
				to assist the prison authorities in preventing escape, injury or death.
Estonia	In all cases	<p>If a person has been convicted for the commission of a criminal offence the maximum punishment prescribed for is imprisonment for a term up to 5 years (inclusive), or a criminal offence the maximum punishment prescribed for which is imprisonment for a term of more than 5 years through negligence, the court may release the convicted offender on parole if he or she has actually served:</p> <p>1) 1/3 but not less than 6 months of the term of the imposed punishment and the person agrees to the application of the electronic surveillance provided in the EPC § 75 Subsection (2) 9); or</p> <p>2) at least 1/2 but not less than 6 months of the term of the imposed punishment.</p> <p>If a person has been convicted for the intentional commission of a criminal offence the maximum punishment</p>	A judge decides upon request by the inmate	<p>With probation to the extent of the unserved part of the term of punishment but for not less than 1 year</p> <p>Pardon by the President possible.</p> <p>Amnesty has been discussed, not provided in any statutes.</p>

Offender/offence		Length of period to be served and conditions	Supervised or decided by judiciary or administration?	With conditions / probation/licence or not?	Amnesty/Pardon
		prescribed for is imprisonment for a term of more than 5 years, the court may release the person on parole if the convicted person has actually served: 1) 1/2 but not less than 6 months of the term of the imposed punishment and the person agrees to the application of the electronic surveillance provided in EPC § 75 Subsection (2) 9); or 2) at least 2/3 of the term of the imposed punishment. (EPC § 76)			
Finland	In all cases	Context dependent but a first time offender is paroled after ½ and a recidivist is at latest paroled after 2/3 unless prosecutor successfully asked that sentence of 3 years at least be served in full. Life inmates can be paroled after 12 years.	Public officials in prison determine how the sentence is executed		
France	In all cases	Prison generally reduced after a certain time, accompanied with probation for the rest of the period. Possibility to reduce the period of SME (probation period) when some criteria are fulfilled including the rehabilitation, reparation of the damage, the end of the nuisance caused by the offence.	Juge d'application des peines with the support of the SPIP (Penitentiary Integration and Probation Service)	When the condemned person is in prison, the early release is generally decided with probation. However, if the person presents all criteria for an effective integration into society, it can be a	Pardon and amnesty are possible to apply to these sanctions.

Offender/offence		Length of period to be served and conditions	Supervised or decided by judiciary or administration?	With conditions / probation/licence or not?	Amnesty/Pardon
				less heavy probation (<i>sursis simple</i>). During the probation period, the JAP can always decide to reduce the period and to end the probation before the primarily decided end also because the person respects the obligations imposed by the judge and the rehabilitation can be guaranteed.	
Germany	In all cases, but shorter period normally not available for re-offenders	Automatic after 2/3 and release appropriate considering public security. Optional after ½ if first conviction of less than 2 years or under special circumstances, but at least 6 months served	Judiciary (section 57 StGB)	With conditions/directions	Pardons are regulated by each state individually (usually in a "Gnadenordnung". The right to pardon is usually held by the minister-president of each state, In certain cases there is also a right to pardon held by the president of Germany (section 452 StPO).

Offender/offence		Length of period to be served and conditions	Supervised or decided by judiciary or administration?	With conditions / probation/licence or not?	Amnesty/Pardon
Greece	In all cases	Early release has become the rule: early release is granted In all cases, after 1/5, 2/5 or 3/5 (or minimum in case of life imprisonment) has been served, depending on the length of sentence imposed, unless the special court takes the view (special reasoning) that the behaviour of the convict during the execution of the sentence renders the continuation of his custody necessary.	First Instance Judicial Council	With conditions	
Hungary	In all cases, except: a) repeat offenders, if their term of imprisonment is to be carried out in a penitentiary; b) repeat offenders with a history of violence; c) persons sentenced for criminal offenses committed in the framework of a criminal organization; d) any person who has been sentenced to imprisonment for an	Generally accepted after 2/3 of term served $\frac{3}{4}$ for repeat offenders, with minimum of 3 months.	Supervised by prosecutor office, decided by judiciary.	(not necessary) with probation	Possibly amnesty or President's pardon.

Offender/offence		Length of period to be served and conditions	Supervised or decided by judiciary or administration?	With conditions / probation/licence or not?	Amnesty/Pardon
	intentional criminal offense committed after being previously sentenced for a term of imprisonment, before that term has been served in full or before the day when it ceases to be enforceable.				
Ireland	In all cases except prisoners serving life sentences for murder	Standard remission of $\frac{1}{4}$ (subject to good behaviour) or $\frac{1}{3}$ (if engaged in rehabilitation programme). Special remission possible in case of life imprisonment. Temporary release before eligibility for remission as well as for life sentence. Subject to probation. Upon a conviction for a second or subsequent offence there is a mandatory sentence in which remission is not permitted.	Decided by the executive and the prison services based upon behaviour and space availability.	With conditions.	Not used in practice
Italy	All offenders	After 30 months imprisonment or $\frac{1}{2}$ sanction served. In case of recidivism, after 4 years served and not less than $\frac{3}{4}$ served. In case of life imprisonment, after 26 years imprisonment served. Subject to good behaviour. Also possibility of community service after 1		With probation	Amnesty or pardon possible

Offender/offence		Length of period to be served and conditions	Supervised or decided by judiciary or administration?	With conditions / probation/licence or not?	Amnesty/Pardon
		month of prison if sentence below 3 years, or of semi-freedom after ½ served if sentence below 6 months, or of early release i.e. reduction of 45 days per 6 months served if participation in reintegration programme.			
Latvia	In all cases	After ½, 2/3 or ¾ of term served, release may be granted, except for persons sentenced for exceptionally severe crime against minor.	At court's discretion upon favourable report by administrative commission of prison facility.	Conditions may be imposed, probation programme may be imposed.	
Lithuania	Legally in all cases. Generally in cases of sentences above 2 years, sentences below normally executed in full.	Qualification for early release after 1/3, ½, 2/3 or ¾, depending on length of pronounced sanction, and taking into account behaviour of convicted.	Decided by courts on recommendations by correctional institutions.	Conditions may be imposed; probation programme may be imposed.	Parliamentary amnesty or President pardon possible.
Luxemburg	In all cases	Before conditional release: for primary offenders, the minimum period is equal to half of the imposed penalty. For recidivists, instead, the minimum period is equal to 2/3 of the imposed penalty. For life sentences at least fifteen years must be served.	Custodial sentences imposed by the Court and the Tribunals are executed by the Prosecutor General. The applicability of early or conditional release is assessed by	in order to access to the alternative measure, then, the detainee must demonstrate good conduct and a serious commitment to rehabilitation.	By way of pardon (<i>Grâce</i>) by HRH the Grand Duke, a custodial sentence may be partially reduced or subjected to particular conditions (<i>travaux d'intérêt général</i> ; community works)

Offender/offence		Length of period to be served and conditions	Supervised or decided by judiciary or administration?	With conditions / probation/licence or not?	Amnesty/Pardon
			the Prosecutor General or his/her delegate, according to the requirements prescribed in art. 100 paragraph 4 of the <i>Code penal</i> .		
Malta	In all cases, but imprisonment period must exceed 1 month	Parole may be granted under fixed criteria	Remission Board (administrative board) determines whether to grant remission and under what circumstances.	Conditions may be imposed, including following rehabilitative and, or restorative justice programmes as may be specified by the Remission Board; and also conducting community work.	The President of the Republic may grant a pardon from the execution of the imprisonment period.
Netherlands	In all cases, provided sentence for at least 1 year.	At least 1/3 in case of sentences of 1 or 2 years, 2/3 if sentenced to more than 2 years, must be served before early release	Prison Director determines the date, public prosecutor may lodge appeal against early release before district court.	General condition not to reoffend. Specific additional conditions may be set.	
Poland	In all cases	Early release is available to any offender and/or any offence, however the minima for period of sentence served before early release will vary. The law provides	Penitentiary court	With conditions	Pardon and amnesty available

Offender/offence	Length of period to be served and conditions	Supervised or decided by judiciary or administration?	With conditions / probation/licence or not?	Amnesty/Pardon
		<p>for a minimum period of sentence served before early release. This is regulated in Article 78 of the Criminal Code. It provides as follows:</p> <ul style="list-style-type: none"> - A person who has been sentenced may be released having served half of the sentence. <p>However:</p> <ul style="list-style-type: none"> - If a person commits another crime having been sentenced before for a similar criminal offence early release is only available if the perpetrator served 2/3 of the sentence (Article 78 § 2 in conjunction with Article 64 § 1 CC); - If a person commits another crime having been sentenced before for a similar serious crime (for instance crime against life and health, rape or burglary) early release is only available if the perpetrator served 3/4 of the sentence (Article 78 § 2 in conjunction with Article 64 § 2 		

Offender/offence		Length of period to be served and conditions	Supervised or decided by judiciary or administration?	With conditions / probation/licence or not?	Amnesty/Pardon
		<p>CC);</p> <ul style="list-style-type: none"> - If a person is sentenced for 25 years imprisonment early release is only available after 15 years of imprisonment; - if a person is sentenced for life, early release is available after 25 years of imprisonment. <p>Irrespective of conditions laid down in Article 78 § 1-2 early release may be ordered as per Article 79 §2 CC after 15 years of imprisonment. Furthermore, in exceptional circumstances the court in charge of sentencing may impose stricter conditions than the ones laid down in Article 78 CC.</p>			
Portugal	In all cases	<p>Conditional release after 6 months, when ½ of term is served, provided it may be expected that convicted will not re-offend and the release does not conflict with social order and peace, or 2/3, provided it may be expected that convicted will not re-offend, or automatically after 5/6 has been served, if sentenced for more than 6 years.</p> <p>Consent is required in all cases.</p>	Court of execution of penalties.	Early release may be anticipated by 1 year if convict is to abide set of rules.	Amnesty and pardon are possible, but the issue does not relate to early release

Offender/offence	Length of period to be served and conditions	Supervised or decided by judiciary or administration?	With conditions / probation/licence or not?	Amnesty/Pardon
Romania	In all cases	2/3 or ¾ depending on the term imposed. In case of lifetime, min of 20 years.	In all cases, judiciary – decided by the court (the court of execution), proposal by a special commission.	<p>According to the new Criminal Code, if the rest of the penalty that were to be executed exceeds 2 years, some measures of supervision are mandatorily imposed by law and other measures can be imposed by the court (Article 101 New Criminal Code).</p> <p>Amnesty can be accorded by law. The Parliament just decided (on November 17, 2014) to reject a project which granted amnesty in cases of maximum 7 years penalty provided by law (the last amnesty law dated from 1990).</p> <p>Pardon can be granted by law. The Parliament just decided (on November 17, 2014) to reject a project that granted pardon in cases of maximum 6 years penalty imposed by courts (the last law on pardon dates from 2002).</p> <p>Pardon can be granted by the President in individual cases, on</p>

Offender/offence		Length of period to be served and conditions	Supervised or decided by judiciary or administration?	With conditions / probation/licence or not?	Amnesty/Pardon
					humanitarian grounds (in 2014, several cases were present, involving elderly convicted persons and minor offences).
Slovakia	In all cases	When convicted of the offence has served the ½ of the sentence, in the case of crime after 2/3 of the sentence and in the case of particularly serious crime after ¾ of the sentence.	Judiciary	The Protective supervision is obligatorily required for the perpetrator of a particularly serious crime, otherwise possible. Probation is possible.	Amnesty or pardon by President are possible.
Slovenia	In all cases	No mandatory release. Condition related to convicted behaviour and min of sanction served ½ or ¾ if sentence above 15 years. Exceptionally only 1/3.	Special Committee set by the Ministry of Justice.	Only condition is to refrain from reoffending.	Possible, but infrequent.
Spain	In all cases. Corresponds to 4th degree of execution.	Depends on individual's evolution in prison. If sentence 5 years or more, judge may order that pre-release penitentiary treatment not possible before a given period (" <i>periodo de seguridad</i> "), in case of terrorism, certain forms of sexual abuse of children or felonies in organised groups, this term	Although the so called "period de seguridad" has been adopted, the prison oversight judge may reintroduce the general regime of execution, but should not order third degree	Classification in a third degree of execution varies depending on the type of crime. For example, in some cases some conditions must be met: the offender should have settled civil liability	

Offender/offence		Length of period to be served and conditions	Supervised or decided by judiciary or administration?	With conditions / probation/licence or not?	Amnesty/Pardon
		may be mandatory.	classification, in case of penalties higher than 5 years being an offence of terrorism, terrorism or sexual abuse of children or organised crime, unless the half of the sentence has been served (Art. 36 SCC).	(i.e. robbery); show unequivocal signs of having abandoned the ends a means of the terrorist activity or collaborate with the authorities, etc.	
Sweden	All cases	Mandatory release after 2/3 of the sentence served	Automatic application	No conditions	Pardon follows a different procedure and is extremely rare

Possibilities for early release generally depend on the sentence pronounced; there is normally no relation whatsoever between the criteria for release and the legal minimum set for the perpetrated offence (see in particular PT report), however early release is **not always available to all types of offenders or for any sentence** (e.g. members of criminal organisations in HU; exceptionally severe crime against minor in LV; life imprisonment for murder in IE, safe for special remission; recidivists in HU in some cases). In IE there may be a mandatory sentence in which remission is not permitted. On the contrary early release is not possible for short term sentences in MT (sentences below 1 month), NL (sentences below 1 year), CY (sentence below 2 years), or LT where sentences below 2 years are also normally executed in full.

Beyond these cases, convict normally **is or may be released after a certain period**. In terms of **percentage** of the sentence imposed, this varies widely between Member States, and according to the nature of the offence (e.g. in DK, release after $\frac{1}{2}$ instead of $\frac{2}{3}$ is limited when offender is part of gang, in CZ for the most serious offences early release is only possible after $\frac{2}{3}$ instead of $\frac{1}{3}$, or in SK release may be postponed up to $\frac{3}{4}$ instead of $\frac{1}{2}$ depending on the seriousness of the offence), the length of the sanction pronounced (e.g. in LT, NL, EL, LV, RO, SI), the prescribed maximum (e.g. EE), whether the convict is a first-time offender or not (e.g. BE, FI, DE, BG, LU, LV, PL, HU, IT), and whether the release is accompanied with surveillance, probation, rehabilitation programme, etc (e.g. EE, AT, IE). Thus, according to the circumstances, the range may be from $\frac{1}{5}$ to $\frac{5}{6}$: $\frac{1}{5}$ in EL, $\frac{1}{3}$ in BE, CZ, EE, LT, NL, $\frac{2}{5}$ in EL, $\frac{1}{2}$ in AT, BG, HR, CY, CZ, DK, E&W, EE, DE, IT, LV, LT, LU, PL, PT, SK, SI, $\frac{3}{5}$ in EL, $\frac{2}{3}$ in AT, BE, BG, CZ, DK, EE, FI, DE, HU, IE, LV, LT, LU, NL, PL, RO, SK, SE, $\frac{3}{4}$ in HU, IE, IT, LV, LT, PL, RO, SK, SI, or even $\frac{5}{6}$ in PT.

There may moreover be, in combination with the percentage, a minimum period of imprisonment **in absolute terms** before the person may be released of 2 (DK), 3 (HR, HU) 6 months (DE, EE, PT), or more (in IT, 30 months, or 4 years for recidivists). In case of life imprisonment, the term is much longer (e.g. 12 years in FI and CY, 15 years in LU and BE, 20 years in RO, 25 years in CY for a prisoner who was convicted twice for life, 26 years in IT). In some Member States the judge may impose a period within which the person may not be released (ES, it is envisaged in BE too).

In certain cases, release is mandatory or automatic (AT after $\frac{2}{3}$ is served, DE and SE after $\frac{2}{3}$, PT after $\frac{5}{6}$ (for sentences of 6 years or more), E&W after $\frac{1}{2}$ is served for sentences less than 1 year), but normally, it is conditioned by the good behaviour of the convict (e.g. BG, ES, HR, IE, IT, LT, SI, PT, NL...), or alternately, release is normally granted unless the person's behaviour demonstrates a need to pursue the execution (e.g. in FI, EL, AT (after $\frac{1}{2}$ is served). The period to be served before release may be shorter when certain conditions are met (for instance the participation in a reintegration programme in IT allows for a reduction of 45 days per 6 months served, or the submission to electronic monitoring, as in EE in ES or in PT (where early release may be anticipated by up to 1 year if convict is to abide a set of rules). Release is generally associated with probation (the NL report indicates that cooperation with the probation services is a prerequisite), but not in all cases (for instance, no testing period is foreseen for juveniles in BG). Probation is sometimes obligatorily imposed on persons convicted of more serious crimes (e.g. in SK when the person was sentenced for particularly serious crimes). In FR the probation period may be reduced when some criteria are fulfilled including the rehabilitation, reparation of the damage, or the end of the nuisance caused by the offence. More details are provided in table 3.2. above.

Another system or institution may lead to a shortening of the sentence pronounced, namely **amnesty or pardon**. It is not an early release mechanism strictly speaking,

and as such not always part of an individualisation process. Amnesties may be personal, on request, or automatic and across the board for all detainees or a whole category of them: in such cases, the rehabilitation process is of course not the guiding principle. These mechanisms have not been explored in details in the study, as their effect is absolutely marginal.

The objective of early release procedures is mainly to tailor the regime to the personality and evolution of each offender. When release is discretionary, the decision to release or not is not so much based on legal provisions, but rather on sociological, psychological and criminological consideration, which may explain why it is not necessarily within the hands of the judiciary (e.g. in BE, when the person is sentenced below 3 years, it is the prison administration which decides, in FI or in IE it is the responsibility of public officials, in SI there is a special committee set by the Ministry of Justice, in LU it is the Prosecutor General, in CY release is decided by an independent Parole Board, in NL the prison director determines the date of release, and the public prosecutor may lodge an appeal with the district court, the decision of which is without legal remedy). Where automaticity applies, obviously it strays from the individualisation logic. But even when applying the classical rules of early release, there may also be more trivial reasons to release convicts before their term, such as overpopulation in detention services, and this is acknowledged in a number of reports, such as FR, IE, IT (where a reform should be introduced favouring home confinement and conditional sentencing, subject to implementing decrees to be adopted before October 2015), RO and EL. Finally the BE report indicates that short term sentences are in principle not executed at all, given that prisons are overcrowded.

3.3 Mitigation in practice

Replies to these questions (2.1. and 5.7.) cannot easily be quantified. The first addresses the experience of basing the judicial decisions on specific mitigating circumstances in case law, and definite statistics are not available, as will be seen in Section 5. The second aims at putting some light on the personal intention of judges: which circumstances would, in their view, justify imposing a lower sentence than the mandatory minimum. Some reports provide a global reply; some others give individual responses, albeit not in a systematic way. Moreover, despite the fact that the survey is generally representative, the number of interviewees is not enough to draw uncontroversial figures. Therefore the present section will mainly distinguish common trends.

3.3.1 Experience

A few preliminary remarks should be done before looking at the most common mitigating circumstances, based on the experience.

First, in a number of Member States, reports indicate that the possibility to go below the minimum is rarely used (AT, BE, SI, LV, but the LV report indicates that there are contradictory surveys), sometimes because the minimum is already quite low (BE). In a few Member States, in particular where a minimum is provided by law only for severe cases, such possibility does not exist (e.g. CY) or is seldom used (DK). By contrast, the frequent or even routinely use of mitigation is reported in LU for instance.

A second remark is that several reports remind of other possibilities to alleviate the sentence, in particular to suspend the execution (e.g. CZ). Indeed, it is worth bearing

in mind that the circumstances, which are taken into account to mitigate the sentence and, where possible, to impose a sanction below the legal minimum, may equally lead, instead or together, to another form of leniency, in particular, the suspension of its execution. It goes without saying that it is more than likely that the same circumstances would also be considered to adapt the sentence where no minimum is provided by the code, or, in case there is a maximum and a minimum level, to determine a sanction within the margin of penalty.

Thirdly, a general assessment of the overall facts and situation of the offender is often referred to: thus cases where "the full application of the minimum sanction threshold stipulated by the code is perceived as unjust" (CZ), "when the minimum penalty provided by law would be too harsh" (PL), "to avoid a sentence which would be unreasonably severe" (E&W). The ES report insists on the proportionality goal, requiring to take on board at the same time the personal circumstances (for instance, the efforts to compensate the damage), and the seriousness of the facts (such as whether or not they involve violence). The FR report for its part stresses the need to base the decision on a thorough analysis made by specialised services, the essential criterion in this individualisation process being the chances of reintegration of the offender. In FR, approximately 2/3 of decisions in 2012 involved mitigation, however it must be underlined that (1) only a few kind of offences involve a legal minimum sanction under FR law, and (2) in such cases imposing a sanction below this minimum is not allowed: this illustrates that mitigation is a broader concept, including leniency below the maximum. As already said, the same kind of circumstances under which judges would be able to impose a penalty below the mandatory minimum are also those which they would consider in order to individualise the punishment, imposing a prison term between the minimum and the maximum or pronouncing an alternative sanction, whatever is considered the most suitable, fair and efficient. The court's response always depends upon the degree, impact and/or quantity of these mitigating circumstances.

Finally, in some Member States, mitigation is more frequent for less serious crimes, or misdemeanours, than for felonies (e.g. EL). On the contrary, the LT report indicates that penalties below the set limit of the sanction are most often imposed when the minimum is 7 years or more. But the fact that reports indicate that the possibility to go below the minimum is used for serious crimes only may simply be that there is no minimum for less serious crimes (LV).

Among the circumstances which are most often indicated as allowing a lower sanction, some are relatively objectivised and may be empirical verifiable, a characteristic which perhaps explains their preferred use. The MT report lists the young age, the cooperation with law enforcement, the absence of a criminal record, and the limited participation or the simple attempt. These four examples are considered first:

- **Age** is indeed reported as a frequent mitigating circumstance in a large number of Member States (BE, BG, DK, EE, EL, HR, HU, IT, LT, PL, PT, SI);
- **Cooperation with law enforcement** is also often quoted (DE, HR, HU, IT, IE, LU, PL, RO, LT, SK). AT report however indicates that none of the interviewees could remind of such situation. In PT the cooperation with law enforcement authorities receives very little application, too. Extensive reliance on this newly introduced explicit reason for mitigating latitude is subject to critics in FI;
- **Absence of criminal record** is a common factor of mitigation too (e.g. BE, DE, EL, HR, HU, IT, IE, LU, PL, RO, SI). On the other hand, the AT report, referring to doctrine and case law, underlines that in case of prior offences, courts would not assume positive special preventive prognosis, and the CZ report also states that imposing a lower sanction would not occur frequently in case of re-offenders;

- **Minor participation or attempt** appears as a typical mitigating circumstance in several reports (e.g. AT, DE, HR, HU, IT (attempt would reduce the sanction by 1/3), LT, LU (where it is however regulated by law), LV);
- Featuring among other circumstances which may lead to a reduced sanction, **remorse and compensation**, or in more general terms the offender's behaviour following the act, also regularly appear in the reports (e.g. HU, EE, HR, IT, LT, PL, PT). In AT a remorseful confession is one of the most important mitigating circumstances. Guilty plea on the other hand is for instance mentioned in the HR, HU, IT, IE, SK reports;
- **Small harm** shows up among the remaining circumstances allowing for a lower sanction (e.g. in DE, DK, IT, RO, SI, LU);
- **Diminished capacity** is another situation which is less often reported (EL, SK). The desperate situation of the offender is also mentioned in the AT, DE, IE, IT, LT, LU or HR reports. The personal, social, family conditions are less often quoted (LT, PL, RO, SI, and SK);
- **Length of proceedings** remains more exceptional (see the EE and LT reports, or the SK report which refers to Art 6 ECHR and to the Constitutional Court to explain why the courts impose sentences below statutory limits in case of inadequate length of proceedings).

3.3.2 Intentions

Some practitioners refused to give examples of situations where they would like to "go below the minimum", underlining the fact that sentencing is a case by case exercise and that there is no "size fit's all" approach as all depends on circumstances (see the IE or the PL reports). A general reply, which however does not provide more concrete insight on the kind of situations where judges would be more inclined to impose a milder sanction, is that they would do so when the legally imposed sanction is deemed too harsh (e.g. see the CZ report: "where even the minimal imprisonment sanction would be perceived as unjust, taking in consideration the concrete situation of the crime and the offender (...)", or the LV report: "where the minimum possible punishment in the concrete situation is to be considered too severe and would be inappropriate for the nature of the offence and the degree of harm"). The latter report indicates nevertheless that many rulings lack sufficient substantiation to explain why the court sees obvious incompatibility between the concrete offence and the possible minimum sanction.

Unsurprisingly, more concrete answers from interviewees to question 5.7. to a large extent reflect the presentation under section 2.1. of national reports. The **same typical circumstances are quoted in more or less the same proportion** (i.e. young age, accessory participation, contrition and repair, small harm, etc.).

Emphasis is regularly put on the fact that the person sentenced is a **first-time offender** or, adversely, there is less propensity to consider a more lenient sanction if the offender is a recidivist (see the HR, DK, IT, LT, EL, LV, SK reports). The victim's behaviour would also explicitly be taken into account according to a number of practitioners (see in FI the debate about self-defence, as well as the examples of family violence in LT, or provocation in the PT or SI reports).

Cooperation with law enforcement, even regardless of the role of the person in the commission of the crime is an example where the interviewed judge would be indulgent in LT or in PT, for instance. On the other hand some caution was expressed with regard to guilty pleading (see HR report "in some cases perpetrators do it because they know the evidence is so strong" that they would not otherwise get a more lenient sentence). However noteworthy is the remark in the LV report that "a

punishment lesser than the minimum could not be imposed if the accused did not admit guilt”.

In ES, where the legal individualisation system precisely regulates the levels of reduction, most respondents tend to consider that there is enough intrinsic flexibility and that in the exceptional cases where even the minimum would be notably excessive, judges would not depart from the minimum, but may and would request pardon instead of opting for an even milder sentence. Indeed Article 4,3 SCC enables judges to request the Government the exercise of the royal prerogative of mercy, “without prejudice to the immediate execution of the sentence, when (...) the punishment is notably excessive, in view of the harm caused by the offence and the personal circumstances of the person found guilty”.

Many reports indicate some **specific categories or types of crimes where interviewed judges would like to reduce the sanction**, and would do so when, or if, they have the option. For instance small drug offences (BG, ES, IT, EL, HU, SI), frequent but considered minor business offences (e.g. in DE or in AT), small property offence (PT, EL, HU, SI, BE, even with limited violence) or offences against property in front of economic need (IT), minor “association de malfaiteurs” (different from criminal organisation) in LU. EE report however points to the fact that “the nature of the offence does not make going below the minimum sanction unthinkable”, and some respondents in LT or PT say that exceptional conditions may exist in any crime case which could allow imposing a milder sentence.

The examples of **cases where there is normally no tendency to go below the minimum** present also similarities, for example violent crimes or severe bodily injuries (HR, PT, ES, HU, SI), or multiple deaths caused by intoxicated drivers (LT), sexual offences, particularly against minors (DE, LU, PT, BE, EL, SI) organised crime (IT), aggravated fraud or corruption (EL), or lack of remorse (DE).

An interesting remark in the CZ and LU reports is that since not going below the minimum is a default option, only limited attention is given as to the reason not to reduce the penalty below the minimum.

3.3.3 Theoretical examples

In order to illustrate the comparisons, we have tested the situation (i.e. what offender would risk, or fear, or hope, to receive as a punishment) in relation to three typical cases: robbery by a first-time (adult) offender, participation in a criminal organisation dealing with drug trafficking by someone who cooperates with law enforcement bodies, and sexual abuse of children by a recidivist, and asked national rapporteurs to check or comment. Of course, the exercise remains rather abstract: the idea was mainly to present in a more “illustrative” way the legal rules which are explained in each report; in other words to apply, so to say, these rules to three typical cases, albeit still theoretical of course (age of the offender, efforts to repair the damage, and many other factors remaining open for instance).

We could not always get input from national experts: some did consider that the exercise was still too abstract, and that no general reply could be given as each case would have to be examined on its own merits. The results therefore are neither complete, in the sense that some Member States are entirely missing, nor exhaustive, in the sense that not all aspects of mitigation (including the possibility to impose a lower sanction, to suspend the execution, to grant early release) are covered for each Member State included in the sample. It should also be noted that, confronted with “typical” cases, the likely sanctions are not necessarily the legal minimum, provided

by the criminal code, nor of course the maximum applicable to the most serious cases. The limited ambition is to give a flavour of the ordinary frame which would orientate the judicial decisions and the execution regime in such kind of situations. As a consequence, whereas the examples do not lead to any classification, at least they show how wide the spectrum of quantum and modalities could be. There are certainly much more nuances in concrete cases, so that individual results could be even more diverse, but sometimes perhaps, on the contrary, more homogeneous in the end.

No clear-cut conclusions could be drawn from this tentative model. Five modest remarks may be made. The first is that the minimum sanction is not necessarily the most likely sanction: in some Member States, the ordinary, basic sanction is normally above the minimum, whereas in some others, the minimum is rather the rule in the absence of aggravating or mitigating circumstance, and it may well be that a sanction below the minimum is routinely pronounced in "standard" cases. The second is that it becomes obvious that legal minimum sanction is only one part of the predictable consequences of the commission of offence: judges have at their disposal many tools to adapt their decision to the particular features of a case, and the execution regimes follow their own logic also, so that at the end, the Member State with the lower minimum is not necessarily the Member State where the risk, or chance, is highest of spending the shortest time in prison. Thirdly, through the severity with which they are dealt with in each Member State, one may guess the degree of reprobation towards crimes seen as threatening particularly sensitive interests, but this degree may vary among Member States. Fourthly, there is a striking diversity in dealing with the particular circumstance of cooperation with law enforcement: it is sometimes a mandatory mitigating circumstance, and in certain Member States it may lead to the renouncement to pronounce a sanction, or even to prosecute. The fifth and last observation is that the situation of recidivists and re-offenders is most commonly dealt with particular severity.

Example 1: robbery by a first-time (adult) offender

In this first example (robbery by a first-time (adult) offender), the sanction would be 1 year in DE, ES, HR, SE, PT and SI, 2 years in CZ, EE, HU, and RO, 3 years in IT, SK or BG, 5 years in EL (as it is a felony), or in BE (but most of the time, it would be "correctionalised" into a misdemeanour, and the minimum would be brought back to 8 days), while there is no minimum in FR (since 1/10/2014, unless committed with violence), IE, LT or EL (safe for aggravated robbery). In MT, the minimum for aggravated theft, depending on the nature of the aggravating circumstances, could be 5, 7, 9 or even 13 months. Mitigation below minimum is possible in most Member States, but rare in CZ and EE. In DE, offender would probably be sentenced for 6 months, since a first-time offence could be considered as a minor offence, for which there is a specific, lower, minimum.

In RO the penalty would probably be, in the absence of mitigating circumstances, between 2 and 3 years. In HU, applying the median system, if there are only few mitigating circumstances, the sentence would be along 2-3 years. Imprisonment could be replaced in ES and EE, and will normally be in EL if the sentence imposed is below the minimum. Conditional or suspended sentence will normally be pronounced in BG, CZ, DE, ES, EL, HR, MT, SI, SK, PT, and may well be decided in the other MS, including EL if a sentence below the minimum has been pronounced. In IE, where there are significant mitigating circumstances there is a high likelihood of there being a low custodial sentence or even a suspended sentence; where there are significant aggravating factors there is a high likelihood of a large custodial sentence of between 3 and 5 years with perhaps a partially suspended portion. In RO suspension of the penalty is possible, but most probably the penalty will be executed in the state penitentiary. In BE, as long as the sentence is of less than 3 years, it would not be

executed. If the sentence of deprivation of liberty is executed, in IT it may still be commuted into semi-freedom after half has been served or into a community service after a month. In all cases, offender could benefit from early release, at discretion (in ES, FR, BG), or after a minimum has been served, in number of months (2, 3 or 6, in DK, DE, EE, HR, HU, PT) and/or in proportion of the sentence (often $\frac{1}{2}$). If in HU the person was sentenced to 2 years, early release would occur after $\frac{2}{3}$, i.e. 16 months. In MT, convicted may earn remission of up to $\frac{1}{3}$ of the length of the imprisonment term. On the hypothesis that he or she was sentenced to 1 year, time spent in prison before release may vary from 2 (EL) to 3 (HR), 6 (CZ, DE, IT, SI, SK) or 8 months (EE), or at the discretion of the court after a minimum of 4 months (LT) or 6 months (BG). In SE, early release would be mandatory after $\frac{2}{3}$ of sentence is served.

