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Jörg–Martin Jehle / Stefan Harrendorf (eds.)

Defining and Registering
Criminal Offences and Measures
Standards for a European Comparison



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Jörg-Martin Jehle and Stefan Harrendorf (Eds.)
Defining and Registering Criminal Offences and Measures

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Jörg-Martin Jehle
and Stefan Harrendorf (eds.)

Defining and Registering
Criminal Offences
and Measures

Standards for a European Comparison

By

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The study and this publication would also not have been possible without the work and assistance by many researchers, statisticians and officials across Europe. The authors and editors are grateful for their invaluable contribution to this project. Especially, we owe gratitude to our national correspondents, to the project steering group members and the observers taking part in our meetings, the conference and our discussions.

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UK: Scotland: Sandra Campbell, Justice and Communities Directorate, Scottish Government, Edinburgh

A **steering group** has overseen the project meetings and conference and took part in all discussions. Its members were:

Hans-Jürgen Kerner, University of Tübingen, Germany

Chris Lewis, University of Portsmouth, UK

Ernesto Savona, TRANSCRIME, University of Milan, Italy

Cynthia Tavares, Eurostat, Luxembourg

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Anna Alvazzi del Frate, UNODC, Vienna, Austria

Kauko Aromaa, HEUNI, Helsinki, Finland

Giulia Muggelini, TRANSCRIME, University of Milan, Italy

Preface

The study presented in this book is a direct response to the needs for defining and registering criminal and judicial data on the European level. Based upon work done by the European Sourcebook experts group in creating the *European Sourcebook of Crime and Criminal Justice Statistics* (ESB), the project intended to improve and complement the standards developed so far for definitions and statistical registration in four fields, in order to contribute to the picture of criminal justice in Europe. It utilized questionnaires filled by an established European network.

Possibilities to improve the offence definitions used so far in the ESB context were explored. Also, further *crime types*, especially those subject to EU-harmonized definition, were tested and introduced. Based on the results of recent projects of one of the editors (Jörg-Martin Jehle), the *prosecution* chapter of the ESB questionnaire was changed and expanded. Data collection possibilities regarding *compulsory measures* in the investigatory stage were tested, and a more sophisticated approach for recording *sanctions and measures* had been developed, as well as for *prison data*.

As overarching issues, ways to collect data on *pre-trial detention* and its surrogates and on *aliens* stemming from EU member states compared to those from other states were sought. The study explored how far national statistics can provide such data and developed a concept for collation on European level.

The offence definitions and data collection instruments introduced and revised during the course of this project were tested and most of them were – albeit mod-

ified sometimes – included in the 4th edition ESB questionnaire. Thus, the 4th edition ESB is based on a questionnaire developed during this project. The ESB is publicized parallel to this book (*Aebi et al*, European Sourcebook of Crime and Criminal Justice Statistics, 4th edition, 2010, The Hague: Boom).

The project would not have been possible without the generous funding by the European Commission under the AGIS 2006 programme. We would like to express our gratitude for this. We also owe gratitude to many researchers, statisticians and officials across Europe. Without their invaluable contribution this project would not have been possible. Above all, this is true for the members of the ESB group, for our national correspondents, the project steering group members and the observers taking part in our meetings, the conference and our discussions. A complete list of project acknowledgments can be found at the beginning of this book.

We would like to express our special thanks to *Martin Killias* for chairing all our meetings and the conference, and for organizing the project meetings in Brigels, Switzerland, and Orta San Giulio, Italy. We would also like to thank *Marcelo F. Aebi*, *Grace Kronicz Aebi*, *Julien Lhuillier* and *Christophe Zufferey* (final questionnaire) as well as *Véronique Jaquier* (other questionnaires) for data processing and database management. We are grateful that *Gordon Barclay* organized the project meeting in London and *Bruno Aubusson de Cavarlay* the meeting in Paris.

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Göttingen, in May 2010

Jörg-Martin Jehle and Stefan Harrendorf

Table of Contents

Project Acknowledgments	V
Preface	IX
Signs and Symbols Used in Tables	XVII
A. Aims and Methodology of the Study	1
1. Introduction	1
2. Methodological background	3
2.1 The European Sourcebook of Crime and Criminal Justice Statistics	3
2.2 The Prosecution Project	6
3. Methodology and course of the AGIS 134 study	7
3.1 Overview	7
3.2 Course of the project	8
4. Overall structure of the questionnaires	12
5. Response rates and data quality	14
6. Future developments	17

B. Criminal Offences Total	19
1. Previous definition	19
2. First steps and development of draft definitions and questions	20
3. Trial questionnaire and evaluation	22
4. Final questionnaire and evaluation	25
5. Additional questionnaire and evaluation	29
6. Conclusion	31
C. Bodily Injury (Assault)	33
1. Previous definition	33
2. First steps and development of draft definitions and questions	34
3. Trial and subsidiary questionnaires and evaluation	34
4. Final questionnaire and evaluation	45
5. Additional questionnaire and evaluation	51
6. Conclusion	52
D. Rape and Other Sexual Offences	55
1. Previous definition	55
2. First steps and development of draft definitions and questions	56
3. Trial questionnaire and evaluation	56
3.1 Offence definitions for police statistics	59
3.2 Offence definitions for conviction statistics	64
4. Final questionnaire and evaluation	68
4.1 Offence definition for rape (tables D.7.1 and D.7.2)	70
4.2 Offence definition for sexual assault (tables D.8.1 and D.8.2)	73
4.3 Offence definition for sexual abuse of minors (tables D.9.1 and D.9.2)	76
4.4 Data availability	79
5. Additional questionnaire and evaluation	79
6. Conclusions	83

E. Drug Offences	85
1. Previous definition	85
2. First steps and development of draft definitions and questions	86
3. Trial questionnaire and evaluation	86
4. Final questionnaire and evaluation	91
5. Additional questionnaire and evaluation	100
6. Conclusions	103
F. Fraud	105
1. First steps and development of draft definitions and questions	105
2. Trial and subsidiary questionnaires and evaluation	106
3. Final questionnaire and evaluation	124
4. Additional questionnaire and evaluation	128
5. Conclusions	129
G. Computer Offences	131
1. First steps and development of draft definitions and questions	131
2. Trial and subsidiary questionnaires and evaluation	132
3. Final questionnaire and evaluation	136
4. Additional questionnaire and evaluation	140
5. Conclusion	142
H. Money Laundering	143
1. First steps and development of draft definitions and questions	143
2. Trial and subsidiary questionnaire and evaluation	144
3. Final questionnaire and evaluation	151
4. Additional questionnaire and evaluation	154
5. Conclusion	157
I. Corruption	159
1. First steps and development of draft definitions and questions	159
2. Trial and subsidiary questionnaires and evaluation	160

3. Final questionnaire and evaluation	167
4. Additional questionnaire and evaluation	171
J. Human trafficking	175
K. Prosecution	177
1. Starting point	177
2. Preliminary discussion and development of draft definitions and questions	179
3. Trial questionnaire and evaluation	179
4. Final questionnaire and evaluation	194
5. Conclusions	212
L. Pre-Trial Detention and Other Compulsory Measures	213
1. First steps and development of draft definitions and questions	213
2. Trial questionnaire and evaluation	215
2.1 Restrictions of freedom of movement	215
2.2 Supervision	216
2.3 Freezing of assets	217
2.4 International legal cooperation	218
2.5 Persons held in pre-trial detention among persons convicted	219
2.6 Confiscation of assets	222
3. Final questionnaire and evaluation	225
4. Additional questionnaire and evaluation	231
5. Conclusions	232
M. Sanctions	233
1. First steps and development of draft definitions and questions	233
2. Trial questionnaire and evaluation	234
3. Final questionnaire and evaluation	247
4. Conclusions	257
N. Prison Population	259
1. First steps and development of draft definitions and questions	259

2. Trial questionnaire and evaluation	260
3. Final questionnaire and evaluation	269
3.1 Stock: Total	269
3.2 Stock: Pre-trial detainees	273
3.3 Stock: Females	273
3.4 Stock: Aliens	273
3.5 Stock: Minors	273
3.6 Flow: Total	273
3.7 Flow: Subcategories	274
3.8 Stock: Convicted prison population by offence	274
4. Additional questionnaire and evaluation	275
5. Conclusions	275
O. Data on EU Citizens	277

Signs and Symbols Used in Tables

In all tables of this book, the following signs and symbols mean:

+	=	included
-	=	excluded
+/-	=	partially included and partially excluded, or uncertain
...	=	no data available or no answer provided
X	=	yes
n.a.	=	not applicable, e.g. because concept does not exist
OK	=	data available
(OK)	=	data in principle available, but certain limitations apply

A. Aims and Methodology of the Study

1. Introduction

This book presents the main results of a study on “Standards for Defining and Registering Crime Types, Public Prosecution Service Disposals, Court Sentences and Improving Correction Statistics”. The study was funded by the European Commission under the AGIS programme (JLS/2006/AGIS/134) and was conducted by the European Sourcebook (ESB) experts group. The project phase lasted from November 2006 to October 2008.

Based upon work done by the ESB experts group in creating the “European Sourcebook of Crime and Criminal Justice Statistics”¹, it was intended to improve and complement the standards developed so far for definitions and statistical registration in four fields, in order to contribute to the picture of criminal justice in Europe. During the course of the project, possibilities to improve the *offence definitions* used so far in the ESB context were explored. Also, further crime types, especially those subject to EU-harmonized definition, were tested and introduced.

¹ COUNCIL OF EUROPE (ed.): European Sourcebook of Crime and Criminal Justice Statistics, Strasbourg: Council of Europe 2000; AEBI et al.: European Sourcebook of Crime and Criminal Justice Statistics – 2003, 2nd edition, Den Haag: Boom 2003; AEBI et. al.: European Sourcebook of Crime and Criminal Justice Statistics – 2006, 3rd edition, Den Haag: Boom 2006. The 4th edition was expanded based on the results of this study: AEBI et. al: European Sourcebook of Crime and Criminal Justice Statistics – 2010, 4th edition, Den Haag: Boom 2010.

Based on the results of recent AGIS 2005 funded projects,² the *prosecution* chapter of the ESB questionnaire was changed and expanded. Also, data collection possibilities regarding *compulsory measures* in the investigatory stage were tested. A more sophisticated approach for recording *sanctions and measures* has also been developed during the course of the project. The group finally tried to receive more detailed *prison* data. As overarching issues, ways to collect data on *pre-trial detention* and its surrogates and to get differentiated information on *aliens stemming from EU member states* compared to those from other states were sought. The study explored how far national statistics can provide such data and tried to develop a concept for collation on European level.

The research area is subject of considerable interest within the wider European community. This study is therefore of importance for the EU and other international bodies and institutions, and also for researchers, practitioners and policy-makers in criminal justice systems. It utilized questionnaires filled by an established European network.

During the course of the project, the ESB experts group developed improved definitions for *criminal offences total*, *bodily injury (assault)*, *rape and other sexual offences*, and *drug offences*. In addition to this, new offence definitions for *fraud*, *offences against the confidentiality, integrity and availability of computer data and systems*, *money laundering* and *corruption* were introduced. All these improved and newly introduced offence definitions were tested and were – sometimes after a slight modification – included in the final 4th edition ESB questionnaire. It was tried to collect additional information on *reported suspicious transactions*. Apart from these, the group also discussed the possibility of data collection on *human trafficking*, but decided against it for the moment.

The reformed *prosecution* chapter turned out to be an efficient and useful data collection instrument. Only with respect to the breakdown of prosecutorial decisions by offence group, data availability was quite poor. With respect to *compulsory measures*, different issues were addressed: *restrictions of freedom of movement*, *measures of supervision*, *freezing and confiscation of assets* and *operations of international legal cooperation*. Data availability was very poor in most areas. The project also focused on the development of a new and more sophisticated instrument to collect data on *sanctions and measures imposed by the criminal courts*. Furthermore it was attempted to collect more differentiated data on non-custodial and suspended custodial sanctions and measures.

In the prison chapter, in addition to addressing the issue of pre-trial detention (see above), it was tried to collect more differentiated data on certain groups of prisoners, namely: *aliens, of which: EU citizens, aliens in pre-trial detention, of which: EU*

² JEHLE / WADE (eds.): *Coping with Overloaded Criminal Justice Systems*, Heidelberg: Springer 2006; and the articles published in the *European Journal on Criminal Policy and Research*, issues 2-3, vol. 14, 2008: Special Issue: Prosecution and Diversion within Criminal Justice Systems in Europe, guest edited by WADE / JEHLE.

citizens, females, minors, persons held in institutions for drug-addict offenders, mentally ill offenders held in psychiatric institutions or hospitals, offenders serving their sentence under electronic surveillance and persons held in facilities under the responsibility of any other Ministry. For the first time it was tried to collect data on the effective length of term served by convicted prisoners.

The data collection instrument developed in the course of this project was not only used for this feasibility study. Based on the results of data collection, including longitudinal tables asking for data for the years 2003 - 2007 and other tables restricted to the year 2006, the 4th edition ESB has been written and compiled. This will be publicized parallel to this book.³ For the medium and long term future of the ESB project many interesting areas of research remain, especially with respect to probation, community sanctions and measures and juvenile criminal law. The ESB group is willing to face these tasks and wants to continue its work in the years to come.

2. Methodological background

The project on “European Standards for Defining and Registering Crime Types, Public Prosecution Service Disposals, Court Sentences and Improving Correction Statistics” builds upon work done so far in the ESB context as well as in AGIS 2005 funded projects. The latest edition of the Sourcebook was divided into five sections providing basic police, prosecution, conviction and correctional statistics, survey data as well as common offence definitions and demographic data in the appendices. This project aimed at enhancing and improving the ESB study in the ways described above. The prosecution chapter was redesigned based upon the findings of AGIS 2005 projects 126⁴ and 139⁵ to include significantly more information, profiting from the definitions provided by these smaller projects.

2.1 The European Sourcebook of Crime and Criminal Justice Statistics

The assessment of trends in crime and criminal justice has been a permanent concern of the Council of Europe and other international organizations. Due to ongoing developments in Greater Europe and the ensuing enlargement of the membership of the Council of Europe, the necessity for such periodic assessment and comparison in the above mentioned areas had become even more apparent.

³ AEBI et. al: European Sourcebook of Crime and Criminal Justice Statistics – 2010, 4th edition, Den Haag: Boom 2010.

⁴ JEHLE / WADE (eds.): Coping with Overloaded Criminal Justice Systems, Heidelberg: Springer 2006.

⁵ European Journal on Criminal Policy and Research, issues 2-3, vol. 14, 2008: Special Issue: Prosecution and Diversion within Criminal Justice Systems in Europe, guest edited by WADE / JEHLE.

Against this background, the European Committee on Crime Problems (CDPC) created in 1993 a Group of Specialists on 'Trends in crime and criminal justice: statistics and other quantitative data on crime and criminal justice systems' (PC-S-ST). The Group was composed of experts from *France, Germany, Hungary, Netherlands, Sweden, Switzerland* and the *United Kingdom*. Some of them are still active in the group,⁶ while another founding member, although having left the group several years ago, now acted as a steering board member of the AGIS 134 project (Chris LEWIS).

During a relatively short period, a great number of theoretical and technical issues were addressed. These issues included data comparison, offences to be considered and their definitions, appropriate table formats, statistical routines including counting rules in the various countries, interpretation of the available data, infrastructure needed for a full implementation of the European Sourcebook Project etc.

In 1995, the Group presented the European Sourcebook of Crime and Criminal Justice Statistics Draft model⁷ to the CDPC. The Draft model presented crime and criminal justice data for the year 1990 for ten European countries. Extensive technical comments were added to the tables in order to document the numerous methodological problems that are involved in international data collections. It was stated that: 'Having found a practical and satisfactory way of handling the difficult problem of varying offence definitions and counting rules, the group reached the conclusion that a European Sourcebook on crime and criminal justice statistics [was] indeed feasible.'⁸

Thus, at its 45th plenary session in June 1996, the CDPC entrusted the Group of Specialists with the preparation of a compendium of crime and criminal justice data for the whole of Europe. The final document should represent an enlarged version of the already existing Model European Sourcebook, covering, if possible, the total membership of the Council of Europe and presenting crime and criminal justice data for the years 1990 to 1996. Additional specialists in the collection of statistical data resulted in the enlargement of the Group and members were given responsibilities as 'regional coordinators'.⁹

In its work, the group took account of the periodic surveys carried out by the UN¹⁰ and INTERPOL.¹¹ These surveys relied on the provision of data by national sources asked to follow standard definitions. This approach contrasted with the group's adopted methodology, where a coordinated network of national corres-

⁶ Martin KILLIAS, Jörg-Martin JEHLE, Gordon BARCLAY.