Example 2: Participation in a criminal organisation dealing with drug trafficking by someone who cooperates with law enforcement bodies

In the second example (participation in a criminal organisation dealing with drug trafficking by someone who cooperates with law enforcement bodies), minimum sanctions are provided either for participation in a criminal organisation (EE, ES, EL, HR, HU, IT, LT, SK, PT) or for drug trafficking (5 years in IE), in this case with the aggravating circumstance of doing so within a criminal organisation (CZ, DE, EE, SI, BG), or given the quantity and/or nature of the drugs (EE, MT, where the case will be before the Court of Magistrates for small amounts of drugs, or before the Criminal Court if not minimal), or when it is the third conviction for offences of that kind (E&W). The possible sanction varies from 1 month (in BE: participation in a criminal organisation committing misdemeanours, with a maximum of 2 years), to 1 year (in FR, and in DE, but since the trend is to be rather harsh in cases of drug trafficking the expected sentence would be around 2 years of imprisonment, or in IT, unless it is a mafia-type organisation), 2 years (CZ, ES, RO), 3 years (HR, LT (participation in an organised group, but 8 for aggravated drug trafficking), BG, SK), 5 years (EL (as a felony, by reference to the general rule), PT, SI), 6 years (EE) or even 7 years (E&W). Cooperation with the authorities will lead to a mitigation of the sanction, probably in proportion with its scope and relevance. In FR, the maximum would be divided by two. Often it is explicitly provided (CZ, DE, EL, IT, LT, EE, IE, SI, HU, SK) or it would fall under a general provision (E&W), or simply the list of mitigating circumstances is not exhaustive (DK, PT). Mitigation would be mandatory in EL, CZ and BG. It could lead to a reduced sanction (BE, DE, ES, IT, EE, SI). In MT, the new minimum applicable in such case would differ according to the competent court (1 month if it falls under the jurisdiction of the Court of Magistrates or 2 years if it is the Criminal Court). Cooperation with law enforcement could also allow for the replacement of imprisonment with another measure (EL). In SE there is a proposal before Parliament to treat cooperation with authority as a mitigating circumstance. In LT, HU and BG, there could even be no prosecution or no sanction pronounced for those who reveal the existence of an organisation before any attempt of crime is pursued. Sentence would not be suspended in CZ, BG or SI (as the maximum exceeds 3 years), and probably not in RO due to the nature of the crime, but it would normally be suspended in DE, in ES (if it is a first-time offender), or in EE. In BE, as long as the sentence is of less than 3 years, it would not be executed. If a prison sentence is executed, early release would not be possible before $\frac{1}{3}$ (EL, LT), $\frac{1}{2}$ (BG, CZ, IT, SI, E&W, RO, SK), $\frac{2}{3}$ (DE, EE, RO if the penalty imposed exceeds 10 years) or $\frac{3}{4}$ (ES) would be served. In HR, there is a minimum to be served of 3 months. In MT, the person may earn remission of up to $\frac{1}{3}$ and also apply for parole for a period not exceeding 33% of the imprisonment term.

Example 3: sexual abuse of children by a recidivist

In the third example (sexual abuse of children by a recidivist), the likely sanction varies between 1 year (AT, CZ, FI, or DE), 2 years (ES, EE, EL, HU, but 5 years if the

child is under 14), 3 years (HR, SI, SK, BG, but 5 in case of dangerous recidivist), or even more (7 years in FR). There is no minimum in LT, MT or in IE. In RO, due to the relapse, the offender being a recidivist, the minimum of 5 years would be increased by half. In PT, the minimum of 1 year would be elevated by 1/3 for recidivists. In BE, the minimum is 5 years (10 or 15 under aggravating circumstances), but the offence is likely to be re-qualified as a misdemeanour (in order to bring it before the correctional court), which means that the minimum becomes 8 days, whereas the maximum would be doubled (10 instead of 5 years) if the person has already been convicted to criminal incarceration. Mitigation is unlikely in several Member States (including BG, EE, LT, ES, FI, HR), but not in PT. In DE, depending on the circumstances the sentence would most likely be in the range of 6 months to 1 year, while in BG, for instance, it would be 3 to 4 years, or even 5 to 6 years for a dangerous recidivist. In CZ and in FI, in such case it would not anyway lead to a sanction below the minimum. Suspension is excluded for recidivists in BG, ES, MT and HU for re-offenders (i.e. someone who was in prison twice before committing a third crime), in HU, and would not be applicable in LT, nor in RO for this level of penalty. In DE, the offender would most likely receive a suspended prison sentence. For recidivists, replacement by a fine would not be available in EL. Early release would be excluded in HU for re-offenders, but "simple" recidivists could be released after $\frac{3}{4}$ of the sentence is served. Early release would in principle be possible, subject to the person's behaviour, after $\frac{2}{5}$, $\frac{1}{2}$ or $\frac{2}{3}$, has been served, or at discretion in other Member States.

4. Implications of minimum sanctions on criminal law

Where implications are indicated, they are “ill-matched”, at least very diverse, as may be seen from table 4.1.

Several reports expressly indicate that minimum sanctions have **no implications** whatsoever.

Even when implications are indicated in table 4.1., only a few responses identify **genuine consequences of legal specific minimum sanctions as such**. Examples of this first situation are criminal liability for attempts in EL, length of prescription period in AT, qualification as predicate offence in PT, extraterritorial jurisdiction in LT, FI and SE, disqualification and accessory penalties in ES, right to defence counsel in FI. In E&W minimum sentence may have implications on the competent court (Crown court instead of Youth court), or to the choice of measures applicable. Also pre-trial detention (IT, AT, CZ, FI) or special investigation techniques (IT, SI, SE) are sometimes available only for offences which may be sanctioned by a minimum duration of imprisonment, whereas in some Member States (e.g. LV), it is enough that a prison sanction may be imposed, whatever its duration. One could however argue that this is perhaps a consequence of the general minimum (15 days in LV). In SE, complicity is punishable when the sanction for the offence itself includes imprisonment, but there is no general minimum. Further consequences of specific legal minimum include the possibility to mitigate, or rather the extent by which the sanction may be reduced, whenever there is a fixed relation between the “standard” minimum and the lower limit in case of mitigation: this is sometimes mentioned (e.g. SI, FI), but has been covered in more details under chapter 3.1. above. Finally one could mention the sanction of recidivism after a first serious crime (i.e. punishable by 5 years or more) in IE.

A particular case is where offences are distinguished by **categories** (BE, DE, EL, LV, LU, LT, PL, PT, SK), but categorisation is rather linked to maximum (see LT and SK reports), or to minimum and maximum together (as underlined by LV and PT reports).

Many consequences are attached to the level of punishment actually pronounced rather than to the mandatory minimum provided by law. Hence, for instance, prison of up to 6 months may be commuted into a fine (IT), suspension of execution is only available for sanctions imposed below 2, 3, 5 or 6 years (see for details section 3.1.2. above), no early release is foreseen for short term imprisonment (MT, NL, CY, LT), parole is revoked if the convicted person commits a new offence for which he/she is sentenced to 1 year or more (HR). Also accessory penalties normally depend on the sentence rather than on the legal minimum (e.g. prohibition of exercising public functions applies in case of crime sentenced for a period of imprisonment above 3 years in PT, permanent disqualification from holding public office in IT is associated to a 5 years imprisonment imposed, sentence for a term of at least 10 years shall also be punished with some absolute barring in ES). Length of imprisonment pronounced also determines the duration of keeping the sentence on criminal record in FI.

In this third situation, the specific minimum sanction can have incidental implications since it is obviously likely that in the absence of sufficient convincing mitigating circumstances, the convicting judge or court will not pronounce a sanction below the specific minimum, and that therefore the sanction meets the threshold necessary for a measure or an option to be available (or not available).

Sometimes it is the maximum prescribed sanction which has implications.

Table 4.1. provides examples in EE, where special investigative techniques (e.g. interception of telecommunications, infiltration, controlled deliveries) are only available for offences punishable by a maximum of 3 years at least, or in RO (statute of limitations, some accessory penalties). In IT, plea bargaining is available if an offence is punishable with a term of imprisonment (reclusione) not higher than 5 years. In HU no prosecution in case of repentance is only possible for crime punishable by less than 3 years, and postponement of indictment only where the maximum is 3 years, exceptionally 5 years. In PL, court may waive from the imposition of the penalty, subject to certain conditions, only if the offence is exposed to the punishment of deprivation of liberty below 3 years or to a more mitigated punishment. As another example, in PT, summary proceedings are applicable to persons arrested in flagrante delicto for the commission of crimes punishable with imprisonment of less than 5 years. Duration of prescription is also linked to the maximum sanction available in FI. In this fourth situation, the specific minimum sanction can also have incidental implications since it is possible that it meets the threshold necessary for a measure to be available or precluded.

A further important remark is to be found in the HR report, which indicates that various material or procedural consequences depending on the severity of the criminal offence are put in relation to **sanction which may be imposed within the sentencing range**, rather than to the mandatory minimum sanction as such: attempt would be punishable, or particularly intrusive investigative measure could be used, as soon as a certain level of sanction could be imposed, but that level could be the minimum, the maximum, or any term in the margin provided by law for the offence in question: e.g. attempt is punishable if the sanction prescribed for crime is 5 years or more means that the minimum sanction must be within the margin: from 6 months to 5 years, from 1 year to 8, or from 5 to 20 all fall within the definition. LV, SK and SI reports made similar comments. LT is the only report where the possibility of extradition is indicated as an implication of minimum sanction; however it is clear that extradition, as well as the issuance of a European arrest warrant, is linked to the possibility to impose a sanction of 1 year, but that a legal specific minimum of 1 year is not a condition to launch an extradition request or issue an European arrest warrant. Arguably, one could say of course that a specific legal minimum sanction of 1 year could be a criterion to ensure that European arrest warrants are not issued for petty crimes.

As a last remark, it should be underlined that even without a precise quantum regarding the offences to which particular procedural measures may be applied, more generally, minimum sanctions may be of significance in order to apply some coercive investigative measures, as their application is subject to proportionality (see e.g. ES report).

An exhaustive survey of all mechanisms or measures linked to a level of sanction provided by law as a maximum, or a minimum, or imposed in any given case would outreach the context of the present study, as would a complete analysis of all the consequences of categorisation in all Member States applying such system. The table below however identifies several situations where minimum sanctions, either directly or incidentally as explained above, may have an incidence. As already pointed out, they vary largely. A tentative grouping is nevertheless made in the following paragraphs.

Table 4.1 Implications on substantive and procedural law

Implications on substantive criminal law		Implications on procedural criminal law
Austria	Duration of the prescription period	Determination of competent court, pre-trial detention if suspected of offence punishable by at least 10 years
Belgium	<u>Complicity*</u> : <u>cumul of sanctions*</u> : all sanctions for infringements executed, while in case of multiple felonies, only the most severe will be imposed, <u>recidivism*</u> : increases the minimum for felonies	<u>Determination of competent court*</u>
Bulgaria	No	Special investigative techniques available for serious crimes
Croatia	Attempted criminal offence punishable if law prescribes 5 years or more for the offence (i.e. 5 years min, max or in the range); revocation of parole if new offence punished by 1 year or more; mandatory psychiatric treatment if criminal offence for which sentence of 1 year or more prescribed; statute of limitation.	No
Cyprus	No	No
Czech Republic	No	Pre-trial detention for intentional crimes punishable by 2 years or more, 3 years if unintentional; interception and infiltration for crimes punishable by 10 years or more.
Denmark	No	No
England and Wales	The offences for which a juvenile must be tried in the Crown Court rather than the Youth Court include any firearms offence that carries a mandatory minimum sentence. Where a person accused of a crime is found unfit to plead because of insanity, or found not guilty by reason of insanity, the court normally has a wide range of options for dealing with him. However, if he was accused of "a offence for which the sentence is fixed by law" (i.e. murder, with the mandatory life sentence) the court has only one option for disposal: a hospital order, subject to restriction	No
Estonia	No	Special investigation techniques available for crimes punishable by 3 years maximum

Implications on substantive criminal law		Implications on procedural criminal law
		at least.
Finland	Crimes committed abroad punishable in Finland where penalty of at least 6 months possible; no possibility of suspended sentence where imposed sentence 2 yrs or above; duration of prescription period affected by level of imposed punishment; no criminal record entry if fine only; length of imposed sentence linked to removal from criminal record. Disqualification, loss of office, etc. linked to maximum available. Conditional imprisonment not possible if minimum of certain level.	<u>Arrest</u> for probable cause where minimum sanction of 4 months, <u>right to defence counsel</u> if minimum sanction of 4 months
France	No	Investigative techniques: proportionality. The only remark that can be made on the procedural aspects is that minimum sanction is considered by practitioners very heavy because of the short period of time in jail and the long period of probation with specific methods to implement, to control. It is very complicated for the practitioners to respect the periodic meetings that should take place with the offender because of the overwhelming number of cases, especially since the laws of 2007 and 2011 introducing the minimum sanctions. Even if it was already the case before these laws, it is even worse since 2007.
Germany	Punishability of <u>attempts</u> : only felonies or when specifically stated by law, <u>predicate offence</u> : all felonies and only named misdemeanours, <u>disqualifications</u> *: loss of some public rights if sentenced for 1 year for felonies only, <u>conditional sentencing</u> not possible where minimum is more than 2 years, <u>non prosecution</u> * only possible for misdemeanours.	Categorisation: possibility of <u>non-prosecution</u> * of petty offences, of <u>summary punishment</u> * only for misdemeanours, <u>mandatory defence counsel</u> * in case of felony. Missing e.g.: §110a stop (undercover agent) Special investigative techniques only for criminal offences of substantial significance (drug, trafficking in arms and money, offences against State security, organised crime)
Greece	<u>Attempts</u> : no sanction if related to misdemeanour punishable by less than 3 months, <u>complicity</u> : not sanctioned in relation to petty crimes (punishable by 1 day to 1 month), <u>predicate offence</u> *: if	Categorisation determines <u>competent court</u> *, <u>coercive investigative measures</u> * linked with deprivation of liberty, collection of DNA samples possible if serious indications of felony or misdemeanour

Implications on substantive criminal law		Implications on procedural criminal law
	punishable by more than 6 months, <u>criminal records</u> *: also if case is dismissed when minimum is at least 3 months, <u>accessory penalties</u> *: confinement only for felonies and misdemeanours, minimum 6 months for drug addicts, expulsion of third countries nationals only in case of felonies.	punishable by 3 months at least, accused referred to <u>investigating judge</u> * in case of felony, <u>proceeding suspended</u> * regarding felonies if accused of unknown residence does not appear, <u>defence counsel</u> * must be appointed if accused of felony, <u>appeal against decision of Judicial Council</u> * only in case of felonies, accused of felony which could not appear due to force majeure may lodge <u>application to cancel proceedings</u> *.
Hungary	Active Repentance (Section 29 HCC).	Postponement of the indictment possible if punishable by 3 years maximum.
Ireland	<u>Recidivism</u> : a further serious offence (punishable by 5 years or more) after a first one triggers another mandatory sentence.	No
Italy	The application of the measures alternatives to prison (fine possible if punished by 6 months maximum, community service if punishable by 3 years maximum; the conditional release; the conditional sentencing (if punished by 2 years maximum)).	<u>Pre-trial detention</u> : not possible if punishable by minimum below 3 years; Telephone tapping: life imprisonment or imprisonment not lower than 5 years provided for crimes committed intentionally; the plea bargain.
Latvia	Classification has a consequence on <u>prescription period</u> *, punishability of <u>attempts and complicity</u> *	<u>Coercive measures, such as arrest, detention</u> as well as cover (special) investigative measures linked with deprivation of liberty possible only if minimum sanction is itself deprivation of liberty.
Lithuania	Categorisation* linked with the maximum of imprisonment have implications: – jurisdictional rules for citizens of Lithuania and aliens for the crimes committed abroad; - responsibility for the preparation; - responsibility for the complicity; - recognition of the recidivism; - possibility to release from criminal responsibility; - possibility for suspension of the sentence; - possibility to mitigate the sentence; - duration of the prescription period.	Categorisation* linked with the maximum of imprisonment have implications: – – mandatory participation of a defence council; - determination of the competent court; - application of the pre-trial detention; - application of certain investigative measures; - possibility of simplified procedure; - possibility to terminate pre-trial investigation; - possibility for extradition;
Luxemburg	Categorisation has implication on <u>attempt and recidivism</u> *, on <u>duration of prescription</u>	Categorisation defines <u>competent court</u> *, has implication on <u>statute of limitation</u> *.

Implications on substantive criminal law		Implications on procedural criminal law
	<u>period*</u>	
Malta	No: implications are strictly tied with the declaration of guilt, the type of offence committed and the period of imprisonment imposed	No
Netherlands	No	No
Poland	No	No
Portugal	Regarding money laundering: predicate offences are those listed, or punishable with maximum imprisonment of more than 5 years, or punishable with minimum imprisonment of more than 6 months. Minimum sanctions can have incidental consequences, i.a. on <u>prescription period*</u> , on punishability of <u>attempts*</u> , on <u>accessory penalties*</u> , on <u>mitigation</u> possibilities.	Minimum sanctions have indirectly implications on <u>delimitation of competence*</u> , <u>special forms of proceedings*</u> , <u>coercive investigative measures</u> , <u>possibility of appeal*</u> .
Romania	No – in Romanian system, there are institutions linked to the maximum penalty provided by law (relapse, application of the complementary punishment of military degradation, the delaying the application of penalty punishments, the renouncement of the application of penalties, statute of limitation regarding the criminal liability) or to the prescribed penalty by the court (relapse, statute of limitations regarding the execution of penalty, suspension of penalty, delaying the application of the penalty).	No – in Romanian Criminal Procedure Law, the preventive arrest is incident - irrespective of other conditions - if the maximum penalty provided by is 5 years or more.
Slovakia	There are no consequences with a minimum sanction. Low sanction has implications for the duration of the prescription period, to waive punishment *, to be punishable by house arrest *, for mandatory social and charitable work * or to be punishable only by a monetary penalty.	With a minimum sanction there are no consequences. Low impending sanction (offence) has consequences for the period of custody, concept of investigation, the decision made only by single judge, approving a settlement by the prosecutor, conditional suspension of the criminal prosecution, etc.
Slovenia	<u>Statute of limitation</u> depends on minimum and maximum, possibility to <u>suspend sentence</u> , <u>mitigation</u> .	<u>Determination of competent court</u> , <u>mandatory defence counsel</u> , <u>undercover investigative measures possible</u> if minimum at least 8 years.
Spain	Absolute barring for convicts sentenced to 10 years at least; duration of optional	Indirectly for some <u>investigative measures</u> based on proportionality.

Implications on substantive criminal law		Implications on procedural criminal law
	accessory penalties linked to seriousness of offence (below or beyond 5 years).	
Sweden	Punishability of <u>complicity</u> : sanction must include imprisonment, <u>extraterritorial competence</u> : minimum sanction of 6 months to exercise jurisdiction on foreigner for crime committed abroad	<u>Covert surveillance of electronic communication</u> , <u>remand in custody</u> : minimum 2 years.

* = categorisation

4.1 On substantive law

On substantive law, a number of reports indicate a link with the seriousness of the offence in terms of minimum sanction regarding punishability of **attempt** (DE: only felonies or when specifically stated by law, EL: no sanction if related to misdemeanour punishable by less than 3 months, HR: if law prescribes 5 years or more, LT: through categorisation, maximum, LU: through categorisation, PT: through categorisation, and LV: through categorisation), or of **complicity** (BE: through categorisation, EL: not sanctioned for petty crimes, LT: through categorisation, LV: through categorisation,, SE: sanction must include imprisonment).

A prescribed minimum sanction may have implications on the **prescription period** (AT, LT: through categorisation, LU: through categorisation, LV: through categorisation, LU: through categorisation, PT: through categorisation, RO: maximum sanction is relevant, SK, SI).

Often, as explained in more details under chapter 3.1., lower prescribed sanctions may allow for **more lenient measures**, i.e. suspension of pronouncement or of execution, or alternative measures (DE: conditional sentencing not possible where minimum is more than 2 years, IT: commutation into fine for maximum pronounced of 6 months, into community service if maximum pronounced of 3 years, conditional sentencing not possible where minimum is more than 2 years, FI: conditional imprisonment, cannot be chosen by the judge if the minimum sanction is at a certain level, LT, PT, SI, SK, RO: maximum is relevant), and even offer the **possibility of non-prosecution** (DE: only possible for misdemeanours, LT), **settlement with prosecutor** (SK), or **postponing indictment** (RO: maximum is relevant, HU: only if punishable by 3 years maximum). On the contrary, in HR, revocation of parole is the rule where a new offence is committed and punished by 5 years or more. In E&W, with regard to insane persons, accused of "a offence for which the sentence is fixed by law" (i.e. murder, with the mandatory life sentence) the court has only one option for disposal: a hospital order, subject to restriction.

It may be relevant to decide upon **accessory penalties** (EL: confinement only for felonies and misdemeanours, 6 months minimum for drug addicts, PT: through categorisation, RO: maximum is relevant, ES: duration linked to seriousness of offence, i.e. punished by 5 years minimum or not), to execute a **plurality of sanctions** (BE: all sanctions for infringements executed, while in case of multiple felonies, only the most severe one), or have consequences on whether or not the sentence will be inserted in the **criminal record** (EL: also when case dismissed when

minimum of 3 years at least), or entail **disqualification** (RO, DE: loss of some public rights if sentenced for 1 year for felonies only, ES: absolute barring 10 years minimum).

The minimum level of penalty may have incidence on the recognition of the offence as a **predicate offence** for money laundering (DE: all felonies or named misdemeanours, EL: if punishable by more than 6 years, PT: listed or punishable by maximum of 5 years at least or minimum of more than 6 months), on the **extraterritorial jurisdiction** (LT: through categorisation, SE: 6 months minimum to exercise jurisdiction on foreigners abroad, FI: linked to a minimum available penalty under Finnish law for crimes committed by or against Finnish persons). Finally, the level of sanction is also important with regard to the taking into account of **recidivism** (BE: increases the minimum for felonies only, IE: further serious offence, i.e. 5 years minimum sanction, after a first one triggers another mandatory sentence, LT: through categorisation, LU through categorisation).

4.2 On procedural law

The most common incidence of minimum sanctions concerns the possibility of arrest and **pre-trial detention** (AT: if suspected of an offence punishable by 10 years at least, CZ: if suspected of intentional crime punishable by 2 years or more, or unintentional crime punishable by 3 years or more, FI: arrest for probable cause where minimum sanction of 4 months, IT: only possible if punishable by 3 years at least, LT: through categorisation, LV: only if minimum sanction is itself deprivation of liberty, RO: if maximum penalty provided is 5 years or more, SE: if minimum sanction is 2 years) and the use of **special investigative techniques** (CZ: interception of communication, infiltration,... possible if minimum sanction is 10 years or more, EE: special investigation techniques where maximum sanction is 3 years or more, ES: indirectly as based on proportionality, EL: coercive investigation measures and DNA samples possible if serious indications of felony or misdemeanour punishable by 3 months at least, LV: only if minimum sanction is deprivation of liberty, IT: telephone tapping available when offence punishable by life imprisonment or not lower than 5 years for intentional crimes, LT: through categorisation, PT: through categorisation, SI: undercover possible if minimum sanction at least 8 years, SE: covert surveillance of electronic communication if minimum sanction is 2 years), SK).

Another main implication is the determination of **competent court** (AT, BE: through categorisation, EL: through categorisation,, LT: through categorisation,, LU: through categorisation,, PT: through categorisation,, SI: criminal offences with a maximum sanction of 3 years fall under the competence of the local court, criminal offences punishable with a more severe sanction fall under the competence of a district court, E&W: offences for which a juvenile must be tried in the Crown Court rather than the Youth Court include any firearms offence that carries a mandatory minimum sentence).

The mandatory designation of a **defence counsel** is also linked to the minimum level in some Member States (DE: compulsory for felonies, FI: if minimum sanction of 4 months, EL: compulsory for felonies, LT: linked with categorisation, SI: compulsory if punishable by 8 years at least).

Also **simplified or summary proceedings** may be indirectly conditioned or affected by the minimum sanction (DE: summary punishment only possible for

misdemeanours, LT: through categorisation,, PT: through categorisation, SK). In EL, **other procedural aspects** are also available only in case of felony, such as accused referred to investigative judge, proceedings suspended if accused of unknown residence does not appear, appeal against decision of Judicial Council, application to cancel proceedings where accused does not appear due to force majeure. Possibility to terminate pre-trial investigation depends also on categories of offences in LT, as is the possibility of appeal in PT. Finally FR indicates an incidental consequence of minimum in terms of overloading monitoring requirements.

5. Legal history and debate

5.1 Brief overview of the legal history throughout the Member States

In the majority of Member States minimum sanctions have been **integral parts** of their criminal codes since their coming into force (AT, BE, BG, HR, CZ, DE, EE, EL, ES, FI, FR, HU, IT, LV, LT, LU, MT, PL, PT, RO, SI and SK). Detailed information on the dates of introduction of minimum sanctions can be found in table 5.1. On the contrary, in CY, DK, E&W, IE and SE, minimum sanctions do not form an integral part of the sentencing systems and have been established only for few offences at certain points in time. The NL never had minimum sanctions.

Nearly all Member States **did maintain their systems of minimum sanctions**; the basic idea of minimum sanctions has neither been denied nor changed. **Changes** mostly only relate to the **levels** of minimum sanctions and to **possibilities of going below** the minimum level. The levels of minimum sanctions seem to rather increase than decrease in most of the countries, however this conclusion has to be treated with caution. BG, DE, MT, PL and SI reported that the minima contained in their Criminal Codes (significantly) increased since their introduction. FI and EL, however, reported that minima partly increased and partly decreased over the years.

Minimum sanctions have been **abolished** in very few countries only. DE and DK abolished minimum sanctions to a limited extent. The DK legislator abolished minima for specific offences at two points in time: In 1967 the minimum for rape was abolished and in 1981 further minima for arson murder, arson, engendering of public peril and robbery were abolished. These minima were judged to be unnecessary and unreasonably blocking judiciary discretion in less serious cases. DE abolished its system of *higher* minimum sanctions for recidivists in 1986. The most drastic change in regard to minimum sanctions happened in FR in 1994: The FR legislator largely abolished minimum sanctions which were contained in the old Criminal Code. The new Criminal Code of 1994 only kept one provision containing a regime on minimum sanctions: if a certain maximum is met certain minima must be observed (article 132-18 Criminal Code). In 2007 minimum levels for recidivist offenders were introduced and in 2011 the regime of minimum sanctions was extended to fight against the most violent offences (independent from recidivist offenders). However, in 2014 both provisions which were introduced in 2007 and 2011 were abolished again. The provisions on minimum sanctions which were introduced in 2007 and 2011 were highly criticised by judges who thought that minimum sanctions are not deterrent. Furthermore, the result of the introduced minima was prison overpopulation. Another important aspect has been that the provisions on minimum sanctions did and do not have the expected impact as they are largely not known by prosecutors and judges. However, that does not lead to the result that penalties under the stipulated minimum levels are imposed, but prosecutors and judges automatically ask for / impose such high penalties which anyway are in accordance with the minimum levels.

Table 5.1 Legal history: overview

Country	When introduced?	When abolished?	Evolution of minimum sanctions
Austria	Criminal Code of 1803 (StG 1803), a predecessor of the actual StGB 1975, already contained minimum sanctions	N/A	<ul style="list-style-type: none"> Basic idea of minimum sanctions has neither been denied nor changed; Possibilities re extraordinary mitigation of sentences via mitigating circumstances have been extended; New rule on aggravated sentences (including higher minima) in cases of adult offenders committing violent acts against minors has been introduced in 2011.
Belgium	Minimum sanctions have been in the sanctioning system since BE became independent in 1830. French Criminal Code of 1810, which came into force in BE after their independence, did already contain minimum sanctions.	N/A	Changes have always concerned the use of mitigating circumstances as a resort mechanism to go below the minimum.
Bulgaria	Minimum levels for imprisonment sentences and fines were provided for already in the first BG Criminal Code 1896. The following Criminal Codes of 1951 and 1968 (currently into force) maintained this system.	N/A	Levels of minimum sanctions have been changed (mostly increased) and new minimum sanctions for specific offences have been introduced.
Croatia	Minimum sanctions always have been part of the various Criminal Codes of Croatia.	N/A	
Cyprus	N/A	N/A	N/A
Czech Republic	Criminal Code 1961 contained minimum sanctions. This system of minimum sanctions has been transferred to the new Criminal Code 2009.	N/A	In 2009 the legislative framework have become friendlier towards alternative sanctions. This can influence the use and effects of minimum sanctions.
Denmark	Penal Code of 1930 introduced sentencing frames including a variety of minimum and maximum sentencing options. A number of statutes carried minimum imprisonment sentences,	1967 the minimum of 1 year for rape was abolished. 1981 further	Legislator abolished certain minima step by step.

Country	When introduced?	When abolished?	Evolution of minimum sanctions
	e.g. robbery.	minima for offences have been abolished: arson murder, arson, engendering of public peril, robbery. The minima were judged to be unnecessary and unreasonably blocking judiciary discretion in less serious cases.	
England & Wales	1965 the mandatory sentence of life imprisonment replaced the death penalty for murder; 1997 mandatory minimum prison sentences for certain grave offences were introduced; a series of other minima have been added since.	N/A	
Estonia	Minimum sanctions were already part of the Criminal Code of the Estonian Republic of the beginning of the 20 th century. The Criminal Code of the Soviet period contained minima as well.	N/A	
Finland	The legislator introduced defined penalty bands in 1863.	N/A	Only the levels of minima have been changed (increased and declined).
France	Historically, sanctions were pronounced between a minimum and a maximum in the old Criminal Code.	Yes, on several occasions.	The Criminal Code of 1994 abolished the minimum levels of the old Criminal Code except one provision (Art 132-18 CC) which foresees certain minima if certain maximum levels are met. In 2007 minimum levels for recidivist offenders have been introduced (Art 132-18-1 and Art 132-19-1 Criminal Code). A law from 2011 extended the use of minimum sanctions to fight against the most violent offences

Country	When introduced?	When abolished?	Evolution of minimum sanctions
			independent from recidivist offenders (Art 132-19-2 CC). A law from 2014 abolished the rules which have been introduced in 2007 and 2011. Only the rule which provides for minimum levels if an offence carries a certain maximum level (Art 132-18 CC) is still in force.
Germany	Already the Reichsstrafgesetzbuch from 1871 (and its predecessors) contained minimum imprisonment sanctions.	Higher minimum sanctions for repeat offenders were abolished in 1986.	The levels of minimum sanctions have been increased throughout the years, especially for sexual (in the years 1998, 2004), violent (1998) and drug (1992) offences.
Greece	Minimum sanctions were introduced in the Criminal Code of 1834. The Greek Criminal Code was strongly influenced by the German legal tradition.	N/A	Adaptions of the Criminal Code in the area of offences and their specific penalties show that penalties become partly stricter, partly more lenient.
Hungary	Hungarian Criminal Code of 1878 already included minimum sanctions. It also included a rule which prescribed that the minimum sanction is higher in case of habitual and repeat offenders.	N/A	1993 the higher minimum sanction for habitual and repeat offenders was abolished, however reintroduced in 2009 by the introduction of the category "repeat offenders with a history of violence".
Ireland	The first offence of a mandatory nature was introduced for the offences of murder and treason in 1990 (mandatory life sentence).	N/A	In 1999 minimum sentences had been introduced for drug offences and in 2007 minimum sentences had been established for firearms offences.
Italy	Minimum sanctions were introduced in the Criminal Code of 1930.	N/A	No changes in regard to minimum sanctions since 1930.
Latvia	Minimum sanctions did exist throughout the independence of Latvia as well as during the period of occupation. Minimum limits – general minima and minima for specific offences – have always been defined.	N/A	
Lithuania	Already the Russian Criminal Statute of 1903, which partly	N/A	Minimum sanctions have a long tradition in Lithuania.

Country	When introduced?	When abolished?	Evolution of minimum sanctions
	came into force in Lithuania after the declaration of its independence in 1919 contained minimum levels for sentences.		All successors of the Russian Criminal Statute, at last the new Criminal Code of Lithuania which was adopted in 2000, contain minimum sanctions.
Luxembourg	Minimum sanctions were introduced in the first version of the Code penal 1979. Mitigating circumstances as well were introduced at the time, however separately from the Code.	N/A	
Malta	Minimum sanctions have been present in Maltese Criminal Code since its first promulgation in 1854 and have remained present till this very day.	N/A	The concept and legal application has remained unchanged throughout the years. Amendments have been made to a few select offences throughout the years with the aim of increasing specific minimum sanctions.
Netherlands	N/A	N/A	N/A
Poland	The Criminal Code 1932 contained minimum (and maximum) sanctions.	N/A	The model of formulation of minimum sanctions has not changed over time. Any attempts to change are aimed at a radicalisation of the criminal system by increasing the level of minimum sanctions.
Portugal	Penal Code 1852 contained a mix of flat (perpetual) and variable (temporary) penalties. Both categories were subject to aggravation / mitigation. Minimum penalties below which the judge could not go while mitigating the penalty have already been established in the framework of the mentioned variable penalties.	N/A	The Penal Code of 1884-86 kept a similar mix of flat and variable penalties (between a minimum and a maximum term of imprisonment), with the possibility of aggravation / mitigation. The penal reform of 1954 abolished flat penalties: up until now imprisonment penalties vary between a minimum and a maximum set by the law.
Romania	General and specific minimum sanctions were even were included in the Criminal Codes of 1865 and 1936.	N/A	No fundamental changes from one Criminal Code to the other.
Slovakia	Since the establishment of the Slovak Republic in 1993 minimum sanctions existed in its Criminal Code.	N/A	Minimum sanctions are a permanent part of the legal tradition and did not undergo significant modifications.
Slovenia	First post-war code soon after WW2 contained general and	N/A	General minimum was raised throughout the years. At

Country	When introduced?	When abolished?	Evolution of minimum sanctions
	specific minimum sanctions.		the moment general minimum amounts to 1 month as otherwise rehabilitative goals could not be achieved. Increase of specific minima in the last years.
Spain	All Spanish Criminal Codes, also the first one of 1822, had minimum sanctions included.	N/A	
Sweden	Although historically certain offences were associated with a specific penalty, e.g. the life sentence for murder, it is not a principle of Swedish law that minimum sanctions are prescribed for different categories of offences.		

5.2 Purpose of minima: practitioners' perception at the national level

In a few national reports we find unanimity among interviewed practitioners against the utility or desirability of minimum sanctions (e.g. in E&W, CY, DK, FR, NL, or IE, people questioned were definitely, and sometimes strongly, opposed). In other states the interviewed practitioners put forward a lot of arguments against and in favour of minimum sanctions and thus no clear picture concerning the utility and desirability of minimum sanctions could have been identified.

Arguments in favour of and against minimum sanctions can be grouped in four categories. They also give an idea what the political idea behind the introduction of minimum sanctions in the individual Member States was. As there are divergent views, references to national reports below merely indicate that at least some of the respondents have underlined the argument. In all cases, some caveat has however to be expressed.

Firstly, minimum sanctions are seen as the **expression by the legislator**, and indirectly as the expectations by the society, of the reprobation which certain behaviours deserve and of the intensity by which the offences to which they apply must be condemned (DE, DK, LT, PL, SE and SI). Minimum sanctions give also judges and prosecutors the possibility to see how the legislator has valued certain offences. It is even argued that minimum sanctions provide reassurance to victims that their suffering is recognised (EL). Minimum sanctions provide a tool to **measure the perceived danger**, the threat against community interests. A related consideration is that the minimum represents the relative place of each (or some) offence on a scale of reprehensive activities, ensuring thereby a consistent approach towards different crimes and offences in a given social, national context (BE, FI, PT). Intrinsic coherence may explain the scepticism towards external, or EU approximation of sanctions. It is not excluded that opinion pressure, following a new pattern of crime, a criminal trend or a particularly appalling series of crimes reported in media, could lead to a lack of systematic and coherent approach. Some reports express indeed concern about evolution which is not guided by criminological or judicial practice but by political considerations (PL, EL, HU: norms are more effective when they correspond to what is customary). The CZ report deplores that decriminalisation which should have been the key principle of the new Penal Code of 2009, is partly overthrown by the introduction of new minimum sanctions. There are Member States where the minimum is relatively often seen as too stringent (LU, SI, SK, LT "minimum are not necessary for minor cases") and therefore disproportionate to the nature or severity of the offence. This comforts some findings in the previous section concerning the intended use of sentences below the minimum.

Secondly, as they limit the discretion of judges, they contribute to fighting against impunity and they aim at avoiding discrimination and arbitrariness. They serve at guaranteeing **equality** among individuals, by making sure that those committing the same offences, under the same circumstances, will be treated in the same way (AT, DE, ES, EL, IE, IT, LT, MT, NL, PL, PT, SI, SK). Especially in big states, e.g. in DE, but also in smaller countries as in AT, big differences in sentencing decisions between the various federal states can be found. Minimum levels therefore can enhance uniformity, or at least greater consistency, in sentencing decisions and thus can accomplish more equality amongst offenders. On the contrary, this limitation in their margin of appreciation is seen as an expression of **distrust** against judges (AT, BG, DE, DK, FR, LV, NL), or even as contrary to the separation of powers (IE), or unconstitutional, and against Art 7 ECHR, because it would (or could) be an obstacle to the imposition of a proportionate sentence (CY).

Thirdly, they ensure **transparency, certainty and predictability** of punishment, in line with the principle *nulla poena sine lege* (AT, ES, IE, IT, LT, MT, NL, PT, SI, SK). Minimum sanctions therefore can be described as one expression of the principle of legality. Thus, amongst others, judges' decisions become more foreseeable for the offenders, but also for the victims and for the public as a whole. In this regard the argument has been put forward that offences that carry minimum sanctions may protect victims more than offences that do not carry minimum levels. Through the fact that perpetrators are aware that at least the minimum sanction prescribed for by law will be imposed on them, according to some interviewees minimum sanctions could have a **preventive effect**, especially in the sense that minimum sanctions are **deterrent** for the offender (AT, BE, BG, DE, ES, EL, HR, IE, MT, NL, PL, PT – especially for “mass-criminality”, RO). Both, the general and special prevention have been mentioned in this regard. However, most of the academics think and also studies show⁴⁸ that there is no or only little deterrent effect of minimum sanctions. Mostly some politicians believe in a deterrent effect of minimum sanctions. According to a study by *Wikstrom* and others at the Institute of Criminology of the University of Cambridge⁴⁹, mandatory minimum sanctions can be effective only against offences which many rational people would be prepared to commit if they could get away with it, provided the risk of detection is high, and known to be so: for example, certain road traffic violations. But outside this type of cases, the deterrent effect of minimum sanctions is likely to be small. Reasons for the little deterrent effect minimum sanctions have are in particular that the level of punishment is largely unknown by would-be offenders, the imposed sanction is actually influenced by additional factors, and the decision to offend or not dictated by many more considerations. The example of “peines-plancher” for recidivists, recently abolished in FR following evidence that it did not have the expected benefit and criticism that it had led to prison overpopulation is, if not self-speaking, at least leading to reflexion. The analysis is moreover largely validated by the reactions of practitioners to the statements which were submitted to them: see under chapter 6 “Statistical analysis”.

Fourthly, minimum sanctions **facilitate the decision-making process** of the judges: even if the minimum sanctions are in principle mandatory, they are seen more as useful guidance, provided enough flexibility is left, either by offering a margin between the maximum and the minimum which is large enough, or because there are other techniques to adapt the sanction, or because the possibility is left to impose a sanction below the minimum in exceptional situations, as it is the case in almost all Member States (CZ, AT, BG, HR, HU, LT, PT, SE). In the RO report, the fact that exemption from criminal punishment is not possible in all cases of recidivism is criticised.

Finally, it seems obvious that a balance between these various elements is needed: Flexibility is required in order for the punishment to be proportionate, but too much flexibility will be to the detriment of certainty (PL). Certainty and predictability of legal sanctions become artificial when the legally foreseen penalty is commuted, replaced or reduced to suit the particular features of the case.

Another aspect in regard to a possible purpose of minimum sanction is the question if they have any **effect on crime rates**. In the majority of the Member States no studies or statistics on the effects of minimum sanctions on crime rates are available (AT, BE, BG, CY, DK, EE, EL, ES, HR, IT, LU, LV, MT, PT, RO, SE, SI and SK). In the other Member States where studies exist (in CZ, DE, E&W, FI, FR, HU, IE, LT, NL and PL)⁵⁰ not one study showed that minimum sanctions do have any effect on crime

⁴⁸ See the references in the NL report on pp. 16 f.

⁴⁹ See the reference in the E&W report, footnote 53.

⁵⁰ For references to the studies see table 5.2 and for a complete overview the national reports.

rates. Especially interesting is the fact that in states where minimum sanctions were (quite) recently introduced, a decrease of the crime rate could not be observed as a result (DE, FR, IE, LT and PL).

5.3 Trends and tendencies in the Member States

In the majority of the Member States (AT, BE, CY, DK, EE, ES, FI, HR, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK) there are no current plans by the legislator to introduce new minimum sanctions or to abolish or alter the existing system of minimum sanctions. If the sentencing systems or parts thereof are discussed in the Member States, the debate rather focuses on other aspects of the sanctioning system than on minimum sanctions (in CZ, ES, IT, LT), for example on *maximum* sanctions (in CZ, ES), the introduction of alternative sanctions (LT) or the suspension of sentences (LT). The Criminal Codes of these Member States typically contain minimum sanctions since a very long time; mostly minimum sanctions already have been included in the very first Criminal Codes of these countries.

While the pure existence and the established concepts of minimum sanctions are not subject of debate in these Member States, the **levels** of (certain) minimum sanctions are discussed. For example in LV the necessity to increase certain minimum limits is discussed at the moment. However, in 2013 in a large-scale penal reform in LV a number of sanctions was decreased. In PL certain minimum sanctions have been increased from time to time. On the contrary, the new Criminal Code of RO, which entered into force in 2014, decreased a few minima. BG reports a general tendency of the legislator to introduce more and harsher minimum sanctions. In DE minimum sanctions for sexual, violent and drug offences have been increased in the last years. In DE and also E&W plans by politicians to increase minimum levels of sanctions refer from single cases, which often appear high in certain media. The increase of the minima for violent offences in DE for example stems from violent incidents, which have taken place in subway stations. In EL the current draft of a new Penal Code, which is currently under discussion, suggests both to lower certain minima and to increase other minima. Although it seems to be that minimum sanctions rather have been increased than decreased over the years in most Member States, no clear trend that minimum sanctions are typically raised or lowered in recent times can be observed throughout the Member States.

In IE a general tendency to abolish minimum sanctions can be observed. Recently, the Law Reform Commission issued a Report on Mandatory Sentences and recommended that no further minimum sanctions should be introduced and requested the repeal of existing statutes containing minimum sanctions. Prior initiatives to introduce minimum sanctions have been failed. In NL – the only Member State that does not have minimum sanctions – initiatives to introduce minimum sanctions took place in 2002, 2009 and 2013. A Bill issued in 2013 included minimum sanctions for most serious crimes in cases of recidivists. However, due to harsh criticism, the government revoked the Bill. In E&W an increasing use of mandatory minimums sanctions could be observed in the recent years. There is currently an Amendment to the Criminal Courts and Justice Bill before Parliament, which was designed to impose a new mandatory minimum sanction on those convicted for a second offence of unlawfully possessing knives in public. As in the case of raising or lowering existing levels of minimum sanctions, no trend if Member States tend to introduce or abolish minimum sanctions can be observed.

With regard to the question whether minimum sanctions are regarded or are perceived as **useful**, different views were expressed in the national reports: In Member States in which minimum sanctions have a long tradition, minimum sanctions are sometimes regarded useful, not only by the public and by politicians, but also by academics and practitioners (e.g. in DE, ES, LV). According to the majority of national reports, academics and practitioners on the one hand usually think that minimum sanctions are not necessary. On the other hand, the public often perceives minimum sanctions and harsh penalties in general as very useful. This view often is triggered by media coverage reporting about single incidents, which are specifically serious and are therefore creating an image that crime has been rising and becoming particularly serious. As well most politicians are in support of minimum sanctions, either because they think they are useful and necessary or they think they have to be in favour of minimum sanctions in order to win sympathy and votes from the population.

Table 5.2 Pro's and con's

	Useful?	Tendency to introduce or abolish?	Pros / Idea behind introduction	Cons
Austria	No: Practitioners think minima are dispensable	No tendency	Necessary due to the principle of legal certainty and as a limitation to the judges' discretion. Extraordinary cases can be handled with the possibility to extraordinarily mitigate minimum levels	More possibilities for judges to find an adequate sentence in an individual case.
Belgium		No plans to introduce new minima or to alter existing ones	Deterrent effect	
Bulgaria	Yes: Public supports minima, criticized by academics	Tendency to introduce more and harsher minima	Preventive, intimidating impact. Existence of minima does not prevent the court from imposing a just penalty (may define a sanction below the minimum).	Not enough possibilities to find an adequate sentence in the individual cases.
Croatia		No plans to alter or introduce minimum sanctions.	Principle of legal certainty. General prevention.	
Cyprus		Cyprus courts deem minimum sanctions as unconstitutional		
Czech Republic		New Penal Code 2009: existing minimum levels have been increased for several offences. Currently, legislator is more focused on maximum levels, no significant debate on minimum levels.		
Denmark		No plans to introduce or alter minimum sanctions.	Legislator can indicate the gravity of an offence by having minimum levels.	Minimum levels can compel the judiciary to hand out sentences that

	Useful?	Tendency to introduce or abolish?	Pros / Idea behind introduction	Cons
				<p>appear unreasonable and unfair in concrete cases.</p> <p>Overall trust that courts apply their discretionary power in reasonable compliance with the legislator's expectations.</p>
England & Wales	Media and certain politicians: yes Academics and practitioners: no	<p>Increasing use of mandatory minimum sanctions in recent years.</p> <p>Amendment to the Criminal Courts and Justice Bill currently before Parliament: designed to impose a mandatory minimum prison sentence on those convicted for a second offence of unlawfully possessing knives in public.</p>	<p>Argument of politicians: minimum sanctions "send a clear message" to potential criminals and thereby reduce crime.</p> <p>Mandatory minimum sanctions could be effective only against offences which many rational people would be prepared to commit if they could get away with it, provided the risk of detection is high, and known to be so: for example, certain road traffic violations. But outside this type of case, their deterrent effect is likely to be small.</p>	
Estonia		No plans to change system on minimum sanctions.		
Finland	Public opinion may desire harsher minimum penalties. Academics doubt the rationality of	No plans to alter or introduce minimum sanctions.		

	Useful?	Tendency to introduce or abolish?	Pros / Idea behind introduction	Cons
	minimum penalties.			
France	No	<p>Minimum sanctions for most serious crimes, which were introduced in 2011, were abolished in 2014.</p> <p>No plans to introduce further minimum sanctions, on the contrary.</p>	Fight against recidivism.	<p>Minimum sanctions interfere with discretionary power of judges: very strong argument in FR!</p> <p>Overpopulation of prison.</p>
Germany	Yes: all interviewed practitioners seemed to support minimum sentences	<p>In the last years: increase of minimum levels for sexual, violent and drug offences.</p> <p>Current problem: mandatory life sentence for aggravated murder, considerations to introduce lower minima.</p> <p>Other ideas to increase minimum levels refer from isolated cases (e.g. minima for violence taking place in subway stations).</p>	<p>Some political parties believe in a deterrent effect.</p> <p>Penalty ranges guarantee some certainty and foreseeability in sentencing.</p> <p>Minimum level can ensure equality between the offenders, to prevent the difference in the sentencing decisions in the different federal states → minima would ensure uniformity in sentencing.</p> <p>Possible for judges and prosecutors to estimate how the legislator values the various offences.</p> <p>General prevention.</p>	Not enough possibilities to find an adequate sentence in the individual cases
Greece		Current Draft Penal Code (submitted in 2011 and currently under discussion):	General deterrent effect of sanctions	

Useful?		Tendency to introduce or abolish?	Pros / Idea behind introduction	Cons
		lowers certain minimum levels, however also some minimum levels become harsher.		
Hungary			With minimum sanctions it is possible to punish every crime	
Ireland	No.	<p>General tendency to abolish.</p> <p>Attempts to introduce new minimum sanctions in 2012 → failed.</p> <p>Law Reform Commission, Report on Mandatory Sentences: no further minimum sanctions should be introduced and request of repeal of existing statutes containing minimum sanctions.</p> <p>Interviewed judiciary shares the view of the Law Reform Commission.</p>	<p>Minimum sanctions considered as necessary due to rapid growth of offences (murders involving firearms had increased 100%).</p> <p>Minimum sanctions directed at high risk criminality → shift from rehabilitation to deterrence.</p> <p>Minimum sanctions facilitate greater consistency and prevent judges providing overly lenient sentences.</p>	<p>In relation to drug offences: minimum sanctions brought the trend of an increase in high scale prosecution of low role persons (drug couriers) → undue pressure on the executive and prison staff and huge strain on resources.</p> <p>Minimum sanctions led to overcrowding and under resourcing in prisons.</p> <p>No deterrent effect of minimum sanctions.</p> <p>Minimum sanctions can be indiscriminate and lead to unjust results.</p>
Italy		No current plans to introduce additional minimum sanctions or to alter existing ones. General reform of sanctioning system, which does not focus on minimum sanctions, but on	To limit the discretion of the court while imposing penalties (principle of legality provided for in the Italian Constitution).	

	Useful?	Tendency to introduce or abolish?	Pros / Idea behind introduction	Cons
		other aspects of the sanctioning system.	To guarantee a minimum of certainty in regard to the application of the sanction → no unjustified difference in treating sentenced people.	
Latvia	The public and politicians regard minimum sanctions as useful.	<p>No current plans by the legislator to alter the existing system of minimum sanctions. Long tradition of minimum sanctions, they already have been included in the first CC of LV after its independence. Only the levels of minimum sanctions are under discussion.</p> <p>In 2013 a large-scale penal reform decreased a number of sanctions.</p> <p>Since the beginning of 2014 the necessity to increase certain minimum and maximum limits has been discussed.</p>	As minimum sanctions have been existed since the independence of LV, the mere existence of minimum sanctions has never been questioned or discussed.	
Lithuania	Harsh sentences in general are seen as useful by the society and the parliament.	Minimum sanctions have a long tradition in LT. They already have been established in 1919 and the existence of minimum sanctions has remained unchanged since then. There are no concrete plans in the near future to alter the general system of minimum sanctions.	<p>The sanction (including the minimum sanction) shall create legal preconditions for the imposition of a proportional (an adequate) and fair punishment.</p> <p>Certainty of a severe penalty for grave crimes.</p>	Minimum sanctions for some types of crimes (e.g. theft, illicit drug trafficking etc.) are regarded as too high (disproportionate to the nature of the crime)

Useful?		Tendency to introduce or abolish?	Pros / Idea behind introduction	Cons
		Plans to change the sanctioning system relate only to possibilities to suspend a sentence and the introduction of alternative penalties.		
Luxembourg		<p>The judicial system of the Grand Duchy is already used to the application of minimum sanctions.</p> <p>Currently no plans to alter the level of minimum sanctions.</p>		
Malta		<p>Minimum sanctions have been present in the CC since its first promulgation in 1854 and have remained present until today. The concept has remained the same; amendments have been made only to a few offences with the aim of increasing specific minimum sanctions.</p> <p>No concrete plans to introduce or alter minimum sanctions.</p> <p>Debates in regard to anti-drugs legislation, which might affect minimum sanctions.</p>	<p>To provide legal certainty to the public by giving a prescribed and specified range of punishments.</p> <p>To provide the courts with defined parameters for its sentencing decisions.</p> <p>Deterrence: the perpetrator is aware that at least s/he shall be awarded with the minimum sanction.</p>	
Netherlands	According to politicians, society calls for the introduction of minimum	Initiatives to introduce minimum sanctions in 2002, 2009 and 2013. The Bill of 2013 included minimum	More protection and acknowledgement for victims.	Minimum sanctions may lead to disproportional high sentences in view of the severity of the offence, the

Useful?	Tendency to introduce or abolish?	Pros / Idea behind introduction	Cons
sanctions.	sanctions for most serious crimes in cases of recidivists. However, the Government revoked the Bill due to harsh criticism.	<p>Introducing minimum sanction serves general and special prevention.</p> <p>The freedom of the judiciary in deciding on the severity of the sanction is too broad and needs limitation by means of the introduction of minimum sanctions.</p> <p>To enhance the uniformity and unity in sentencing.</p> <p>To reduce recidivism in case of severe criminal offences.</p>	<p>perpetrator and further circumstances of the case.</p> <p>Minimum sanctions hinder the suspension of sentences.</p> <p>Discretion of the judges and prosecutors would be infringed.</p> <p>Minimum sanctions lead to overcrowded prisons.</p> <p>Minimum sanctions and longer prison sentences (resulting therefrom) do not increase safety among society.</p> <p>Research does not sustain that imposing higher prison sentences will effectively contribute to the (general) prevention of criminal behaviour.</p> <p>Re-socialization and rehabilitation (but not the existence of minimum sanctions) contribute to the prevention of criminal behaviour.</p> <p>Prevention of crime is not achieved by way of minimum sanctions, but rather by increasing the chance of being caught.</p> <p>Severe prison sentences cost a lot of money but produce no demonstrable effects in terms of preventing recidivism.</p> <p>Minimum sanctions would increase the</p>

Useful?	Tendency to introduce or abolish?	Pros / Idea behind introduction	Cons
			<p>workload of the judiciary.</p> <p>The existence of minimum sanctions shifts the power from the judiciary to the legislator and the public prosecutors.</p> <p>Research demonstrates that society does not demand harsher sentences than the sentences currently imposed.</p>
Poland		<p>Minimum sanctions have a long tradition in Polish criminal law. The Criminal Code 1932 already contained minimum sanctions. The introduced system of minimum sanctions has not been changed yet. Only the levels of minimum sanctions have been increased.</p> <p>Draft of "Petty Offences Amendment Act": increases the minimum daily rate of financial fines.</p>	<p>Method of (general) prevention of criminal behaviour.</p> <p>Minimum sanctions also aim at the education of the perpetrator and reflect the degree of social damage caused by the perpetrator.</p> <p>Minimum sanctions serve the society as a whole in indicating that crimes will not be tolerated and will be suitably punished.</p> <p>Most of the interviewees argued that minimum sanctions do not have a deterrent effect.</p>
Portugal		<p>No concrete plans to alter the existing system or the level of minimum sanctions.</p> <p>From time to time the irrational discourse among certain sectors of society according to which the criminal justice is in general too lenient.</p>	<p>In the 10th century, minimum sanctions were introduced probably as a reaction to the wide judicial discretion existing in the <i>Ancien Régime</i>, which was harshly criticised by the scholars of the Enlightenment.</p> <p>Minimum penalties serve the principle</p>

Useful?		Tendency to introduce or abolish?	Pros / Idea behind introduction	Cons
			of legal certainty.	
Romania		In the course of the recent reform of the Criminal Code (the new Criminal Code entered into force in February 2014), few levels of minimum sanctions have been decreased.	Minimum sanctions serve the principle of legal certainty – if minimum sanctions are provided for by law, sanctions are more predictable. Minimum sanctions do have a deterrent effect.	
Slovakia		Minimum sanctions are an integral part of the SK CC. There has been no significant modification of the concept and application of minimum sanctions. No plans to alter the existing system or to introduce new minimum sanctions.	That judges are able to impose sanctions that correspond to the dangerousness of the criminal acts.	
Slovenia		Minimum sanctions are a common and traditional feature of the Slovenian system. No plans to introduce new or alter existing minimum sanctions.	When minimum sanctions were introduced after WW2 they were means of limiting the judges' discretion in their sentencing decisions.	
Spain	Yes, all interviewees in favour of minimum sanctions.	Spain has a long tradition of minimum sanctions. No plans to changes system on minimum sanctions. Debates are focused on maximum levels.	Minimum sanctions strengthen the principles of legality, certainty and equality. Reduces judicial arbitrariness	
Sweden		In Sweden minimum sanctions are not	Minimum sanctions are an indication of	

Useful?	Tendency to introduce or abolish?	Pros / Idea behind introduction	Cons
		spread in the CC. Only certain offences are historically associated with a specific penalty (e.g. life sentence for murder).	the severity of the offence. However, minimum sanctions do not lead to the fact that <i>in concreto</i> a higher penalty will be imposed for that offence compared to offences for which no minimum sanction is prescribed.

5.4 Constitutional debate in the Member States

In many Member States minimum sanctions did neither trigger any constitutional debate nor there are any decisions by the Constitutional Court or a competent High Court (BE, BG, CZ, DK, EE, EL, ES, FI, IE, LT, LU, LV, NL, PT, RO, SE and SI). On the contrary, CY courts deem minimum sanctions as unconstitutional.

In other Member States the following issues in regard to minimum sanctions have triggered a constitutional debate:

In E&W, DE and HU the issue has arisen whether a **mandatory life sentence** shall be deemed as unconstitutional as such a sentence is incompatible with human rights. The mandatory life sentence in combination with the so-called "whole life tariff" for murder in E&W has been subject of a case before the ECtHR. The ECtHR ruled that the whole life tariff is incompatible with human rights, because it contains no mechanism for review and no possibility of early release, thus it is breaching Article 3 ECHR (protection from inhuman and degrading treatment). However, the Court of Appeal in E&W upheld a whole life tariff in subsequent decisions. In DE the Federal Constitutional Court ruled on the mandatory life sentence for murder under aggravating circumstances and came to the conclusion that such a sentence is not unconstitutional as long as the judge has the discretion to either mitigate the sanction or avoid the mandatory life sentence by re-qualifying the offence, e.g. as simple murder. Very recently the HU Constitutional Court annulled the provision containing compulsory life long imprisonment for recidivist offenders with a history of violence as this provision did not allow the judge to evaluate the single cases according to their actual severity. It has not been possible for the judge to impose a milder sentence according to mitigating circumstances. It can be concluded from these three cases that a mandatory life sentence is deemed as constitutional as long as judges have the possibility to mitigate the sanction or as long as the imposed sentence does not have to be served in full. Also in cases of fixed term imprisonment sentences prescribed by law, it is sometimes said that the judge must have the **opportunity to go below** any prescribed minima, otherwise the principle of proportionality would be at stake (FR, SK). If judges do not have the possibility to mitigate the sentence or if minimum sanctions are too high, it would not be possible for the judge to decide on a sentence in accordance with the concretely realised guilt by the offender (DE).

Questions on the **balance between the minimum and maximum level** prescribed by law have been discussed in PL. The Constitutional Tribunal ruled that the difference between a minimum of 25 years imprisonment and a maximum of life imprisonment does not offer the judge enough room to find an adequate sentence.

In DE and FR the issue came up whether **no minimum sanctions** could be deemed as unconstitutional. The FR Constitutional Council ruled that abolishing the regime of minimum sanctions (as it has been done for minimum sanctions for specific offences in 2014) is in line with the French Constitution. The German Federal Constitutional Court said, on the other hand, that having too low minimum sanctions could violate the principle of legal certainty.

5.5 Obstacles to EU legislation in regard to minimum sanctions?

In sixteen Member States interviewees in principle do not foresee major legal obstacles (AT, CZ, DE, HR, EE, ES, HU, IT, LT, LU, MT, PL, PT, SE, SI, SK), if the EU would pass a legal instrument containing minimum sanctions. However, concerns exist

that minimum sanctions would be too high and would not fit into the established system of penalty levels in the Member States. The different sanctioning systems throughout the Member States are perceived as one of the major legal obstacles to introduce or alter minimum sanctions at EU level. Especially the different definitions of offences and aggravating and mitigating circumstances and the different weighting of offences are mentioned in this regard. The LV report interestingly has mentioned that the introduction of minimum levels for fines does not seem reasonable at all due to the significantly different living standards throughout the Member States. Moreover, a possible approximation would not guarantee any specific result due to the other aspects of the individual sentencing systems (e.g. possibility to suspend a sentence).

On the contrary, in twelve Member States (BE, BG, CY, DK, EL, E&W, FI, FR, IE, LV, NL and RO) political and/or legal obstacles are foreseen. However, only in BE, CY, DK, E&W, FR, IE and NL a strong position against minimum sanctions could have been identified. Reasons for the position against minimum sanctions partly overlap with the concerns of the other Member States which have been mentioned in the paragraph above, but go further and also point out constitutional problems, if minimum sanctions would be introduced or altered at EU level. The principle of discretionary power of judges and the principle of proportionality are mentioned in this regard.

One major obstacle to approximate minimum sanctions throughout all EU Member States is found in EU law itself. According to Protocol 22 to the EU Treaties DK does not take part in the area of criminal justice of the Lisbon Treaty. Furthermore, the United Kingdom and IE are not bound by EU legislation in the area of criminal justice except where they have expressly decided to opt into it according to Protocol 21 to the EU Treaties. The E&W report points out that, given the present political climate in the UK, it is likely that, if EU legislation were adopted requiring Member States to introduce legislation providing for mandatory minimum sentences, the UK would decline to opt into it. This is true not only for minimum sentences for fraud on the EU budget, but for any other type of crime.

Table 5.3 Constitutional debate, effects on crime rate, and obstacles to EU legislation

	Constitutional debate on minimum sanctions?	Effects on crime rate?	Obstacles to EU legislation?
Austria	Only one decision of the Constitutional Court which refers to minimum sanctions in the field of administrative law. In this case the court argued that the provided minimum sanction has to be regarded disproportional, because it does not allow imposing adequate penalties in cases of minor fault of the offender or very low damage.	No research or evidence on the effects of minimum sanctions on crime rates.	No, as minimum sanctions are already provided for in Austria. If, however, the proposed minimum sanction would be extraordinary high, it might be problematic with respect to the principle of proportionality. As long as the proposed minimum level fits in the system of the existing Austrian sanctioning system of the Criminal Code, neither legal nor political obstacles have to be expected.
Belgium	There is no constitutional debate on the minimum sanctions themselves, and there has never been a decision of the Belgian Constitutional Court regarding minimum sanctions.	No research has been conducted and no evidence has been collected in Belgium regarding the supposed effects of minimum sanctions on crime rates.	Yes, as recent debate underline that the concept of minimum sanctions had not only lost its meaning because of the non-execution of these rules, but has also made the entire system of prosecution and sentencing more complicated than necessary. Consequently, a reform of the Belgian sanction system would rather go towards an abolishing of the concept of minimum sanctions than towards a revision and maintenance of it.
Bulgaria	No	No research or evidence.	Main legal obstacle is the big differences between the sanctioning systems of the MS: e.g. the different categories of offences throughout the MS (misdemeanours, felonies etc.), different definitions of offences and aggravating / mitigating circumstances, offences are of different value in the various MS
Croatia	Constitutional Court never decided on minimum	No research available.	No obstacles foreseen.