⁷ Strasbourg: Council of Europe, 1995.

⁸ Op. cit., p. 190.

⁹ Among the new members of the group were Marcelo AEBI and a bit later also Paul SMIT and Bruno AUBUSSON DE CAVARLAY, who are still with the group.

¹⁰ United Nations Survey on Crime Trends and the Operations of Criminal Justice Systems (CTS); see www.unodc.org.

¹¹ INTERPOL International Crime Statistics (now discontinued).

pondents provided data from current statistical sources within each country. These data were then supplemented by the collection of information on statistical and legal definitions. The group, which included several members involved in recent UN surveys, felt that this approach would allow more comprehensive and accurate data to be produced.

The system of national correspondents required that each country should have one person responsible for the collection and initial checking of the data. Each correspondent would be an expert in crime and criminal justice statistics and act as a helpline. They would also be entrusted with checking their country's data to ensure good quality. The national correspondents had and have full responsibility for the accuracy of the data provided by their respective countries. A group of three or four national correspondents were 'coached' by each member of the Experts' Group in their capacity as 'regional coordinators', a system that is also still applied now.

After the publication of the first edition in 1999,¹² the Council of Europe was no longer able to support the project financially. In 2000, in order to maintain continuity in a data collection effort (which was seen as important) and especially to avoid dismantling the network of correspondents (from 40 countries), the British Home Office, the Swiss Foreign Ministry (through the University of Lausanne School of Criminal Sciences) and the Dutch Ministry of Justice agreed to continue supporting the project until the publication of the second edition. These three new funding agencies commissioned a small group of experts with the work of updating the European Sourcebook of Crime and Criminal Justice Statistics. Most of these experts are still active in the group.¹³

After the publication of the second edition in 2003,¹⁴ the Swiss Federal Office of Statistics and the Dutch Ministry of Justice (WODC)¹⁵ offered financial and logistic support to maintain the work for the third edition.¹⁶ The European Commission, the German Federal Ministry of Justice and the Home Office provided the funds necessary to organize one meeting each.

Given the modest resources, the Experts' Group decided for the third edition to concentrate on updating time-series data as well as on improving data quality.

¹² COUNCIL OF EUROPE (ed.): *European Sourcebook of Crime and Criminal Justice Statistics*, Strasbourg: Council of Europe 2000.

¹³ Beata GRUSZCZYŃSKA and Vasilika HYSI then joined the group, as well as Cynthia TAVARES, who now works for Eurostat and was the representative of Eurostat on the steering board during the AGIS project.

¹⁴ AEBI et al.: *European Sourcebook of Crime and Criminal Justice Statistics – 2003*, 2nd edition, Den Haag: Boom 2003.

¹⁵ Wetenschappelijk Onderzoek- en Documentatiecentrum, Den Haag.

¹⁶ AEBI et. al.: *European Sourcebook of Crime and Criminal Justice Statistics – 2006*, 3rd edition, Den Haag: Boom 2006.

With the co-operation of the correspondents and thanks to the assistance by CESDIP¹⁷ staff, errors in the tables published in the 2003 edition were identified.

Since 2001, the Dutch Ministry of Justice has provided the necessary resources to set up and maintain a website containing all the data published in the 1999 edition of the European Sourcebook (www.europeansourcebook.org) under the supervision of Paul SMIT. This service has been extended until now. All editions of the ESB are available for download there. The data included in the Sourcebook have been used in different scientific publications, mainly two special issues of the European Journal on Criminal Policy and Research¹⁸.

2.2 The Prosecution Project

Based on the experiences of the ESB project, there was a study on the function of the Public Prosecution Service (PPS) in European comparison conducted. The production of the ESB chapter on public prosecution highlighted a lack of comparable statistical and legal information. Thus the idea for an in-depth study on PPS functions was born.

The research was carried out in two waves: The first wave included England and Wales, France, Germany, the Netherlands, Poland and Sweden.¹⁹ The second wave was an expanded follow-up of the initial study. It worked with methodical instruments refined on the basis of experience gained from the first wave and covered those countries once more and additionally included Croatia, Hungary, Spain, Switzerland and Turkey.²⁰ The project partners were criminal justice system experts and experienced comparative researchers, e.g. through their membership of the ESB group and other international committees.²¹

Research was funded by the European Commission (JLS/2005/AGIS/126) and the Fritz-Thyssen-Stiftung for the first wave and by the Commission again (JLS/2005/AGIS/139) for the second wave.

The study examined prosecution services in different European countries aiming to understand their national role and function within the respective criminal

¹⁷ Centre d'Études Sociologiques sur le Droit et les Institutions Pénales, Guyancourt, France.

¹⁸ Issue 1, vol. 8, 2000, and issues 2-3, vol. 10, 2004.

¹⁹ JEHLE / WADE (eds.): *Coping with Overloaded Criminal Justice Systems*, Heidelberg: Springer 2006.

²⁰ See the articles published in the European Journal on Criminal Policy and Research, issues 2-3, vol. 14, 2008.

²¹ They were: Chris LEWIS for England and Wales, Bruno AUBUSSON DE CAVARLAY for France, Paul SMIT and Martine BLOM (first wave only) for the Netherlands, Beata GRUSZCZYŃSKA, Teodor BULENDA, Andrzej KREMPEWSKI (all first wave only) and Piotr SOBOTA for Poland, Josef ZILA for Sweden, the German project management and research team consisting of Beatrix ELSNER, Jörg-Martin JEHLE, Julia PETERS and Marianne WADE and - joining the group for the second wave - Ksenija TURKOVIC for Croatia, Erika ROTH for Hungary, Marcelo AEBI and Marc BALCELLS MAGRANS for Spain, Martin KILLIAS and Gwladys GILLERON for Switzerland and Hakan HAKERI for Turkey.

justice system and thereby to highlight common features and important differences between European systems. It analyzed comparatively the functions performed by prosecution services across Europe - by means of legal comparison in combination with empirical data reflecting actual working practice and factual mechanisms. The basic assumption was that of criminal justice systems as a complex with different stages through which cases are passed and – from stage to stage – increasingly led out of, before they reach the court stage. The powers of, above all, the prosecution services to deal with cases in alternative ways formed the heart of the study. For more details on this study, see below.²²

3. Methodology and course of the AGIS 134 study

3.1 Overview

The AGIS 134 study addressed the problem of comparing criminal justice systems, crime rates, the effect of certain policies etc. in an effective way, taking into account the vast differences between criminal justice systems in Europe. The aim was to work towards a more reliable picture of the rate of offending and how European systems react to criminal offences in order to understand the current situation and to enhance cooperation between the relevant institutions in Europe, as future effects also to learn from each other's experiences by tracing which policies have what effect in which context and to establish a common European basis for EU crime policy strategies.

To achieve the goals of the study, the ESB experts group and network of correspondents were used to develop and improve common categories in order to facilitate comparison in the areas covered. A tested basis for comparison was available due to the work formerly done in this context (see above) and was improved and expanded to provide comparable information on offence and other definitions, prosecution disposals, pre-trial measures and sentences as well as on detainees and prisoners.

The expertise in this area is inherent in the group composition and the group member's experience particularly within the ESB context (see above), but also with respect to the AGIS 2005/126 and 2005/139 projects.

At the time of signing the AGIS grant agreement, the ESB experts group consisted of ten members: Martin KILLIAS (chairman of the group), Jörg-Martin JEHL (beneficiary of the grant agreement), Marcelo AEBI (subcontractor for data processing), Bruno AUBUSSON DE CAVARLAY, Gordon BARCLAY, Beata GRUSZCZYŃSKA, Markku HEISKANEN, Vasilika HYSI, Paul SMIT and Rannveig ÞORISDOTTIR. During the course of the AGIS project, Olena

²² Chapter K.

SHOSTKO, Véronique JAQUIER and Stefan HARRENDORF became members of the group, too.

The group members were also acting as national correspondents for their respective countries, thus representing *Albania, Finland, France, Germany, Iceland, Netherlands, Poland, Spain, Switzerland, United Kingdom: England and Wales, Ukraine*. Apart from these 11 countries, the group was also able to draw upon the national correspondents of the ESB, some of which have already been working with the group for earlier editions while others were newly appointed.

A steering group was established consisting of Cynthia TAVARES as a delegate of Eurostat as well as three senior international researchers not involved in the project: Hans-Jürgen KERNER from the University of Tübingen, Chris LEWIS from the University of Portsmouth and Ernesto SAVONA from TRANSCRIME, Italy. Members of the steering group attended the project meetings, received all emails sent between group members and discussed relevant methodological issues with the experts group. After the end of the project phase, the steering group evaluated the work of the ESB group.

During the project phase, the group held several meetings and a conference. All the meetings were necessary to discuss methodology, develop, improve and expand the questionnaires and evaluate the data collected. Meetings were held in Blackheath (London), UK (November 2006), Brigels, Switzerland (March 2007), Bologna, Italy (September 2007) and Paris, France (November 2007). In June 2008 in Bonn, Germany, the project conference with all national correspondents took place. After that date, two more meetings were held, one in Edinburgh, UK, in September 2008 and one in Orta San Giulio, Italy, in October 2008.

3.2 Course of the project

3.2.1 *First steps and development of draft definitions and questions*

The first meeting in Blackheath (London) took place in November 2006 and was mainly used to discuss the goals of the AGIS project, develop ideas for improving and expanding the ESB questionnaire according to the AGIS goals and distribute tasks between group members. It was agreed during the meeting that several group members produce papers on different topics related to the AGIS goals that were due to be discussed during the next meeting.

This next meeting was held in Brigels, Switzerland, in March 2007. During the meeting the papers produced by the different group members were presented and discussed. It was decided that draft definitions and questionnaire elements should be designed by certain group members. The other group members were supposed to assist by sending in national offence definitions etc. Several trial parts of the questionnaire were completed ahead of the next (short) meeting. This meeting took place during the Conference of the European Society of Criminology in Bologna on September 26th. Apart from planning the Bonn conference that was due

in the first half of 2008, this meeting was mainly devoted to discussion of the questionnaire drafts already received.

It was agreed among the group members that the new and reformed parts of the questionnaire should be tested among the experts group before a final questionnaire to be sent to all national correspondent could be designed.

3.2.2 Development, distribution and evaluation of draft and subsidiary questionnaires

The next meeting took place in Paris in November 2007. Ahead of the meeting, a first version of a trial questionnaire was drafted and circulated around group members. The Paris meeting was devoted to the discussion of all the new and expanded parts of the questionnaire. It was agreed that directly after the meeting, two different questionnaires should be produced and distributed to the group members:

The first questionnaire was the trial 4th edition questionnaire. This questionnaire was an expanded and improved update of the older ESB questionnaires, using parts of the short 3rd edition questionnaire and also parts of the older, but more detailed 2nd edition questionnaire. It was agreed that this questionnaire should be sent to the group members and each should try to fill in the questionnaire for his or her respective country. The members should concentrate on definitions and data availability at this stage of the process. Data provision could therefore be restricted to one year only, even in longitudinal data tables.

For certain new or improved offence definitions (bodily injury, fraud, computer offences, money laundering and corruption) additional questions were developed, aiming at definitional and data availability issues. It was clear that these additional questions could and should not be included in a final questionnaire to be sent round to all national correspondents. They would be used for the development of final definitions and for the purposes of the AGIS project. Therefore, they were compiled in a subsidiary questionnaire that had only to be filled in by the experts' group members for their respective countries.

It was agreed to finalize both questionnaires after the Paris meeting. The trial and subsidiary questionnaires were sent to all group members in December 2007. The answers received were evaluated afterwards.

3.2.3 Development and distribution of the final questionnaire

Based on that evaluation a new final questionnaire was proposed. There was some discussion, and then the final questionnaire was completed in March 2008 and circulated among all national correspondents of the group with a deadline ending in May, allowing the group members to check the questionnaires that arrive in time ahead of the Bonn conference.

This questionnaire was shorter than the trial version. Parts of the trial questionnaire that did not work well due to poor data availability were dropped from

the questionnaire. Also, the trial questionnaire featured questions on whether the concepts presented on the include/exclude lists of the different definitions were separately identifiable in criminal law. It was decided that answers to these questions are not necessarily needed from all national correspondents and might be a burden too heavy to answer for those correspondents without a legal background. Therefore, the respective questions were dropped, too.

Once again, different members of the group acted as regional coordinators for groups of national correspondents (see above). National correspondents were encouraged to contact their respective coordinator in the case of questions or problems, while the coordinators themselves contacted their correspondents in case they found problems or errors in the filled questionnaire and to clear open questions. This system once again turned out to work efficiently.

3.2.4 The Bonn conference

The Bonn conference took place from June 13th to 16th, 2008. It comprised internal ESB group sessions and “public” sessions together with all attending national correspondents. The internal sessions were mainly devoted to data evaluation and production of the AGIS report and the 4th edition of the ESB. A stronger cooperation with UNODC²³ regarding their CTS²⁴ was agreed upon during the meetings, too. It was decided that the group members should also fill in the parts of the initial trial questionnaire that were dropped while producing the final version. This had already been done during the trial phase for almost all countries represented within the group. However, definitions were partially changed due to the results of the trial phase.²⁵ Therefore, the dropped parts had to be updated, too. These updated parts of the former trial questionnaire should be compiled into an additional questionnaire after the Bonn conference and circulated among group members.

The conference sessions were used for discussions with the national correspondents on the new questionnaire. The project, the changes for the 4th edition and the motivations for these changes were explained to the correspondents. All parts of the questionnaire were addressed and problematic issues were discussed at the round table. There was also a session devoted to correspondents meeting their respective regional coordinator. There, the filled questionnaires and problems and questions related to it were discussed in detail.

²³ United Nations Office on Drugs and Crime, Vienna.

²⁴ United Nations Survey on Crime Trends and the Operations of Criminal Justice Systems; see www.unodc.org.

²⁵ For details, see below.

3.2.5 Development and distribution of the additional questionnaire, data validation and evaluation for final and additional questionnaires, etc.

Shortly after the Bonn conference, the additional questionnaire was completed and sent to all group participants to be filled in. Entry, check and collation of the final questionnaire data received from national correspondents started at Lausanne University. Parallel to this procedure the data validation process started at the Bonn meeting was continued. National correspondents were contacted by their regional coordinators, if problems in the information given were identified. Also, efforts were made to receive the last missing questionnaires and to find national correspondents for countries that were not yet covered in the 4th edition or where the old correspondent had not responded.

The next meeting took place in September 2008 during the conference of the European Society of Criminology in Edinburgh. During the meeting, data validation status and progress were discussed, as well as the (few) remaining problems with missing correspondents and questionnaires. Relevant parts of the meeting were used for discussion on cooperation issues. The possibilities of closer cooperation with UNODC CTS in data validation issues were discussed in more detail, as a follow-up to the discussion during the Bonn conference. It was agreed that the group should pilot a small joint data validation project. This project aimed at comparison of five key variables (intentional homicide completed, drug-related crimes, drug trafficking, motor vehicle theft and prison population total) for 2005 and 2006 between 10th CTS and 4th edition ESB data for all countries covered in both surveys. Validation was completed by the end of 2008.²⁶ UNODC in exchange provided the ESB group with the 10th CTS data of missing countries for use in the 4th edition ESB.

The ESB group met again with the Secretary General of the Conférence Permanente Européenne de la Probation (CEP), Leo TIGGES, to discuss the possibilities of a joint project on probation and community sanctions and measures. It was agreed that there was a need to get a more in-depth look at the quite complex reality of alternative sanctions across Europe.

The group met in October 2008 in Orta San Giulio in Italy. Raw data entry was completed now and the group mainly discussed the results and questions arising from the raw data tables. Also, the structure of the AGIS final report was discussed and tasks were distributed among group members. The further produc-

²⁶ Only results on homicide have been published by UNODC so far: UNODC: Tenth CTS, 2005-2006: Intentional homicide, annotated with extended UNODC metadata, 2009, <http://www.unodc.org/unodc/en/data-and-analysis/Tenth-CTS-annotated.html>. Based on this first approach, UNODC started an initiative to introduce regular data validation routines for CTS data. An extended pilot for data validation of 10th and 11th CTS variables was carried out for UNODC by Stefan HARRENDORF and was finished in February 2010. Results are not yet published.

tion of the 4th edition was also addressed, as were other issues connected to the future of the Sourcebook.

In January 2009, the final report was completed via e-mail exchange of drafts and sent to the European Commission.