	Constitutional debate on minimum sanctions?	Effects on crime rate?	Obstacles to EU legislation?
	sanctions. However, debate amongst practitioners and academic that some minimum levels are too harsh (e.g. minima of 3 years for abuse of drugs by means of production and distribution).		
Cyprus	Cyprus courts deem minimum sanctions as unconstitutional.	No studies on minimum sanctions.	Yes, as Cyprus courts deem minimum sanctions as unconstitutional.
Czech Republic	No	According to practitioners and academics there is no links whatsoever between minimum sanctions and crime rates.	The interviewed practitioners have mentioned no explicit political obstacle. However, CZ politicians are in general sceptical towards new initiatives in EU criminal law.
Denmark	No significant debate.	No research available.	Denmark does not take part in the adoption by the Council of proposed measures pursuant to Title V of Part Three of the TFEU, cf. Protocol 22 on the Position of Denmark to the EU treaties. If Denmark were to become a party to such legislative initiatives, there would in principle be no legal obstacles to fulfilling obligations regarding legislation obliging Member States to introduce certain minimum sanctions. However, applying such legislation would deviate significantly from legislative traditions and tendencies in Danish criminal law as described in the answers to the above posed questions, as almost all statutory imprisonment minima have gradually been abolished and only one such provision has been introduced recently (PC §

Constitutional debate on minimum sanctions?		Effects on crime rate?	Obstacles to EU legislation?
			192 a regarding aggravated weapons offences).
England & Wales	Before the Court of Appeal the issue has arisen as to whether automatic life sentences, and as to whether the “whole life tariff” in connection with the mandatory life sentence for murder might be incompatible with the ECHR. ECtHR has ruled that the whole life tariff is incompatible with the ECHR, because the whole life tariff contains no mechanism for review and no possibility of release, thus breaching Art 3 ECHR, which provides for protection from inhuman and degrading treatment. Despite this condemnation by the ECHR, the Court of Appeal subsequently upheld a “whole life” tariff in subsequent decisions.	<p>As regards <i>individual deterrence</i>, empirical evidence suggests that negligible deterrent effect can be gained from imprisonment, with re-conviction and re-offending rates high in those released from custody in England and Wales (see Ministry of Justice (2014) <i>Proven Re-offending Statistics Quarterly Bulletin July 2011 to June 2012</i>, London: Ministry of Justice).</p> <p>As regards <i>general deterrence</i>, a major study of offenders recently conducted by the Institute of Criminology in Cambridge (see Wikstrom, P-O. H., Oberwittler, D., Treiber, K. and Hardie, B. (2012) <i>Breaking Rules: The Social and Situational Dynamics of Young People’s Urban Crime</i>, Clarendon Studies in Criminology, Oxford: Clarendon) is relevant. According to this study mandatory minima could be effective against offences which many rational people would be prepared to commit if they could get away with it, provided the risk of detection is high, and known to be so: for example, certain road traffic violations. But outside this type of case, their deterrent effect is likely to be small.</p>	By Protocol 21 to the Treaties, no EU legislation in the area of criminal justice binds the UK except where it has expressly decided to opt into it. Given the present political climate in the UK, it is likely that, if EU legislation were adopted requiring Member States to introduce legislation providing for mandatory minimum sentences for frauds on the EU budget – or indeed for any other type of crime – the UK would decline to opt into it.
Estonia	No	No research available on minimum sanctions so far.	No obstacles are foreseen, if the EU legislation does not plan to introduce unreasonable high

Constitutional debate on minimum sanctions?		Effects on crime rate?	Obstacles to EU legislation?
			minimum sanctions.
Finland	No	An authoritative overview of this evidence is that introducing a minimum sanction has at best a temporary marginal effect on crime rates (Lappi-Seppälä, Tapio, 'Seuraamusjärjestelmän pääpiirteet' in Lappi-Seppälä et al, <i>Rikosoikeus</i> (SanomaPro 2013) 142). Interviewees were sceptical of the long-term effects of minimum penalties on crime rates.	Problems in maintaining the coherence of the national criminal justice system probably would arise. Academic discussion is also cautious of such a development. In the opinion of the reporter an attempt to force such a change without extremely reliable preparatory work could trigger a discussion on the role of the Union in this field which would be unlikely to help in any aim to ensure the effectiveness of EU-linked sanctions, and might instead polarise opposition.
France	Decision of Constitutional Council on minimum sanctions for recidivists (2007): as long as judges have the possibility to go below minimum sanctions, the principle of proportionality is respected and thus they are admissible. Recently, the Constitutional Council also approved the provisions of the Law 2014/896 on 7 August 2014 (DC n°2014-696) abolishing the regime of minimum sanctions.	Studies showed that the introduced minimum sanctions for recidivist offenders in 2007 did not seem to cause any decrease in crime rates.	Minimum sanction without the possibility for the judge to go below the minimum would cause a constitutional problem in France. This would interfere with the constitutional principles on the independence of the judge from government and legislation and on the individualisation of sanctions. Moreover, as minimum sanctions for recidivists has been abolished very recently, it is unlikely that France would welcome easily an EU legislation on this matter.
Germany	1) German Federal Constitutional Court: too high minimum sanction can conflict with the principle that a sanction has to be imposed according to the concretely realised guilt.	All research on sentencing and sentencing levels did not find any evidence that increased minimum sentences or a harshening of sentencing had any impact on the crime rate.	Execution of sanctions is not harmonised throughout EU MS; different definitions of offences and aggravating / mitigating circumstances throughout MS

	Constitutional debate on minimum sanctions?	Effects on crime rate?	Obstacles to EU legislation?
	<p>2) Too low minimum sanctions may violate the constitutional principle of legal certainty.</p> <p>3) Federal Court of Justice stated in 1971 that minimum sanctions may only violate the constitution if they prevent judges from being able to impose sanctions according to the guilt of the offender.</p> <p>4) Federal Constitutional Court on the mandatory life sentence for murder under aggravating circumstances (1976): despite only one sanction being possible, the provision is constitutional, because the courts could either mitigate the sanction or avoid the aggravating circumstances by interpreting the elements of the offence in a restrictive way.</p> <p>→ There has never been a ruling which deemed minimum sanctions as unconstitutional.</p>	<p>There is no proof in literature that minimum sanctions have an impact on crime rates. The reform of 1998 for example did not have a significant impact on the number of sexual or violent crimes registered by the police.</p>	
Greece	Neither such debate nor any decision by the High Court.	No research available.	<p>Problems could arise due to the different legal systems in the EU MS.</p> <p>Moreover, minimum sanctions are mostly derived from the General Part of the Greek Penal Code; that is why specific minimum sanctions would largely interfere with the Greek sanctioning system.</p>
Hungary	Decision of the Constitutional Court from 2013 on the compulsory life long imprisonment for repeat offenders with a history of violence: this	No effect on crime rates.	Opposition from the judiciary foreseen only, if minimum sanctions would not leave any room for discretion.

	Constitutional debate on minimum sanctions?	Effects on crime rate?	Obstacles to EU legislation?
	provision does not allow judges to evaluate each case according to its actual severity, thus the judge cannot decide on the sentence on the basis of the guilt of the offender and in accordance with aggravating and mitigating circumstances → provision has been annulled		
Ireland	No constitutional debate.	No statistics that show any decrease of crime rates after the introduction of minimum sanctions (e.g. in the areas of firearms possession or drug offences).	Yes, interviewed practitioners would it consider as more useful to have harmonised legislation in other areas of criminal law, e.g. in the area of investigation of crime.
Italy	Constitutional Court has repeatedly stressed the following: Legislator's choices on the level of sanctions must not be unreasonable, taking into consideration the legal interests protected by the offence and the proportionality of the sanction.	No studies available.	No legal or political obstacles foreseen.
Latvia	No	No studies available.	Possible problems: different criminal law traditions, different standards of living, different crime rates, etc. The introduction of a minimum level for fines does not seem to be reasonable at all in light of the significantly different living standards.
Lithuania	No constitutional debate on minimum sanctions.	A study from 2012 in LT concluded that the amendments of the CC in the years 2003-2010, particularly the ones that made sanctions more severe, had no impact on the real trends of registered crimes. Increasing the levels of	No political obstacles. Possible legal obstacles: distortion of national systems, relation between minimum – maximum levels

Constitutional debate on minimum sanctions?		Effects on crime rate?	Obstacles to EU legislation?
		sanctions thus did not lead to a decrease of the crime rate.	
Luxembourg	No	No research available.	Interviewed practitioners do not foresee any obstacles.
Malta	In drug trafficking cases the Attorney General can decide whether a case is tried before the Magistrates Court or the Criminal Code. If a case is tried before the Magistrates Court the minimum sanction is 6 months; if a case is tried before the Criminal Code the minimum level amounts to 4 years. This discretion of the Attorney General has been declared as inadmissible with human rights by the ECtHR in 2013 as there are no clear guidelines for the Attorney General to determine before which court a case is tried ("Camilleri vs. Malta", nr. 42931/10).	No research available.	No
Netherlands	No	Academic literature does not give any unequivocal affirmative answer to the question of whether crime rates would decrease with the introduction of minimum sanctions.	Yes
Poland	The Criminal Code (1997) Amendment Act 2005 raised the minimum statutory sentences for serious offences against life, which raised constitutional questions. Kraków Court of Appeal submitted a question, which the Constitutional Tribunal reviewed and provided	1) Statistics tend to suggest that minimum sanctions do not provide a strong barrier that would deter citizens from committing crimes. Most of interviewees argued that minimum sanctions do not have, in general terms, deterrent effect. Unfortunately statistical data	In general there should be no obstacles. However, it should be stressed that some resistance might be expected in instances where proposed minimum sanctions will be too high (interviewed practitioners mentioned EU legislation on crimes against financial interests

	Constitutional debate on minimum sanctions?	Effects on crime rate?	Obstacles to EU legislation?
	its judgement (Case P11/08 judgement given on 16 April 2009). The Tribunal ruled that the amendment provisions of the Criminal Code (6/6/1997) are in breach of Polish Constitution 1997. The Tribunal ruled that the sanction provided for an offence specified in art. 148(2) CC (6/6/1997) is, in fact, closer to the sanction defined in absolute terms, especially that in particular cases the difference between the penalty of 25 years of deprivation of penalty and the penalty of deprivation of liberty for life may prove to be insignificant. These sanctions made it difficult for courts to implement the principle of adequate criminal law's response and thus the principle of fair trial was affected.	indicate that the level of the prison population remain high also after the introduction of minimum sanctions. Furthermore most of these prisoners are sentenced for successive crimes, what can be perceived as a failure of the preventive dimension of both minimum sentences and imprisonment. 2) There is the observation that whenever the legislator increases minimum sanctions, courts try to apply the lowest possible sanctions. Nevertheless, he also noted that in case of crimes such as murder or offences against limb, courts rarely opt for minimum sanction due to the fact that they are set at a very low level.	of the EU as a potential problem in this respect).
Portugal	No	No research available.	No, however, the establishment of minimum sanctions should not disrupt the balance within the legal system of each MS, e.g. by setting minimum levels that are disproportionately high when compared with penalties provided for other offences.
Romania	No	No research or statistics available.	Political obstacles are foreseen as the introduction of minimum sanctions could raise a lack of coherence in the MS legal orders.
Slovakia	Constitutional Court: In order to have adequate sentences, the judicial discretion plays a very important role in the sentencing decision.	No research available.	No legal obstacles foreseen; political obstacles are always hard to predict.

Constitutional debate on minimum sanctions?		Effects on crime rate?	Obstacles to EU legislation?
Slovenia	No	No research available.	No, however newly introduced minima should not be too high as this could disturb the already established balance between the various criminal offences.
Spain	No	No relevant research available.	No
Sweden	No	No research available.	In principle no, however due to the various rules in the sanctioning system (e.g. possibility of suspended sentences), the introduction of minimum sanction does not guarantee any particular result. Further problems relate to the disturbance of national systems due to the introduction of single minimum sanctions at EU level.

6. Statistical analysis

6.1 Introduction

One of the objectives of the study is to provide a statistical analysis of minimum sanctions across Europe. For the statistical analysis, data have been gathered and analysed on the practice of application and imposition of minimum sanctions. In particular relevant are the following questions:

- Imposition: to what extent do judges go below the minimum sanctions?
- Execution: to what extent are minimum sanctions executed in full?
- Deterrence: to what extent does the existence of minimum sanctions influence the number of criminal offences committed?

Six offences are preselected for the statistical analysis. This selection is based on the following three criteria: (i) the number of Member States which provide for minimum sanctions for these offences; (ii) the practical relevance of these offences which guarantees sufficient statistics or experience; (iii) offences should protect different legal interests and be of varying levels of seriousness. These criteria have resulted in the following selection:

- Murder (wilful homicide, but without premeditation);
- Sexual abuse of children in the sense of Article 3 Directive 2011/92/EU;
- Aggravated fraud;
- Active corruption (promising, offering or giving bribes);
- Aggravated illicit drug trafficking;
- Robbery.

We have collected data and expert estimates on imposition and execution for some of the EU Member States. However, the deterrent effect cannot be measured in a reliable manner, since there is no statistical base line and there are many other factors that might be of influence on the behaviour of perpetrators. Instead of analysing data, we have collected expert opinions on issues related to deterrence and minimum sanctions. Interviewees were asked to comment on four statements related to the issue if, and to what extent, the existence of minimum sanctions might influence the number of criminal offences committed.

6.2 Levels of minimum sanctions

In table 6.1 an overview of the minimum sanctions for the six selected offences is presented. The table is based on data presented in chapter 2 (table 2.6 – 2.12) and the national reports on minimum sanctions (for aggravated drug trafficking). The table demonstrates that:

- All Member States (except NL) have a minimum sanction for (aggravated) murder. The majority of the Member States have a minimum sanction for (aggravated) sexual abuse, robbery, active corruption, and fraud.
- Half of the Member States have minimum sanctions for aggravated drug trafficking. Levels of minimum sanctions are highest for murder: between 1 year to mandatory life imprisonment.
- 'Medium' levels of minimum sanctions are found for aggravated drug trafficking (8 years at average across the EU), most serious cases of sexual abuse (almost 7 years at average), and aggravated robbery (6,5 years at average).

- Relatively low average levels of minimum sanctions are applied for aggravated fraud (2,4 years imprisonment) and active corruption (1,7 years of imprisonment).
- Aggravated drug trafficking is an outlier with the lowest number of Member States that have a minimum sanction for this offence, but a relative high minimum sanction (at average, second highest after murder).

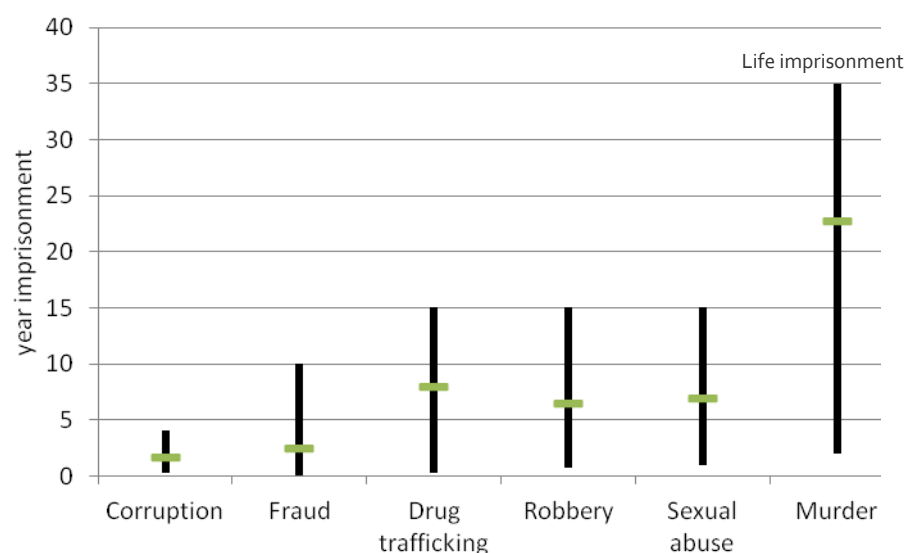
Table 6.1 Overview of levels of minimum sanctions for six selected offences

	Murder	Sexual abuse	Aggravated drug trafficking	Active corruption	Robbery	Aggravated fraud
Austria	10	10	1	1	5	1
Belgium	LIFE	10	0,25	1	15	0,04
Bulgaria	20	5	3	no minsanct	15	10
Croatia	10	10	3	0,5	5	1
Cyprus	LIFE	no minsanct	no minsanct	no minsanct	no minsanct	no minsanct
Czech Republic	15	10	2	1	10	5
Denmark	5	no minsanct	no minsanct	no minsanct	no minsanct	no minsanct
England and Wales	LIFE	no minsanct	7	no minsanct	0	no minsanct
Estonia	8	6	3	2	3	no minsanct
Finland	LIFE	1	1	0,33	2	0,33
France	2	1	1	1	2	no minsanct
Germany	LIFE	10	1	1	5	1
Greece	LIFE	10	10	1	10	2
Hungary	10	5	2	1	5	5
Ireland	LIFE	no minsanct	10	no minsanct	no minsanct	no minsanct
Italy	LIFE	5	6	4	4,5	1
Latvia	15	10	3	2	5	2
Lithuania	8	no minsanct	8	2	2	no minsanct
Luxembourg	LIFE	10	5	4	15	0,33
Malta	LIFE	4	no minsanct	1	0,75	0,17
Netherlands	no minsanct	no minsanct	no minsanct	no minsanct	no minsanct	no minsanct
Poland	12	2	3	1	3	0,5
Portugal	12	3	5	2	10	2
Romania	15	5	3	3	3	2
Slovakia	LIFE	15	10	4	15	10
Slovenia	10	5	3	1	5	1
Spain	10	13	6	3	4,5	3
Sweden	10	1	2	0,5	4	0,5
# Member States	27	22	14	22	23	20
Average minimum sanction	-	6,9	8,0	1,7	6,5	2,4
Minimum sanction range	2 - LIFE	1 - 15	3m - 15	4m - 4	9m - 15	15d - 10

Source: Table 2-6 – 2.12, ECLAN national reports on minimum sanctions (aggravated drug trafficking).
 An average of the sanction for murder cannot be calculated due to the fact that some states have a mandatory life sentence.

An overview of the maximum and minimum and average levels of minimum sanctions is visually presented in figure 6.1.

Figure 6.1 Overview of highest, lowest and average levels of minimum sanctions for six selected offences across the European Union



Source: Table 6.1

How do these levels relate to actual imposition and execution of the sanctions?

6.3 Imposition and execution

The limited availability of statistics on imposition and execution turned out to be problematic for most of the countries, for various reasons: Most countries do not collect statistics on the effects of minimum levels of penalties on the sentencing practice; Statistics are in most countries too aggregated and/or not very reliable; Statistics are often not publicly available; And in most cases it is difficult or even impossible to compare the data across MS, due to differences in legal definitions, legal systems and practices.

If statistical data are not available, national rapporteurs were asked to present a sample of court judgements and/or collect perceptions of experts and practitioners (interviewees) in a systematised manner. Even this turned out to be more complicated than expected, since many interviewees did not feel comfortable with giving an estimate. In two countries (Italy, England and Wales) neither data, nor expert estimates or court judgements were provided. An overview of the data sources is given in table 6.2.

An overview of the data sources for the imposition and execution of minimum sanctions is provided in table 6.2. In many countries we had to rely on expert estimates or sampling of court judgements.

Table 6.2 Availability of data sources

	Imposition of imprisonment sanctions	Execution of minimum sanctions
Austria	Expert estimates	Expert estimates
Belgium	Expert estimates	Expert estimates
Bulgaria	Sampling court judgements (murder)	No data
Croatia	Data	Expert estimates
Cyprus	No data	Data
Czech Republic	Sampling court judgements (murder)	Expert estimates
Denmark	No data	Not applicable
Estonia	Sampling court judgements (murder)	Data
Finland	Data	Expert estimates
France	Data	No data
Germany	Data	Expert estimates
Greece	No data	Expert estimates
Hungary	Data	Data (aggregated)
Ireland	Data	Data / not applicable
Italy	No data	No data
Latvia	Data (murder)	Data (murder)
Lithuania	Sampling court judgements	Expert estimates
Luxembourg	Expert estimates	No data
Malta	No data	No data
Netherlands	Not applicable	Not applicable
Poland	Data	No data
Portugal	Expert estimates	Expert estimates
Romania	Data	Expert estimates
Slovakia	Sampling of court judgements	No data
Slovenia	Data	Expert estimates
Spain	Sampling court judgements (murder)	No data
Sweden	Data	No data
England, Wales	No data	No data

Source: ECLAN national reports on minimum sanctions and annex B.

Murder

In table 6.3 the data on imposition and execution for aggravated murder are presented. As discussed before the numbers are based on official data, expert estimates or sampling court judgements. If estimated ranges were presented, we have selected the median value as a proxy of the percentage of sanctions that is imposed below, at or above the minimum level or as a proxy for the percentage of the sanctions that are executed in full. A full overview of the original data per country is presented in annex B.

One of the conclusions from the table is that Member States vary widely in the imposition of the minimum sanctions, with on the one extreme imposition of sanctions for murder below the minimum level in 10% or less than 10% of the cases (AT, BE, EE, FI, LV, LT, PT, SE). On the other extreme there are countries where judges impose sanctions for murder below the minimum level in more than 50% of the cases (HR, ES, SK).

Table 6.3 Murder: imposition and execution of minimum sanctions

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Executed in full
Austria	2,5%	5%	92,5%	20%
Belgium	10%	2,5%	87,5%	15%
Bulgaria	41%	22%	37%	-
Croatia	60%	17%	23%	55%
Cyprus	0%	100%	0%	-
Czech Republic	22%	33%	45%	60%
Denmark	0%	0%	100%	-
Estonia	11%	20%	69%	85%
Finland	10%	1%	89%	0%
France	27%	12%	61%	-
Germany	42%	0%	58%	45%
Greece	-	-	-	15%
Hungary	28%	0%	72%	20%
Ireland	1%	99%	0%	0%
Latvia	2%	8%	89%	89%
Lithuania	5%	35%	60%	7,5%
Luxembourg	100%	0%	0%	-
Poland	29%	14%	57%	-
Portugal	10%	5%	86%	-
Romania	26%	8%	66%	5%
Slovakia	0%	0%	100%	-
Slovenia	69%	9%	22%	30%
Spain	79%	7%	15%	-
Sweden	8%	74%	18%	0%

Source: ECLAN national reports on minimum sanctions, Annex B.

No minimum sanction: NL.

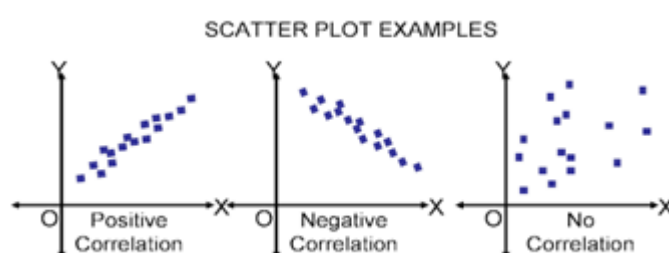
No data: E & W, IT.

One of the conclusions from the table is that MS vary considerably in the imposition of minimum sanctions. There are countries where sanctions are imposed below the minimum level in less than 10% of the cases (AT, FI, IE, LT, PL). There are also MS where sanctions are imposed below the minimum level in 50% or more than 50% of the cases (HR, FR, HU, SK). At average 26% of the minimum sanctions is imposed below the minimum, 18% at the minimum and 59% above the minimum. Note that in

the table the totals can be more than 100% if estimates are based on - party overlapping - ranges.

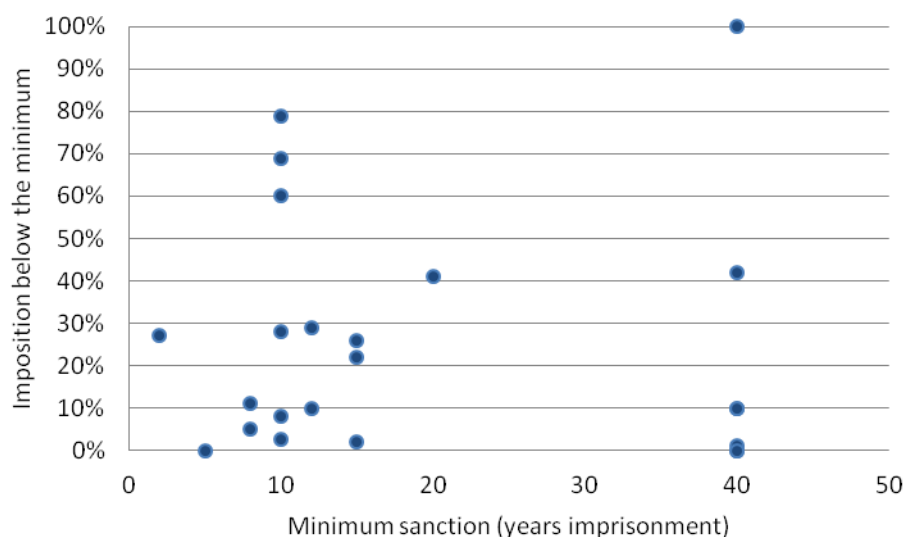
The data from table 6.3 are related to the levels of minimum sanctions for murder (table 6.1) and presented as a scatter plot in figure 6.3. Countries with no data or estimate on the levels of imposition are excluded from the figure.

The scatter plot relates two variables (in this case minimum years of imprisonment with the percentage of sanctions that are imposed below the minimum). If there is a positive relation between the two (more imprisonment years and means more often imposition below the minimum) the dots will have a positive slope.



Mandatory life sentence is presented as 40 years of imprisonment (BE, CY, FI, DE, IR, LU and SK). This figure reveals that there is no relation between the level of minimum sanctions for murder and the frequency sanctions are imposed below the minimum sanction level. For example six EU countries have a minimum sanction for murder of 10 years of imprisonment. However, imposition below this minimum varies from 2,5% of the cases (Austria) to 69% of the cases (Spain).

Figure 6.3 Murder: relation between the minimum sanction level and (estimated) % of sanctions that are imposed below the minimum for a sample of 23 EU Member States



Source: Table 6.3

Sexual abuse

The same exercise has been conducted for aggravated sexual abuse. In table 6.4 data and estimates on the imposition and execution (if available) are presented for a variety of EU Member States. As in the case of murder, a wide variety in the actual imposition and execution of minimum sanctions. At average (sample of 12 EU Member States) about one fourth of the sanctions for aggravated sexual abuse is imposed below the minimum level. One third of the imposed sanctions is executed in full.

Table 6.4 Sexual abuse: imposition and execution of minimum sanctions

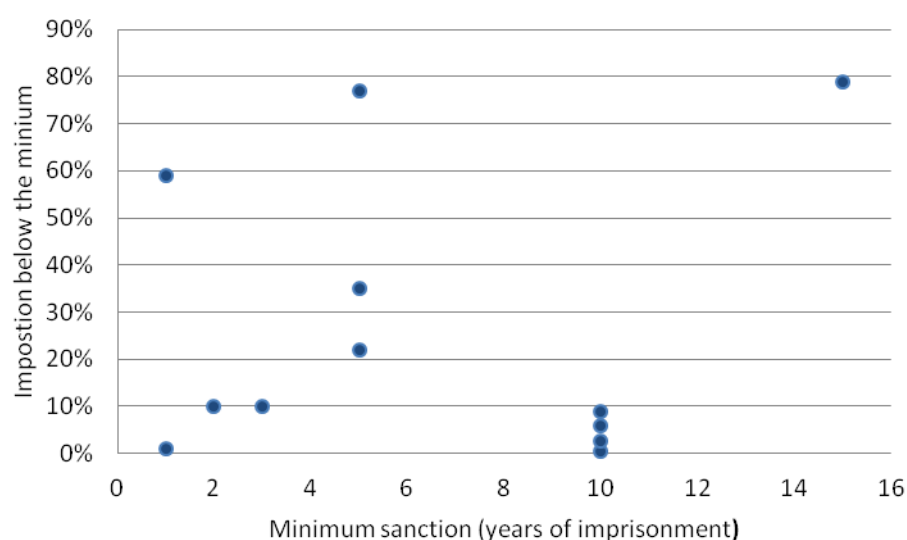
	Imposed below minimum	Imposed at minimum	Imposed above minimum	Executed in full
Austria	0,50%	5%	94,5%	27,5%
Belgium	2,50%	2,5%	95%	15%
Croatia	9%	21%	70%	50%
Czech Republic	-	-	-	70%
Estonia	-	-	-	85%
Finland	1%	1%	97%	0%
France	59%	3%	38%	-
Germany	6%	8%	86%	35%
Hungary	35%	NA	65%	20%
Poland	10%	64%	27%	-
Portugal	10%	10%	80%	-
Romania	22%	32%	46%	1%
# of data (countries)	12	12	12	10
Average	26%	13%	61%	33%

Source: ECLAN national reports on minimum sanctions, Annex B.

No minimum sanction: CY, DK, E&W, IE, LT, NL.

No data: BG, EL, IT, LV, LU, MT, , SK, SI, SE, ES.

Figure 42 Sexual abuse: relation between the minimum sanction level and (estimated) % of sanctions that are imposed below the minimum for a sample of 12 EU Member States



Source: Table 6.4

Aggravated drug trafficking

Data and estimates for aggravated drug trafficking are based on a sample of 14 EU Member States. At average in these countries two third of the sanctions are imposed above the maximum: with BE, AT and FI at the one extreme (more than 90%) and FR at the very low end: according to our data more than 90% is imposed *below* the minimum. The relative severity of the punishment (15 years if imprisonment for re-offenders) could be an explanation for this.

Table 6.5 Aggravated drug trafficking: imposition and execution of minimum sanctions

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Executed in full
Austria	4%	5%	91%	10%
Belgium	2,5%	2,5%	95%	15%
Croatia	71%	12%	17%	40%
Czech Republic	-	-	-	70%
Estonia	-	-	-	64%
Finland	4%	5%	91%	0%
France	91%	7%	2%	-
Germany	22%	0%	78%	50%
Greece	-	-	-	15%
Hungary	77%	NA	23%	20%
Ireland	69%	23%	8%	-
Lithuania	-	-	-	20%
Poland	38%	20%	42%	-
Portugal	10%	20%	70%	-
Romania	11%	5%	84%	3%
Slovakia	13%	27%	60%	-
Slovenia	68%	6%	26%	30%

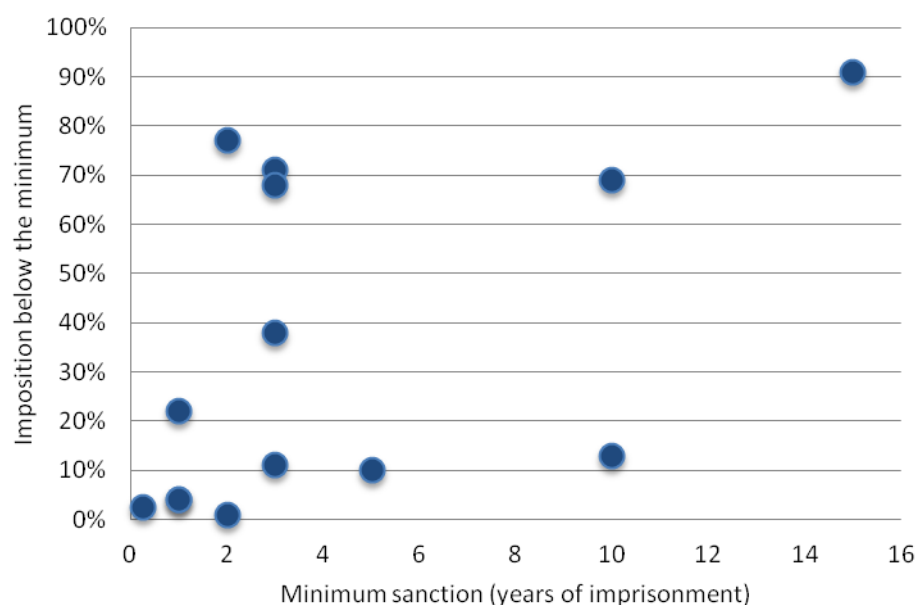
Sweden	1%	12%	86%	0%
# of data (countries)	14	14	14	13
Average	34%	10%	55%	26%

Source: ECLAN national reports on minimum sanctions, Annex B.

No minimum sanction: CY, MT, NL.

No data: BG, E&W, IT, LV, LU, ES.

Figure 6.5 Aggravated drug trafficking: relation between the minimum sanction level and (estimated) % of sanctions that are imposed below the minimum for a sample of 13 EU Member States



Source: Table 6.5

Active corruption

For active corruption minimum sanctions are generally lower (at average 1,7 years of imprisonment), again about one third of the sanctions are imposed below the minimum level (based on a sample of 11 countries), and one third of the imposed sanctions in executed in full. There seems to be no relation between the level of the sanction and the actual imposition.

Table 6.6 Active corruption: imposition and execution of minimum sanctions

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Executed in full
Austria	7,5%	17,5%	75%	7,5%
Belgium	2,5%	2,5%	95%	15%
Croatia	9%	34%	57%	40%
Czech Republic	-	-	-	50%
Estonia	-	-	-	76%
France	99%	1%	0%	-
Germany	69%	6%	25%	90%
Greece	-	-	-	10%

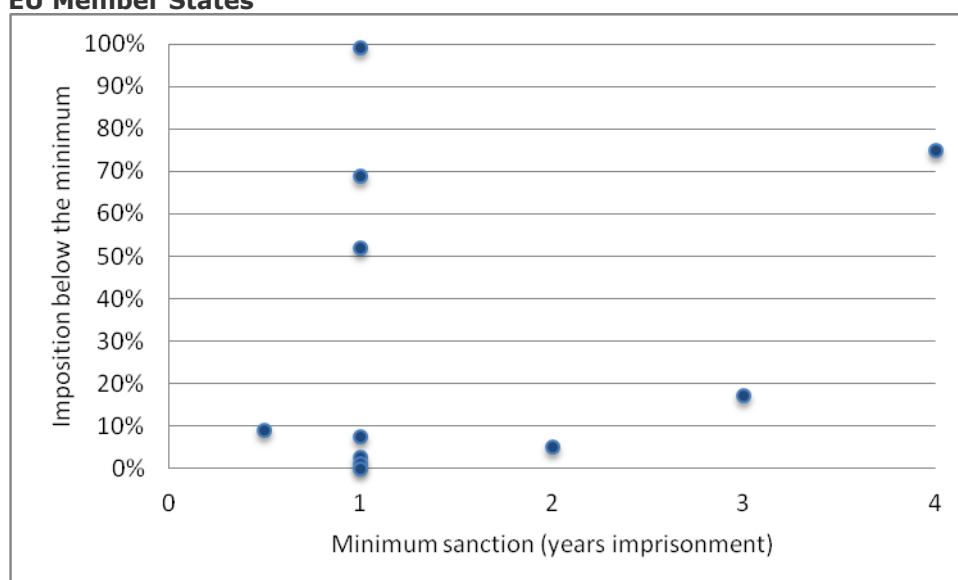
Hungary	52%	NA	48%	20%
Poland	1%	4%	95%	-
Portugal	5%	15%	80%	-
Romania	17%	11%	72%	0%
Slovakia	75%	4%	21%	-
Slovenia	0%	0%	100%	30%
# of data (countries)	11	11	11	11
Average	31%	9%	61%	31%

Source: ECLAN national reports on minimum sanctions, Annex B.

No minimum sanction: BG, DK, E&W, IE, NL.

No data: FI, E&W, IT, LV, LT, LU, MT, RO, ES, SE.

Figure 6.6 Active corruption: relation between the minimum sanction level and (estimated) % of sanctions that are imposed below the minimum for a sample of 11 EU Member States



Source: Table 6.6

Robbery

The data and estimates on imposition and execution of minimum sanctions for (aggravated) robbery are generally in line with the other offences. In the majority of countries sanctions are imposed at or above the minimum level

Table 6.7 Robbery: imposition and execution of minimum sanctions

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Executed in full
Austria	6%	8%	80%	7,5%
Belgium	2,5%	2,50%	95%	15%
Croatia	30%	29%	41%	50%
Czech Republic	-	-	-	70%
Estonia	-	-	-	80%

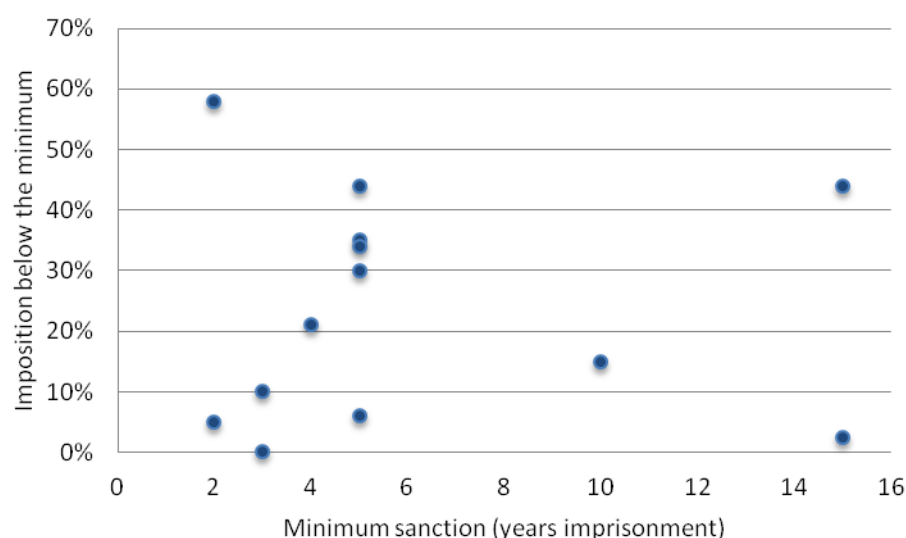
Finland	5%	5%	90%	0%
France	58%	9%	34%	-
Germany	35%	0%	65%	45%
Greece	-	-	-	15%
Hungary	44%	-	56%	20%
Poland	0,1%	7%	92%	-
Portugal	15%	15%	80%	-
Romania	10%	9%	81%	2,5%
Slovakia	44%	12%	44%	-
Slovenia	34%	29%	37%	30%
Sweden	21%	12%	56%	0%
# of data (countries)	13	13	13	12
Average	23%	11%	65%	28%

Source: ECLAN national reports on minimum sanctions, Annex B.

No minimum sanction: CY, DK, E&W, IE, NL.

No data: BG, IT, LV, LT, LU, MT, PT, ES.

Figure 6.7 Robbery: relation between the minimum sanction level and (estimated) % of sanctions that are imposed below the minimum for a sample of 12 EU Member States



Source: Table 6.7

Fraud

In the case of serious forms of fraud only one fifth of the sanction is imposed below the minimum (average across a sample of 12 EU Member States). One fifth of the imposed sanctions is fully executed. There is no clear relation between the level of the minimum sanction and the imposition below the minimum level (figure 6.5). Outliers in the sample of 11 countries with minimum sanctions for fraud and available data or estimates on the imposition, are Slovakia (10 years imprisonment, 45% executed below the minimum) and Hungary (5 years imprisonment, 45% executed below the minimum)

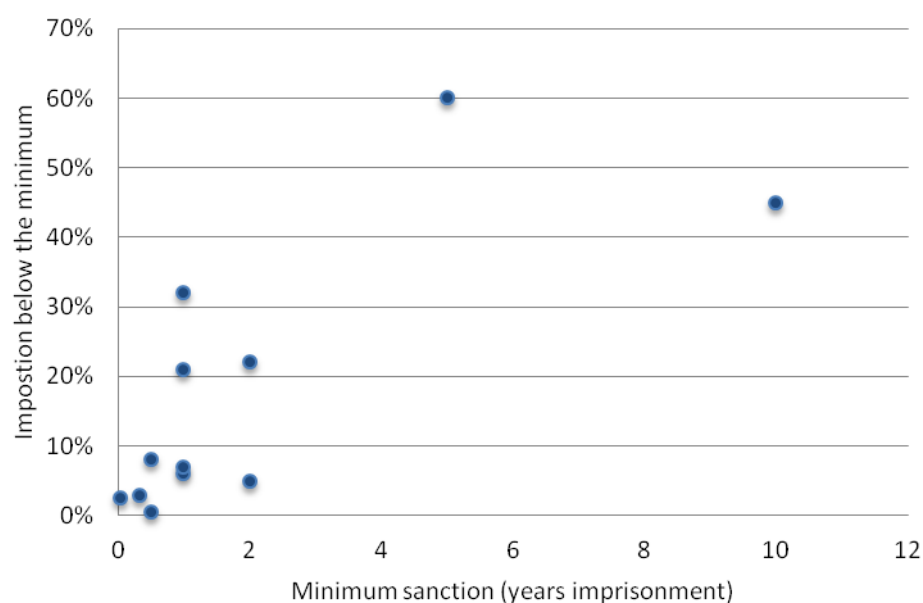
Table 6.8 Fraud imposition and execution of minimum sanctions

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Executed in full
Austria	6%	5%	88%	10%
Belgium	2,50%	2,50%	95%	15%
Croatia	21%	7%	70%	43%
Czech Republic	-	-	-	50%
Finland	3%	4%	93%	0%
Germany	7%	2%	91%	45%
Greece	-	-	-	10%
Hungary	60%	0%	40%	20%
Poland	0,6%	19,7%	79,6%	-
Portugal	5%	15%	80%	-
Romania	22%	6%	72%	1%
Slovakia	45%	35%	20%	-
Slovenia	32%	12%	56%	36%
Sweden	8%	6%	86%	0%
# of data (countries)	12	12	12	11
Average	18%	12%	73%	21%

Source: ECLAN national reports on minimum sanctions, Annex B

No minimum sanction: CY, DK, E&W, EE, FR, IE, LT, NL.

No data: BG, IT, LV, LU, MT, ES.

Figure 6.8 Fraud relation between the minimum sanction level and (estimated) % of sanctions that are imposed below the minimum for a sample of 12 EU Member States

Source: Table 6.8

Overview

An overview of the totals from the previous tables is presented in table 6.9. The underlying data are based on a combination of actual data, court samplings and expert estimates and are also based on a sample of EU MS (countries with minimum sanctions and with available data, court samplings or estimates). Table 6.9 is derived from samples of 23 (for murder) to only 11 to 13 Member States (other five offences). Conclusions must therefore be considered with caution.

However, we can say that across the range sanctions are imposed below the minimum in about one fifth to one third of the situations where minimum levels apply. In about 10 to 20% sanctions are imposed at minimum levels, and in 50 to over 70% above the minimum. There are no significant differences between offences. Individual Member States might vary considerably in the actual sanctioning practices. If sanctions are imposed, in most cases only a minority is executed in full (about 20 to 30%).

Table 6.9 Overview of levels, imposition and execution of minimum sanctions

	Average minimum sanction	Imposed below minimum	Imposed at minimum	Imposed above minimum	Executed in full
Murder	-	25%	21%	54%	30%
Sexual abuse	6,9	26%	13%	61%	33%
Drug trafficking	8,0	34%	10%	55%	26%
Active corruption	1,7	31%	9%	61%	31%
Robbery	6,5	23%	11%	65%	28%
Aggravated fraud	2,4	18%	12%	73%	21%
		26%	12%	62%	28%

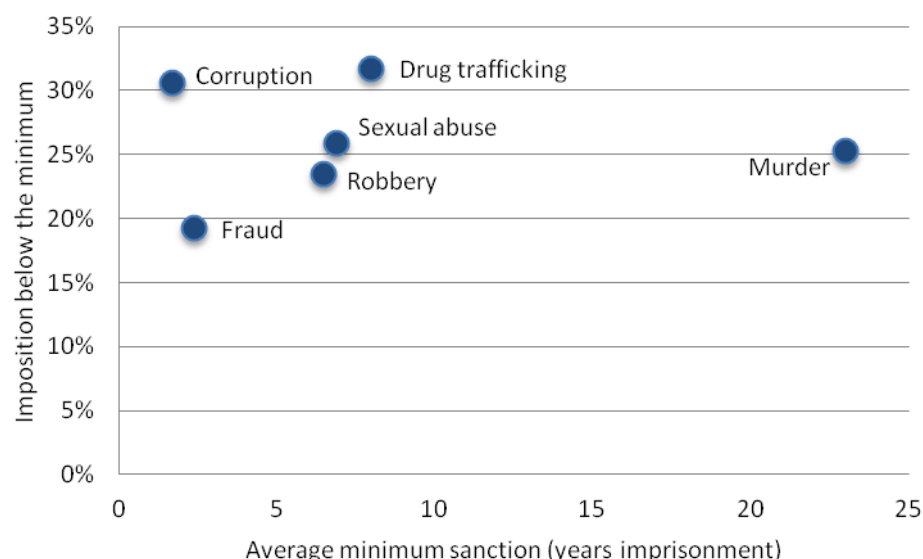
Source: Tables 6.1 – 6.8

Note: An average of the sanction for murder cannot be calculated due to the fact that some states have a mandatory life sentence.

Figure 6.9 demonstrates that in general there is no significant relation between the level of the minimum sanction and the imposition below the minimum.

Figure 6.9 Relation between the minimum sanction level and (estimated) % of sanctions that are imposed below the minimum for six selected offences:

Murder, Sexual abuse, drug trafficking, active corruption, robbery, aggravated fraud



Source: Table 6.9

6.5 Deterrence

The final step in the statistical analysis is the analysis if minimum sanction might deter offenders from committing criminal offences. In order to answer this question, the 28 EU Member States national rapporteurs collected expert opinions on four statements:

- Statement 1: Minimum sanctions are necessary to ensure that an effective deterrence can be achieved;
- Statement 2: What makes up the deterrent effect of minimum sanctions? Is it the threat of being sent to prison for the offence committed?
- Statement 3: There are other factors that have a deterrent effect such as the risk of being caught (efficiency of law enforcement bodies, or of prosecution services), and the possibility of an effective, full execution in practice of the sanction imposed. These are a) less b) more c) as important as minimum sanctions;
- Statement 4: The severity of the sanction, in particular a minimum sanction in one Member State has or could induce "delocalisation" of the criminal activity to another MS where the penal regime is less severe ("forum shopping").

We have scored the answers on each of the four statements per EU Member States, according to the following categories:

- Agree – all interviewees, or a large majority, expressed their consent;
- Disagree – all interviewees expressed their disagreement;
- Mixed – some of the interviewees agreed with the statement, others disagreed;
- No answers – no answer has been provided to the statement.

6.5.1 Minimum sanctions and deterrence

In answering statement 1 (Minimum sanctions are necessary to ensure that an effective deterrence can be achieved), the majority of the interviewees are of the

opinion that minimum sanctions do not have a deterrent effect (table 6.16). In only 5 out of 28 EU Member States, the experts agreed that minimum sanctions might have a deterrent effect: Bulgaria, Estonia, Greece, Italy, and Slovakia. However, even if interviewees believe that minimum sanctions have a deterrent effect, this is not sufficient, since sanctions should be 'effectively, certainly and fully executed, in order to guarantee the best results in terms of deterrence' (IT). It has also been noted that, deterrence cannot be proven 'in cases where minimum sanctions are significantly low' (EL). Some experts stated that minimum sanctions are at least 'helpful' but not necessary to deterrence (EE).

Table 6.16 Answers to Statement 1:

Minimum sanctions are necessary to ensure deterrence

	Disagree	Mixed	Agree	No answer
Austria		x		
Belgium	x			
Bulgaria			x	
Croatia		x		
Cyprus	x			
Czech Republic	x			
Denmark	x			
Estonia			x	
Finland	x			
France	x			
Germany		x		
Greece			x	
Hungary	x			
Ireland	x			
Italy			x	
Latvia		x		
Lithuania	x			
Luxembourg		x		
Malta	x			
Netherlands	x			
Poland	x			
Portugal	x			
Romania		x		
Slovakia			x	
Slovenia	x			
Spain		x		
Sweden	x			
England, Wales	x			
TOTAL	16	7	5	0

Source: ECLAN national reports on minimum sanctions, 2014.

The majority of the interviewees did not agree with the statement, or were at least sceptical, for a variety of reasons:

- The level of minimum sanctions: the minimum sanctions are sometimes too low to have a deterrent effect (BE, SE);
- Escape routes to go below the minimum: courts look for sentencing alternatives which undermine the deterrent effect of the minimum sanction (BE, CZ), courts can go below the minimum level (FR), In most countries with minimum sanctions there are so many escape clauses and ways to order early release that minimum sanctions can no longer be deemed real mandatory minimum sanctions (NL);
- Lack of knowledge among citizens and (potential) offenders: Most citizens and even perpetrators of criminal offences do not know what kind of punishment is envisaged for specific offences (LV, PT, SI, IE), potential offenders do not know the law and surely not the penalty clauses attached to specific criminal offences (NL);
- Impulse perpetrators versus calculating offenders: The existence of “calculating offenders”, presumes that there are criminals that are fully aware of the substantive and procedural criminal law system. As opposed to this, it has been stated by many experts that, in general, offenders, prior to committing an offence, do not contemplate on the (severity of the) sanction they might get (FR, NL). A large part of the perpetrators are so-called “impulse-perpetrators”, they act upon an impulse rather than on the basis of rational considerations. Often perpetrators do not see any other possibility than committing a crime in order to “survive” (NL).

According to many interviewees deterrence is more ensured by increasing the chance of being caught (NL), and the maximum of the sanction (LT, PT, ES, HR).

It has been noted in the report of England and Wales, that mandatory minimum sanctions could, perversely, undermine deterrence rather than enhance it. Mandatory minimum sentences, they said, encourage criminals to fight cases when, for the prospect of a mandatory prison sentence, they would otherwise plea guilty. As contested cases consume resources, both for prosecutors and for courts, an increase in the number of fought cases is likely to mean that fewer criminals are prosecuted. And the fewer criminals are prosecuted, the weaker is the deterrent effect. (These views were expressed in relation to mandatory sentences of imprisonment. By contrast, mandatory disqualification from driving was thought to serve a useful purpose in the context of road traffic offences.)

Some judges find that a preference by politicians for applying statutory minima is not mainly motivated by considerations regarding crime prevention but rather by a desire to demonstrate a tough line in the fight against crime.

6.5.2 Other factors

The second statement relates to the underlying factors for the (eventual) deterrent effect of minimum sanctions. This statement is related to the third statement on other factors that might have a deterrent effect.

In many cases perpetrators do not rationally consider whether or not they will commit a criminal offence prior to actually committing the offence. The chance of being apprehended by the investigative authorities after having committed a criminal offence does on the other hand have a deterrent effect, according to many of the interviewees, at least more than the question whether or not there are minimum sanctions. Hence, many interviewees stressed that the deterrent effect of minimum sanctions is mainly driven by:

- Threat or risk of being caught (BE, CZ, DE, DK, EE, HU, LU, LV, FI, RO, SI);

- Threat of being sent to prison (BG, DE, EL, IT, LV, LU, PL, PT, ES).

Almost all interviewees thought that the perceived likelihood of getting caught – the ‘subjective probability of detection’ – is much more important than the nature of the eventual sentence. Some practitioners mentioned that the offender is more scared of the fact that he may be caught by the police authorities rather than that he will be sent to prison or that his sentence will be effectively and fully executed. This is because the arrest is the first violent act against him. One prosecutor took the view that the risk of being caught is the only thing that deters criminals (EL).

Other elements that are regarded important for deterrence are: full execution of the penalty (EL), certainty of enforcement and full execution of the sanction, the threat of property sanctions (IT), fast and robust execution of sanctions (PL), risk of a loss of assets and loss of prestige (LV), the threat of public shaming (FI).

It has been noted that the **organised criminal is inherently a risk-taker**, and if the odds of being caught are low, then a minimum sentence will have little impact. Minimum sentences are part of the answer to fighting crime, but are by no means the most important element.

In addition, **offenders are generally very optimistic** (NL). They rely on the chance of not being caught. Offenders do also often commit a crime under the influence of drugs or heavy emotions, and one does not stop these offenders by way of high and/or minimum sanctions.

Some interviewees **disagree with the vision of a calculating offender**. According to the experts, the threat of a (high) prison sentence will not keep people from committing criminal offences (NL). People commit offences most often impulsively, in the sense that they do not reflect upon the possible prison sentence attached to a certain criminal offence. Moreover, people do not even know the (content) of the criminal code and the sentences attached to various criminal offences.

It has also been noted that the decision to commit a criminal offence might depend to a certain extent on the **type of criminal offence**. Many offences, such as murder or rape are committed in an impulse/emotional way, out of revenge, without prior considerations. Most perpetrators do not calculate the pro’s and the con’s of committing an offence prior to actually committing it. This may be a bit different with respect to financial crime but it does not go as far as criminals reviewing how severe the minimum sanctions for a certain offence are. Informing society about the consequences of committing an offence and (in addition) reinforcing the chances of being caught by the investigative authorities will have more preventive effects than introducing minimum sanctions.

6.5.3 Minimum sanctions and cross-border delocalisation

There was general agreement on the question whether the existence and level of minimum sanctions could lead to ‘forum shopping’ (delocalisation of criminal activities from one jurisdiction to another) in only two MS: Italy and Romania (table 6.17). In Italy ‘all the interviewees believe that different levels of minimum sanctions in the EU Member States certainly enhances the “forum shopping” phenomenon’ (IT). According to the Romanian interviewees, forum shopping ‘could represent an important factor in the migration of criminal activities across borders’ (RO).

In most other countries (15 Member States) there is a general agreement among experts and practitioners on the fact that perpetrators will not, prior to committing a crime, consider in which country there are minimum sanctions and what the level of minimum sanctions is and then choose their location on the basis of that information. In 8 MS the experts expressed a mixed or little nuanced opinion.

Table 6.17 Statement 4: The severity of the sanction, in particular a minimum sanction in one Member State has or could induce "delocalisation" of the criminal activity to another MS where the penal regime is less severe ("forum shopping").

	Disagree	Mixed	Agree	No answer
Austria	x			
Belgium	x			
Bulgaria	x			
Croatia		x		
Cyprus	x			
Czech Republic	x			
Denmark	x			
Estonia		x		
Finland	x			
France	x			
Germany		x		
Greece		x		
Hungary	x			
Ireland	x			
Italy			x	
Latvia		x		
Lithuania		x		
Luxembourg		x		
Malta	x			
Netherlands	x			
Poland	x			
Portugal		x		
Romania			x	
Slovakia	x			
Slovenia	x			
Spain		x		
Sweden				x
England, Wales	x			
TOTAL	16	9	2	1

Source: ECLAN national reports on minimum sanctions, 2014.

Several factors have been mentioned against this statement:

Lack of knowledge on the existence and levels of minimum sanctions

The statement presupposes that criminals have knowledge of comparative criminal law within the European Union. Many interviewees pointed – again – to the limited awareness and lack of knowledge on minimum sanctions:

- Offenders do not have the knowledge to be aware which Member States have lower minimum sanctions, so they are not capable of forum shopping (HR);
- There might be some people that calculate where to commit a crime. However, even specialist lawyers do not know the whole subject of jurisdiction and criminal prosecution and execution, let alone an ordinary criminal (NL);
- Most perpetrators (80%) are low-educated and not very smart. There are very few smart calculating perpetrators. Most perpetrators have been raised and educated in the criminal circuit; they do not have alternatives for the criminal spheres in which they 'work' (NL).

Cross-border transfer of prosecution and execution of sentences

Due to the possibility of serving prison sentence in one's own Member State, the level of minimum sanction is not relevant for the choice of a country where a crime will be committed. If prosecution and execution of a sentence can be transferred it does not matter where one commits a criminal offence. (NL) Experience with such requests does not indicate a high possibility of forum-shopping (that is to an extent available already) at all (SI).

Localisation of markets is decisive

It has been mentioned that for many criminal offences (such as drug offences), the localisation of the market is decisive not the penal system:

- Experts generally suggested cross-border crimes were localised with reference to other criteria, such as the availability of drugs or relative wealth differences (FI);
- Naturally there are international criminal organizations that may choose specific countries to commit their criminal offences, but that is not so much depending on the penalty clauses of the applicable criminal law system but more on whether or not the country is convenient for committing the intended crimes, such as illegal drugs-trafficking, trafficking in women (NL);
- Criminal activity is committed anywhere the offender has found opportunity for (SK).

Limited mobility of many perpetrators

Perpetrators are often tied to their home region: Perpetrators commit criminal offences close to their home, in (the surroundings of) their own city or village (NL). Perpetrators do not have the means to travel abroad (HU).

Possible exceptions (some forms of organised crime and economic crime)

Many interviewees referred again to the fact the statement presupposes that there are calculating offenders – which is rarely the case for many offences. However there might be exceptions, such as some forms of organised crime and economic crimes:

- The risk of delocalisation and forum shopping is perceived as only relevant in relation to a very limited number of transnational offences, if at all (DK);
- This might happen in the case of organised crime (HU);
- It is possible that certain offenders (e.g. involved in organized crime) could decide on where they would start their criminal activities depending on various circumstances, including the prescribed sanctions (HR);
- The only exception to this, therefore offences which might be transferred to another state, are the ones which are very well planned and structured: such as tax evasion, large-scale fraud, organized crime etc. But even in such cases the

experts think that the difference in prescribed sanction, particularly with regard to minimum sanctions, among the MS would not change much (SI).

Other factors are more relevant

If delocalisation occurs, interviewees believed that it might be influenced by other factors, such as the ease with which the offence could be committed in a particular country, or the relative likelihood of detection and prosecution, or the likelihood of being extradited:

- Forum shopping does only refer to the effectiveness of the execution of imposed sanctions, but not to the existence of minimum sanctions as such (AT);
- If the criminals would be mindful to it, they would be more likely to take the risk of being caught or the execution of the sentences into account (BE);
- Prosecutors consider that if an offender thinks about the “best” territory to commit a crime, which is not the case for the majority of offences, they will look at the methods of investigations, the question of protection of freedom of movements, but not minimum sanctions (FR).

Some interviewees (UK) added that, if the EU really wished to take effective action against trans-border crime in general, and trans-border fraud in particular, it would be more productive to get Member States to improve their procedures for confiscating the proceeds of crime, and ensuring that confiscation orders can be more readily enforced across national borders.

Finally it must be noted that arguments about forum shopping can be used as an argument in favour of harmonisation of criminal law within the European Union. However, as one interviewee (NL) noted, implementation of criminal law does not require harmonisation of all sanctioning systems. This can easily be reached with very different criminal law systems within the European Union. So, effective implementation of criminal law is feasible even if the procedural and substantive law of EU Member-States differ. The only thing that makes a difference in effectively implementing criminal law is increasing the chance of being caught. It would be good for the European Union (Member States) to start with creating more employment opportunities within the EU instead of introducing minimum sanctions. Having no work, no perspective and no alternatives brings people to committing crimes.

7. Summary and conclusions

7.1 Summary of the results

7.1.1 Legal systems

7.1.1.1 Legal provisions on minimum sanctions

Apart from NL, all Member States provide for minimum sanctions in their criminal laws. However, in spite of the existence of minimum sanctions in most of the Member States, there are big differences; not only between the systems and levels of minimum sanctions, but also between the ways how to go below or to circumvent minimum levels. These differences are caused by the existence of different sanctioning systems as well as by different traditions of minimum sanctions in the Member States.

Regarding imprisonment, most Member States provide for minimum sanctions for specific offences defined in the Special Part of criminal law. However, there are significant differences in the number of offences for which minimum sanctions are provided. Whereas in some Member States minimum sanctions are seen as exceptions, in others they are quite common, at least for more serious criminal offences.

There are legal systems where the free discretion of the judge in sentencing decisions is seen as a high value and minimum sanctions are regarded as a restriction of this discretion. In such systems minimum levels are the exception. However, regarding these legal systems the selection of offences for which minimum sanctions are foreseen, seems quite arbitrary. Except murder for which all these states provide for minimum sanctions, it seems that the introduction of minimum sanctions has been more triggered by certain events than by a concept of criminal politics. For example, in some Member States driving under influence is not even criminally punishable, but in CY it is one of the three offences for which minimum sanctions are foreseen.

This difference regarding offences for which minimum sanctions are provided for can also be seen in those Member States where minimum sanctions are quite common. Except for murder, for which all Member States except NL provide for minimum sanctions, there is no homogenous picture of offences for which minimum sanctions are contained in the national laws.

The most significant differences exist with regard to the level of minimum sanctions for imprisonment penalties. Regarding the minimum levels for specific offences the levels for one offence in the most serious cases differ in the Member States by at least ten years (e.g. for murder between 2 years and life imprisonment; sexual abuse of children between 1 year and 15 years or fraud 15 days to 10 years). This shows that sanctioning systems in the Member States are very different in regard to the functioning of the system, the (general) levels of penalties and the function of minimum sanctions.

There are sanctioning systems which provide for wide definitions of offences which cover less serious and very serious cases in one statutory definition of offence. In such a system minimum sanctions may not be too high to enable an adequate reaction in less serious cases. On the other hand the maximum limits must be quite high to have adequate sanctions to severe breaches of the law. On the other hand there are very differentiated systems of sanctions where low penalties are provided for less serious

cases (basic offences) and higher sanctions are provided for, if aggravating circumstances exist. In these systems minimum levels are also differentiated according to the seriousness of the offence. For the most serious cases higher minimum levels can be foreseen.

The levels of sanctions in the various Member States are very different. These different levels of penalties can also be seen in the levels of minimum sanctions. These differences are the result of legal history and legal traditions, and even the approximation of legal systems in the EU did not change the situation significantly. There cannot be seen any differences between offences which are influenced by EU legislative acts and "original" national offences. Regarding minimum sanctions this can be explained with the fact, that EU legislative acts did not contain any obligations to introduce certain minimum sanctions. Even an indirect effect (i.e. that the approximation of maximum sanctions also influenced the minimum levels) cannot be observed.

With regard to financial penalties, there are only a few Member States where the law provides for minimum levels in the Special Part of the Criminal Code; in general if minimum levels exist, they are foreseen in the general part and in most Member States they are more of a "technical" nature. Only in seven Member States different minimum sanctions contained in the Special Part or different minimum levels for fines are provided for various groups of offences (e.g. misdemeanours, felonies).

7.1.1.2 Possibilities to go below minimum sanctions

Even if minimum sanctions are foreseen, this does not mean that it is not possible to impose penalties below this minimum. All Member States provide for possibilities to go below the minimum. However, also these provisions are different. In some Member States there are different sentencing regimes for special groups (especially for juveniles and/or young adults), or judges may or have to impose a lower sentence than the minimum penalty due to specific provisions (particularly provisions on mitigating circumstances).

More than two thirds of the Member States have different sanctioning regimes for juveniles in their laws and/or have declared that imprisonment sanctions are inadmissible for juveniles in certain cases (e.g. less serious offences). These sanctioning regimes foresee lower or even no minimum levels for imprisonment sanctions. In a few states a fine can be imposed on the juvenile instead of an imprisonment sentence, if certain prerequisites are met. The other Member States do not have a separate sanctioning system for juveniles and in principle the same minimum levels apply to juveniles as they apply to adults.

Sanctioning systems that do not apply minimum levels to juveniles often restrict this non-application to less serious cases. The most serious crimes carry a certain minimum level also for juveniles, but which is lower than the minimum level for adults. Thus, the decision of the legislator whether to implement a minimum level for a juvenile offender often depends on the severity of the offence. In some Member States minimum levels also can be higher for juveniles than for adults. In three Member States (DE, HR, SI) the legislator decided that the minimum level for all juvenile offences is at least 6 months, otherwise the sentence imposed on the juvenile could not serve educational purposes. In these Member States imprisonment sentences under 6 months are inadmissible.

Three Member States foresee different or no minimum levels for young adults. In a few other Member States, the fact that the offender is a young adult is "only" a general mitigating circumstance.

Furthermore, judges may or are obliged to go below the minimum sanction in cases in which even the provided minimum sanction would be too harsh for the concretely realised guilt. Beside the application of such mitigating circumstances that especially relate to the gravity of the offence and the personal circumstances of the offender, the cooperation with law enforcement authorities plays an equal important role.

Some states foresee mechanisms to go below minimum sanctions via guilty plea in exchange for a reduced sanction and/or via plea-bargaining between the parties of the criminal proceedings. However, the application of guilty pleas and plea-bargaining does not automatically mean that a sentence below the minimum level will be imposed. Guilty pleas and plea-bargaining simply lead to a mitigated sentence.

7.1.2 Individualisation of the prison sanction

While the level of sanctions prescribed by law must be proportionate in the sense that it has to reflect the relative seriousness of the offence concerned, and thereby ensure global and internal coherence within each criminal law system, the punishment actually imposed and enforced on the offender will be determined thanks to a process of individualisation. This takes place at different phases and through various mechanisms.

The analysis of the possibility to provide for a more lenient sanction than the legal minimum and/or a more flexible enforcement regime gives the following picture regarding sanctions consisting in deprivation of liberty.

In the first place, the judge or court will examine whether the particular case submitted deserves a lower sanction than the mandatory minimum because of particular circumstances, mostly linked to the act or to the personality of the offender.

Mitigating circumstances taken into consideration are largely the same in all Member States, but they are not always listed. If they are, the list is often not exhaustive or there is a "catch-all clause" allowing for more flexibility. In some Member States, there is a wide discretion as to the individualisation of penalty where mitigating circumstances are present, but in many Member States the criminal code itself determines the level of reduction.

Mitigation can also take the form of an alternative to (the execution of) imprisonment. It is possible sometimes not to impose any sanction. However, the most common option is to suspend its execution, and in a number of Member States, this happens in the majority of cases. Other alternatives include fines, community services, or home confinement, either as independent sanctions, or as a replacement of imprisonment. While the process is essentially aimed at adapting the sentence to the convicted, other considerations play a role, such as prison overpopulation.