4. Overall structure of the questionnaires

Excerpts of the different questionnaires are reprinted in the following chapters of this book. Also, the methodological changes and the results of questionnaire evaluation are discussed there.

In this introduction, only a short overview of the structure of the different questionnaires, especially the final questionnaire, will be given. The trial, final and additional questionnaires all follow the same structure: There is a first part on offence definitions, followed by chapters on police, prosecution, conviction and prison data. The chapters include tables, definitions and methodological questions.

Different from that, the subsidiary questionnaire only covers additional questions on certain offence types (bodily injury, fraud, computer offences, money laundering and corruption). This questionnaire is fully reprinted and evaluated in the related parts of this book.

The trial questionnaire was the first draft of the full 4th edition questionnaire that was sent round to the group members together with the subsidiary questionnaire in December 2007 in order to test the new definitions, tables and questions. The final questionnaire was an improved, updated and abridged version of the trial questionnaire, sent round to all national correspondents and to the group members in March 2008. Finally, the additional questionnaire was sent to the group members in June 2008 and was an updated and improved version of the parts of the trial questionnaire that were dropped while designing the final questionnaire.²⁷

The police chapter of the *final* questionnaire includes the following tables:²⁸ Offences recorded by the police 2003 - 2007, Total suspected offenders 2003 - 2007, Number of females, minors and aliens among suspected offenders in 2006 and Police staff 2003 - 2007.

In the prosecution chapter, the following tables are included: Criminal cases handled by the prosecuting authorities 2003 - 2007, Prosecutorial input and output by offence group in 2006, Persons whose freedom of movement was restricted in 2006, Staff of the prosecuting authority 2003 - 2007.

²⁷ For more details on the different questionnaire types, please refer to A.3 above and to the parts reprinted and discussed in the following chapters.

²⁸ In this book only the modified or newly introduced definitions and questions are printed. The figures can be found in: AEBI et. al: European Sourcebook of Crime and Criminal Justice Statistics – 2010, 4th edition, Den Haag: Boom 2010.

The conviction chapter features tables on: Total number of convictions 2003 - 2007, Number of females, minors and aliens among convicted persons in 2006, Type of sanctions/measures imposed upon adults in 2006, Type of sanctions/measures imposed upon minors in 2006, Number of convictions by length of unsuspended custodial sanctions and measures imposed upon adults in 2006, Persons held in pre-trial detention (at least temporarily) among persons convicted in 2006.

The tables in the corrections chapter are: Prison population (including pre-trial detainees) stock 2003 - 2007, Prison population (including pre-trial detainees) flow 2003 - 2007, Convicted prison population by offence on 1 September 2006.

Some of these tables (Prosecutorial input and output by offence group, Persons whose freedom of movement was restricted, the differentiated sanctions tables for adults and minors, Persons held in pre-trial detention [at least temporarily] among persons convicted) have not been included in earlier editions of the ESB. Other tables were improved and often expanded. Most of the tables ask for data by offence type (exceptions are staff tables and the tables on criminal cases handled by the prosecuting authority, persons whose freedom of movement was restricted and prison population stock and flow).

Due to the introduction of new offence types and new tables, the 4th edition questionnaire is by far the longest questionnaire ever used for the ESB. The empty 4th edition questionnaire is 79 pages long, much longer than the abridged 3rd edition questionnaire (38 pages) and the 2nd edition questionnaire (64 pages). Apart from this, for the 4th edition in most tables a smaller font size was used than in the earlier editions.

Compared with the 2nd and 3rd editions, the 4th edition questionnaire featured more offence groups and subgroups. These earlier editions covered 13 offence groups and subgroups (criminal offences total and of which: traffic offences [defined as criminal]; intentional homicide total and of which: completed; assault; rape; robbery; theft total, of which: theft of a motor vehicle, of which: burglary total, of which: domestic burglary; drug offences total and of which: drug trafficking).

The 4th edition covers on police level 27 offence groups and subgroups (criminal offences total, of which: minor property offences handled outside the criminal justice system, of which: minor violent offences handled outside the criminal justice system, of which: major traffic offences; intentional homicide total and of which: completed; bodily injury [assault] total, of which: minor bodily injury, of which: aggravated bodily injury, of which: bodily injury of a public servant, of which: domestic violence; rape; sexual assault; sexual abuse of minors; robbery; theft total, of which: minor theft handled outside the criminal justice system, of which: theft of a motor vehicle, of which: burglary total, of which: domestic burglary; fraud; offences against computer data and systems; money laundering; corruption; drug offences total, of which: drug trafficking, of which: aggravated drug

trafficking), i.e. the number of offence groups and subgroups covered was more than doubled.

In the other chapters of the 4th edition questionnaire, some of the new subgroups (minor property offences handled outside the criminal justice system, minor violent offences handled outside the criminal justice system, minor bodily injury, bodily injury of a public servant, domestic violence, minor theft handled outside the criminal justice system) were not included (for an explanation, see the following chapters on criminal offences total and bodily injury). Therefore, in these other chapters (prosecution, conviction, corrections) 21 offence groups and subgroups were covered.

5. Response rates and data quality

The project covers the following countries:

1) Trial Questionnaire:

Albania

Finland

France

Germany

Iceland

Netherlands

Poland

Switzerland

United Kingdom: England and Wales

Total: 9 countries, of which 6 EU, 1 potential candidate, 2 EFTA/EEA

2) Subsidiary Questionnaire

Albania

Finland

France

Germany

Iceland

Netherlands

Poland

Switzerland

United Kingdom: England and Wales

Total: 9 countries, of which 6 EU, 1 potential candidate, 2 EFTA/EEA

3) Final questionnaire

Albania

Armenia

Austria

Belgium

Bulgaria

Croatia

Cyprus

Czech Republic

Denmark

Estonia

Finland

France

Georgia

Germany

Greece

Hungary

Iceland

Ireland

Italy

Latvia

Lithuania

Luxembourg

Moldova

Netherlands

Poland

Portugal

Romania

Russia

Slovakia

Slovenia

Sweden

Switzerland

Turkey

United Kingdom: England and Wales

United Kingdom: Northern Ireland

United Kingdom: Scotland

Ukraine

Total: 35 countries, of which 26 EU, 2 candidate, 1 potential candidate, 2 EF-TA/EEA, 4 other European countries; concerning the United Kingdom, there are separate questionnaires for England and Wales, Northern Ireland and Scotland

4) Additional questionnaire

Albania

Finland

Germany

Iceland

Poland

Switzerland

United Kingdom: England and Wales

Ukraine

Total: 8 countries, of which 4 EU, 1 potential candidate, 2 EFTA/EEA, 1 other European country

The final questionnaires for *Moldova*, *Romania* and *Slovenia* were received after the end of the project phase. Therefore, it was not possible to evaluate these questionnaires for the AGIS report. They are also covered here; data on these countries are included in the 4th edition ESB. For *Luxembourg* the group was not able to find a correspondent. Therefore, a questionnaire from *Luxembourg* was also not received during the project phase.

For *France*, the definition parts of the questionnaire were only filled in during the trial phase. Due to some differences between the trial and final questionnaires, *France* is not included in the tables regarding the evaluation of definitions in the final questionnaire. However, the *French* responses to questions on definitions can be found in the trial parts. Regarding data availability, *France* was also considered in the evaluation of the final questionnaire.

Since *France* and the *Netherlands* did not return the additional questionnaire, their responses from the trial phase were evaluated instead, as far as possible. Where this was not possible, data on *France* and the *Netherlands* are missing in the tables.

The correspondent for *Malta* quit during the project phase. Time was too short to find a substitute for him. For some other Council of Europe countries the ESB group was unable to find a correspondent during the whole project phase although the group made every effort to find persons willing and able to do the task. This is true for *Azerbaijan*, *Bosnia and Herzegovina*, *Norway*, *TFYR Macedonia*, *Montenegro* and *Serbia*. Also, small countries (*Andorra*, *Liechtenstein*, *Monaco*, *San Marino*) were – like in all other ESB editions – not covered.

Data in this book are mainly presented as they were in the moment the project report was sent to the European Commission (beginning of February 2009). However, in some cases further validation after January 2009 brought some changes in definitions or data availability. These changes have also been considered for this publication. Therefore, results might differ in some cases from the results in the (unpublished) original version of the AGIS report. All data have been validated. However, there are some responses from national correspondents

missing. Also, some questionnaires have not been filled to full completeness. Therefore, some cells in the tables featured in the report had to be set to “...” (i.e.: missing). Missing values have also been used in case that a certain concept does not apply. Therefore, missing values in the cells are not only due to non-response or invalid responses, but might also mean “not applicable”.

Overall data quality is very good due to the use of experienced national correspondents and the efficient ESB data validation system, with regional coordinators getting back to the correspondents in the case a question or problem occurs.

6. Future developments

The 4th edition of the ESB itself was not part of the AGIS 134 report. However, the data collection instrument developed in the course of the project was not only used for this feasibility study that aimed at definitions and data availability. It was used for the collection of national statistical data for the 4th edition of the ESB as well; the questionnaire included longitudinal tables asking for data for the years 2003 - 2007 and other tables restricted to the year 2006 (for details, see above). The parts not referred to in detail in this report have not been changed compared with previous editions. However, some changes discussed here affected the data collection instrument on all levels of the criminal justice process. This is mainly true for the new and reformed offence definitions. Newly introduced offence groups and subgroups led to much longer tables with much more data for all levels of the criminal justice system (see above).

The 4th edition ESB²⁹ is publicized parallel to this book. For the medium and long term future of the ESB project many interesting areas of research remain. First of all, the idea of the abovementioned joined project of CEP and ESB on alternative sanctions should be developed and realized. This is an area that is still in need of in-depth research in European comparison. The results of such a study might then be used to improve and extend the convictions and corrections chapters of the ESB questionnaire.

Another task that will be important for the future of the group is to optimize the relation between the different data collection instruments that aim at collecting data on the reality of criminality across Europe. Especially, the possibilities of cooperation with UNODC CTS and Eurostat should be explored more thoroughly (for drug crimes, there are even five data collections covering Europe: UN CTS, UN ARQ,³⁰ EMCDDA,³¹ Eurostat and ESB). It might be an aim to combine the efforts of the different crime studies in order to avoid duplicate or multiple data

²⁹ AEBI et. al: European Sourcebook of Crime and Criminal Justice Statistics – 2010, 4th edition, Den Haag: Boom 2010.

³⁰ ARQ= Annual Reports Questionnaire, used for the World Drug Report.

³¹ European Monitoring Center for Drugs and Drug Addiction, Lisbon.

collection. This will be a complex task with no obvious solution at the moment, but it is a problem that needs attention.

The ESB group is willing to face these tasks and wants to continue its work in the years to come.

B. Criminal Offences Total

As a part of the project goals, it was tried to refine the definition of criminal offences total, the definition was tested and it was checked whether data for the total of offences and some subgroups of the total were available in the countries participating in the project.

1. Previous definition

The previous definition used in the 3rd edition questionnaire was as follows:

Total criminal offences recorded by the police	
	Indicate whether "included" or "excluded"
Include the following:	
offences defined as criminal by the law (which may be processed as a criminal act by the public prosecutor or a judge). These are more serious offences. In many countries, these are defined as against the "penal code" or the "criminal code" and exclude less serious crimes (misdemeanours) recorded by the police or other authorities e.g. customs, tax authorities	
traffic offences defined as criminal by the law (which may be processed as a criminal act by the public prosecutor or a judge)	
Exclude the following:	
other less serious traffic offences (for example, those processed directly by the police)	
breaches of public order regulations	

2. First steps and development of draft definitions and questions

At the beginning different issues regarding the “total criminal offences” part of the questionnaire were discussed. It was argued that the purpose of the “criminal offences total” category is to provide data on the more serious offences; what is included in this category depends on the way serious offences are defined in national legislations, but it also depends on how the system works. One needs first information on the existence of different categories of offences, based on seriousness. Second, one needs to look at how the distinction is made between non-serious and serious offences. Finally, one needs information on how this is dealt with practically. It was also discussed whether the title of this category should be renamed, e.g. to “Total number of offences counted in national statistics”, since the heading might be misleading. Finally, the group refrained from renaming the category.

Later the issue of total offences was revisited, with a special focus on minor offences. The issue of minor offences is a problem for some countries as these may not be included in the total number. When minor offences are not included, national correspondents should provide, if possible, the number of these offences. However, it was agreed it is necessary to be careful regarding the data sources used, as the ESB should not rely on obscure data from some special unit.

A draft proposal for criminal offences total was then sent to all group members. It had the following wording:

In principle all offences defined as criminal by the law should be included. But there are some countries which follow a minor offence concept either excluding them from the criminal code (for example the <i>wykroczenia</i> in Poland in cases of minor thefts etc.) or making them subject to special proceedings (for example most <i>contraventions</i> in France which are handled by the police only) outside the criminal justice system. Sometimes they are recorded in police statistics, sometimes not.			
Total criminal offences recorded by the police			
	Indicate whether separately identifiable in criminal law (Y/N)	Indicate whether included:	
		in pol. stats. (Y/N)	in conv. stats. (Y/N)
Include the following:			
minor offences defined as criminal by the law, but subject to proceedings outside the criminal justice system (e.g. most <i>contraventions</i> in France)			
minor forms of criminal offences (e.g. minor theft) that are excluded from the Criminal Code (e.g. <i>wykroczenia</i> in Poland)			
criminal offences committed by juveniles			
major traffic offences (e.g. drunk driving)			
other criminal offences			
Exclude the following:			
minor traffic offences (e.g. parking offences)			
breaches of public order regulations			

The draft was thoroughly discussed. Especially, there were critical remarks from group members of countries where offences defined as criminal by the law but subject to proceedings outside the criminal justice system exist. It was felt that the new include rule for “minor offences defined as criminal by the law, but subject to proceedings outside the criminal justice system” was not consistent with the rule regarding traffic offences (exclusion of minor traffic offences). In a country where some minor offences are considered criminal, but are subject to proceedings outside the criminal justice system, they cannot be included in conviction statistics. Therefore, with respect to comparisons between police level and court level, it is problematic to include these offences in police statistics. It was suggested to move the “minor offences defined as criminal by the law, but subject to etc.” category to the “exclude” side.

3. Trial questionnaire and evaluation

It was, however, decided to at least pilot the new definition in the trial ESB questionnaire. Therefore, the trial questionnaire featured a just slightly modified version that is reproduced here:

In principle, all offences defined as criminal by the law should be included. But there are some countries which follow a minor offence concept either excluding them from the criminal code (for example the <i>wykroczenia</i> in Poland in cases of minor thefts etc.) or making them subject to special proceedings (for example most <i>contraventions</i> in France which are handled by the police only) outside the criminal justice system. Sometimes they are recorded in police statistics, sometimes not.					
Total criminal offences recorded by the police					
	Indicate whether separately identifiable in criminal law (Y/N)	Indicate whether <u>included</u> or <u>excluded</u>:			
		in pol. stats.		in conv. stats.	
		incl.	excl.	incl.	excl.
Include the following:					
minor offences defined as criminal by the law (i.e. misdemeanours, <i>contraventions</i> , <i>wykroczenia</i> , <i>faltas</i>), but subject to proceedings outside the criminal justice system					
criminal offences committed by juveniles					
major traffic offences (e.g. <i>drunk driving</i>)					
other criminal offences					
Exclude the following:					
minor traffic offences (e.g. <i>parking offences</i>)					
breaches of public order regulations					

In the tables, it was tried to collect data for the total amount of criminal offences and for the sub-groups “Minor offences defined as criminal by the law, but subject to criminal proceedings outside the criminal justice system” and “Major traffic offences”.

The results of the trial phase can be seen in tables B.1 and B.2. The results show a quite good agreement with the standard definition, except with respect to the minor offences include rule. With respect to minor offences proceeded outside the criminal justice system, things were even more problematic when looking at data availability: While all responding countries (except Switzerland for police

data) stated that there are data on criminal offences total available for both police and convictions level, the situation was different for the sub-category of “minor offences proceeded outside the criminal justice system” on police level. No country was able to report data here, not even *France* or (with some exception) *Poland*, for which it could be expected beforehand. Data availability for “major traffic offences” was reasonably well, half of the responding countries reported to have available data on police level and all of the countries on convictions level.

4. Final questionnaire and evaluation

In the draft of the final questionnaire the definition of criminal offences total was changed. Now it was proposed to only include certain minor offences like minor theft, but to exclude the rest of the offences subject to proceedings outside the criminal justice system. As a consequence, “include: minor theft” was added to the definition of theft and “include: minor fraud” to the definition of fraud.