Except in exceptional cases, almost all prisoners have a possibility to be released before the end of their term, after a period which is sometimes defined, either in percentage of the sentence or in absolute minimum. The rules principally aim at rewarding good behaviour and encouraging rehabilitation, but overcrowd in prisons has an impact here also. However, in all Member States the execution of sanctions is completely detached from minimum sanctions and does not for instance depend on the level of the minimum sanction.

National reports on experience and interviews regarding the intentions regarding mitigation converge to a large extent on the types of mitigating circumstances and on

the situations where leniency is mostly applied, but not necessarily on the consequences attached.

As is demonstrated by an attempt to identify the trends in sanctioning three standard, theoretical examples, the various mechanisms and approaches in the different Member States deliver quite diverging results in practice. In particular, these examples show that the existence and level of a minimum sanction only has a limited impact on the actual period of imprisonment.

7.1.3 Implications of minimum sanctions on criminal law

In most Member States, the minimum sanction has no particular impact on substantial criminal law. In a few Member States, it has an incidence in procedural criminal law: on the possibility of pre-trial detention, on the availability of special investigation techniques, on the determination of the competent court, on the possibility to apply simplified procedures or to appoint a defence counsel.

However, more often, the determining factor is the maximum applicable penalty, or simply the available penalty (which may be the minimum, the maximum, or any penalty included in between).

7.1.4 Debate on minimum sanctions

In a few Member States (CY, E&W, DK, FR, NL, IE) the interviewed practitioners unanimously expressed their opposition to minimum sanctions. In the other states a lot of arguments against and in favour minimum sanctions have been put forward and therefore no clear picture concerning the utility or desirability of minimum sanctions could have been identified. Practitioners perceptions include that minimum sanctions aim at avoiding discrimination and arbitrariness, however, they are seen as an expression of distrust against judges as well as they limit their discretion in sentencing decisions. Furthermore, minimum sanctions aim to ensure transparency, certainty and predictability of punishment. However, the preventive effect of minimum sanctions is to be considered as very little among the interviewed practitioners. Minimum sanctions also can facilitate the decision-making process of the judges, but enough flexibility must be given that judges are able to impose a sanction below the minimum levels.

In sixteen Member States interviewees in principle do not foresee major obstacles, if the EU would pass a legal instrument containing minimum sanctions. On the contrary, in twelve Member States political and/or legal obstacles are foreseen. The main concerns in the Member States are that minimum sanctions would be too high and would not fit into the established system of penalty levels in the Member States. Moreover, a possible approximation would not guarantee any specific results due to the other aspects of the individual sentencing systems.

7.1.5 Imposition, execution, deterrence

The availability of statistics on the imposition and execution of minimum sanctions turned out to be problematic for most of the countries. This is due to a variety of factors. Most countries do not collect statistics on the effects of minimum levels of penalties on the sentencing practice. Statistics are in most countries too aggregated and/or not very reliable. Statistics are often not publicly available. It is in most cases difficult or even impossible to compare the data across Member States, due to differences in legal definitions, legal systems and practices.

The statistical analysis of this study is based on a mixture of data, sampling of court judgements and systematised collected perceptions of the experts and practitioners (interviewees) in 28 EU Member States. Some interviewees did not feel comfortable with giving an estimate, due to a lack of sufficient information. As a result neither data, nor experts estimates, or court judgements were provided in some EU Member States. Still some general conclusions can be formulated on the basis of the information which have been collected.

There is a wide variety between Member States on the levels of minimum sanctions and on the actual imposition of the minimum sanction. However, it can be said that roughly 25% of the sanctions in the EU are imposed below minimum. Roughly 10 - 15% of the sanctions in the EU are imposed at minimum. About 60 - 65% of the sanctions in the EU are imposed above minimum. It was also found that in most Member States only about 20-35% of the imposed minimum sanctions (imprisonment) are actually executed in full. There is no significant relation between the level of the minimum sanction and the imposition below the minimum. In other words, imposition regimes differ between the EU Member States and are not related to the relative level of the minimum sanction in comparison with other EU Member States.

The analyses of the relation between minimum sanctions and deterrence are based on expert opinions across all EU Member States. There is a wide agreement among experts (practitioners, academics) that there is no relation between the existence or levels of minimum sanctions and deterrence.

According to many interviewees deterrence is more ensured by increasing the risk of being caught and probably the maximum of the sanction. It has been noted that mandatory minimum sanctions could, perversely, undermine deterrence rather than enhance it, since it might encourage criminals to fight cases when, but for the prospect of a mandatory prison sentence, they would otherwise plead guilty.

It has also been noted that preference by politicians for applying statutory minima is not mainly motivated by considerations regarding crime prevention but rather by a desire to demonstrate a tough line in the fight against crime.

Likewise, in most other Member States there is a general agreement among experts and practitioners on the fact that, perpetrators will not, prior to committing a crime, consider in which country there are minimum sanctions and then choose their location on the basis of that information.

7.2 Conclusions

7.2.1 General remarks

Referring to the results of this study, the consequences for a European criminal law strategy with regard to minimum sanctions shall be discussed.

Due to the very different systems of minimum sanctions, an approximation of minimum sanctions at the EU level is expected to be difficult. It has to be considered that not only the systems of minimum sanctions, but also the whole sanctioning systems of the EU Member States are very different and hardly to approximate without fundamental interventions in national legal systems.

7.2.2 Minimum sanctions and their relation to legal principles

Among the main criticisms against minimum sanctions, it is argued that they are in conflict with certain principles of most EU Member States, amongst others:

1. The discretion of judges in sentencing decisions;
 2. The principle of proportionality; and
 3. The principle of separation of powers.
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1. One of the strongest arguments against minimum sanctions at the national level, is the fact that minimum sanctions clearly limit the discretion of judges in their sentencing decisions. By the introduction of minimum sanctions the legislator defines that certain offences are so serious that it is – in principle – not allowed to go below a certain minimum level. This limits the discretion of the judge to find an adequate penalty even in minor cases. Even if the legislation provides for possibilities to go below the minimum in exceptional cases, usually a specific reasoning is required which makes it more difficult for the judge to determine a penalty below the minimum level. Narrow ranges of penalties with high minimum levels may deprive judges of the possibility to adjust the penalty to the seriousness of the offence.
 2. Penal provisions must be abstract and may cover a broad field of different cases with various gravities of fault. Therefore minimum sanctions can be in a tension with the principle of proportionality, if the judge is not able to impose a sentence adequate to the specific situation because of the existence of minimum sanctions.⁵¹ The legislator establishes in general abstract rules limits for penalties which in individual cases can make it impossible to impose the adequate and proportional penalty. For example in cases of recidivist offenders, often there is no possibility for the judge to go below the minimum sanctions prescribed by law. However, there can be cases of minor offences (e.g. “shop lifting”) where it would be just to impose a very low penalty and to go below the minimum sanction even if the offender is a recidivist. In such individual cases minimum sanctions can lead to disproportionate sentences.
 3. Minimum sanctions are an instrument how the legislator can influence the determination of the sentence by the judge. Particularly in cases of high minimum sanctions prescribed by law the legislator – in a way – takes over the role of the judge. The more the legislator limits the discretion of the judge to determine the sentence in the concrete case by introducing minimum sanctions, the more the legislator interferes into the competencies of a judge to evaluate a concrete case freely. Therefore the establishment of minimum sanctions can be seen as a contradiction to the principle of separation of powers. In a certain way the legislator takes over the function of a judge by giving too narrow limits for the decision of the judge.

On the other hand, in some Member States minimum sanctions are regarded necessary to be in line with the constitutional requirement of legal certainty. Ranges of penalties which are too broad are seen as problematic with regard to the principle of *nulla poena sine lege certa*. Minimum sanctions make judges’ decisions more foreseeable for the offenders, but also for the victims and for the public as a whole. In this regard the argument has been put forward that offences that carry minimum sanctions may protect victims more than offences that do not carry minimum levels. However, this requirement does only exist in a few Member States.

⁵¹ See for example Austrian Constitutional Court 16.3.2000, G 312/97.

7.2.3 Purposes of an approximation of minimum sanctions

Envisaging an approximation of minimum levels, the purpose of approximation has to be sufficiently defined. Possible purposes of minimum sanctions are amongst others:

1. The equal treatment of offenders because of the commission of the same offence in all Member States;
2. General and special prevention of further offences⁵²;
3. Ensure effective cooperation between Member States;
4. Hamper de-localisation of crime;⁵³
5. Proclaim the respective seriousness of crimes.

1. The equal treatment of offenders in all Member States might be seen as a legitimate goal in a common area of freedom, security and justice. One way to achieve this can be seen in the establishment of minimum sanctions in EU legislative instruments. It could be argued that minimum sanctions have a more approximating effect regarding penalties actually imposed than minimum maximum penalties as provided for in several EU legislative acts, since in the sentencing process judges rarely use the maximum of the range of penalty, but begin to determine the penalty in the lower third or half of the penalty range. However, the study raises doubts that equal treatment between the offenders will be achieved by approximating minimum sanctions, as minimum sanctions are only part of the sanctioning system of a state. The results of the study show that minimum sanctions do not have significant influence on the penalties imposed and particularly on the time an offender actually spends incarcerated. There are different systems of conditional sentencing and early release in the Member States which do not directly refer to the existence of minimum sanctions, but refer to other circumstances. These instruments enable judicial authorities and/or execution bodies to go below minimum sanctions or circumvent the limits set by minimum levels.

Regarding the far-reaching differences between the level and the system of minimum sanctions in the Member States, an approximation of minimum levels would require significant changes in many national laws. However, it is doubted that such legislative changes would also lead to a change in the practice of the courts. Therefore it is very uncertain whether an approximation of minimum sanctions would actually lead to an equal punishment of offenders for the commission the same offences.

2. In general, criminal provisions aim to have special and general preventive effects. That such preventive effects could be reached in a better way by approximating minimum levels of sanctions is based on the assumption that minimum sanctions have the effect that higher penalties have a more deterrent and preventive effect and that an approximation of minimum sanctions influences the level of penalties imposed in the Member States. There is no evidence that minimum sanctions have a deterrent effect. In general, it is doubted whether and which deterrent effect the level of penalties has. The impact of higher penalties on the behaviour of people is difficult to analyse, since there are many factors which are relevant for special and general deterrence, not only the penalties provided in the law, but inter alia also the risk of being caught and to be convicted, the penalties which are actually imposed by the judges or the application of alternative sanctions.

⁵² See for example Commission Staff Working Paper, Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on the Protection of the Euro and other Currencies against Counterfeiting by Criminal Law, and replacing Council Framework Decision 2000/383/JHA, COM (2013) 42, SWD (2013) 20, p. 9 f.

⁵³ Ibid, p. 3.

However, it can also be seen that there is no evidence that either imprisonment itself or the length of imprisonment is effective in deterring crime.⁵⁴ It is important to have criminal provisions to affirm – particularly to those people who are willing to accept these rules – that certain norms and values have to be observed, but that harsh sentences in general or the existence of minimum sanctions have the effect to motivate persons not to commit an offence, cannot be proved.⁵⁵ Until now, studies have not proven a relationship between the crime rate and the severity of (minimum) sanctions, but an inverse correlation between the crime rate and the probability of being punished.⁵⁶

Other factors as the mere existence of criminal provisions, the actual application of these provisions and the risk of being caught are much more relevant in this regard. Also the fact that a conviction is kept in the criminal records⁵⁷ plays an important role. The extent of the penalty which is to be expected in most cases is not the most relevant factor.

A deterrent effect of minimum sanctions, if any, depends very much on the type of offence. Offenders of economic crimes for example are – as a rule – more rational in their decisions than offenders of offences against life and limb or offences which are committed out of need.⁵⁸ Therefore, for example in certain cases of fraud minimum sanctions could be considered to have a deterrent effect, as potential perpetrators could be expected to make a certain calculation of risks before deciding to engage in such criminal activities.⁵⁹ However, as also this study shows, minimum sanctions do not seem to be the relevant factor for perpetrators of criminal offences which they involve into their deliberations before committing a criminal offence. In most cases offenders do not even know the level of the minimum sanction. If offenders “integrate” the level of sanctions into their considerations they think about the maximum levels, but normally not the minimum levels. Therefore the deterrent effect of minimum sanctions may also be doubted in the cases where penalties play a role in the considerations of the offender.

3. A legitimate reason for the approximation of penalties could also be to ensure an effective cooperation between the Member States. On the one hand, a low

⁵⁴ See especially the national report on England and Wales, p. 16 and the references in the report on The Netherlands, p. 16 f; see also Gottfredson, Michael, Sanctions, situations, and agency in control theories of crime, *European Journal of Criminology* 8(2) (2011) 128 (134); Kreuzer, Arthur, Mehr Sicherheit durch strengeres Strafen?, *KrimPäd*, 2004, Vol. 43, p. 4 (8 f.); Heinz, Kriminalprävention auf justizieller Ebene: Hilft weniger mehr? Alternativen zu “klassischen” Sanktionen: Erfahrungen aus Deutschland, in: Kury/Karimov (eds.), *Kriminalität und Kriminalprävention in Ländern des Umbruchs*, Bochum 2006, p. 293 (299); Harrel/Roman, Reducing Drug Use and Crime among Offenders: The Impact of Graduated Sanctions, *Journal of Drug Issues* 31(1), 2001, p. 210; Snacken/van Zyl Smit, Neue Kriminalpolitik 2/2009, p. 58; Paternoster, Raymond, How much do we really know about criminal deterrence?, *The Journal of Criminal Law & Criminology* 2010, p.765 (802 ff. and 818 ff.); A. Pagliaro, Empirical Verification of the Effects of General Prevention and Incapacitation, *European Journal of Crime, Criminal Law and Criminal Justice*, 2003 – 4, p. 406.

⁵⁵ Streng, F., *Strafrechtliche Sanktionen*, 2nd ed. Stuttgart 2002, p. 30 ff; Heinz, W., *Kriminalprävention durch Strafrecht – Postionsbestimmung des Strafrechts*, in: Kury/Karimov (Eds.), *Kriminalität und Kriminalprävention in Ländern des Umbruchs*, Bochum 2006, p. 300.

⁵⁶ See A. Pagliaro, Empirical Verification of the Effects of General Prevention and Incapacitation, *European Journal of Crime, Criminal Law and Criminal Justice*, 2003 – 4, p. 406.

⁵⁷ The conviction is not only registered in the criminal records of the convicting Member State, but according to Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States also in the Member State of the person’s nationality.

⁵⁸ See Akers, Ronald, Rational Choice, Deterrence, and Social Learning Theory in Criminology: the Path Not Taken, *Journal of Criminal Law and Criminology*, Vol. 81, 1990, p. 653 (663).

⁵⁹ Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union’s financial interests by means of criminal law, COM(2012) 363 final, p. 10.

level of penalties could be an obstacle to cooperate. On the other hand, differences in sanctioning regimes may well impact on propensity to refer to the territorial clause (e.g. Article 4 (7) of the EAW FD) as a basis to refuse mutual recognition/execution of a decision taken in another Member State. However, the minimum levels of sanctions per se do not constitute a reason to refuse mutual recognition, mutual legal assistance or cooperation in the legislative acts. And again the legal minimum sanction is just one element of the criminal policy. The level of sanctions is explicitly not an element in deciding where to prosecute (see Eurojust guidelines on transfer of proceedings of May 2004), which means it cannot hinder that form of cooperation between Member States.

4. It is seen as a risk that criminals move to countries with a more lenient criminal law system (risk of so-called "forum shopping"). It is sometime argued that Member States with low levels of sanctions tend to attract criminal offenders.⁶⁰ The study does not confirm these arguments. Particularly minimum sanctions are not seen as relevant factors for criminals to decide to commit or not to commit an offence in one Member State. The fact that minimum sanctions are not harmonised does not necessarily lead to the effect of de-localisation of crime. Crimes are committed where there are more opportunities to do so (where they produce more profit, where the risk of detection is lower,..). In addition, as there are no common rules on jurisdiction, the place where the offence has been committed does not always play a decisive role. Thus, there is no evidence that forum shopping is a result of having no harmonised system of minimum sanctions.
5. It can be the purpose of minimum sanctions to proclaim the seriousness of criminal offences. By establishing criminal penalties in the law, the legislator conducts an abstract assessment of a certain prohibited conduct. The more serious the legislator regards a certain behaviour the higher the penalties are in principle. Minimum sanctions may be a way to demonstrate the seriousness of a behaviour. But – as the study shows – it is not always the case that the most serious crimes are subject to minimum sanctions: some Member States have for instance no minimum for murder, but they provide minimum sanctions for robbery. Main means to proclaim the seriousness of the offence seem to be seen in the maximum penalties. In some Member States the minima are in a certain way linked to the maxima, but this is not necessary.

7.2.4 The usefulness of approximating minimum sanctions

The use of Union competences is governed by the principles of subsidiarity and proportionality according to Article 5 TEU. Each EU action must comply with the principle of proportionality and subsidiarity. According to the principle of subsidiarity (Article 5 para 3 of the TEU), action at EU level should be taken only when the aims envisaged cannot be achieved sufficiently by Member States. The principle of proportionality (Article 5 para 3 of the TEU) requires that any intervention by the EU is targeted and does not go beyond what is necessary to achieve the objectives.

The questions therefore are whether the purpose cannot be achieved satisfactorily by the Member States themselves and whether the harmonisation would be proportionate

⁶⁰ See Commission Staff Working Document. Executive summary of the Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on the Protection of the Euro and other currencies against counterfeiting by criminal law, and replacing Framework Decision 2000/383/JHA, COM(2013) 42, p. 3.

and effective for the defined purpose. In general, the sanctions imposed must be effective, dissuasive and proportionate. However, this does not automatically mean that minimum sanctions must be approximated on EU level.

Regarding the purposes which could be reached by an approximation of minimum penalties:

- Reaching an equal treatment of offenders because of the commission of the same offence in all Member States, in principle can be achieved by a harmonisation of the sanctioning systems. Regarding the big differences between the levels of minimum sanctions in the Member States, there are doubts whether the establishment of minima for minimum levels would have a sufficient approximating effect. For Member States which have higher minimum levels, this would not be a reason to lower them, in Member States without minimum levels or with lower minimum levels such a measure would interfere with their whole system of criminal sanctions.

In general, the approximation of only minimum sanctions will not have the effect that an equal punishment of offenders in all Member States is reached, since minimum sanctions represent only a small part of the sanctioning system. High minimum sanctions do not make sure that judges also impose high sentences. Despite equal levels of sentences throughout various countries, the imposed sentences still stay different. The study shows that in the Member States an extensive set of tools is foreseen in the sanctioning systems whereby penalties under the minimum level or less harsh forms of sanctions can be imposed, or execution of sentences can be softened to avoid the consequences of minimum sanctions. These instruments are necessary for an adequate reaction to criminal offences and to reach the aims of special prevention and reintegration of offenders into the society.

- As already pointed out above, the present study shows that there are certain doubts that minimum sanctions are effective in preventing further offences. In FR, for example, the introduction of minimum sanctions did not hinder an increase of recidivist offenders; therefore minimum sanctions did not prove to be effective and were abolished for recidivist offenders. If there was no preventive effect in that MS, it is not clear why there should be a preventive effect if minimum sanctions are imposed throughout the Union.
- The approximation of minimum sanctions does not seem to be the adequate instrument to ensure effective cooperation in criminal matters between Member States, since the instruments of mutual legal assistance and mutual recognition do not refer to the minimum sanctions, but to the maximum penalties (see e.g. Article 2 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States). The study does not indicate any problems with cooperation in criminal matters due to differences in minimum sanctions.
- The study does not give any evidence that minimum sanctions are relevant factors for criminals to choose a certain Member State to commit a criminal offence. Therefore it does not seem to be an adequate measure to hamper the de-localisation of crime to approximate minimum sanctions.
- The most commonly used factor for proclaiming the significance and seriousness of certain crimes are the maximum penalties foreseen in law. Even in Member States which foresee minimum sanctions for many criminal offences, these

minimum levels are not seen as the most important criterion. Since the EU has already proclaimed the seriousness of certain criminal offences by fixing minima of the maximum applicable penalty in EU instruments, it is doubted whether fixing minimum sanctions would have any added value in that respect.

If minimum sanctions are approximated throughout the EU, the question of the level for minimum sanctions for specific offences arises. As the legislators of the various Member States often value the same offences in different ways or, in general, provide for different levels of penalties due to their tradition and system of criminal law, also the levels of minimum sanctions vary greatly. Approximation of minimum sanctions at EU level would, by definition, only concern limited offences or categories of offences: it would therefore necessarily introduce an extraneous element within the existing scale of sanctions in the various Member States. Thus, the setting of a proportionate level for a minimum sanction throughout all EU Member States while respecting their different legal systems and traditions could cause more difficulties than the setting of minimum levels of maximum penalties, since the systems of minimum sanctions – if they exist – seem to be more different than the upper levels of penalties. Moreover imposing a minimum is likely to have more impact on the pattern of actual sentencing than raising the minimum of the maximum.

Following the study, the introduction of minimum sanctions could cause more problems in the Member States' criminal law systems than it could solve problems on Union level.

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Annex A Mitigating circumstances

Table A.1 Mitigating circumstances I

- Small or no harm;
- Attempt;
- Limited participation;
- Age of the offender;
- Diminished capacity;
- Unavoidable error;
- Offence committed out of distress / tempting opportunity;
- No crime record.

Table A.2 Mitigating circumstances II

- Efforts to compensate damage;
- Cooperation with authorities;
- Guilty plea (confession);
- Offence committed long time ago;
- Reasonable delay of proceedings;
- Balance with aggravating circumstances.

Table A.1 Mitigating circumstances I

COUNTRY	Small or no harm	Attempt	Limited participation	Age of the offender	Diminished capacity	Unavoidable error	Offence committed out of distress / tempting opportunity	No crime record
AUSTRIA	yes (provided for in a non-exhaustive list in the CC; fixed lower limit)	yes (provided for in a non-exhaustive list in the CC; fixed lower limit)	yes (provided for in a non-exhaustive list in the CC; fixed lower limit)	yes (provided for in a non-exhaustive list in the CC; fixed lower limit)	yes (provided for in a non-exhaustive list in the CC; fixed lower limit)	yes (provided for in a non-exhaustive list in the CC; fixed lower limit)	yes (provided for in a non-exhaustive list in the CC; fixed lower limit)	yes (provided for in a non-exhaustive list in the CC; fixed lower limit)
BELGIUM	yes (no list in law, circumstances relate to the personal and individual case of the perpetrator, left to the judge's discretion)	Attempts to felonies will be punished by a sanction that is one classification lower than the actual offender. The law itself decides in which cases attempts to misdemeanours are punishable.	yes (no list in law, circumstances relate to the personal and individual case of the perpetrator, left to the judge's discretion)	yes (no list in law, circumstances relate to the personal and individual case of the perpetrator, left to the judge's discretion)	yes (no list in law, circumstances relate to the personal and individual case of the perpetrator, left to the judge's discretion)	yes (no list in law, circumstances relate to the personal and individual case of the perpetrator, left to the judge's discretion)	yes (no list in law, circumstances relate to the personal and individual case of the perpetrator, left to the judge's discretion)	yes (no list in law, circumstances relate to the personal and individual case of the perpetrator, left to the judge's discretion)
BULGARIA	yes (general minimum applies)	yes (court NOT obliged to go below)	yes (exceptional mitigating circumstance; general minimum applies)	yes (exceptional mitigating circumstance; general minimum applies)	yes, when this circumstance is not explicitly stated in CC the general minimum applies; otherwise the legal fixed lower minimum is applied			yes (general minimum applies)
CROATIA	yes	yes; explicitly provided, possibility for the judge, with fixed lower minimum	yes; explicitly provided, possibility for the judge, with fixed lower minimum	Lower general minimum of 6 months	yes; explicitly provided, possibility for the judge, with fixed lower minimum	yes; explicitly provided, possibility for the judge, with fixed lower minimum		yes

COUNTRY	Small or no harm	Attempt	Limited participation	Age of the offender	Diminished capacity	Unavoidable error	Offence committed out of distress / tempting opportunity	No crime record
CYPRUS	all m.s. are mandatory	all m.s. are mandatory	all m.s. are mandatory	all m.s. are mandatory	all m.s. are mandatory	all m.s. are mandatory	all m.s. are mandatory	all m.s. are mandatory
CZECH REPUBLIC	yes, non-exhaustive list in CC, but lies to a great extent in the discretion of the judge who can take any personal circumstances of the offender and the crime into account; fixed lower minimum or impose alternative sanction to incarceration	yes	yes, non-exhaustive list in CC, but lies to a great extent in the discretion of the judge who can take any personal circumstances of the offender and the crime into account; fixed lower minimum or impose alternative sanction to incarceration	yes, non-exhaustive list in CC, but lies to a great extent in the discretion of the judge who can take any personal circumstances of the offender and the crime into account; fixed lower minimum or impose alternative sanction to incarceration	yes, combination of incarceration with protective medical treatment	yes	yes	yes, non-exhaustive list in CC, but lies to a great extent in the discretion of the judge who can take any personal circumstances of the offender and the crime into account; fixed lower minimum or impose alternative sanction to incarceration
DENMARK		yes, non-exhaustive list of mitigating sentencing factors; court may reduce or completely remit punishment	yes, non-exhaustive list of mitigating sentencing factors; court may reduce or completely remit punishment	yes, non-exhaustive list of mitigating sentencing factors; court may reduce or completely remit punishment		yes, non-exhaustive list of mitigating sentencing factors; court may reduce or completely remit punishment	yes, also in case of provocation of the offender, non-exhaustive list of mitigating sentencing factors; court may reduce or completely remit punishment	

COUNTRY	Small or no harm	Attempt	Limited participation	Age of the offender	Diminished capacity	Unavoidable error	Offence committed out of distress / tempting opportunity	No crime record
ENGLAND & WALES				Minima only applicable to adults	in case of mental disorder, possibility to return a verdict of manslaughter rather than murder – and by this tortuous route, to avoid the pronouncement of the mandatory life sentence.			
ESTONIA	possibility of judge to go below minimum, if special circumstances with regard to the offender or the case are given (no enumeration of special circumstances in law); fixed lower limit, decision lies in discretion of the judge	yes, listed in CC, fixed lower limit, decision lies in discretion of the judge	yes, listed in CC, fixed lower limit, decision lies in discretion of the judge	possibility of judge to go below minimum, if special circumstances with regard to the offender or the case are given (no enumeration of special circumstances in law); fixed lower limit, decision lies in discretion of the judge	yes, listed in CC, fixed lower limit, decision lies in discretion of the judge	yes, listed in CC, fixed lower limit, decision lies in discretion of the judge	possibility of judge to go below minimum, if special circumstances with regard to the offender or the case are given (no enumeration of special circumstances in law); fixed lower limit, decision lies in discretion of the judge	possibility of judge to go below minimum, if special circumstances with regard to the offender or the case are given (no enumeration of special circumstances in law); fixed lower limit, decision lies in discretion of the judge; No crime record is not among listed mitigating circumstances,

COUNTRY	Small or no harm	Attempt	Limited participation	Age of the offender	Diminished capacity	Unavoidable error	Offence committed out of distress / tempting opportunity	No crime record
								but as the list is non-exhaustive, judges can refer to this as well, but some other special circumstances have to be present as well
FINLAND	mitigated penal latitude	mitigated penal latitude (also general minimum for imprisonment, 14 days)	lesser role or assistance mitigated penal latitude (6:8)	yes, court may waive punishment; also mitigated penal latitude	mitigated penal latitude	yes, court may waive punishment	yes, court may waive punishment	<i>mitigating circumstances to go below minimum sanctions</i>
FRANCE	it is always in the judges discretion to go below minimum levels, no specific provision exist, judge has to justify his decision and to give reasons why he mitigated the minimum levels, reasons may relate to the personal circumstances of the offender or the offence	it is always in the judges discretion to go below minimum levels, no specific provision exist, judge has to justify his decision and to give reasons why he mitigated the minimum levels, reasons may relate to the personal circumstances of the offender or the offence	it is always in the judges discretion to go below minimum levels, no specific provision exist, judge has to justify his decision and to give reasons why he mitigated the minimum levels, reasons may relate to the personal circumstances of the offender or the offence	it is always in the judges discretion to go below minimum levels, no specific provision exist, judge has to justify his decision and to give reasons why he mitigated the minimum levels, reasons may relate to the personal circumstances of the offender or the offence	it is always in the judges discretion to go below minimum levels, no specific provision exist, judge has to justify his decision and to give reasons why he mitigated the minimum levels, reasons may relate to the personal circumstances of the offender or the offence	it is always in the judges discretion to go below minimum levels, no specific provision exist, judge has to justify his decision and to give reasons why he mitigated the minimum levels, reasons may relate to the personal circumstances of the offender or the offence	it is always in the judges discretion to go below minimum levels, no specific provision exist, judge has to justify his decision and to give reasons why he mitigated the minimum levels, reasons may relate to the personal circumstances of the offender or the offence	it is always in the judges discretion to go below minimum levels, no specific provision exist, judge has to justify his decision and to give reasons why he mitigated the minimum levels, reasons may relate to the personal circumstances of the offender or the offence

COUNTRY	Small or no harm	Attempt	Limited participation	Age of the offender	Diminished capacity	Unavoidable error	Offence committed out of distress / tempting opportunity	No crime record
GERMANY	if offender prevents completion of offence: general minimum applies, discretion of the judge	1.) yes, fixed lower limit; 2.) in case of improper attempt: general minimum applies; in both cases decision lies in discretion of the judge	1.) in cases of omissions, fixed lower limit, discretion of judge; 2.) in case of aiding, fixed lower limit, obligatory for judge; 3.) in case of attempted abetting, fixed lower limit, obligatory for judge	Lower minimum for juveniles and young adults	yes, fixed lower limit, discretion of judge	yes, fixed lower limit, discretion of judge	in cases of duress in regard to false testimony, general minimum applies, discretion of the judge	yes (mit. circumst. exhaustively provided for in CC, fixed lower limit)
GREECE		yes, non-exhaustive list, fixed lower limit, obligatory for judge	yes, fixed lower limit, obligatory for judge	yes (young adults), discretionary for the judge	yes, fixed lower limit, obligatory for judge		yes, non-exhaustive list, fixed lower limit, obligatory for judge	yes, non-exhaustive list, fixed lower limit
HUNGARY	yes	yes, second degree mitigation possible, discretionary; in case of failed attempted: unlimited mitigation possible	yes, second degree mitigation possible, discretionary	yes	yes, unlimited mitigation possible, discretionary	yes	yes	yes
IRELAND	yes (from Court of Appeal case law)		yes (as list non exhaustive)	lower limit	yes (from Court of Appeal case law)			yes (as list non exhaustive)

COUNTRY	Small or no harm	Attempt	Limited participation	Age of the offender	Diminished capacity	Unavoidable error	Offence committed out of distress / tempting opportunity	No crime record
ITALY	Mitigating common circumstance: explicitly provided by law (art. 62, n.4, CC), reduction of the imposed sanction up to 1/3.	It is not a mitigating circumstance. Art. 56 CC provides a reduction from 1/3 to 2/3 of the sanction provided for the consumed crime.	Mitigating circumstance: explicitly provided by law (art. 114 C). reduction of the imposed sanction up to 1/3	reduced minimum (in percentage), mandatory	yes, explicitly provided (e.g. juveniles older than 14 y and younger than 18 y and some offender affected by mental ill) lower minimum (in percentage of reduction), judge's discretion	It is not a mitigating circumstance. It is not explicitly provided by law, but thanks to a judgement of Constitutional Court (364/1988), it must be considered by the judge in the evaluation of the culpability of the offender. Discretion of the judge	Not mitigating circumstance. The situation can be considered by the judge in the evaluation of the offender's culpability and in the application of the sanction.	It is not a mitigating circumstances. It is explicitly provided, depending on the discretionary power of the judge. Applicable for detention up to 2 years and pecuniary sanction up to 516 €
LATVIA	yes, general clause and non exhaustive list, lower minimum (in percentage of reduction), judge's discretion	Yes, as general clause	Yes, as general clause	yes, explicitly provided, lower minimum (in percentage of reduction), judge's discretion	yes, explicitly provided, lower minimum (in percentage of reduction), judge's discretion		yes, explicitly provided, lower minimum (in percentage of reduction), judge's discretion	
LITHUNIA	yes (not provided in non-exhaustive list in the CC), combined with other mitigating circumstances, possibility for the judge	yes, (not provided in non-exhaustive list in the CC) explicitly provided, but combined with other mitigating circumstances,	yes, explicitly provided, (not provided in non-exhaustive list in the CC), but combined with other mitigating circumstances, possibility for	lower limit, optional yes (not provided in non-exhaustive list in the CC), combined with other mitigating circumstances,	yes (not provided in non-exhaustive list in the CC), combined with other mitigating circumstances, possibility for the judge	yes (not provided in non-exhaustive list in the CC), combined with other mitigating circumstances, possibility for the judge	yes, explicitly provided, but (not provided in non-exhaustive list in the CC), combined with other mitigating circumstances,	yes (not provided in non-exhaustive list in the CC), combined with other mitigating circumstances, possibility for the judge

COUNTRY	Small or no harm	Attempt	Limited participation	Age of the offender	Diminished capacity	Unavoidable error	Offence committed out of distress / tempting opportunity	No crime record
		possibility for the judge	the judge	possibility for the judge			possibility for the judge	
LUXEMBURG	yes, no list, left to judge's discretion, fixed lower minimum	yes, fixed lower minimum	yes, fixed lower minimum	Minimum are not foreseen for juveniles. Young adults likely to receive a milder sanction in practice	yes, explicitly provided, obligation for the judge to reduce, but discretion as to the amount or other penalty	no	provocation explicitly provided, obligation for the judge to reduce, fixed lower penalty	yes, no list, left to judge's discretion, fixed lower minimum
MALTA	It is in the judge's discretion to go below the minimum, as stated in Article 21 of the Maltese Criminal Code.	Yes, mandatory upon the judge to decrease punishment by 1-2 degrees calculated on the punishment of the completed offence.	No mitigating circumstances	Yes, mandatory upon the judge to decrease punishment by 1-2 degrees	It is only expressly specified in the law for certain offences, such as sudden passion in voluntary homicide - these are considered as mitigating circumstances	It is only expressly specified in the law for certain offences, such as mistakenly believing an object to be yours in theft - these are considered as exculpatory or mitigating circumstances, depending on the case.	It is only expressly specified in the law for certain offences, such as murdering a person to survive - these are considered as exculpatory or mitigating circumstances, depending on the case.	It is in the judge's discretion to go below the minimum, as stated in Article 21 of the Maltese Criminal Code.