The new definition was discussed and the group agreed to use it for the final questionnaire. It had the following wording:

In principle, all offences defined as criminal by the law should be included. But there are some countries which follow a minor offence concept either excluding them from the criminal code (for example the <i>wykroczenia</i> in Poland in cases of minor thefts etc.) or making them subject to special proceedings (for example most <i>contraventions</i> in France which are handled by the police only) <i>outside the criminal justice system</i> . Sometimes they are recorded in police statistics, sometimes not.				
Total criminal offences recorded by the police				
	Indicate whether <u>included</u> or <u>excluded</u>:			
	in pol. stats.		in conv. stats.	
	incl.	excl.	incl.	excl.
Include the following:				
minor theft and other minor property offences (even if subject to proceedings outside the criminal justice system)				
minor assault and other minor violent offences (even if subject to proceedings outside the criminal justice system)				
criminal offences committed by juveniles				
major traffic offences (e.g. drunk driving)				
all other criminal offences subject to criminal proceedings				
Exclude the following:				
minor traffic offences (e.g. parking offences)				
breaches of public order regulations				
all other minor offences subject to proceedings <i>outside the criminal justice system</i> , even if defined as criminal by the law (i.e. misdemeanors, contraventions, <i>wykroczenia</i> , <i>faltas</i>)				

In all offence tables of the final questionnaire, it was asked for data on criminal offences total and the sub-category of “Major traffic offences”. On police level, there were some more categories added to cover the issue of offences proceeded outside the criminal justice system. There were two sub-categories added to crimi-

nal offences total (“Minor property offences handled outside the criminal justice system” and “Minor violent offences handled outside the criminal justice system”). Apart from this, also in order to handle the minor offences problem, there was a minor offence sub-category added to the categories of assault and theft.

Tables B.3.1 and B.3.2 show the responses of the different countries to the questions on the definition of criminal offences total. As can be seen from the tables, most countries were able to follow the include / exclude rules.

With respect to data availability, all countries were able to provide data on the total amount of offences. Less countries also had separate data available on major traffic offences: Data were reported to be unavailable on police level in *Albania, Belgium, Cyprus, Denmark, France, Germany, Iceland, Italy, Switzerland, UK: Northern Ireland* and *Scotland*; on convictions level in *Austria, Cyprus, Italy, and Ukraine*.

Since such procedures do not exist in many European countries, only four countries provided data on minor property offences subject to proceedings outside the criminal justice system (*Bulgaria, Croatia, Latvia, Lithuania*) and only two countries (*Bulgaria, Croatia*) on minor violent offences subject to proceedings outside the criminal justice system.

Table B.3.1: Results for the final definition of criminal offences total – part 1

	Minor theft and other minor property offences		Minor assault and other minor violent offences		Criminal offences committed by juveniles		Major traffic offences	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	+	+	+	+	+	+	+	+
Armenia	+	+	+	+	+	+	+	+
Austria	+	+	+	+	+	+	+	+
Belgium	+	+	+	+	+	+	-	+
Bulgaria	+	+	+	+	+	+	+	+
Croatia	+	+	+	+	+	+	+	+
Cyprus	-	+	-	+	+	+	+	+
Czech Rep.	-	-	-	-	+	+	+	+
Denmark	+	+	+	+	+	+	+	+
Estonia	-	-	+	+	+	+	+	+
Finland	+	+	+	+	+	+	+	+
Georgia	+	+	+	+	+	+	+	+
Germany	+	+	+	+	+	+	-	+
Greece	+	+	+	+	+	+	+	+
Hungary	...	...	...	...	+	+	+	+
Iceland	+	+	+	+	+	+	-	+
Ireland	-	-	-	-	-	-	+	+
Italy	+	+	+	+	+	+	+	+
Latvia	+	+	-	-	+	+	+	+
Lithuania	+	+	+	+	+	+	+	+
Netherlands	+	+	+	+	+	+	+	+
Poland	-	-	-	-	+	-	+	+
Portugal	+	+	+	+	+	+	+	+
Russia	+	+	+	+	+	+	-	-
Slovakia	-	-	-	-	+	+	-	-
Sweden	+	+	+	+	+	+	+	+
Switzerland	-	-	-	-	+	+	-	+
Turkey	+	+	+	+	+	+	+	+
Ukraine	-	-	-	-	+	+	+	+
UK: E. & W.	+	+	+	+	+	+	+	+
UK: N. Irel.	+	+	+	+	+	+	+	+
UK: Scotl.	+	+	+	+	+	+	+	+

Table B.3.2: Results for the final definition of criminal offences total – part 2

	All other criminal offences subject to criminal proceedings		Minor traffic offences		Breaches of public order regulations		All other minor offences subject to proceedings outside the criminal justice system	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	+	+	-	-	-	-	-	-
Armenia	+	+	-	-	-	-	-	-
Austria	+	+	-	-	-	-	-	-
Belgium	+	+	-	-	-	-	+	-
Bulgaria	+	+	-	-	+	+	-	-
Croatia	+	+	-	-	-	-	-	-
Cyprus	+	+	-	-	-	+	-	-
Czech Rep.	+	+	-	-	-	-	-	-
Denmark	+	+	-	-	-	-	-	-
Estonia	+	+	-	-	-	-	-	-
Finland	+	+	-	-	-	-	-	-
Georgia	+	+	-	-	-	-	-	-
Germany	-	+	-	-	-	-	-	-
Greece	+	+	-	-	-	-	-	-
Hungary	+	+	...	...	...	...	...	...
Iceland	+	+	-	-	-	+	-	-
Ireland	+	+	-	-	-	-	-	-
Italy	+	+	-	-	-	-	-	-
Latvia	...	...	+	+	+	+	-	-
Lithuania	+	+	-	-	-	-	-	-
Netherlands	+	+	-	-	-	-	-	-
Poland	+	+	-	-	-	-	-	-
Portugal	+	+	-	-	-	-	-	-
Russia	+	+	-	-	+	+	-	-
Slovakia	+	...	-	...	+	...	-	...
Sweden	-	+	-	+	-	+	-	-
Switzerland	-	+	-	-	-	-	-	-
Turkey	+	+	-	-	-	-	-	-
Ukraine	+	+	-	-	+	+	-	-
UK: E. & W.	-	+	-	-	+	-	-	+
UK: N. Irel.	+	+	-	+	-	+	-	-
UK: Scotl.	+	+	-	-	+	+	-	-

5. Additional questionnaire and evaluation

In the additional questionnaire, it was asked whether the different concepts on the include / exclude list were separately identifiable in criminal law. The relevant part of the questionnaire had the following wording:

In principle, all offences defined as criminal by the law should be included. But there are some countries which follow a minor offence concept either excluding them from the criminal code (for example the <i>wykroczenia</i> in Poland in cases of minor thefts etc.) or making them subject to special proceedings (for example most <i>contraventions</i> in France which are handled by the police only) <i>outside the criminal justice system</i> . Sometimes they are recorded in police statistics, sometimes not.			
Total criminal offences recorded by the police			
	Please indicate whether these items are separately identifiable in criminal law:		
	Yes	No	Remarks
Include the following:			
minor theft and other minor property offences (even if subject to proceedings outside the criminal justice system)			
minor assault and other minor violent offences (even if subject to proceedings outside the criminal justice system)			
criminal offences committed by juveniles			
major traffic offences (e.g. <i>drunk driving</i>)			
all other criminal offences subject to criminal proceedings			
Exclude the following:			
minor traffic offences (e.g. <i>parking offences</i>)			
breaches of public order regulations			
all other minor offences subject to proceedings <i>outside the criminal justice system</i> , even if defined as criminal by the law (i.e. <i>misdemeanors, contraventions, wykroczenia, faltas</i>)			

Table B.4: Criminal offence concepts separately identifiable in criminal law

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.	Ukraine
Include										
minor property offences	no	yes	...	yes	yes	...	yes	yes	no	no
minor violent offences	yes	yes	...	yes	yes	...	no	yes	no	no
criminal offences committed by juveniles	no	yes	no	yes	yes	no	yes	yes	no	yes
major traffic offences	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
all other offences subject to criminal proceedings	yes	yes	yes	yes	yes	yes	yes	yes	no	yes
Exclude										
minor traffic offences	no	yes	yes	yes	yes	yes	yes	no	no	no
breaches of public order regulations	yes	yes	no	yes	yes	yes	yes	no	no	yes
all other minor offences subject to proceedings outside cjs	no	yes	...	yes	yes	...	yes	no	no	no

Table B.4 shows the results of the evaluation of the additional questionnaire: In all responding countries major traffic offences are separately identifiable in criminal law. However, many countries added the remark that the border line between major and minor traffic offences was not clearly determined in their countries. Also, for all countries except UK: *England and Wales*, all “other offences” defined as criminal by the law and subject to criminal proceedings were separately identifiable. Regarding minor offences, separate identifiability is not always the case, as can be seen from table 4.

6. Conclusion

The reformed definition for “criminal offences total” worked quite well. The re-naming of the traffic offence category from “traffic offences defined as criminal by the law” to “major traffic offences” in the new version is an improvement, since now the inclusion of traffic offences does no more depend on the quite accidental question whether an offence is defined as criminal. This might even be the case for parking offences in some countries.

With respect to minor offences defined as criminal by the law and subject to proceedings outside the criminal justice system, the general exclusion rule proved to be right. On the other hand, the rules for inclusion of minor property and minor violent offences, even if subject to proceedings outside the criminal justice system, might be subject to revision in a 5th edition of the ESB.

C. Bodily Injury (Assault)

It was also tried to improve the definition for assault (bodily injury), and a more differentiated data collection instrument for that offence was introduced.

1. Previous definition

The old definition of assault had the following wording in the 3rd edition questionnaire:

Assault: inflicting bodily injury on another person with intent	
	Indicate whether “included” or “excluded”
Exclude the following:	
assault leading to death	
threats	
only causing pain	
slapping or punching	
sexual assault	

2. First steps and development of draft definitions and questions

At the beginning it was agreed that the situation regarding assault is complex, as the concept of seriousness varies across countries and hence the proportion of serious assault included in the total of assault.

The definition of assault used in the Sourcebook until the 3rd ed. has been a continental definition, which excluded assault without injuries. In order to keep this definition, it was discussed whether it would be a better idea to disaggregate the concept of assault, but therefore, a common concept of serious assault across countries would be necessary.

As for data collection, logically, when legal concepts exist for both simple and serious assault, it should be possible to disaggregate the numbers. Based on national definitions and a synopsis of assault from every country represented in the group, a draft of questions and tables, to be filled in by the group members, was developed in order to get a more in-depth look at assault (bodily injury).

After that a proposal for the definition of bodily injury (complete with include / exclude rules) was discussed. As the distinction between minor and aggravated assault might be misleading, the group decided to keep the definition of total of assault and include aggravated assault as a sub-category. In addition, it appeared that several countries do not require an injury as an outcome in the definition of assault; in these cases, the intent is criminalized, not the outcome (i.e. Finland, The Netherlands, United Kingdom). This started a discussion on the intent approach versus outcome approach. Finally, the group decided to ask some additional questions regarding bodily injury and assault to the group members only.

3. Trial and subsidiary questionnaires and evaluation

A new version of the special questionnaire on bodily injury (assault) was developed. Also a definition of bodily injury in the regular ESB format, i.e. a standard definition followed by include and exclude rules, to be included in the trial questionnaire was drafted. After a final discussion in the beginning of December 2007 a trial ESB questionnaire and a subsidiary questionnaire were distributed to the ESB expert group members.

The part of the subsidiary questionnaire regarding bodily injury (assault) had the following wording:

*Extract of the subsidiary questionnaire***S.1 Bodily injury / assault**

Standard definition: Inflicting bodily injury on another person with intent (including attempts)

In the criminal law of most countries, a distinction is being made between several degrees of bodily injury / assault, usually according to the seriousness of outcomes or the dangerousness of means (weapons etc.). In some countries, assault is punishable even if there has been no physical damage to the victim. In some other countries, this is the case only if the offender's intent was to inflict bodily injury and if he is, therefore, punishable for attempted bodily injury.

Please specify, in the following table, what is the situation in your country.

	Punishable under criminal law (Y/N)	Prosecuted only at vic- tim's request (Y/N) <i>If yes, please specify condi- tions</i>	Please specify how counted in police sta- tistics: - as a spe- cial offence - included in (specify) - not counted	Please spe- cify how counted in conviction statistics: - as a spe- cial offence - included in (specify) - not counted
Assault leading to death				
Aggravated assault				
Assault leading to bodily injury (or intent to cause bodi- ly injury)				
Assault without bo- dily injury				

Aggravated bodily injury / assault

According to the criminal law of your country, which are the **aggravating circumstances**? Please mark them with an 'X'.

Use of weapons or dangerous objects	Grave injury, e.g. hospital care > 2 days	Loss / paralysis of bodily parts, disfiguration	Mental illness / dementia caused	Life-threatening injury	Especially vulnerable victim	Other (specify)

Additional Comments on bodily injury / assault

The trial questionnaire featured a standard definition that had the following structure:

Bodily injury (assault): inflicting bodily injury on another person with intent (TOTAL)					
	Indicate whether separately identifiable in criminal law (Y/N)	Indicate whether included or excluded:			
		in pol. stats.		in conv. stats.	
		incl.	excl.	incl.	excl.
Include the following:					
minor bodily injury					
aggravated bodily injury					
bodily injury of a public servant/official					
domestic violence					
attempts					
Exclude the following:					
assault leading to death					
threats (except in the case of an attempt)					
assault only causing pain					
slapping or punching					
sexual assault					

There was also a definition for aggravated bodily injury introduced. It read as follows:

<u>of which</u> Aggravated bodily injury (assault): inflicting serious (i.e. grave, e.g. life-threatening or disabling) bodily injury to another person with intent, or under aggravated circumstances (use of weapons, or on a vulnerable victim) <i>Please note that cases of aggravated bodily injury should be counted under the Total of bodily injury as well.</i>					
Include the following:					
serious and lasting (<i>i.e. disabling</i>) bodily injury					
life-threatening bodily injury					
use of weapons (<i>dangerous objects</i>)					
particularly vulnerable victim					
attempts					
Exclude the following:					
assault leading to death					
threats (except in case of an attempt)					
sexual assault					

For the trial questionnaire, nine countries gave their answers on the definition for assault in the police and conviction statistics.

The results of the trial phase showed that the definition worked quite well in all countries. In general, all countries were able to include all items on the include list in police data and convictions data. The only exception to this was minor bodily injury in *France*, which is not included in police statistics and only partially included in conviction statistics, i.e. only when they are 5th class *contraventions*. Violence without temporary work incapacity (no injury) and without aggravating circumstances is a 4th class *contravention*, excluded from conviction statistics in *France*.

Compared with the “include”-rules, countries had much more difficulties to follow the “exclude”-rules: On the one hand, four out of eight countries on police and five out of nine countries on convictions level stated that they included assault leading to death. On the other hand, four countries included at least some of the minor forms of assault without actual injury that should be excluded according to the definition. Assault only causing pain, slapping and punching are included in *Finland*, *Germany*, *Poland* and *UK: England and Wales*. The latter two countries also included threats.

Finally, *Finland* and *Poland* even included sexual assault in their data.

One reason to try to record separate data on aggravated assault was that this category should be more comparable between countries, since it should be less influenced by the varying wideness of the national assault definitions. However, as results show, inclusion/exclusion of assault leading to death is a problem here, still. But apart from that, definitions between countries seem to be more comparable, as most parts of the include/exclude rules were quite strictly followed by all countries. There are only exceptions for an especially vulnerable victim as an aggravating circumstance – this is not considered aggravating in *Finland* and *Germany*. Apart from this, in *Poland*, threats and sexual assault are even included in the aggravated cases.

Data availability for assault was very good. All responding countries were able to provide data on assaults on police and convictions level. The situation is a bit different for aggravated assault, where only half of the responding countries were able to provide data during the trial phase. On the other hand, data availability for aggravated assault was good on convictions level, where of the responding countries only *France* was not able to provide separate data.