COUNTRY	Small or no harm	Attempt	Limited participation	Age of the offender	Diminished capacity	Unavoidable error	Offence committed out of distress / tempting opportunity	No crime record
NETHERLANDS	plays a general role as mitigating circumstance in determining the severity of the sentence	article 45, section 2 of the Dutch Criminal Code lowers the penalty clause with 1/3 in case of an attempt. This means that for example manslaughter which carries a maximum penalty clause of 15 years will be punished with a maximum of 10 years in case of an attempt. In case of a criminal act which carries a penalty clause of life imprisonment, the maximum penalty will be 20 years (for example in case of premeditated murder) according to article 45, section 3 of the Dutch Criminal Code.	article 49, section 1 of the Dutch Criminal Code lowers the penalty clause with 1/3 in case of limited participation. This means that for example manslaughter which carries a maximum penalty clause of 15 years will be punished with a maximum of 10 years in case of participation in manslaughter. In case of a criminal act which carries a penalty clause of life imprisonment, the maximum penalty will be 20 years (for example in case of premeditated murder) according to article 49,	see article 77i of the Dutch Criminal Code. For children between 12 and 16 years the maximum penalty is 12 months. For children between 16 and 21-23 the maximum penalty is 24 months.	the judge is free to mitigate the penalty in case of diminished capacity of the offender.	An unavoidable error excludes culpability in accordance with articles 40 up to and including 43 of the Dutch Criminal Code.	Offences committed out of distress may lead to lack of culpability in accordance with article 40 of the Dutch Criminal Code.	Whether an offender has a crime record or not will play a role in fixing the sentence. Not having a prior crime record may mitigate the sentence.

COUNTRY	Small or no harm	Attempt	Limited participation	Age of the offender	Diminished capacity	Unavoidable error	Offence committed out of distress / tempting opportunity	No crime record
			section 2 of the Dutch Criminal Code.					
POLAND	yes, explicitly provided			yes, explicitly provided				yes
PORTUGAL	yes, as list not exhaustive, reduced minimum	yes, explicitly provided, mandatory, reduced minimum	yes, explicitly provided, mandatory, reduced minimum	yes, general provision, mandatory, reduced minimum	yes, as list not exhaustive, reduced minimum	unavoidable error (of prohibition) excludes culpability; other errors (of prohibition) can reduce minimum sanctions	yes, explicitly provided, reduced minimum	
ROMANIA	yes, explicitly provided, possibility for judge	yes, explicitly provided, possibility for judge, reduced minimum (in percentage)	NO	According to the former Criminal Code, the penalties were reduce by half. According to the current Criminal Code, minors have a regime that does not	yes, explicitly provided, possibility for judge, reduced minimum (in percentage)	It is not a mitigating circumstance. If unavoidable, it will lead to acquittal.	yes, explicitly provided, possibility for judge, reduced minimum (in percentage)	yes, explicitly provided, possibility for judge

COUNTRY	Small or no harm	Attempt	Limited participation	Age of the offender	Diminished capacity	Unavoidable error	Offence committed out of distress / tempting opportunity	No crime record
				permit application of penalties (only education measures).				
SLOVAKIA	yes, at the opinion of the judge	yes, specifically said, but the judge decides	yes, in general clause, possibility for the judge	yes, in general clause, possibility for the judge	yes, specifically said, but the judge decides	yes, in general clause, possibility for the judge	yes, in general clause, possibility for the judge	yes, non-exhaustive list in CC, but lies to a great extent in the discretion of the judge who can take any personal circumstances of the offender and the crime into account;
SLOVENIA	yes, explicitly provided, possibility for the judge, with fixed lower minimum	Attempts are typically punishable within the same sentencing ranges, can only be mitigating when the crime was wilfully aborted	yes, as list not exhaustive, possibility for the judge, with fixed lower minimum	yes, explicit, with fixed lower minimum	yes, possibility for the judge as list not exhaustive	yes, possibility for the judge as list not exhaustive	yes, possibility for the judge as list not exhaustive	yes, explicitly provided, possibility for the judge, with fixed lower minimum
SPAIN	In some cases, e.g. drug trafficking, judges may impose a lower degree punishment in	yes, court obliged to impose a penalty being lower by one or two degree	in case of complicity, court obliged to impose a penalty being lower by one degree	No minimum where wrongdoing is a wilful or negligent misdemeanour, a negligent	yes, court obliged to impose a penalty being lower by one or two degree	yes, court obliged to impose a penalty being lower by one or two degree	Provocation explicitly provided (e.g. murder), obligation for the judge to reduce, fixed	

COUNTRY	Small or no harm	Attempt	Limited participation	Age of the offender	Diminished capacity	Unavoidable error	Offence committed out of distress / tempting opportunity	No crime record
	view of the scarce importance of the facts and the offender's personal circumstances. Not possible when aggravating circumstances concur.			offence or a not so serious wilful offence without concurring violence or intimidation. Minimum of 1 year of internment in a closed special centre for very serious crimes committed by juveniles (between 16 and 17)			lower penalty by one or two degrees	
SWEDEN	Mitigating circumstances apply to all offences and all sanctions and do not address specifically minimum sentences.	Mitigating circumstances apply to all offences and all sanctions and do not address specifically minimum sentences.	Mitigating circumstances apply to all offences and all sanctions and do not address specifically minimum sentences.	Mitigating circumstances apply to all offences and all sanctions and do not address specifically minimum sentences.	Mitigating circumstances apply to all offences and all sanctions and do not address specifically minimum sentences.	Mitigating circumstances apply to all offences and all sanctions and do not address specifically minimum sentences.	Mitigating circumstances apply to all offences and all sanctions and do not address specifically minimum sentences.	Mitigating circumstances apply to all offences and all sanctions and do not address specifically minimum sentences.

Table A.2 Mitigating circumstances II

COUNTRY	Efforts to compensate damage	Cooperation with authorities	Guilty plea (confession)	Offence committed long time ago	Reasonable delay of proceedings	Balance with aggravating circumstances
AUSTRIA	yes (provided for in a non-exhaustive list in the CC; fixed lower limit)	yes, only for organised crime, provided for in CC, fixed lower limit	yes (provided for in a non-exhaustive list in the CC; fixed lower limit)	yes (provided for in a non-exhaustive list in the CC; fixed lower limit)	yes (provided for in a non-exhaustive list in the CC; fixed lower limit)	not necessary that there are more mitigating than aggravating circumstances present, the decisive factor is the weight of the single mitigating circumstances
BELGIUM	yes (no list in law, circumstances relate to the personal and individual case of the perpetrator, left to the judge's discretion)	yes (no list in law, circumstances relate to the personal and individual case of the perpetrator, left to the judge's discretion)	yes (no list in law, circumstances relate to the personal and individual case of the perpetrator, left to the judge's discretion)	yes (no list in law, circumstances relate to the personal and individual case of the perpetrator, left to the judge's discretion)	yes (no list in law, circumstances relate to the personal and individual case of the perpetrator, left to the judge's discretion)	yes (no list in law, circumstances relate to the personal and individual case of the perpetrator, left to the judge's discretion)
BULGARIA	yes, when this circumstance is not explicitly stated in CC the general minimum applies; otherwise the legal fixed lower minimum is applied	yes, only for five crimes, explicitly provided for in CC, court obliged to go below the minimum; in other cases depends on the discretion of the judge to take it as a mitigating circumstance	If defendant confesses the facts described in the bill of indictment during the judicial inquiry and agrees that no evidence will be collected, court is obliged to reduce the determined punishment by 1/3		yes (exceptional mitigating circumstance; general minimum applies)	in case of an exceptional mitigating circumstance, the presence of only this circumstance is enough; otherwise great number of mitigating circumstances is required; in both cases judge is obliged to go below the minimum level
CROATIA	yes; explicitly provided, possibility for the judge, with fixed lower minimum	yes	yes; explicitly provided, possibility for the judge, with fixed lower minimum			yes
CYPRUS	all m.s. are mandatory		all m.s. are mandatory	all m.s. are mandatory	all m.s. are mandatory	

COUNTRY	Efforts to compensate damage	Cooperation with authorities	Guilty plea (confession)	Offence committed long time ago	Reasonable delay of proceedings	Balance with aggravating circumstances
CZECH REPUBLIC	yes, non-exhaustive list in CC, but lies to a great extent in the discretion of the judge who can take any personal circumstances of the offender and the crime into account; fixed lower minimum or impose alternative sanction to incarceration	yes, court obliged to go below the minimum, fixed lower limit	yes, non-exhaustive list in CC, but lies to a great extent in the discretion of the judge who can take any personal circumstances of the offender and the crime into account; fixed lower minimum or impose alternative sanction to incarceration			
DENMARK	yes, non-exhaustive list of mitigating sentencing factors; court may reduce or completely remit punishment	yes, non-exhaustive list of mitigating sentencing factors; court may reduce or completely remit punishment	yes, non-exhaustive list of mitigating sentencing factors; court may reduce or completely remit punishment	yes, non-exhaustive list of mitigating sentencing factors; court may reduce or completely remit punishment	yes, non-exhaustive list of mitigating sentencing factors; court may reduce or completely remit punishment	
ENGLAND & WALES			yes, explicitly provided for domestic burglaries and drug trafficking, possibility for the judge			
ESTONIA	possibility of judge to go below minimum, if special circumstances with regard to the offender or the case are given (no enumeration of special circumstances in law); fixed lower limit, decision lies in discretion of the judge		possibility of judge to go below minimum, if special circumstances with regard to the offender or the case are given (no enumeration of special circumstances in law); fixed lower limit, decision lies in discretion of the judge	possibility of judge to go below minimum, if special circumstances with regard to the offender or the case are given (no enumeration of special circumstances in law); fixed lower limit, decision lies in discretion of the judge	The Estonian Code of Criminal Procedure provides for reduced sentencing if reasonable time of proceedings is exhausted - § 306 Subsection 61. It is in the discretion of the judge. It is not clear whether the judge can go below minimum sanction, but it is very likely that if otherwise the sentence would have been minimum	

COUNTRY	Efforts to compensate damage	Cooperation with authorities	Guilty plea (confession)	Offence committed long time ago	Reasonable delay of proceedings	Balance with aggravating circumstances
					sanction then exceeding reasonable time will offer an opportunity to go below the minimum sanction.	
FINLAND	mitigated penal latitude (also general minimum for imprisonment, 14 days)	Ch6s6	Ch6s8a after 1.1.2015 mitigated penal latitude	mitigated penal latitude	not expressly mentioned	yes, Ch6s4
FRANCE	it is always in the judges discretion to go below minimum levels, no specific provision exist, judge has to justify his decision and to give reasons why he mitigated the minimum levels, reasons may relate to the personal circumstances of the offender or the offence	it is always in the judges discretion to go below minimum levels, no specific provision exist, judge has to justify his decision and to give reasons why he mitigated the minimum levels, reasons may relate to the personal circumstances of the offender or the offence	it is always in the judges discretion to go below minimum levels, no specific provision exist, judge has to justify his decision and to give reasons why he mitigated the minimum levels, reasons may relate to the personal circumstances of the offender or the offence	it is always in the judges discretion to go below minimum levels, no specific provision exist, judge has to justify his decision and to give reasons why he mitigated the minimum levels, reasons may relate to the personal circumstances of the offender or the offence	it is always in the judges discretion to go below minimum levels, no specific provision exist, judge has to justify his decision and to give reasons why he mitigated the minimum levels, reasons may relate to the personal circumstances of the offender or the offence	it is always in the judges discretion to go below minimum levels, no specific provision exist, judge has to justify his decision and to give reasons why he mitigated the minimum levels, reasons may relate to the personal circumstances of the offender or the offence
GERMANY	yes, fixed lower limit, discretion of judge	yes, fixed lower limit, discretion of judge				no
GREECE	yes, non-exhaustive list, fixed lower limit, obligatory for judge	yes, in cases of organised crime, terrorism and corruption, obligatory for the judge	yes, non-exhaustive list, fixed lower limit			

COUNTRY	Efforts to compensate damage	Cooperation with authorities	Guilty plea (confession)	Offence committed long time ago	Reasonable delay of proceedings	Balance with aggravating circumstances
HUNGARY	yes	yes	yes	yes	yes	yes
IRELAND		yes	yes, explicit			yes
ITALY	Mitigating common circumstance: explicitly provided by law (art. 62, n. 6, CC), reduction of the imposed sanction up to 1/3	yes, explicitly provided, possibility for the judge, with fixed lower minimum	yes, explicitly provided, possibility for the judge, with fixed lower minimum (in percentage of reduction)	No	yes, according to the case law of Supreme Corte di Cassazione, it can be considered by the judge within the general mitigating circumstances (circostanze attenuanti generiche: ar. 62 bis CC).Reduction of the imposed sanction up to 1/3.	yes
LATVIA	yes, explicitly provided, lower minimum (in percentage of reduction), judge's discretion	yes, explicitly provided, lower minimum (in percentage of reduction), judge's discretion	yes, explicitly provided, lower minimum (in percentage of reduction), judge's discretion		yes, explicitly provided, lower minimum (in percentage of reduction), judge's discretion	yes
LITHUNIA	yes, explicitly (provided in non-exhaustive list in the CC), but combined with other mitigating circumstances, possibility for the judge	yes, explicitly provided, but (provided in non-exhaustive list in the CC), combined with other mitigating circumstances, possibility for the judge	yes, explicitly provided, but (not provided in non-exhaustive list in the CC), combined with other mitigating circumstances, possibility for the judge	yes (not provided in non-exhaustive list in the CC), combined with other mitigating circumstances, possibility for the judge	yes (not provided in non-exhaustive list in the CC), combined with other mitigating circumstances, possibility for the judge	yes, not necessary that there are more mitigating than aggravating circumstances present, the decisive factor is the weight of the mitigating and aggravating circumstances
LUXEMBURG		yes, no list, left to judge's discretion, fixed lower minimum			yes	

COUNTRY	Efforts to compensate damage	Cooperation with authorities	Guilty plea (confession)	Offence committed long time ago	Reasonable delay of proceedings	Balance with aggravating circumstances
MALTA	It is in the judge's discretion to go below the minimum, as stated in Article 21 of the Maltese Criminal Code	It is in the judge's discretion to go below the minimum, as stated in Article 21 of the Maltese Criminal Code	Yes, unless the confession was tendered at a late stage in the proceedings or there were no prospects of the accused being liberated.	Yes, discretionary upon the judge. Case law stipulates that the passage of time does not mitigate the responsibility of the convicted person but it does lessen the social effects of the crime, unless it was of exceptional gravity.	Discretionary upon the judge	Discretionary upon the judge and depending on the type of offence and circumstances of the case.
NETHERLANDS	If the offender compensates damages for the victim, this will play a role as mitigating circumstance in determining the sentence.	This may play a role in determining the sentence, but it is not provided for in law.	The judge has a discretion to take a confession into account in determining the sentence, but it has not been provided for in law.	When criminal proceedings exceed the limits for a trial within a reasonable time as provided for in article 6 of the ECHR, the sentence may accordingly mitigated.	When criminal proceedings exceed the limits for a trial within a reasonable time as provided for in article 6 of the ECHR, the sentence may accordingly mitigated.	
POLAND	yes, explicitly provided	yes, explicitly provided				
PORTUGAL	yes, explicitly provided, reduced minimum	yes, as list not exhaustive		yes, explicitly provided, reduced minimum		both types of circumstances can apply to the same case; aggravating circumstances operate first, and mitigating circumstances afterwards
ROMANIA	yes, explicitly provided, possibility for judge, reduced minimum(in percentage)	yes	Yes, in cases of imprisonment, reduced minimum with 1/3. In cases of fine, reduced minimum with 1/4.	NO	NO	First, the mitigating circumstances have effect, then the aggravating ones. The limits are reduced and then are increased. Observation: the mitigating effect is

COUNTRY	Efforts to compensate damage	Cooperation with authorities	Guilty plea (confession)	Offence committed long time ago	Reasonable delay of proceedings	Balance with aggravating circumstances
						compulsory, while the aggravating one is optional
SLOVAKIA	yes, in general clause, possibility for the judge	yes, as general clause, possibility for the judge	yes, specifically said, but the judge decides	Yes, if the distance of time caused the public authorities	yes	
SLOVENIA	yes, explicitly provided, possibility for the judge, with fixed lower minimum	yes, explicit, possibility for the judge, with fixed lower minimum	yes, explicit, possibility for the judge, with fixed lower minimum	yes, possibility for the judge as list not exhaustive	yes, possibility for the judge as list not exhaustive	no balance is required
SPAIN	Possibility of imposing a punishment lower by one or two degrees when this mitigating circumstance concurs with another one or this was to be a highly qualified mitigating factor, and there are no aggravating ones whatsoever (Art. 66,1, 2º SCC).	In some cases, e.g. drugs trafficking, courts may impose, giving the reasons in the judgment, a punishment lower by one or two degrees to that stated by the Law for the felony concerned, as long as the subject has actively collaborated with the authorities or their agents either to prevent the offence from taking place, or to obtain decisive proof for identification of capture of others who are responsible or to prevent actions or the furtherance of the organisations or assemblies to which they have belonged or with which they	Possibility of imposing a punishment lower by one or two degrees when this mitigating circumstance concurs with another one or this was to be a highly qualified mitigating factor, and there are no aggravating ones whatsoever (Art. 66,1, 2º SCC). In some cases (e.g. offences against road safety), confession leads to a reduction of the penalty by one third. This is provided by the Spanish Code of Procedural Criminal Law.		Possibility of imposing a punishment lower by one or two degrees when this mitigating circumstance concurs with another one or this was to be a highly qualified mitigating factor, and there are no aggravating ones whatsoever (Art. 66,1, 2º SCC).	yes

COUNTRY	Efforts to compensate damage	Cooperation with authorities	Guilty plea (confession)	Offence committed long time ago	Reasonable delay of proceedings	Balance with aggravating circumstances
		may have collaborated (Art. 376 SCC). In case of terrorism there is also a possibility of imposing the punishment lower by one degree.				
SWEDEN	Mitigating circumstances apply to all offences and all sanctions and do not address specifically minimum sentences.	no	Mitigating circumstances apply to all offences and all sanctions and do not address specifically minimum sentences.	Specifically provided.	Specifically provided	yes

Annex B Imposition and execution

In the tables below an overview is presented of the data on imposition and execution in each of the 28 EU MS, as provided by the national rapporteurs is presented. Sources of all data are the national reports that have been compiled for this study. The national rapporteurs have been asked to identify **statistical data** on imposition and execution of minimum sanctions for the six selected offences: murder; sexual abuse; aggravated fraud; active corruption; aggravated drug trafficking; and robbery. If data are not available rapporteurs could either present a **sample of court judgements** and/or provide **expert estimates**. The expert estimates are an average of the interviews with national practitioners.

Country averages have been calculated by dividing the column total (total number of sanctions imposed below, at, above the minimum level) by the total number of sanctions imposed (according to the presented data or sampling of court judgement). The total number is presented in blue. If ranges are presented (mostly based on expert estimates), country average is based on lowest and highest given percentage.

- = no minimum sanction for this offence and/or no data, court judgements or expert estimates available

Table B.1. Imposition and execution of minimum sanctions Austria

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	0-5%	0-10%	85-100%	0-40%
Sexual abuse	0-1%	0-10%	89-100%	15-40%
Aggravated fraud	2-10%	0-10%	80-98%	0-20%
Active corruption (aggrav)*	5-10%	10-25%	65-85%	0-15%
Aggrav. drug trafficking	3-5%	0-10%	85-97%	0-20%
Robbery	3-8%	0-15%	77-97%	0-15%
Country average	0-10%	0-25%	77-100%	0-40%
Data source on number of sanctions imposed	Expert estimates * no minimum sanctions for 'basic' corruption.			
Data source on execution of minimum sanctions	Expert estimates * no minimum sanctions for 'basic' corruption.			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.2. Imposition and execution of minimum sanctions Belgium

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	0-20%	0-5%	75-100%	0-30%
Sexual abuse	0-5%	0-5%	90-100%	0-30%
Aggravated fraud	0-5%	0-5%	90-100%	0-30%
Active corruption	0-5%	0-5%	90-100%	0-30%
Aggrav. drug trafficking	0-5%	0-5%	90-100%	0-30%
Robbery	0-5%	0-5%	90-100%	0-30%
Country average	0-20%	0-5%	75-100%	0-30%
Data source on number of sanctions imposed	Expert estimates			
Data source on execution of minimum sanctions	Expert estimates			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.3. Imposition and execution of minimum sanctions Bulgaria

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	41%	22%	37%	-
Sexual abuse	-	-	-	-
Aggravated fraud	-	-	-	-
Active corruption	-	-	-	-
Aggrav. drug trafficking	-	-	-	-
Robbery	-	-	-	-
Country average	-	-	-	-
Data source on number of sanctions imposed	Murder data based on sampling of 27 court judgments (2012), of which 11 imposed below, 6 at and 10 above the minimum. All experts refused to give an educated guess.			
Data source on execution of minimum sanctions	No data or estimates.			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.4. Imposition and execution of minimum sanctions Croatia

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	77%	17%	23%	55%
Sexual abuse	30%	51%	70%	50%
Aggravated fraud	30%	37%	70%	43%
Active corruption	43%	34%	57%	40%
Aggrav. drug trafficking	83%	12%	17%	40%
Robbery	59%	29%	41%	50%
Total # imposed: 7.512	4.492	1.816	3.020	3.262
Country average	54%	30%	46%	46%
Data source on number of sanctions imposed	Information is available through the Croatian Bureau for Statistics and expert interviews.			
Data source on execution of minimum sanctions	Expert estimates			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.5. Imposition and execution of minimum sanctions Cyprus

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	-	LIFE	-	-
Sexual abuse	-	-	-	-
Aggravated fraud	-	-	-	-
Active corruption	-	-	-	-
Aggrav. drug trafficking	-	-	-	-
Robbery	-	-	-	-
Country average	-	-	-	-
Data source on number of sanctions imposed	Only mandatory life sentences for murder.			
Data source on execution of minimum sanctions	No data			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.6. Imposition and execution of minimum sanctions Czech Republic

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	22%	33%	45%	50-70%
Sexual abuse	-	-	-	70%
Aggravated fraud	-	-	-	40-60%
Active corruption	-	-	-	40-60%
Aggrav. drug trafficking	-	-	-	70%
Robbery	-	-	-	60-80%
Country average	-	-	-	40-80%
Data source on number of sanctions imposed	Sampling of court judgements: 45 for murder (2012). No data for other offences.			
Data source on execution of minimum sanctions	Expert estimates. Practitioners stressed that their estimates lack robustness.			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.7. Imposition and execution of minimum sanctions Denmark

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	-	-	100%	-
Sexual abuse	-	-	-	-
Aggravated fraud	-	-	-	-
Active corruption	-	-	-	-
Aggrav. drug trafficking	-	-	-	-
Robbery	-	-	-	-
Country average	-	-	100%	-
Data source on number of sanctions imposed	Information on sanctions is systematically collected and reported by the national statistics office Denmark's Statistics.			
Data source on execution of minimum sanctions	Decisions on early release are made administratively without any considerations regarding the sentencing latitude available to the judiciary.			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.8. Imposition and execution of minimum sanctions Estonia

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	11%	20%	69%	85%
Sexual abuse	-	-	-	85%
Aggravated fraud	-	-	-	76%
Active corruption	-	-	-	76%
Aggrav. drug trafficking	-	-	-	64%
Robbery	-	-	-	80%
Country average	-	-	-	78%
Data source on number of sanctions imposed	Sampling of court judgements for murder: 35 sanctions imposed in 2012: 4 imposed below, 7 at and 24 above minimum. Sampling of the 2012 first instance judgments. Judgements available at: https://www.riigiteataja.ee/kohtuteave/maa_ringkonna_kohtulahendid/main.html			
Data source on execution of minimum sanctions	Data from a statistical study of 2012 practice. Available at: http://www.kriminaalpoliitika.ee/sites/www.kriminaalpoliitika.ee/files/elfinder/dokumendid/ennetahtaegse_vabastamise_analuus_1-2013.pdf . Country average is average of percentages per offence.			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.9. Imposition and execution of minimum sanctions Finland

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	10%	1%	89%	0%
Sexual abuse	1%	1%	97%	0%
Aggravated fraud	3%	4%	93%	0%
Active corruption	-	-	-	-
Aggrav. drug trafficking	4%	5%	91%	0%
Robbery	5%	5%	90%	0%
Total # imposed: 5.876	255	254	5.367	-
Country average	4%	3%	77%	0%
Data source on number of sanctions imposed	Data available through the Finnish national office for statistics (Tilastokeskus).			
Data source on execution of minimum sanctions	Conditional release always takes place before the full sentence except where prosecutors demand that the sentence is served in full. The prosecutor general's office did not recall any case where this had taken place, nor did other interviewed practitioners.			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.10. Imposition and execution of minimum sanctions France (re-offenders)

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	27%	12%	61%	-
Sexual abuse	59%	3%	38%	-
(Aggravated) Fraud	95%	4%	2%	-
Active corruption	99%	1%	0%	-
Aggrav. drug trafficking	91%	7%	2%	-
Robbery	58%	9%	34%	-
Total # imposed: 158.010	143.381	9.664	5.439	-
Country average	72%	6%	23%	-
Data source on number of sanctions imposed	Data are provided on request of the author by the Service of Statistics.			
Data source on execution of minimum sanctions	No information is available. Country average is available through the statistics of the minister of Justice for the year 2008 and depicts full execution of minimum sanctions only.			

Source: ECLAN national report on minimum sanctions, 2014

Table B.11. Imposition and execution of minimum sanctions Germany

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	42%	0%	58%	20-70%
Sexual abuse	6%	8%	86%	10-60%
Aggravated fraud	7%	2%	91%	10-80%
Active corruption	69%	6%	25%	10-80%
Aggrav. drug trafficking	22%	0%	78%	20-80%
Robbery	35%	0%	65%	10-60%
Total # imposed: 63.177	10.828	853	51.496	28.848
Country average	30%	3%	67%	10-80%
Data source on number of sanctions imposed	All imposed criminal sanctions are published in the Strafverfolgungsstatistik. This source shows the total number of sanctions imposed for any given offence as well as which sanctions were imposed. The statistic is published annually by the Federal Statistical Office, the latest publication dates from 2012.			
Data source on execution of minimum sanctions	Expert estimates			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.12. Imposition and execution of minimum sanctions Greece

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder (aggravated)*	-	-	-	15%
Sexual abuse	-	-	-	< 10%
Aggravated fraud	-	-	-	< 10%
Active corruption	-	-	-	< 10%
Aggrav. drug trafficking	-	-	-	15%
Robbery	-	-	-	15%
Country average	-	-	-	~13%
Data source on number of sanctions imposed	No data. There is a general register but the data is too general and, in some cases, incomplete and not reliable.			
Data source on execution of minimum sanctions	Expert estimates. Information on the full execution of sanctions comes from six judges who have been interviewed in light of this study. An estimation of the country average full execution of sanctions, neglecting the '<', has been provided and is thus based on expert judge judgments.			

Source: ECLAN national report on minimum sanctions, 2014.

* Minimum sanctions only for aggravated murder.

Table B.13. Imposition and execution of minimum sanctions Hungary

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	28%	-	72%	20%
Sexual abuse	35%	-	65%	20%
Aggravated fraud	60%	-	40%	20%
Active corruption (aggrav)*	52%	-	48%	20%
Aggrav. drug trafficking	77%	-	23%	20%
Robbery	44%	-	56%	20%
Total # imposed: 11.041	5.570	-	5.471	-
Country average	49%	-	51%	20%
Data source on number of sanctions imposed	The data is from the official statistic of the Kuria (highest court). The total number of sanctions includes only the imprisonments. For sexual abuse: There is no data about the age of the victims of sexual abuses, so I worked with aggregated data. For Aggravated Fraud: It includes the 310 § (4) HCC, 318 § (6) HCC, but the data is about the 2011 and 2012 years.			
Data source on execution of minimum sanctions	The data is from the official statistic of the Hungarian Prison Service. The data is aggregated, there is not any separated data per crimes			

Source: ECLAN national report on minimum sanctions, 2014.

* Minimum sanctions only for aggravated corruption.