Table C.1: Results for the trial definition of bodily injury and aggravated bodily injury – police level

BODILY INJURY		Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
<i>include:</i>	minor bodily injury	...	+	-	+	+	+	+	+	+
	aggravated bodily injury	...	+	+	+	+	+	+	+	+
	bodily injury of public servant	...	+	+	+	+	+	+	+	+
	domestic violence	...	+	+	+	+	+	+	+	+
	attempts	...	+	+	+	+	+	+	+	+
<i>exclude:</i>	assault leading to death	...	+	-	-	+	+	+	-	-
	threats	...	-	-	-	-	-	+	-	+
	assault only causing pain	...	+	-	+	-	-	+	-	+
	slapping punching	...	+	-	+	-	-	+	-	+
	sexual assault	...	+	-	-	-	-	+	-	-
of which: AGGRAVATED BODILY INJURY										
<i>include:</i>	serious and lasting	...	+	...	+	+	+	+	+	+
	life-threatening	...	+	...	+	+	+	+	+	+
	use of weapons	...	+	...	+	+	+	+	+	+
	vulnerable victim	...	-	...	-	+	+	+	+	+
	attempts	...	+	...	+	+	+	+	+	+
<i>exclude:</i>	assault leading to death	...	+	...	-	+	+	+	-	-
	threats	...	-	...	-	-	-	+	-	-
	sexual assault	...	-	...	-	-	-	+	-	-

The subsidiary questionnaire should provide for a more in-depth look at the definition of and data availability for certain offences in the countries represented in the ESB group. The first question was aimed at the different degrees of assault and the way they can be identified in law and statistics. Sure it was no wonder that assault leading to death and aggravated assault are not only punishable according to the law of all responding countries, but also there is no request of the victim needed to prosecute the offence.

Assault leading to bodily injury is also punishable in all responding countries. However, as table C.3 shows, in 4 out of 8 countries (*Germany, Iceland, Poland, Switzerland*), the offence is only prosecuted if the victim requests it. In *Germany* and *Iceland* there is an exception to this rule if there is an increased public interest to prosecute the offence. Assault *without* bodily injury is also punishable according to the law of most responding countries, with the exception of *Albania* and the *Netherlands*. This corresponds with the finding from the trial questionnaire that many countries had to include assault only causing pain and slapping/punching (*Finland, Germany, Poland, UK: England and Wales*) and sometimes also threats (*Poland, UK: England and Wales*) in their assault data. Of the countries that consider assault without injury punishable, five (*Finland, Germany, Iceland, Poland, Switzerland*) out of seven countries require at least for minor cases that the victim requests prosecution formally.

Regarding data recording, the answers imply that most countries differentiate in their statistics between aggravated and simple assault (exception: *France* and on police level also *Switzerland*). Assault leading to death is recorded as a separate offence in the crime and conviction statistics of *Finland, France, Germany* and *Poland*. In *Iceland* and the *Netherlands*, it is recorded under the category of (aggravated) assault, while in *UK: England and Wales* it is considered manslaughter (i.e. a homicide offence). In *Switzerland*, it is also recorded as (involuntary) homicide on convictions level, but not recorded at all on police level. In *Albania*, finally, the recording category changes between police and conviction statistics: While it is recorded as murder in police statistics (obviously based on the outcome, without prior investigation of the intent), the recording changes to serious (i.e.: aggravated) assault on convictions level, since the court did not find evidence for the intent to kill. Assault without injury is recorded separately in four (*Iceland, Poland, Switzerland, UK: England and Wales*) out of seven countries on convictions level and three on police level, since *Switzerland* does not count these offences there. The other countries count these assaults (if at all) under the heading of (simple) assault.

Table C.3: Degrees of Assault – Part 2

Assault leading to bodily injury (or intent to cause bodily injury)		Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
		...	yes	yes	yes	yes	yes	yes	yes	yes
Assault leading to bodily injury (or intent to cause bodily injury)	Punishable under criminal law	...	no	no	yes, or increased public interest to prosecute	yes, or increased public interest to prosecute	no	yes	yes	no
	Prosecuted only at the victim's request	...	no	no	yes, or increased public interest to prosecute	yes, or increased public interest to prosecute	no	yes	yes	no
	Counted in police statistics	incl. in serious assault	incl. in assault or aggravated assault	incl. in assault or not counted	as a special offence	as a special offence	as a special offence	as a special offence	incl. in assault	incl. in less serious wounding or common assault
	Counted in conviction statistics	incl. in serious assault	incl. in assault or aggravated assault	incl. in assault	as a special offence	as a special offence	as a special offence	as a special offence	as a special offence	as a special offence
Assault without bodily injury	Punishable under criminal law	no	yes	yes	yes	yes	no	yes	yes	yes
	Prosecuted only at the victim's request	...	partially (petty assault)	no	yes, or increased public interest to prosecute	yes, or increased public interest to prosecute	...	yes	yes	no
	Counted in police statistics	...	incl. in (petty) assault	incl. in assault or not counted	incl. in assault	as a special offence	...	as a special offence	not counted	as a special offence
	Counted in conviction statistics	...	incl. in (petty) assault	incl. in assault	incl. in assault	as a special offence	...	as a special offence	as a special offence	as a special offence

Table C.4: Aggravated bodily injury

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK E. & W.
Use of weapons or dangerous objects	X (if used against important parts of the body)	X	X	X	X		X	X	X
Grave injury, e.g. hospital care > 2 days	X	X	X (8 days work inability)		X	X	X	X	
Loss / paralysis of bodily parts, disfigurement	X		X	X	X	X	X	X	
Mental illness / dementia caused	X	X	X	X	X		X	X	
Life-threatening injury	X	X		X	X	X	X	X	X
Especially vulnerable victim	X		X				X	X	
Other (except of assault leading to death)	special victim, pregnant victim (when the author knows the fact), among family members, with racist motivation	assaults committed in a particularly cruel or brutal manner, also when the offence is considered aggravated when assessed as a whole	victim age (minors), quality (parents, police officer, public servant, teachers) (racial offences), place (school, public transport), domestic violence, drunkenness	by use of poison or other health-damaging substances, by means of an insidious ambush, together with others, victim losing sight, hearing, ability to speak or to procreate, becoming incurably ill or handicapped			The aggravating circumstances are not enumerated. The court may take into account any such circumstances.	permanent inability to work, use of poison, domestic violence	intent to do grievous bodily harm

Another question was aimed at the aggravating circumstances for assault according to criminal law (table C.4). Most commonly, use of weapons or dangerous objects and life-threatening injuries are mentioned as aggravating circumstances (both in 8 out of 9 responding countries). In 7 out of 9 countries, grave injuries are sufficient, too. Also in 7 out of 9 countries, causing the loss / paralysis of bodily parts or disfiguration and causing mental illness / dementia are aggravating circumstances. The special vulnerability of certain types of victims is an aggravating circumstance in only 4 countries (*Albania, France, Poland, Switzerland*). There are also various other aggravating circumstances according to the criminal law of responding countries, as the answers in the “other” box show.

4. Final questionnaire and evaluation

Since the definition of (aggravated) bodily injury (assault) proved to work well during the trial phase, there were no changes applied for the final questionnaire with the exception of a slight editorial change in the “minor assault” line (see the part on criminal offences total for an explanation):

Bodily injury (assault): inflicting bodily injury on another person with intent (TOTAL)				
	Indicate whether <u>included</u> or <u>excluded</u> :			
	in pol. stats.		in conv. stats.	
	incl.	excl.	incl.	excl.
Include the following:				
minor bodily injury (<i>even if subject to proceedings outside the criminal justice system</i>)				
aggravated bodily injury				
bodily injury of a public servant/official				
domestic violence				
attempts				
Exclude the following:				
assault leading to death				
threats (<i>except in the case of an attempt</i>)				
assault only causing pain				
slapping or punching				
sexual assault				

Of which: Aggravated bodily injury (assault): inflicting serious (i.e. grave, e.g. life-threatening or disabling) bodily injury to another person with intent, or under aggravated circumstances (use of weapons, or on a vulnerable victim) <i>Please note that cases of aggravated bodily injury should be counted under the Total of bodily injury as well.</i>				
	Indicate whether <u>included</u> or <u>excluded</u>:			
	in pol. stats.		in conv. stats.	
	incl.	excl.	incl.	excl.
Include the following:				
serious and lasting (<i>i.e. disabling</i>) bodily injury				
life-threatening bodily injury				
use of weapons (<i>dangerous objects</i>)				
particularly vulnerable victim				
attempts				
Exclude the following:				
assault leading to death				
threats (except in case of an attempt)				
sexual assault				

It was, however, decided, to collect more differentiated data on police level, not only asking for separate data on aggravated assault, but also on minor assault, bodily injury of a public servant and domestic violence. This is due to the fact that the explicit inclusion of minor assault, bodily injury of a public servant and domestic violence might break the trend compared with previous data collections, since these special forms of assault might have been excluded for some countries in earlier editions.

Table C.5.1 shows, that – as in the trial version – the include rules for assault were followed by the vast majority of the responding countries. Some exceptions can be found especially for bodily injury of a public servant, which is excluded from the data in several countries. And once again – as table C.5.2 makes clear – the exclude rules were more difficult to follow for many countries, with the rule on sexual assault being the easiest to follow. There are quite a few countries including assault leading to death in their data. Also, assault without injury is often included at least with respect to “assault only causing pain” and “slapping/punching”. Threats, however, are included quite seldom.

Table C.5.1: Results for the final definition of bodily injury (assault) – part 1

[illegible]

Table C.5.2: Results for the final definition of bodily injury (assault) – part 2

	Assault leading to death		Threats		Assault only causing pain		Slapping or punching		Sexual assault	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	-	+	-	-	-	-	-	-	-	-
Armenia	+	+	-	-	-	-	-	-	-	-
Austria	-	-	-	-	-	-	-	-	-	-
Belgium	+	-	-	-	-	-	-	-	-	-
Bulgaria	+	+	+	+	-	-	-	-	-	-
Croatia	-	-	-	-	-	-	-	-	-	-
Cyprus	-	-	-	-	-	-	-	-	-	-
Czech Rep.	+	+	-	-	-	-	+	+	-	-
Denmark	-	-	-	-	+	+	+	+	-	-
Estonia	-	-	-	-	-	-	-	-	-	-
Finland	-	-	-	-	+	+	+	+	+	+
Georgia	+	+	-	-	-	-	-	-	-	-
Germany	-	-	-	-	+	+	+	+	-	-
Greece	+	+	-	-	-	-	-	-	-	-
Hungary	-	...	...	...	...	...	...	...	-	...
Iceland	+	+	-	-	-	-	-	-	-	-
Ireland	-	-	-	-	-	-	-	-	-	-
Italy	-	-	-	-	-	-	-	-	-	-
Latvia	-	-	-	-	-	-	-	-	-	-
Lithuania	-	-	-	-	+	+	-	-	-	-
Netherlands	+	+	-	-	+	+	+	+	-	-
Poland	-	-	-	-	-	-	-	-	-	-
Portugal	-	+	-	-	+	+	+	+	-	-
Russia	-	-	-	-	-	-	-	-	-	-
Slovakia	+	...	+	...	-	...	+	...	+	...
Sweden	-	-	-	-	+	+	+	+	-	-
Switzerland	-	-	-	-	-	-	-	-	-	-
Turkey	-	+	-	-	-	-	-	-	-	-
Ukraine	-	-	-	-	-	-	-	-	-	-
UK: E. & W.	-	-	+	+	+	+	+	+	-	-
UK: N. Irel.	-	-	-	-	+	+	+	+	+	-
UK: Scotl.	-	-	-	-	+	+	+	+	-	-

The following tables C.6.1 and C.6.2 show the results on the definition of aggravated assault. While almost all countries included serious and lasting bodily injury, life-threatening injury and use of weapons or dangerous objects in their definition of aggravated assault, in some countries a particularly vulnerable victim is not an aggravating circumstance, at least not one reflected in statistics (see table C.6.1). Exclusion of assault leading to death from aggravated assault data is not possible for several countries (see table C.6.2).

Table C.6.1: Results for the final definition of aggravated bodily injury – part 1

	Serious and lasting bodily injury		Life-threatening bodily injury		Use of weapons (dangerous objects)		Particularly vulner- able victim	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	+	+	+	+	+	+	+	+
Armenia	+	+	+	+	+	+	+	+
Austria	+	+	+	+	+	+	+	+
Belgium	...	+	...	+	...	+	...	+
Bulgaria	+	+	+	+	+	+	+	+
Croatia	+	+	+	+	+	+	+	+
Cyprus	+	+	+	+	+	+	+	+
Czech Rep.	+	+	+	+	+	+	+	+
Denmark	+	+	+	+	+	+	+	+
Estonia	+	+	+	+	+	+	+	+
Finland	+	+	+	+	+	+	-	-
Georgia	+	+	+	+	+	+	+	+
Germany	+	+	+	+	+	+	-	-
Greece	+	+	+	+	+	+	+	+
Hungary	+	+	+	+	+	...	+	...
Iceland	+	+	+	+	+	+	+	+
Ireland	+	+	+	+	+	+	+	+
Italy	...	...	...	...	...	...	...	...
Latvia	+	+	+	+	+	+	+	+
Lithuania	+	+	+	+	+	+	+	+
Netherlands	+	+	+	+	+	+	+	+
Poland	+	+	+	+	+	+	+	+
Portugal	+	+	+	+	+	+	-	+
Russia	+	+	+	+	+	+	+	+
Slovakia	-	...	-	...	-	...	-	...
Sweden	-	+	-	+	-	+	-	+
Switzerland	+	+	+	+	+	+	+	+
Turkey	...	+	...	+	...	-	...	+
Ukraine	+	+	+	+	-	-	-	-
UK: E. & W.	+	+	+	+	+	+	+	+
UK: N. Irel.	+	+	+	+	+	+	+	+
UK: Scottl.	+	+	+	+	...	+	...	+

Table C.6.2: Results for the final definition of aggravated bodily injury – part 2

	Attempts		Assault leading to death		Threats		Sexual assault	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	+	+	+	+	-	-	-	-
Armenia	+	+	+	+	-	-	-	-
Austria	+	+	-	-	-	-	-	-
Belgium	...	+	...	-	...	-	...	-
Bulgaria	+	+	-	-	-	-	-	-
Croatia	+	+	-	-	-	-	-	-
Cyprus	+	+	-	-	-	-	-	-
Czech Rep.	+	+	+	+	-	-	-	-
Denmark	+	+	-	-	-	-	-	-
Estonia	+	+	-	-	-	-	-	-
Finland	+	+	+	+	-	-	-	-
Georgia	+	+	+	+	-	-	-	-
Germany	+	+	-	-	-	-	-	-
Greece	+	+	-	-	-	-	-	-
Hungary	+	...	-	...	...	...	-	-
Iceland	+	+	+	+	-	-	-	-
Ireland	+	+	-	-	-	-	-	-
Italy	...	...	...	...	...	...	...	...
Latvia	+	+	-	-	-	-	-	-
Lithuania	+	+	-	-	-	-	-	-
Netherlands	+	+	+	+	-	-	-	-
Poland	+	+	-	-	-	-	-	-
Portugal	-	+	-	+	-	+	-	-
Russia	+	+	-	-	-	-	-	-
Slovakia	+	...	+	...	+	...	+	...
Sweden	-	+	-	+	-	-	-	-
Switzerland	+	+	-	-	-	-	-	-
Turkey	...	+	...	+	...	-	...	-
Ukraine	+	+	+	+	-	-	-	-
UK: E. & W.	+	+	-	-	-	-	-	-
UK: N. Irel.	+	+	-	-	-	-	-	-
UK: Scotl.	-	-	-	-	-	-	-	-

With respect to data availability, on police level all countries were able to provide data on the total of bodily injury. Some countries were also able to give the numbers for minor bodily injury (14 countries), aggravated bodily injury (21 countries), bodily injury of a public servant (9 countries) and domestic violence (8 countries). On convictions level, data availability for bodily injury total was not as good as on police level. Still, almost all countries were able to provide data. For the aggravated

cases, even 25 countries were able to report data here, more than on police level. The reason might be that in some countries only the court defines whether a case is aggravated or not, based on a full assessment of the case. countries). On convictions level, data availability for bodily injury total was not as good as on police level. Still, almost all countries were able to provide data. For the aggravated cases, even 25 countries were able to report data here, more than on police level. The reason might be that in some countries only the court defines whether a case is aggravated or not, based on a full assessment of the case.

5. Additional questionnaire and evaluation

In the additional questionnaire, it was asked whether the different concepts on the include / exclude list were separately identifiable in criminal law. The relevant part of the questionnaire had the following wording:

Bodily injury (assault): inflicting bodily injury on another person with intent (TOTAL)			
	Please indicate whether these items are separately identifiable in criminal law:		
	Yes	No	Remarks
Include the following:			
minor bodily injury (<i>even if subject to proceedings outside the criminal justice system</i>)			
aggravated bodily injury			
bodily injury of a public servant/official			
domestic violence			
attempts			
Exclude the following:			
assault leading to death			
threats (<i>except in the case of an attempt</i>)			
assault only causing pain			
slapping or punching			
sexual assault			

Table C.7 shows the results of the evaluation of the additional questionnaire. According to that, some of the concepts used on the include/exclude list are separately identifiable in criminal law, and some are not, varying from concept to concept and also between countries. Only few countries have separate legal concepts for domestic violence (3 out of 10) and bodily injury of a public servant (5 out of 10). Therefore, in most other countries these forms of behavior will be considered “normal” bodily injury (assault). On the other hand, most countries have separate legal rules for threats and for sexual assault, thus making it possible to exclude

these forms of behavior from the data. 6 out of 10 responding countries are also able to identify assault leading to death separately in criminal law.

6. Conclusion

The results show that the reform of the assault/bodily injury definition was quite successful. The introduction of the new subgroup of aggravated assault seems to be useful. According to the results on definitions and data availability, the concept of aggravated assault might be more comparable across Europe than the basic assault concept. However, the rule to exclude assault leading to death was not always easily followed. It might be useful to revisit the issue of differentiation between homicide and bodily injury offences in future editions of the ESB. One possibility might be to have a separate category for assault leading to death/manslaughter.

The study also showed that for “basic” assault, concepts vary wildly even for continental Europe. Although continental definitions usually do not include threats, actual injury is not required in many countries, causing pain is sufficient. Based on the results of this study, the pros and cons of a change to a broader assault definition should be discussed.

Table C.7: (Aggravated) bodily injury concepts separately identifiable in criminal law

BODILY INJURY	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.	Ukraine
Include										
minor bodily injury	yes	no	yes	yes	yes	no	no	yes	yes	no
aggravated bodily injury	yes	no	yes	yes	yes	no	yes	yes	yes	yes
bodily injury of public servant	yes	no	yes	no	yes	no	yes	yes	no	no
domestic violence	no	no	yes	no	no	no	yes	no	no	yes
Attempts	yes	no	no	yes	no	yes	yes	yes	no	yes
Exclude										
assault leading to death	yes	no	yes	yes	no	no	yes	yes	yes	no
threats (except if attempt)	yes	yes	yes	yes	yes	yes	yes	yes	no	no
assault only causing pain	yes	no	yes	no	yes	no	no	yes	no	no
slapping or punching	yes	no	yes	no	yes	no	yes	yes	no	no
sexual assault	no	no	yes	yes	yes	yes	yes	yes	yes	no
Of which: AGGRAVATED BODILY INJURY										
Include										
serious and lasting bodily injury	no	no	yes	yes	no	no	yes	yes	no	yes
life-threatening bodily injury	no	no	no	yes	no	no	yes	yes	no	yes
use of weapons	no	no	yes	yes	no	yes	yes	yes	no	no
particularly vulnerable victim	no	no	yes	no	no	no	no	yes	no	no
Attempts	yes	no	no	yes	no	yes	yes	yes	no	yes
Exclude										
assault leading to death	no	no	...	yes	no	no	yes	yes	yes	yes
threats (except if attempt)	yes	yes	...	yes	yes	yes	yes	yes	no	no
sexual assault	...	no	...	yes	yes	yes	yes	yes	yes	no

D. Rape and Other Sexual Offences

Along with trying to update the definition of rape, we decided to try to provide more data on sexual abuse of minors.

1. Previous definition

The previous definition for rape in the 3rd edition questionnaire was as follows:

Rape: sexual intercourse with a person against her/his will (<i>per vaginam</i> or other)	
	Indicate whether “included” or “excluded”
Include the following:	
other than vaginal penetration (e.g. buggery)	
violent intra-marital sexual intercourse	
sexual intercourse without force with a helpless person	
sexual intercourse with force with a minor	
incestual sexual intercourse with or without force with a minor	
Exclude the following:	
sexual intercourse with a minor without force	
other forms of sexual assault	

2. First steps and development of draft definitions and questions

Looking at the previous editions of the ESB, it appeared that the standard definition of rape had not changed much over time. The definition was slightly modified after the first edition of the questionnaire, and then remained identical in the 2nd and 3rd editions. In order to examine the possibility to collect data on sexual abuse of minors, it was decided to produce a paper on sexual offences and sexual abuse of children, trying to provide a maximum of information on the specifics of different countries. Although simple, the initial rape definition was not without flaw. The concept of force appeared not clearly defined; indeed, notions such as force, threat, or helpless situation were potentially overlapping. The category “incestual sexual intercourse with or without force with minor” in the initial ESB rape definition needed to be disaggregated. Different sources were considered, among them a report from TRANSCRIME³² addressing the issue of child sexual exploitation and pornography across EU countries.

Therefore, a more precise definition needed to be created. It was decided that the definition of sexual abuse of minors should include: (a) acts covered, (b) age up to which one is considered a minor (i.e. in most countries, the age of sexual majority is 16); and (c) eventual overlap with the offence of rape.

A proposal for three standard definitions (rape, sexual assault, and sexual abuse of minors) was developed and discussed. The proposal was modified, in order to clarify the distinctions between these three offences and limit potential overlapping of definitions. The suggestion to distinguish between male and female rape victims was abandoned because most countries do not record data on the victim's gender.

3. Trial questionnaire and evaluation

The following standard definitions were used for the ESB Trial Questionnaire:

³² Study to assess the scope of and collect available statistics and meta-data on five crime types and propose harmonized definitions and collection procedures for the types of crime for the EU member states and the acceding countries, final report, 8 August 2006, financed by the European Commission – DG JLS (Contract No. DG.JLS/D2/2005/04).

Rape: sexual intercourse with a person against her/his will (<i>per vaginam</i> or other)					
	Indicate whether separately identifiable in criminal law (Y/N)	Indicate whether <u>included</u> or <u>excluded</u> :			
		in police statistics		in conviction statistics	
		incl.	excl.	incl.	excl.
Include the following:					
penetration other than vaginal (e.g. <i>buggery</i>)					
violent intra-marital sexual intercourse					
sexual intercourse without force with a helpless person					
sexual intercourse with force with a minor					
attempts					
Exclude the following:					
sexual intercourse with a minor without force					
other forms of sexual assault					

Sexual assault: physical sexual contact with a person against her/his will					
	Indicate whether separately identifiable in criminal law (Y/N)	Indicate whether <u>included</u> or <u>excluded</u> :			
		in police statistics		in conviction statistics	
		incl.	excl.	incl.	excl.
Include the following:					
any sexually motivated physical contacts committed with violence					
any sexually motivated acts committed with abuse of authority or undue pressure					
any sexually motivated acts committed against a helpless person					
any sexually motivated acts committed against a marital partner against her/his will					
attempts					
Exclude the following:					
any verbal or any other form of non-physical molestation					
pornography					
acts committed without violence					
acts committed against persons under the age of consent (<i>considered as abuse of minors</i>)					
acts considered as rape (<i>see above</i>)					

Sexual abuse of minor: sexual intercourse, or any other form of physical sexual contact, with a person below the age of consent					
Please indicate the age of consent³³ in your country:					
	Indicate whether separately identifiable in criminal law (Y/N)	Indicate whether <u>included</u> or <u>excluded</u>:			
		in police statistics		in conviction statistics	
		incl.	excl.	incl.	excl.
Include the following:					
sexual intercourse or any other form of physical sexual contact committed without violence					
acts committed by a person below the age of consent					
acts committed by persons above the age of consent					
attempts					
Exclude the following:					
verbal or any other form of non-physical molestation					
child pornography					
acts considered as rape					

In the ESB Trial Questionnaire, answers on sexual offences were produced by 6 countries: *Albania, England and Wales, Finland, France, Germany, Iceland, Netherlands, Poland, Switzerland*. Examples of deviations from the ESB standard definitions are summarized and detailed data provided afterwards, for police statistics and conviction statistics.

3.1 Offence definitions for police statistics

According to this trial, overall, most countries could meet the ESB standard definitions of rape, sexual assault, and sexual abuse of minors at the police level. However, as can be seen in tables D.1 - D.3, there are deviations, some of which are summarized hereafter as examples.

Overall, most countries could meet the ESB standard definition of rape, with a few exceptions (see table D.1). For example, *rape without force with a helpless person* could not be included in police statistics in *England and Wales, Switzerland*, and the *Netherlands*. Or, *Poland* could not exclude *other forms of sexual assault*, as well as *sexual abuse of minor with force*, from data on police-recorded rape.

³³ Age of consent means the age under which a minor cannot validly consent to have sexual contacts.

A few countries were not able to match the ESB standard definition of sexual assault (see table D.2), namely *England and Wales*, *Germany*, *Iceland*, *Poland*, *Switzerland*, and the *Netherlands*. Interestingly, in *Switzerland*, at the police level, sexual assault and sexual abuse of minors cannot be distinguished; however the situation should be different after 2010 when the new national Police Crime Statistical System will be operative.

Age of consent differs across countries (see table D.3). In *England and Wales*, the age of consent is 16 years old, although 13 years old identifies most serious offences. The age of consent is 14 in *Germany*, 15 in *France* and *Poland*, 16 in *Finland*, *Switzerland* and the *Netherlands*.

Only 3 countries were able to fully match the ESB definition for sexual abuse of minors, namely *England and Wales*, *Iceland*, and the *Netherlands*. In *Germany* and *Finland*, acts committed by a person below the age of consent are excluded from data on police-recorded sexual abuse of minors. Non-physical molestation could not be excluded from neither *Swiss* nor *Polish* police data.

Table D.2: Results for the trial definition of sexual assault – police level

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
<i>Include:</i>	physical contacts with violence	+	+	+	+	+	+	+	+
	acts committed with abuse of authority	+	+	+	+	+	+	+	-
	acts committed against a helpless person	+	+	+	+	+	+	+	-
	acts committed against a marital partner	+	+	+	+	+	+	+	+
<i>Exclude:</i>	attempts	+	+	+	+	+	+	+	+
	verbal / non-physical molestation	-	-	-	-	-	+	+	-
	pornography	-	-	-	-	-	-	-	-
	acts committed without violence	-	-	-	+	+	+	-	...
	acts committed against persons under the age of consent	-	...	+/-	-	-	-	+	...
	rape	-	-	-	...	-	...	-	-

Table D.3: Results for the trial definition of sexual abuse of minors – police level

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
<i>Age of consent</i>	...	16	15	14	...	16	15	16	16 (13)
<i>Include:</i>									
sexual intercourse / other physical sexual contact without violence	...	+	...	+	+	+	+	+	+
committed by person below age of consent	...	-	...	-	+	+	+	+	+
committed by person above age of consent	...	+	...	+	+	+	+	+	+
attempts	...	+	...	+	+	+	+	+	+
<i>Exclude:</i>									
verbal / non-physical molestation	...	-	...	-	-	-	+	+	
child pornography	...	-	...	-	-	-	-	-	-
rape	...	-	...	+/-	-	-	+	+	-

3.2 Offence definitions for conviction statistics

Definitions used for conviction statistics are almost identical to definitions used for police data. Some findings are summarized hereafter as illustration.

Definitions at conviction level for rape (table D.4) differ from definitions used at police level in two countries, namely *Albania*, and *Switzerland*. *Swiss* conviction data match ESB definition, whereas it was not possible at the police level.

Conviction statistics definitions for sexual assault are different from police statistics definitions for *France* and *Switzerland*. As can be seen in table D.5, sexual assaults with abuse of authority or against a helpless person could not be included in data from *England and Wales*. Non-physical molestation is included in conviction data in *France* and *Poland*. Sexual assaults without violence are included in data from *Iceland*, *Poland*, and the *Netherlands*.

For sexual abuse of minors conviction statistics definitions are different from police statistics definitions for *Iceland* and *Switzerland*. Sexual abuse of minors committed by person below the age of consent is excluded from data in *Finland*, *France*, *Germany*, and *Iceland*.

Table D.4: Results for the trial definition of rape – conviction level

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
<i>Include:</i>	penetration other than vaginal	-	+	+	+	+	+	+	+
	violent intra-marital sexual intercourse	-	+	+	+	+	+	+	+
	sexual intercourse without force with a helpless person	-	+	+	+	-	+	+	-
	sexual intercourse with force with a minor	-	+	+	+	+	+	+	+
	attempts	...	+	+	+	+	+	+	+
<i>Exclude:</i>	sexual intercourse with a minor without force	-	+	-	-	-	+	-	-
	other sexual assault	-	-	-	-	-	+	+	-

Table D.6: Results for the trial definition of sexual abuse of minors - conviction level

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
<i>Age of consent</i>	...	16	15	14	...	16	15	16	16 (13)
<i>Include:</i>									
sexual intercourse / other physical sexual contact without violence	...	+	+	+	+	+	+	+	+
committed by person below age of consent	...	-	-	-	-	+	+	+	+
committed by person above age of consent	...	+	above 18	+	+	+	+	+	+
Attempts	...	+	...	+	+	+	+	+	+
<i>Exclude:</i>									
verbal / non-physical molestation	...	-	...	-	-	-	+	-	
child pornography	...	-	...	-	-	-	-	-	-
Rape	...	-	...	+/-	-	-	+	-	-

4. Final questionnaire and evaluation

Based on the results of the trial questionnaire, the two new offences – sexual assault and sexual abuse of minors – were introduced without modification in the final version of the ESB questionnaire, along with the updated definition of rape:

Rape: sexual intercourse with a person against her/his will (<i>per vaginam</i> or other)				
	Indicate whether <u>included</u> or <u>excluded</u>:			
	in police statistics		in conviction statistics	
	incl.	excl.	incl.	excl.
Include the following:				
penetration other than vaginal (<i>e.g. buggery</i>)				
violent intra-marital sexual intercourse				
sexual intercourse without force with a helpless person				
sexual intercourse with force with a minor				
attempts				
Exclude the following:				
sexual intercourse with a minor without force				
other forms of sexual assault				

Sexual assault: physical sexual contact with a person against her/his will				
	Indicate whether <u>included</u> or <u>excluded</u>:			
	in police statistics		in conviction statistics	
	incl.	excl.	incl.	excl.
Include the following:				
any sexually motivated physical contacts committed with violence				
any sexually motivated acts committed with abuse of authority or undue pressure				
any sexually motivated acts committed against a help-less person				
any sexually motivated acts committed against a marital partner against her/his will				
attempts				
Exclude the following:				
any verbal or any other form of non-physical molestation				
pornography				
acts committed without violence				
acts committed against persons under the age of consent (<i>considered as abuse of minors; see below</i>)				
acts considered as rape (<i>see above</i>)				

Sexual abuse of minor: sexual intercourse, or any other form of physical sexual contact, with a person below the age of consent				
Please indicate the age of consent³⁴ in your country:				
	Indicate whether <u>included</u> or <u>excluded</u>:			
	in police statistics		in conviction statistics	
	incl.	excl.	incl.	excl.
Include the following:				
sexual intercourse or any other form of physical sexual contact committed without violence				
acts committed by a person below the age of consent				
acts committed by persons above the age of consent				
attempts				
Exclude the following:				
verbal or any other form of non-physical molestation				
child pornography				
acts considered as rape (see above)				

For the fourth edition of the ESB questionnaire, 32 countries completed the part of the questionnaire dealing with offence definitions. Detailed data are provided for, respectively, rape, sexual assault, and sexual abuse of minors.

4.1 Offence definition for rape (tables D.7.1 and D.7.2)

Half of the countries could meet the ESB standard definition of rape at the police level. For the other countries, some items could not be included/excluded from the data. However, overall, there are no more than seven deviations per item to include/exclude. Some countries (*Austria, Greece, The Netherlands, Slovakia, Switzerland, England and Wales, Northern Ireland, and Scotland*) could not include sexual intercourse with a helpless person in their rape data, whereas three countries (*Albania, Italy and Poland*) could not exclude sexual assault from data.

Most countries could meet the ESB standard definition of rape at the conviction level; there are fewer deviations for standard definitions for conviction statistics than for police statistics. Sexual assault is included in data from 4 countries (*Italy, Poland, Switzerland, and Turkey*).

³⁴ Age of consent means the age under which a minor cannot validly consent to have sexual contacts.