Table B.14. Imposition and execution of minimum sanctions Ireland

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	1%*	99%	0%	0%
Sexual abuse	-	-	-	-
Aggravated fraud	-	-	-	-
Active corruption	-	-	-	-
Aggrav. drug trafficking	69%	23%	8%	-
Robbery	-	-	-	-
Country average	-	-	-	-
Country average	-	-	-	-
Data source on number of sanctions imposed	Offences other than murder do not exist in Irish Law, and therefore no statistics are available. If a suspect is convicted of murder a judge will impose the life sentence. *One person found to have committed attempted murder, despite being tried of murder.			
Data source on execution of minimum sanctions	there is no offence such as this in Irish law, however there is an offence of Drug Trafficking and a sampling of 79 judgments of the Court of Criminal Appeal was conducted in 2013 for the period of 2009- 2013 and it found that in relation to the offences of 15A and 15 B which attract a presumptive minimum sentence for possession or importation with the intent to supply there were 61 sentences; of these in 6 instances the sentence was suspended in full, thereby forming the lowest sentence which accounts for 10%. In 23 % a term of imprisonment of 10 years or more was imposed. A sentence imposed of between 5 and ten years was measured at 46%, fewer than 5 years 18%, fewer than 2% at 3 %. The report stated that the average sentence was between 5 and 8 years generally			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.15. Imposition and execution of minimum sanctions Italy

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Data source on number of sanctions imposed	No data available. Country experts could not provide an educated guess.			
Data source on execution of minimum sanctions	No data available. Country experts could not provide an educated guess.			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.16. Imposition and execution of minimum sanctions Latvia

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	2%	8%	89%	89%
Sexual abuse	-	-	-	-
Aggravated fraud	-	-	-	-
Active corruption	-	-	-	-
Aggrav. drug trafficking	-	-	-	-
Robbery	-	-	-	-
Country average	-	-	-	-
Data source on number of sanctions imposed	Data available on murder through the court information system (Tiesu informacijas sistēma tie.s.lv). Other crimes have unreliable data or are incomplete.			
Data source on execution of minimum sanctions	Data obtained (murder) through the information centre of the minister of interior. Information on other types of sanctions, based on expert judgment, has too much variation to be of statistical significance.			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.17. Imposition and execution of minimum sanctions Lithuania

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	5%	35%	60%	5-10%
Aggravated murder	5%	27%	68%	-
Sexual abuse	-	-	-	-
Aggravated fraud	-	-	-	-
Active corruption	-	-	-	-
Aggrav. drug trafficking	-	-	-	10-30%
Robbery	-	-	-	-
Total # imposed: 84	4	26	54	-
Country average	5%	31%	64%	5-30%
Data source on number of sanctions imposed	Sampling of court judgements (40 murder and 44 aggravated murder). The indicated data relies on the sampling of first instance court (Vilnius, Kaunas, Klaipeda, Šiauliai and Panevėžys Region Courts) judgments rendered from 1 January to 31 December 2012. This data was collected from the official public data base for court decisions "Liteko". It should be noted that this is the data of the first instance decisions that may be varied by appeal or cassation instance courts.			
Data source on execution of minimum sanctions	Expert estimates. The indicated data relies on guesses from practitioners. The answers to this question presented only 5 respondents.			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.18. Imposition and execution of minimum sanctions Luxembourg

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Data source on number of sanctions imposed	No data. Almost all the interviewees considered not possible to provide a reliable guess without knowing the concrete circumstances of a case. Due to the large discretionary power that the judge enjoys in the application of mitigating circumstances, the concrete level of the imposed penalty could vary a lot, independently from the prescribed legal minimum which could be disregarded.			
Data source on execution of minimum sanctions	No data. The interviewees agreed on the fact that, as a general trend, conditional release (liberation conditionnelle) is largely applied.			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.19. Imposition and execution of minimum sanctions Malta

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Data source on number of sanctions imposed	No data			
Data source on execution of minimum sanctions	No data			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.20. Imposition and execution of minimum sanctions Netherlands

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
	No data			
Data source on number of sanctions imposed	No minimum sanctions			
Data source on execution of minimum sanctions	No minimum sanctions			

Table B.21. Imposition and execution of minimum sanctions Poland

	Imposed below minimum	Imposed at minimum	Imposed above minimum	-Fully executed (estimated %)
Murder	29%	14%	57%	-
Sexual abuse	10%	64%	27%	-
Aggravated fraud	0,6%	19,7%	79,6%	-
Active corruption	1%	4%	95%	-
Aggrav. drug trafficking	38%	20%	42%	-
Robbery	0,1%	7%	92%	-
Total # imposed: 124.015	2.470	39.934	236.606	-
Country average	13%	21%	65%	-
Data source on number of sanctions imposed	Data. The data provided above is based on a number of sources, in particular statistical data provided by the Ministry of Justice. Nevertheless the above should be treated as an estimate due to the fact that the statistical data available not always deals with the same category of statistical exercise, e.g. the data on aggravated fraud also covers less severe cases of fraud. Data provided only reflects imprisonment sentences.			
Data source on execution of minimum sanctions	No data available. Interviewees were not keen to make guesses.			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.22. Imposition and execution of minimum sanctions Portugal

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	0-20%	0-10%	75-98%	-
Sexual abuse	0-20%	0-20%	70-100%	-
Aggravated fraud	0-10%	0-30%	60-100%	-
Active corruption	0-10%	0-30%	70-100%	-
Aggrav. drug trafficking	0-25%	0-40%	45-100%	-
Robbery	0-30%	0-30%	60-100%	-
Country average	0-30%	0-40%	45-100%	-
Data source on number of sanctions imposed	Expert estimates. Values above are median values of expert judgement (see country report for experts), for both imposed below/on/above and fully executed sanctions. Data on the concrete sentences exist already but cannot be used because the quality and reliability of their collection and processing are still under evaluation.			
Data source on execution of minimum sanctions	There are no statistics available. Almost all practitioners have declined to share their perceptions, claiming that they would be fictions and given at random.			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.23. Imposition and execution of minimum sanctions Romania

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	26%	8%	66%	5%
Sexual abuse	22%	32%	46%	1%
Aggravated fraud	22%	6%	72%	1%
Active corruption	17%	11%	72%	0%
Aggrav. drug trafficking	11%	5%	84%	3%
Robbery	10%	9%	81%	2-3%
Total # imposed: 6426	874	517	5.035	-
Country average	18%	12%	70%	2%
Data source on number of sanctions imposed	Data. There is a central register but the available data is very general. Data is only accessible through official means. Data are based on the number of persons who are imprisoned in 2012 for the aforementioned offences Romania Ministry of Justice, Romanian national Administrations of Penitentiaries).			
Data source on execution of minimum sanctions	Data provided by Romanian National Administrations of Penitentiaries and the Romanian Ministry of Justice. Depending on the gravity of the sanction and of the <i>mens rea</i> (according to the former Criminal Code), after the execution of 2/3 or ¾ of the penalty, conditional release is possible. Country average is calculated as average of individual offences.			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.24. Imposition and execution of minimum sanctions Slovakia

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	0%	0%	100%	-
Sexual abuse	79%	0%	21%	-
Aggravated fraud	45%	35%	20%	-
Active corruption	75%	4%	21%	-
Aggrav. drug trafficking	13%	27%	60%	-
Robbery	44%	12%	44%	-
Total # imposed: 96	51	14	31	-
Country average	43%	13%	44%	-
Data source on number of sanctions imposed	Sampling of court judgements: Murder (3); Sexual abuse (19), Fraud (20), Corruption (24), Drug trafficking (14), Robbery (16).			
Data source on execution of minimum sanctions	No data			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.25. Imposition and execution of minimum sanctions Slovenia

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	69%	9%	22%	30%
Sexual abuse	77%	10%	13%	30%
Aggravated fraud	32%	12%	56%	30%
Active corruption	0%	0%	100%	30%
Aggrav. drug trafficking	68%	6%	26%	30%
Robbery	34%	29%	37%	30%
Total # imposed: 320	153	58	109	-
Country average	47%	11%	42%	30%
Data source on number of sanctions imposed	Data provided by the prosecutor service: internal data of which access was granted for this specific research. Percentages are derived from raw data.			
Data source on execution of minimum sanctions	Based on expert judgement the above listed crimes are treated in a similar way as 'other' crimes and 30% of the sanctions are fully executed.			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.26. Imposition and execution of minimum sanctions Spain

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	79%	7%	15%	-
Sexual abuse	-	-	-	-
Aggravated fraud	-	-	-	-
Active corruption	-	-	-	-
Aggrav. drug trafficking	-	-	-	-
Robbery	-	-	-	-
Country average	-	-	-	-
Data source on number of sanctions imposed	Sampling of court judgements (murder: 172 in 2012). There is a Central Register of Convicted Persons. These data are not publicly accessible. The National Statistical Institute (INE) is charged with publishing data related to convictions. These data do not provide for statistics on minimum sanctions.			
Data source on execution of minimum sanctions	The general rule on sanction is as follows: The conditional early release is possible after three quarters of the sentence, this does not depend on any minimum sanctions set for a certain crime.			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.27. Imposition and execution of minimum sanctions Sweden

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
Murder	8%	74%	18%	0%
Sexual abuse	-	-	-	0%
Aggravated fraud	8%	6%	86%	0%
Active corruption	-	-	-	0%
Aggrav. drug trafficking	1%	12%	86%	0%
Robbery	21%	12%	56%	0%
Total # imposed: 5.030	663	846	3.021	-
Country average	6%	17%	41%	0%
Data source on number of sanctions imposed	Data. The official statistics is published yearly in the Yearbook of Criminal Statistics (Kriminalstatistik) but for the purpose of this report, more detailed breakdowns have been made through direct access to Brå's database. The database – which does not contain personal information or details on individual cases – is available to the public.			
Data source on execution of minimum sanctions	Due to the mandatory rule on early release, sentences are not actually served in full.			

Source: ECLAN national report on minimum sanctions, 2014.

Table B.28. Imposition and execution of minimum sanctions UK (England and Wales)

	Imposed below minimum	Imposed at minimum	Imposed above minimum	Fully executed (estimated %)
	No data			
Data source on number of sanctions imposed	From the statistics available it is not possible to complete the answers on imposition and execution. Everyone convicted of murder will, if over 18 have received a mandatory sentence of life imprisonment; if under 18, imprisonment during Her Majesty's Pleasure. Those sentenced for sexual offences against children, fraud, bribery, drug offences and robbery will almost invariably have received sentences indicated in the relevant Sentencing Council Guidelines.			
Data source on execution of minimum sanctions				

Source: ECLAN national report on minimum sanctions, 2014.

Annex C Research team

Table E.1. EU28 network of national experts

Country	Member	Organisation
Austria	Christian Mahler	University of Vienna
Belgium	Ines Gallala	VUB, Brussels
Bulgaria	Miroslava Manolova	Sofia University
Croatia	Maja Munivrana Vajda Aleksandar Marsavelski	University of Zagreb
Cyprus	Theodora Christou	Legal Expert
Czech Republic	Ivo Šlosarčík	Charles University Prague
Denmark	Jorn Vestergaard	University of Copenhagen
England & Wales	John R. Spencer	University of Cambridge
Estonia	Jaan Ginter	University of Tartu
Finland	Samuli Miettinen	University of Helsinki
France	Céline Cocq	Université Libre de Bruxelles
Germany	Frieder Dünkel Nicholas Mohr	University Greifswald
Greece	Valsamis Mitsilegas Niovi Vavoula	Queen Mary University London
Hungary	Imre Szabo	Attorney at Public Sector
Ireland	Máire Duffy	Barrister
Italy	Giovanni Grasso Valeria Scalia	University of Catania
Latvia	Kristina Strada Rozenberga Ārija Meikališa	University of Riga
Lithuania	Gintaras Svedas	University of Vilnius
Luxembourg	Katalin Ligeti	University of Luxembourg
Malta	Leonard Caruana	Caruana Camilleri Xuereb Advocates
Netherlands	Karin Veegens	University of Maastricht
Poland	Adam Lazowski Anna Labedzka	University of Westminster
Portugal	António Pedro Nunes Caeiro Miguel João Costa	University of Coimbra
Romania	Florin Streteanu Daniel Nitu	University in Cluj-Napoca
Slovakia	Anna Ondrejova	General Prosecutor Office of the Slovak Republic
Slovenia	Katja Sugman Stubbs Mojca Mihelj Plesničar	University of Ljubljana
Spain	Marta Muñoz de Morales Romero	University of Castilla-La Mancha
Sweden	Christoffer Wong	University of Lund

Table E.2. Project team

Member	Role	Organisation
Prof. Dr. Robert Kert	Senior team member, lead of the study	ECLAN
Dr. Gisèle Vernimmen	Senior Researcher	ECLAN
Dr. Andrea Lehner	Research and Organisation of national reports	ECLAN
Dr. Brigitte Slot	Senior team member	Ecorys
Joachim Schellekens	Research and Organisation	Ecorys
Prof. Dr. Anne Weyembergh	Cross-border cooperation	ECLAN

Annex D Questionnaire

Questionnaire

Study on minimum sanctions in the EU Member States

Client: European Commission, DG Justice

Instructions

Purpose of the study

This study on minimum sanctions in the EU Member States (MS) is initiated by the call for tender by the European Commission, DG Justice (contract notice: 2013/S 158-275091). With a view to the new legal framework for criminal law legislation under the Lisbon Treaty, the objective of the study is 'to achieve a better understanding of the basic legislative structure and – based on statistics – of the practice of national criminal law systems on minimum sanctions in 28 EU Member States. The results of the study will assist the EU legislator in ensuring added value and improving consistency and coherence whenever the adoption of minimum criminal sanctions will be considered.

We will analyse with these country reports, the rationale and application of minimum sanctions in national legalisation and practice in each of the 28 EU MS. Some work has been done in this field, but the Commission wants a more in-depth analysis on this specific topic with reference to the legal systems in all EU MS. The study aims to analyse which legal systems in the EU apply a concept of minimum sanctions, and how these national concepts differ from each other, particularly in relation to the degree of discretion that this concept leaves to the judiciary in sentencing, and to identify the impact, positive or negative, which minimum sanctions may have in MS and in the EU as such.

The study seeks to:

- Analyse national legislation and practice;
- Collect and analyse statistical data in MS that apply minimum sanctions.

Scoping and definitions

For the purpose of this study, minimum sanctions are to be understood as the minimum levels of fines and imprisonment that should be imposed by a court when a person is held liable for a criminal offence. A precise definition is difficult to give, as it differs in many legal systems. The geographical scope of the study will be all 28 EU MS. The study will be limited to fines and imprisonment.

Organisation

The study is carried out by the consortium of ECORYS and ECLAN, who have jointly conducted several studies (impact assessments, comparative legal analyses) in commission of the European Commission (DG Justice). Project leader is Ecorys (Dr. Brigitte Slot, project director). Management of the 28 MS reports, comparison and analysis of MS legislation and practice will be carried out by ECLAN under supervision of Prof. Dr. Robert Kert (Vienna University of Economics and Business).

What we ask from you as country rapporteur

- Conduct desk-research (national legal provisions, policy documents, academic literature, jurisprudence and court reports);
- Collect cases and statistical material on sanctions for different categories of offences (If available. If not, this should be compensated by an increased number of interviews. The number of interviewees should be related to the availability of statistics). If possible, conclusions can also be drawn from sampling a number of court judgements over a given time;
- Conduct in-depth interviews with at least 8 practitioners (judges, prosecutors, defence lawyers, persons in charge of monitoring or reviewing the sentence under execution, policymakers). Among the interviewed practitioners should be:
 - At least four judges;
 - At least one or two prosecutors;
 - At least four of them should deal with the execution of sanctions;
 - At least one of them has specific experience with cross-border cases.
- Report your findings according to the directives as presented in this questionnaire.

Note that strict academic standards must apply to the research in terms of reliability of sources and referencing. The information must be up-to-date and balanced, making it possible to describe, analyse and compare the outputs from the different MS.

Please cite the legal provisions (Articles, Sections) and case law exactly. Please remember to cite any references – particularly the used literature – in footnotes. Any evidence from interviews must be clearly attributed. It is important to know who said what (which does not necessarily mean that the names must be known, but the function/rule of the interviewee).

Please fill in the questionnaire which will make up your report. Please answer all questions and do not write in a separate document not following the questions and sequence of the questionnaire.

The report should be of a **maximum of 15 pages** (except tables) long.

Sequence of activities

1. Briefing by the core team (Robert Kert and Andrea Lehner) (before July 18);
2. Identify interviewees and data sources, desk research, interviews (after briefing before the end of July);
3. Write interview report, validate reports by the interviewee and prepare draft country report (July 18 - September 17);
4. Submission by **17 September 2014** to: andrea.lehner@wu.ac.at;
5. Feedback by core team;
6. Final country report **10 October 2014**.

Confidentiality

Please inform each interviewee that:

- Interview information will be treated confidential and only used for the purpose of this study;
- The interviewee will validate interview reports;
- Interview report will serve as input for the final report, which will be published;
- In the final report, interviewees have the possibility to remain anonymous, if they wish to;
- In the final report an overview will be given of the conducted interviews. The overview will comprise the Member State and the general stakeholder category.

Country	
Date	
Rapporteur	
List of interviewees	
<p>Please answer the questions, if relevant, for both natural and legal persons. Please note that all responses should cover both imprisonment and fines, if applicable. Please attach relevant literature and other source material as much as possible Please fill in the questionnaire which will make up your report.</p>	
<u>1. Legal situation</u>	
<p>1.1 Does your law provide for minimum sanctions? If yes, which ones (note that we are interested in both types of minimum sanctions: imprisonment and fines)? If not, please go to question 4.1. What are the minimum sanctions for imprisonment? What are the minimum sanctions for fines for natural and legal persons? <i>Please give a short overview of the system here, including information on legal persons, and more detailed information below.</i></p>	
<p>1.2 Does your law provide for a general minimum sanction that is applicable to all offences (imprisonment, fines)? What is the level of these general minimum sanctions? Please provide details.</p>	
<p>1.3 Does your law apply a categorization of offences with defined levels of minimum sanctions (for example a maximum coupled with a mandatory minimum, or a mandatory minimum where the offence was committed in a specified way or in particular circumstances)? Or is the level of a minimum sanction regulated in each specific offence in a different way? Please provide details.</p>	

1.4 Does your law provide for minimum sanctions for specific offences? If so, please give detailed information on these minima in **table 1**. Please refer to the law stipulating the sanctions (respective provisions of the relevant laws, date of enactment) for the enumerated offences, type and level of sanction (in particular imprisonment and/or fines) and type of offenders (individuals and/or legal persons, prime offenders, recidivists, specific groups of offenders). It is not necessary to indicate maximum sentences.

Please only refer to the selected offences and their corresponding aggravating and mitigating circumstances, which change the range of penalties. The enumerated offences shall not be understood as terms describing 'legal families'; therefore please do not indicate sanctions for similar, but separate offences. Furthermore, please mention only minimum sanctions (mostly provided for in the special part of the criminal law), which reflect the seriousness of the offence and the value of the legally protected interest. General minima for fines and imprisonment sanctions (e.g. 1 day), which apply to ALL offences, are not of interest for the purposes of table
Please do not quote the relevant provisions word by word, but indicate only short keywords. If the relevant provisions of your national legislation are available in English, please send us the texts in a separate document.

1.5 According to your national legislation, are minimum sanctions to be applied **in all cases** or are minimum sanctions **limited to certain groups of offences or specific cases by law** (for example minimum sanctions only for recidivism or particular aggravating circumstances)? Please explain.

1.6 Are there any **sentencing guidelines** in your legal system which provide for minimum limits for sentencing? If yes, are they binding for the judicial authorities?

1.7 (a) Are there **provisions in your legislation** according to which **in specific circumstances minimum sanctions do not exist** (for example if the offender is a juvenile)?
 (b) Are there legal provisions according to which the level of minimum sanctions **is lower**

according to the law (for example if the offender is a young adult)? If so, please explain the provisions in detail.

1.8 Are **courts** allowed to go **below the level** of the minimum sanction? If yes, according to which provisions? Are these provisions derived from procedural or substantive law? Are they provided for in general law or the specific offence? If there is no legal provision, can the application of minimum sanctions be mitigated or avoided in other ways? Please explain.

1.9 (a) **In what circumstances** may courts go below the level of the minimum sanctions (for example where there are mitigating circumstances such as the youth of the offender, the absence of grave harm, the mode of participation, attempt, omission, first time offender, diminished responsibility, personal situation of the offender)? (b) Does this lie in the **discretion of judges** or is it obligatory where the mitigating circumstances exist? Please explain the provisions in detail.

Table F.1. Minimum sanctions

Offence	Yes / No	Provisions, Legal act nr and date	Type of sanction, minimum sanction level*	Offenders**
Murder (wilful homicide, but without premeditation)	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Rape	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Grievous bodily injury	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Theft	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Fraud (including against financial interests of the EU)	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Participation in a terrorist organisation in	Yes / No			Natural / Legal persons

Offence	Yes / No	Provisions, Legal act nr and date	Type of sanction, minimum sanction level*	Offenders**
the sense of Art 2 (2) (b) FD 2002/475/JHA				All / Repeat / Other
– Aggravating				
– Mitigating				
Sexual abuse of children in the sense of Art 3 (4) Directive 2011/92/EU	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Trafficking in human beings	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Illicit drug trafficking	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Money laundering	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Active Corruption in the sense of Art 3 (1) EU Corruption Convention 1997	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				

Offence	Yes / No	Provisions, Legal act nr and date	Type of sanction, minimum sanction level*	Offenders**
– Mitigating				
Passive Corruption in the sense of Art 2 (1) EU Corruption Convention 1997	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Counterfeiting currency	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Forgery/counterfeiting of means of payment	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Participation in a criminal organisation in the sense of Art 2 (a) FD 2008/841/JHA	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Trafficking in stolen vehicles	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Robbery	Yes / No			Natural / Legal persons

Offence	Yes / No	Provisions, Legal act nr and date	Type of sanction, minimum sanction level*	Offenders**
				All / Repeat / Other
– Aggravating				
– Mitigating				
Armed robbery	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Arms trafficking	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Treason	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Collection, transport or disposal of dangerous waste	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Perjury				Natural / Legal persons All / Repeat / Other
– Aggravating				

Offence	Yes / No	Provisions, Legal act nr and date	Type of sanction, minimum sanction level*	Offenders**
– Mitigating				
Driving under the influence	Yes / No			Natural / Legal persons All / Repeat / Other
– Aggravating				
– Mitigating				
Remarks, relevant legislation or explanation:				
<p>*Minimum sanction level: If there is more than one minimum sanction due to different aggravating or mitigating circumstances which change the range of penalties of the specific offences, please indicate all of them. Please specify whether the mentioned minimum sanction refers to the basic offence or an aggravated or mitigating circumstance.</p> <p>**Offenders: Please specify if the stated minimum sanction(s) is/are foreseen for natural and/or legal persons. Furthermore, please state which of the following categories apply: All = The minimum sanction applies to all offenders; Repeat = The minimum sanctions applies exclusively to (second or third) offenders; Other = The minimum sanction applies to other specific groups of offenders.</p>				

2. Imposition

2.1 If courts have the discretion to go below the level of minimum sanction, **do they use them?**

If yes, under what **conditions** do they tend to use this discretion? *For example for minors, low level of harm, participations as accessory rather than as principal, attempt omission, first time offender, diminished responsibility, unavoidable errors, desperate situation of the offender, cooperation with law enforcement authorities.*

2.2 **What do practitioners think about minimum sanctions?** Do they see them as a necessary and useful limitation of judges' discretion, or as a restriction, which makes it difficult to impose a sanction appropriate to the concrete case?

2.3 If a minimum sanction is imposed, **is it (often) executed in full** or, for example, are rules on conditional or early release be applied? Does the **law require** it to be executed in full? Please explain.

2.4 Are there any **legal provisions** on the **execution** of minimum sanctions? If yes, do the respective **decisions** (for example that rules on early release are not applicable in case of minimum sanctions) lie in the **discretion of practitioners** (judges, prosecutors, public officials in prisons)?

2.5 **What mechanisms are used to mitigate the imposition and execution of minimum sanctions** (such as conditional sentencing, or replacing a custodial with a non-custodial sentence, conditional release)? Please explain whether such devices may be applied to mitigate the execution of minimum sanctions.

3. Implications for criminal law

3.1 Are there any *other implications of minimum sanctions on substantive criminal law*?

Please give brief comment or analysis of the main and most relevant issues. *For example: Is it relevant for the division between misdemeanours and felonies; for the criminal liability of an attempt or the participation in an offence? Do minimum levels have implications on the role as a predicate offence to money laundering, the duration of the prescription period, on the insertion of a sentence in the criminal record and/or of the term of erasure from criminal records? Do minimum levels of sanctions have any consequence for accessory penalties and measures (e.g. expulsion from a profession or removal from office; exclusion from running a business)? Are minimum sanctions relevant for the execution of sentences, e.g. the possibility of suspension of sentences, the possibility of early (conditional) release, distinction between imprisonment and detention?*

3.2. Are there any *other implications of minimum sanctions on procedural criminal law*?

Please give brief comment or analysis of the main and most relevant issues. *For example: Is it relevant for the determination of the competent court, for the application of certain investigative measures, for the possibility and conditions of an arrest warrant and for pre-trial detention? Do they have any implications on the possibility of certain procedures such as summary punishments? Any relevance for mandatory appearance in court (e.g. since they have implications on the categorization of offences), or the right to procedural safeguards (such as the right to lodge an appeal, right for a counsel for the defence, right for a counsel for the joint plaintiff; right to refuse testimony, possibility to reopen a trial after res judicata)?*

4. Legal history and debate

4.1 Please provide a brief overview of the legal history of minimum sanctions in your MS.
(a) When were minimum sanctions introduced (if so), or abolished (if they have been)? (b) How has the concept and legal application of minimum sanctions evolved and why has it changed?

4.2 What is or was the (political) idea behind the introduction of minimum sanctions?
What does the legislator want to say by introducing minimum sanctions?

4.3 Are there concrete plans to introduce or alter minimum sanctions in the near future (general or for one or more specific offence(s)? If so, please explain the nature and status of this draft legislation.

4.4 (a) Please provide a **brief overview of the recent and current debate** on minimum sanctions (political, academic, judicial practitioners). (b) Which **arguments** are presented **in favour** and **against** minimum sanctions? (c) Are there arguments which relate to **implications for criminal law**?

4.5 Is there a **constitutional debate** on minimum sanctions? Are there any **decisions** of your **Constitutional Court** or other **High Court**?

4.6 (a) Is there any research or evidence on the supposed **effects of minimum sanctions on crime rates**? (b) Did the **introduction of new minimum sanctions** have any effect on the crime rate?

4.7 Do you foresee any legal and/or political obstacles to EU legislation obliging Member States to introduce certain minimum sanctions? If your MS does not provide for minimum sanctions, please continue to questions 5.6 and 5.8.

5. Statistical analysis

5.1 Is there any obligation for the respective authorities (for example courts) to give information on the sanctions imposed? Does a **system to register imposed sanctions** exist in your country? If yes, how does it function?

5.2 We have preselected six offences: murder, sexual abuse of children, aggravated fraud, active corruption, aggravated illicit drug trafficking, robbery. Please indicate in **table 2** on the basis of **official statistics**:

- The penalty range for these sanctions;
- The total number of sanctions imposed over the 5-year period 2008-2012;
- The lowest and highest imposed sanction; and
- The number or percentage that is imposed below, at or above the minimum level.

If your legislation does not provide for minimum sanctions for the selected offences, please also fill in table 2 and disregard the columns "imposed at / below / above the minimum". Please answer this question with information obtained from official statistics. If there is no statistical data, please go to question 5.3.

5.3 If there is no statistical data available, please provide for a '**sampling of court judgements**' for the offence **murder**. No sampling is needed in regard to the other offences specified in table 2. Sampling of court judgements shall mean to look at the judgements rendered in the year 2012 (only!) by all criminal courts of first instance in your country (around 60 judgements). Please identify the sentences imposed in these judgements and fill in **table 2**.

If there is no minimum sanction for murder, please indicate the lowest and highest imposed sanctions in 2012.

If a sampling of court judgements is not feasible in your country (e.g. because the decisions of first instance are not published in a database), please shortly explain the reasons why it is not feasible and go to 5.4.

5.4 Please **ask the interviewees for an estimated guess** on the imposition of **sanctions** in order to fill in **table 2** and/or to check the figures obtained from your sampling of court judgements.

*If there is no minimum sanction for the specified offences, please ask for guesses in regard to the lowest and highest imposed sanctions. If there are neither statistics available nor a sampling of judgements feasible, please conduct **interviews with at least two other judges**. Please indicate the*

minimum / maximum scope of the guesses by the practitioners in the table. For example interviewee 1 says 5%, interviewee 2 says 30%, interviewee 3 says 15%: scope of 5 – 30%.

5.5 Please indicate in **table 3** the extent to which **minimum sanctions** are **executed** in full?

If there are no statistics available, please ask the interviewees for an estimated guess to the extent that minimum sanctions are executed in full? Please indicate the minimum / maximum scope of the guesses by the practitioners in the table. For example interviewee 1 says 5%, interviewee 2 says 30%, and interviewee 3 says 15%: scope of 5 – 30%.

5.6 Please ask the interviewees to comment on the following statements related to the deterrent effect of minimum sanctions:

Statement 1: Minimum sanctions are necessary to ensure that an effective deterrence can be achieved.

Statement 2: What makes up the deterrent effect of minimum sanctions? Is it the threat of being sent to prison for the offence committed?

Statement 3: There are other factors that have a deterrent effect such as the risk of being caught (efficiency of law enforcement bodies, or of prosecution services), and the possibility of an effective, full execution in practice of the sanction imposed. These are a) less b) more c) as important as minimum sanctions.

Statement 4: The severity of the sanction, in particular a minimum sanction in one Member State has or could induce "delocalisation" of the criminal activity to another MS where the penal regime is less severe ("forum shopping").

5.7 Please describe cases or examples where judges:

- Would preferably / often go below the minimum sanction (and why);
- Would preferably never go below the minimum sanction (and why).

5.8 If minimum sanctions **are not applied** in your legislation, would you consider that including minimum sanction levels in the legislation would be useful and have an influence on the sanctioning practice?

Table F.2. Imposition of imprisonment sanctions

Offence	Penalty range	Total number of sanctions imposed 2008 - 2012	Lowest imposed sanction	Imposed below minimum	Imposed at minimum	Imposed above minimum	Highest imposed sanction			
			months/years	Number	%	Number	%	Number	%	months/years
Murder (wilful homicide, but without premeditation)										
Sexual abuse of children in the sense of Art 3 (4) Directive 2011/92/EU										
Aggravated Fraud										
Active Corruption in the sense of Art 3 (1) EU Corruption Convention 1997										
Aggravated illicit drug trafficking										
Robbery										
Sources, remarks or explanation: Please clearly mark if the indicated data relies on statistics, sampling of court judgements or on guesses from practitioners.										

Offence	Penalty range	Total number of sanctions imposed 2008 - 2012	Lowest imposed sanction	Imposed below minimum	Imposed at minimum	Imposed above minimum	Highest imposed sanction

Table F.3. Execution of minimum sanctions

Offence	Minimum sanction	(Estimated) % executed in full	Explanation
Murder (wilful homicide, but without premeditation)			
Sexual abuse of children in the sense of Art 3 (4) Directive 2011/92/EU			
Aggravated Fraud			
Active Corruption in the sense of Art 3 (1) EU Corruption Convention 1997			
Aggravated illicit drug trafficking			
Robbery			
Sources, remarks or explanation: Please mark if the indicated data relies on statistics or on guesses from practitioners.			

Guidelines for interviews with practitioners

Interviews with practitioners should help to find out how practitioners deal with minimum sanctions, if and how they try to circumvent them and what kind of effect minimum sanctions produce in practice. Moreover, they should give information on sentencing in the case of specific offences (see table 2) and on the execution of minimum sanctions.

In particular, the practitioners should be asked the following questions (in brackets you will find the corresponding question in the questionnaire):

1. If courts have the discretion to go below the level of minimum sanction, do they use them? If yes, under what conditions do you preferably use this discretion? (for example for minors, low degree of harm, level of participation, attempt, omission, first time offender, diminished responsibility, unavoidable errors, desperate situation of the offender, cooperation with law enforcement authorities) (2.1)
2. What do you, as practitioner, think about minimum sanctions? Do you see them as necessary and useful limitation of judges' discretion or as a restriction making it difficult to impose sanctions appropriate to the concrete case? (2.2)
3. If a minimum sanction is imposed, is it (often) executed in full? (2.3)
4. What mechanisms are being used to mitigate the execution of minimum sanctions (such as conditional sentencing, or replacing a custodial with a non-custodial sentence, conditional release)? (2.5)
5. Is there a recent and current debate on minimum sanctions (political, academic, judicial practitioners)? What are the arguments in favour and against minimum sanctions? (4.4)
6. Does a system to register imposed sanctions exist? If yes, how does it function? (5.1)
7. If no statistics are available: Which sanctions have been imposed for the 6 offences indicated in table 2 over the 5-year period 2008, 2009, 2010, 2011 and 2012. (5.4) And specify (estimated guess):
 - a. How many minimum sanctions?
 - b. How many sanctions above the minimum?
 - c. How many sanctions below the minimum?
 - d. Lowest and highest imposed sanctions?
8. Please indicate the extent to which minimum sanctions are executed in full? Are there any statistics? If not, please give an educated guess to the extent that minimum sanctions are executed in full? (5.5)
9. Please comment on the following statements related to the deterrent effect of minimum sanctions (5.6):
 - a. Statement 1: Minimum sanctions are necessary to ensure that an effective deterrence can be achieved;
 - b. Statement 2: What makes up the deterrent effect of minimum sanctions? Is it the threat of being sent to prison for the offence committed?
 - c. Statement 3: There are other factors that have a deterrent effect such as the risk of being caught (efficiency of law enforcement bodies, or of prosecution services), and the possibility of an effective, full execution in practice of the sanction imposed. These are a) less b) more c) as important as minimum sanctions;
 - d. Statement 4: The severity of the sanction, in particular a minimum sanction in one Member State has or could induce "delocalisation" of the criminal activity to another MS where the penal regime is less severe ("forum shopping").
10. Please describe cases or examples where (5.7):

- You would preferably / often go below the minimum sanction (and why);
- You would preferably never go below the minimum sanction (and why).



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