Table D.7.1: Results for the final definition of rape – part 1

	Penetration other than vaginal		Violent intra-marital inter-course		Sexual inter-course w/o force w/ help-less person		Sexual inter-course w/ force w/ a minor		Attempts	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	+	+	+	+	+	+	+	+	+	+
Armenia	-	-	+	+	+	+	+	+	+	+
Austria	+	+	+	+	-	-	+	+	+	+
Belgium	+	+	+	+	+	+	+	+	+	+
Bulgaria	+	+	+	+	+	+	+	+	+	+
Croatia	+	+	+	+	+	+	+	+	+	+
Cyprus	+	+	+	+	+	+	+	+	+	+
Czech Rep.	+	+	+	+	+	+	+	+	+	+
Denmark	+	+	+	+	+	+	+	+	+	+
Estonia	+	+	+	+	+	+	+	+	+	+
Finland	+	+	+	+	+	+	+	+	+	+
Georgia	+	+	+	+	+	+	+	+	+	+
Germany	+	+	+	+	+	+	+	+	+	+
Greece	+	+	+	+	-	-	-	-	+	+
Hungary	+	+	+	...	...	...	+	...	+	...
Iceland	+	+	+	+	+	+	+	+	+	+
Ireland	+	+	+	+	+	+	+	+	+	+
Italy	+	+	+	+	+	+	+	+	+	+
Latvia	+	+	+	+	+	+	+	+	+	+
Lithuania	+	+	+	+	+	+	+	+	+	+
Netherlands	+	+	+	+	-	-	+	+	+	+
Poland	+	+	+	+	+	+	+	+	+	+
Portugal	+	+	+	+	+	+	+	+	-	+
Russia	-	-	-	-	+	+	+	+	+	+
Slovakia	-	...	-	...	-	...	-	...	-	...
Sweden	+	+	+	+	+	+	+	+	+	+
Switzerland	-	+	+	+	-	+	-	+	+	+
Turkey	+	+	+	+	+	+	+	+	+	+
Ukraine	-	-	+	+	+	+	+	+	+	+
UK: E. & W.	+	+	+	+	-	-	+	+	+	+
UK: N. Irel.	+	+	+	+	-	+	+	+	+	+
UK: Scotl.	-	-	+	+	-	-	+	+	+	+

Table D.7.2: Results for the final definition of rape – part 2

	Sexual intercourse w/ a minor w/o force		Other forms of sexual assault	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	+	-	+	-
Armenia	-	-	-	-
Austria	-	-	-	-
Belgium	+	+	-	-
Bulgaria	-	-	-	-
Croatia	-	-	-	-
Cyprus	-	-	-	-
Czech Rep.	-	-	-	-
Denmark	-	-	-	-
Estonia	-	-	-	-
Finland	-	-	-	-
Georgia	-	-	-	-
Germany	-	-	-	-
Greece	-	-	-	-
Hungary	...	...	...	...
Iceland	-	-	-	-
Ireland	-	-	-	-
Italy	-	-	+	+
Latvia	-	-	-	-
Lithuania	-	-	-	-
Netherlands	-	-	-	-
Poland	-	-	+	+
Portugal	-	-	-	-
Russia	-	-	-	-
Slovakia	-	...	-	...
Sweden	+	+	-	-
Switzerland	-	-	-	+
Turkey	-	-	-	+
Ukraine	-	-	-	-
UK: E. & W.	-	-	-	-
UK: N. Irel.	-	-	-	-
UK: Scotl.	-	-	-	-

4.2 Offence definition for sexual assault (tables D.8.1 and D.8.2)

The distinction between rape and sexual assault is not always evident in police statistics (*Russia, Slovakia, Sweden, and Turkey*). Many countries did include acts committed without violence (*Armenia, Austria, Denmark, Estonia, Lithuania, the Netherlands, Portugal, Slovakia, Sweden, Turkey, and England and Wales*) and sexual abuse of minors (*Armenia, Denmark, Estonia, Iceland, Slovakia, Sweden, Switzerland, Turkey, England and Wales, and Scotland*) in their police statistics on sexual assault.

Many countries did not provide detailed information regarding conviction statistics. Again, nine countries (*Austria, Denmark, Estonia, Lithuania, the Netherlands, Portugal, Sweden, Switzerland, and England and Wales*) could not exclude acts committed without violence; six countries (*Armenia, Denmark, Estonia, Iceland, Sweden, England and Wales*) could not exclude sexual abuse of minors.

Table D.8.1: Results for the final definition of sexual assault – part 1

	Any sexually motivated physical contact w/ violence		Any sexually motivated physical contact w/ abuse of authority or undue pressure		Any sexually motivated physical contact against helpless person		Any sexually motivated physical contact against marital partner against his/her will		Attempts	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	+	+	+	+	+	+	+	+	+	+
Armenia	+	+	+	-	+	+	+	+	+	+
Austria	+	+	+	+	+	+	+	+	+	+
Belgium	+	+	+	+	+	+	+	+	+	+
Bulgaria	+	+	+	+	-	-	-	-	+	+
Croatia	+	+	+	+	+	+	+	+	+	+
Cyprus	+	+	+	+	+	+	+	+	+	+
Czech Rep.	...	...	...	...	...	...	...	...	...	...
Denmark	+	+	+	+	-	-	-	-	+	+
Estonia	+	+	+	+	+	+	+	+	+	+
Finland	+	+	+	+	+	+	+	+	+	+
Georgia	+	+	+	+	+	+	+	+	+	+
Germany	+	+	+	+	+	+	+	+	+	+
Greece	...	+	...	+	...	+	...	+	...	+
Hungary	+	+	+	+	+	...	+	...	+	...
Iceland	+	+	+	+	+	+	+	+	+	+
Ireland	+	+	+	+	+	+	+	+	+	+
Italy	...	...	...	...	...	...	...	...	...	...
Latvia	+	+	+	+	+	+	-	-	+	+
Lithuania	+	+	+	+	+	+	+	+	+	+
Netherlands	+	+	+	+	+	+	+	+	+	+
Poland	...	...	...	...	...	...	...	...	...	...
Portugal	+	+	+	+	+	+	+	+	+	+
Russia	+	+	-	-	+	+	-	-	+	+
Slovakia	-	...	-	...	-	...	-	...	-	...
Sweden	+	+	+	+	+	+	+	+	+	+
Switzerland	+	+	+	+	+	+	+	+	+	+
Turkey	+	...	+	...	+	...	+	...	+	...
Ukraine	+	+	+	+	+	+	+	+	+	+
UK: E. & W.	+	+	-	-	-	-	+	+	+	+
UK: N. Irel.	+	+	+	+	+	+	+	+	+	+
UK: Scotl.	+	+	...	-	-	-	+	+	-	+

Table D.8.2: Results for the final definition of sexual assault – part 2

	Any verbal or other form of non-physical molestation		Pornography		Acts committed w/o violence		Acts committed against persons under the age of consent		Acts considered as rape	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	-	-	-	-	-	-	-	-	-	-
Armenia	-	-	-	-	+	-	+	+	-	-
Austria	-	-	-	-	+	+	-	-	-	-
Belgium	-	-	-	-	-	-	-	-	-	-
Bulgaria	-	-	-	-	-	-	-	-	-	-
Croatia	-	-	-	-	-	-	-	-	-	-
Cyprus	-	+	-	-	-	-	-	-	-	-
Czech Rep.	-	-	-	-	-	-	-	-	-	-
Denmark	-	-	-	-	+	+	+	+	-	-
Estonia	-	-	-	-	+	+	+	+	-	-
Finland	-	-	-	-	-	-	-	-	-	-
Georgia	-	-	-	-	-	-	-	-	-	-
Germany	-	-	-	-	-	-	-	-	-	-
Greece	-	...	-	...	-	...	-	...	-	...
Hungary	...	...	...	...	-	...	-	...	-	-
Iceland	+	+	-	-	-	-	+	+	-	-
Ireland	-	-	-	-	-	-	-	-	-	-
Italy	...	...	...	...	...	...	...	...	...	...
Latvia	-	-	-	-	-	-	-	-	-	-
Lithuania	+	+	-	-	+	+	-	-	-	-
Netherlands	-	-	-	-	+	+	-	-	-	-
Poland	...	...	...	...	...	...	...	...	...	...
Portugal	+	+	-	-	+	+	-	-	-	-
Russia	-	-	-	-	-	-	-	-	+	+
Slovakia	-	...	-	...	+	...	+	...	+	...
Sweden	+	+	+	+	+	+	+	+	+	+
Switzerland	+	-	-	-	-	+	+	-	-	+
Turkey	+	...	+	...	+	...	+	...	+	...
Ukraine	-	-	-	-	-	-	-	-	-	-
UK: E & W	-	-	-	-	+	+	+	+	-	-
UK: N. Irel.	-	-	-	-	-	-	-	-	-	-
UK: Scotl.	-	-	-	-	-	-	+	-	-	-

4.3 Offence definition for sexual abuse of minors (tables D.9.1 and D.9.2)

Age of consent ranges from 14 (*Albania, Austria, Croatia, Estonia, Germany, Italy, Lithuania, Portugal, and Ukraine*) to 18 (*Hungary and Latvia*). Age of consent is 15 in *Czech Republic, Denmark, Greece, Iceland, Poland, Slovakia, Sweden, and Turkey*; 16 in *Finland, Georgia, the Netherlands, Russia, Switzerland and Scotland*; and 17 in *Cyprus and Northern Ireland*. Other countries did not provide an answer. Most countries could meet the standard definition of sexual abuse of minors for police statistics, although 5 countries (*Latvia, Poland, Slovakia, Switzerland, and Northern Ireland*) could not exclude acts considered as rape.

Table D.9.1: Results for the final definition of sexual abuse of minors – part 1

	Age of consent	Sexual inter-course or other form of physical sexual contact without violence		Acts committed by a person below the age of consent		Acts committed by a person above the age of consent		Attempts	
		pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	14	+	+	-	-	+	+	+	+
Armenia	16	+	+	-	-	+	+	+	+
Austria	14	+	+	+	+	+	+	+	+
Belgium	...	+	+	+	+	+	+	+	+
Bulgaria	...	+	+	+	+	+	+	+	+
Croatia	14	+	+	+	-	+	+	+	+
Cyprus	17	+	+	+	+	+	+	+	+
Czech Rep.	15	+	+	+	-	+	+	+	+
Denmark	15	+	+	+	-	+	+	+	+
Estonia	14	+	+	+	-	+	+	+	+
Finland	16	+	+	-	-	+	+	+	+
Georgia	16	+	+	+	+	+	+	+	+
Germany	14	+	+	-	-	+	+	+	+
Greece	15	...	+	...	+	...	+	...	+
Hungary	18	...	...	+	...	+	...	+	...
Iceland	15	+	+	+	+	+	+	+	+
Ireland	...	+	+	+	+	+	+	+	+
Italy	14	+	+	+	-	+	+	+	+
Latvia	18	+	+	+	+	+	+	+	+
Lithuania	14	+	+	+	+	+	+	+	+
Netherlands	16	+	+	+	+	+	+	+	+
Poland	15	+	+	+	+	+	+	+	+
Portugal	14	+	+	+	+	+	+	-	+
Russia	16	+	+	-	-	+	+	+	+
Slovakia	15	+	...	+	...	+	...	+	...
Sweden	15	+	+	+	-	+	+	+	+
Switzerland	16	+	+	+	+	+	+	+	+
Turkey	15	+	+	+	+	+	+	+	+
Ukraine	14	+	+	-	-	+	+	+	+
UK: E. & W.	...	+	+	+	+	+	+	+	+
UK: N. Irel.	17	+	+	+	+	+	+	+	+
UK: Scotl.	16	+	+	...	+	+	+	-	-

Table D.9.2: Results for the final definition of sexual abuse of minors – part 2

	Verbal or any form of non physical molestation		Child pornography		Acts considered as rape	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	-	-	-	-	-	-
Armenia	-	-	-	-	-	-
Austria	+	+	-	-	-	-
Belgium	-	-	-	-	-	-
Bulgaria	-	-	-	-	-	-
Croatia	-	-	-	-	-	-
Cyprus	-	+	-	-	-	-
Czech Rep.	-	-	-	-	-	-
Denmark	-	-	-	-	-	-
Estonia	-	-	-	-	-	-
Finland	-	-	-	-	-	-
Georgia	-	-	-	-	-	-
Germany	-	-	-	-	-	-
Greece	...	-	...	-	...	-
Hungary	...	...	-	...	-	...
Iceland	+	+	-	-	-	-
Ireland	-	-	-	-	-	-
Italy	-	-	-	-	-	-
Latvia	-	-	-	-	+	+
Lithuania	+	+	-	-	-	-
Netherlands	-	-	-	-	-	-
Poland	+	+	-	-	+	+
Portugal	-	-	-	-	-	-
Russia	-	-	-	-	-	-
Slovakia	-	...	+	...	+	...
Sweden	-	-	-	-	-	-
Switzerland	+	-	-	-	+	-
Turkey	-	-	-	-	-	-
Ukraine	-	-	-	-	-	-
UK: E. & W.	-	-	-	-	-	-
UK: N. Irel.	+	...	+	...	+	...
UK: Scotl.	...	-	...	-	...	-

Most countries could meet the ESB standard definition for conviction statistics as well; yet there is one important deviation: 13 countries (*Albania, Armenia, Croatia, Czech Republic, Denmark, Estonia, Finland, Germany, Italy, Latvia, Russia, Sweden, and Ukraine*) could not include acts committed by a person below the age of consent in their data.

4.4 Data availability

Data availability was reviewed for each of the three sexual offences (rape, sexual assault, and sexual abuse of minors). For the 33 questionnaires returned at the time the AGIS report was written, all national correspondents were able to indicate the number of rape offences recorded by the police in 2006, whereas 13 countries could not provide such data for sexual assault. Then, seven countries could not provide the number of police-recorded offences for sexual abuse of minors.

Overall, for three countries there are no data for the number of convictions for rape. Then, ten national correspondents could not provide conviction data for sexual assault, and seven countries could not provide conviction data for sexual abuse of minors.

Whereas most countries could provide prison population data for rape, only nine national correspondents could provide such data for sexual assault, and only eight national correspondents gave data for sexual abuse of minors.

5. Additional questionnaire and evaluation

The additional questionnaire was sent to members of the ESB group; answers from ten countries could be analyzed, namely *Albania, England and Wales, Finland, France, Germany, Iceland, Poland, Switzerland, the Netherlands, and Ukraine*.

With respect to sexual offences, the additional questionnaire contained questions referring to the legal concepts of rape, sexual assault, and sexual abuse of minors.

As can be seen in Tables D.10 to D.12, many items do not exist *per se* in the criminal legislation of the countries. Interestingly, there are also many differences across countries. The fact that some items are not separately identifiable in criminal law might explain why standard ESB definitions cannot be matched in some cases.

Table D.10: Rape concepts separately identifiable in criminal law

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.	Ukraine
Include										
penetration other than vaginal	no	no	no	no	no	no	yes	yes	yes	no
violent intra-marital sexual intercourse	no	no	no	no	no	no	no	no	no	yes
sexual intercourse w/o force w/ helpless person	yes	no	yes	yes	no	no	yes	yes	yes	yes
sexual intercourse w/ force w/ minor	yes	no	yes	no	no	no	yes	no	yes	yes
attempts	...	no	no	yes	no	yes	yes	yes	no	yes
Exclude										
sexual intercourse w/ minor w/o force	yes	yes	...	yes	yes	yes	yes	yes	yes	no
other forms of sexual assault	no	yes	...	yes	yes	yes	yes	yes	yes	no

Table D.11: Sexual assault concepts separately identifiable in criminal law

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.	Ukraine
Include										
sexually motivated acts with physical violence	no	no	yes	yes	no	no	yes	yes	yes	yes
acts with abuse of authority/undue pressure	yes	yes	yes	yes	no	no	yes	yes	yes	yes
acts against a helpless person	yes	no	yes	yes	no	no	yes	yes	yes	yes
acts against marital partner	no	no	no	no	no	no	no	yes	no	yes
acts against will										
attempts	yes	no	no	yes	no	yes	yes	yes	no	yes
Exclude										
verbal / non-physical molestation	no	no	yes	yes	yes	no	no	yes	no	no
pornography	yes	yes	...	yes	yes	yes	yes	yes	yes	no
acts committed w/o violence	yes	yes	no	yes	no	no	no	yes	yes	no
acts against persons under the age of consent	yes	yes	yes	yes/no	yes	yes	yes	yes	no	yes
acts considered as rape	yes	yes	...	yes	yes	yes	...	yes	yes	no

Table D.12: Sexual abuse of minors concepts separately identifiable in criminal law

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.	Ukraine
Age of consent	14	16	15	14	14 <i>changed to 15, summer 2007</i>	16	15		...	...
Include										
sexual intercourse/contact w/o violence	yes	yes	yes	yes	yes	no	yes	yes	yes	yes
acts committed by a person under age consent	no	no	no	no	no	no	yes	yes	yes	no
acts committed by a person above age consent	yes	yes	no	no	no	no	yes	yes	yes	yes
attempts	...	yes	no	yes	no	yes	yes	yes	no	yes
Exclude										
verbal or non-physical molestation	yes	no	yes	yes	yes	no	no	yes	no	no
child pornography	yes	yes	yes	yes	yes	yes	yes	yes	yes	no
acts considered as rape	yes	yes	yes	yes/no	yes	yes	...	yes	yes	no

6. Conclusions

Overall the introduction of two new offences – sexual assault and sexual abuse of minors – is conclusive, even though several countries could not provide data for each of the three sexual offences. With respect to cross-national comparisons, rape appears to be the sexual offence with the most consistent definition across countries, even though differences have been observed.

Future work should include the clarification of the distinction between sexual assault and rape, and the updating of the standard concept of sexual abuse of minors.

E. Drug Offences

1. Previous definition

The previous definition of the 3rd edition had the following wording:

Drug offences: the definition is largely uniform through international conventions	
	Indicate whether “included” or “excluded”
Include the following:	
possession	
cultivation	
production	
sale	
supplying	
transportation	
importation	
exportation	
financing of drug operations	
of which Drug trafficking: in most countries such acts are punishable as an aggravated offence (usually called “trafficking”) if the act is not in connection with personal use.	
Specify how this concept is defined in your country:	

2. First steps and development of draft definitions and questions

At the beginning it was agreed that the Sourcebook definition of drug offences does not seem to pose problems; the issue with drug trafficking was seen to be more complicated.

“New” data could be collected regarding the issues of drug offences and drug trafficking. For example, it was discussed to look at drug seizures (type of drug and quantity) in order to provide a better idea of the drug market. The EMCDDA in Lisbon has collected information on that for EU countries,³⁵ as well as the UN in a worldwide approach.³⁶ The European School Survey Project on Alcohol and Other Drugs (ESPAD)³⁷ could also be a valuable source of information regarding drug consumption across countries. It is necessary to reflect that drug seizures reflect police work, not the drug market itself. The Sourcebook group later on decided not to include data on drug seizures in the fourth edition, based on the collected information.

There is neither a unique concept of drug trafficking, nor one of aggravated drug trafficking. As with drug seizures, or small theft offences, what we seem to measure is in fact police work. Drug trafficking is an aggravated circumstance among others, such as the type or quantity of drug, whether trafficking is organized, etc. It is necessary to collect such information. Therefore, the drug offence part had to be redesigned, for example by first disaggregating between simple and aggravated drug offences, and, second, between different circumstances/types of aggravated offences.

Therefore, a proposal for revised drug offence definitions was presented. Major changes included questions regarding drug quantity limits below which offences are not counted, and the reintroduction of aggravated drug trafficking. Some members were concerned about aggravated drug trafficking as it was previously (i.e.: in the first edition of the Sourcebook, where it had been included) answered only by a few countries. In addition, the idea of having a list of substances was not very appealing for some members. The group, however, decided that it would be valuable to ask this information, even if only the most common drugs were included.

3. Trial questionnaire and evaluation

Based on the proposal, a draft of the new definitions for drug offences was adopted. It was added to the trial questionnaire. The text is reprinted here:

³⁵ Global report and country reports available on <http://www.emcdda.europa.eu/?nNodeID=435>.

³⁶ World Drug Report: <http://www.unodc.org/unodc/en/data-and-analysis/WDR.html>.

³⁷ www.espad.org.

Drug offences: the definition is largely uniform through international conventions					
	Indicate whether separately identifiable in criminal law (Y/N)	Indicate whether <u>included</u> or <u>excluded</u> :			
		in police statistics		in conviction statistics	
		incl.	excl.	incl.	excl.
Include the following:					
possession					
cultivation					
production					
sale					
supplying					
transportation					
importation					
exportation					
financing of drug operations					
possession of small quantities of drug					
<i>If possession of small quantities of drug is excluded, please specify the upper limit for each of the following substance:</i> cannabis _____ heroin _____ cocaine _____ ecstasy _____ amphetamines _____					

of which Drug trafficking: in most countries such acts are punishable as an aggravated offence (usually called 'trafficking') if the act is not in connection with personal use	
of which Aggravated drug trafficking	
If such an offence is defined through the quantity of drugs the offender dealt with, please specify the limits (above which the offence is considered aggravated) for each of the following substance:	
cannabis	_____
heroin	_____
cocaine	_____
ecstasy	_____
amphetamines	_____
If such an offence is defined through the way the offender has been operating, please specify whether an offence is aggravated in case of (Y/N):	
organised criminal operations	_____
large monetary profits	_____
as part of terrorist activities	_____
in view of any other circumstances (please specify)	_____

The results of the trial phase can be seen in tables E.1 and E.2. They show a very good agreement with the standard definition for drug offences. The only exception is that in some countries possession of minor quantities of drugs is excluded from the data on convictions level due to a small quantities rule (*Albania, Germany, Netherlands*; table E.2). Limits for small quantities of drugs were in the trial phase only provided by *Germany* and (for Cannabis only) by the *Netherlands* (table E.1). Also, only some responding countries gave information on aggravating circumstances for drug trafficking. *Germany* and *Switzerland* also indicated substance limits for drug offences above which trafficking offences would be considered aggravated (table E.1).

Data availability turned out to be very good for drug offences: For the total of drug offences, all responding countries said that they were able to provide data on both police and convictions level. Also, all responding countries were able to provide data on drug trafficking on police level and four out of six also on aggravated drug trafficking. On convictions level, data on trafficking was available for six out of seven countries as well as for aggravated drug trafficking.

Table E.1: Results for the trial definitions of drug offences – police level

DRUG OFFENCES <i>include:</i>	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
	...	+	+	+	+	+	+	+	+
possession	...	+	+	+	+	+	+	+	+
cultivation	...	+	+	+	+	+	+	+	+
production	...	+	+	+	+	+	+	+	+
sale	...	+	+	+	+	+	+	+	+
supplying	...	+	+	+	+	+	+	+	+
transportation	...	+	+	+	+	+	+	+	+
importation	...	+	+	+	+	+	+	+	+
exportation	...	+	+	+	+	+	+	+	+
financing drug operations	...	+	+	+	+	+	+	+	+
small quantities:	...	+	+	+	+	+	+	+	+
cannabis	...	...	...	6g	...	5g	...	...	...
heroin	...	...	...	30mg	...	...	...	...	...
cocaine	...	...	...	300mg	...	...	...	...	...
ecstasy	...	...	...	multiple qts	...	...	...	...	...
amphetamines	...	...	...	150mg base	...	...	...	...	...
of which DRUG TRAFFICKING									
of which AGGRAVATED TRAFFICKING									
cannabis	...	...	...	7.5g THC	...	...	...	...	...
heroin	...	...	...	1.5g	...	...	...	12g	...
cocaine	...	...	...	5.0g	...	...	...	18g	...
ecstasy	...	...	...	differs	...	...	...	...	...
amphetamines	...	...	...	10g base	...	...	...	36g	...
organised crime	...	...	yes	yes	...	...	yes	yes	no
large monetary profits	...	...	no	no	...	...	yes	yes	no
part of terrorist activities	...	...	...	no	...	...	...	no	no
other circumstances	...	...	...	yes	...	...	yes	no	no

4. Final questionnaire and evaluation

After the trial phase a discussion started on the issue of drug consumption. In several countries not only possession, but also consumption of drugs is a criminal offence. It was agreed that it should be entered into the “include/exclude list” for the definition of drug offences. It was also talked about whether one should include or exclude consumption from the data. Since in practice “drug consumption” may be equivalent to the already included possession of a very small quantity of a drug, it was decided to include it, too.

The new version of the definition had the following wording:

Drug offences: the definition is largely uniform through international conventions				
		Indicate whether <u>included</u> or <u>excluded</u>:		
		in police statistics		in conviction statistics
		incl.	excl.	incl.
Include the following:				
cultivation				
production				
sale				
supplying				
transportation				
importation				
exportation				
financing of drug operations				
consumption				
possession of larger quantities				
possession of small quantities				
<i>If possession of small quantities of drugs is excluded, please specify the upper limit for each of the following substance:</i>				
cannabis				
heroin				
cocaine				
ecstasy				
amphetamines				
<u>Of which:</u> Drug trafficking: in most countries such acts are punishable as an aggravated offence (<i>usually called 'trafficking'</i>) if the act is not in connection with personal use				
<u>Of which:</u> Aggravated drug trafficking				
1.) If such an offence is defined through the quantity of drugs the offender dealt with, please specify the limits (<i>above which the offence is considered aggravated</i>) for each of the following substance:				
cannabis				
heroin				
cocaine				
ecstasy				
amphetamines				
2.) If such an offence is defined through the way the offender has been operating, please specify whether an offence is aggravated in case of :		YES	NO	
organised criminal operations				
large monetary profits				
as part of terrorist activities				
in view of any other circumstances (<i>please specify</i>): _____ _____				

Table E.3.1: Results for the final definition of drug offences – part 1

	Cultivation		Production		Sale		Supplying	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	+	+	+	+	+	+	+	+
Armenia	+	+	+	+	+	+	+	+
Austria	+	+	+	+	+	+	+	+
Belgium	+	+	+	+	+	+	+	+
Bulgaria	+	+	+	+	+	+	+	+
Croatia	+	+	+	+	+	+	+	+
Cyprus	+	+	+	+	+	+	+	+
Czech Rep.	+	+	+	+	+	+	+	+
Denmark	+	+	+	+	+	+	+	+
Estonia	+	+	+	+	+	+	+	+
Finland	+	+	+	+	+	+	+	+
Georgia	+	+	+	+	+	+	+	+
Germany	+	+	+	+	+	+	+	+
Greece	+	+	+	+	+	+	+	+
Hungary	+	+	+	+	+	+	+	+
Iceland	+	+	+	+	+	+	+	+
Ireland	+	+	+	+	+	+	+	+
Italy	+	+	+	+	+	+	+	+
Latvia	+	+	+	+	+	+	+	+
Lithuania	+	+	+	+	+	+	+	+
Netherlands	+	+	+	+	+	+	+	+
Poland	+	+	+	+	+	+	+	+
Portugal	+	+	+	+	+	+	+	+
Russia	+	+	+	+	+	+	+	+
Slovakia	+	...	+	...	+	...	+	...
Sweden	+	+	+	+	+	+	+	+
Switzerland	+	+	+	+	+	+	+	+
Turkey	+	+	+	+	+	+	+	+
Ukraine	+	+	+	+	+	+	+	+
UK: E. & W.	+	+	+	+	+	+	+	+
UK: N. Irel.	+	+	+	+	+	+	+	+
UK: Scotl.	+	+	+	+	+	+	+	+

Data evaluation shows that the definition for the total of drug offences is quite uniform between countries. All responding countries reported that they were able to include cultivation, production, sale, supplying, transportation and exportation in their data (tables E.3.1 and E.3.2). Importation was only excluded by *Sweden* for smuggling cases, since these are covered by a different legal rule there. Possession of larger quantities of drugs was also only excluded by one country, *Portugal* (table E.3.3). The *Portuguese* correspondent added the remark that this refers only to pos-

session for personal use. In some countries (*Czech Republic, Iceland, Turkey, Ukraine*) financing of drug operations was excluded, but the vast majority was able to include it.

Table E.3.2: Results for the final definition of drug offences – part 2

	Transportation		Importation		Exportation		Financing of drug operations	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	+	+	+	+	+	+	+	+
Armenia	+	+	+	+	+	+	+	+
Austria	+	+	+	+	+	+	+	+
Belgium	+	+	+	+	+	+	...	...
Bulgaria	+	+	+	+	+	+	+	+
Croatia	+	+	+	+	+	+	+	+
Cyprus	+	+	+	+	+	+	+	+
Czech Rep.	+	+	+	+	+	+	-	-
Denmark	+	+	+	+	+	+	+	+
Estonia	+	+	+	+	+	+	+	+
Finland	+	+	+	+	+	+	+	+
Georgia	+	+	+	+	+	+	+	+
Germany	+	+	+	+	+	+	+	+
Greece	+	+	+	+	+	+	+	+
Hungary	+	+	+	+	+	+	+	+
Iceland	+	+	+	+	+	+	-	-
Ireland	+	+	+	+	+	+	+	+
Italy	+	+	+	+	+	+	+	+
Latvia	+	+	+	+	+	+	+	+
Lithuania	+	+	+	+	+	+	+	+
Netherlands	+	+	+	+	+	+	+	+
Poland	+	+	+	+	+	+	+	+
Portugal	+	+	+	+	+	+	+	+
Russia	+	+	+	+	+	+	+	+
Slovakia	+	...	+	...	+	...	+	...
Sweden	+	+	- if smuggling	-	+	+	+	+
Switzerland	+	+	+	+	+	+	+	+
Turkey	+	+	+	+	+	+	-	+
Ukraine	+	+	+	+	+	+	-	-
UK: E. & W.	+	+	+	+	+	+	+	+
UK: N. Irel.	+	+	+	+	+	+	+	+
UK: Scotl.	+	+	+	+	+	+	+	+

More differences could be found with regard to the typical forms of personal use offences (i.e. consumption and possession of small quantities; see table E.3.3). While the majority of countries included both types in their data, many countries excluded consumption and/or possession of small quantities. Both types were excluded from police and conviction statistics in *Albania*, the *Czech Republic*, *Italy*, *Portugal* and *Russia*, probably due to “real” decriminalization of personal use offences. The same is true in principle for *Estonia*, where small quantities are only included in the data if there is intent of trafficking. In *Germany*, consumption is fully excluded while possession of small quantities is only excluded on convictions level (the latter is due to mere procedural decriminalization).

Some other countries only exclude one: consumption (*Denmark*, *Lithuania*, *Portugal*, *Ukraine*) or possession of small quantities (*Belgium* [convictions level only], the *Netherlands*), therefore not leading to a full decriminalization of personal use offences (see also table E.7, below).

Table E.3.3: Results for the final definition of drug offences – part 3

	Consumption		Possession of larger quantities		Possession of small quantities	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	-	-	+	+	-	-
Armenia	+	+	+	+	+	+
Austria	+	+	+	+	+	+
Belgium	+	+	+	+	+	-
Bulgaria	+	+	+	+	+	+
Croatia	+	+	+	+	+	+
Cyprus	+	+	+	+	+	+
Czech Rep.	-	-	+	+	-	-
Denmark	-	-	+	+	+	+
Estonia	-	-	+	+	-	-
Finland	+	+	+	+	+	+
Georgia	+	+	+	+	+	+
Germany	-	-	+	+	+	-
Greece	+	+	+	+	+	+
Hungary	+	+	+	+	+	+
Iceland	+	+	+	+	+	+
Ireland	+	+	+	+	+	+
Italy	-	-	+	+	-	-
Latvia	+	+	+	+	+	+
Lithuania	-	-	+	+	+	+
Netherlands	+	+	+	+	-	-
Poland	...	...	+	+	+	+
Portugal	-	-	+	+	-	-
Russia	-	-	+	+	-	-
Slovakia	+	...	+	...	+	...
Sweden	+	+	+	+	+	+
Switzerland	+	+	+	+	+	+
Turkey	+	+	+	+	+	+
Ukraine	-	-	+	+	+	+
UK: E. & W.	+	+	+	+	+	+
UK: N. Irel.	+	+	+	+	+	+
UK: Scotl.	+	+	+	+	+	+

Table E.4 shows the upper limits of the “small quantity” for the countries that stated that there is a concept of possession of small quantities according to their law. A small quantity is – according to these results – not always limited by a fixed maximum quantity. In *Portugal*, it is only necessary that the offence is connected with personal use, while in *Estonia* and *Greece*, the quantity also has to be assessed as small. In other countries, there are fixed upper limits for the small quantity.

However, the rules differ significantly: Some countries only know small quantity rules for certain drug types, most prominently for cannabis use. Others have such a rule for all common drugs. The amounts that make up a “small” quantity differ significantly between countries, e.g. for heroin between 0.001 g (*Latvia*) and 0.25 g (*Italy*), for cannabis between 0.5 g (*Ukraine*) and 6 g (*Germany*, *Russia*). Obviously the maximum quantity of a drug depends on its dangerousness. Therefore, the maximum “small” quantity for heroin is lowest in all countries while it is highest for cannabis. However, the “cannabis-heroin-ratio” is very different: In *Latvia* it is 1000 for marijuana and 100 for hashish, respectively, in *Germany* it is still 200, while in *Russia* it is 12 and in *Italy* only 4.

Table E.4: Upper limits for possession of small quantities of drugs

	Cannabis	Heroin	Cocaine	Ecstasy	Amphetamines
Albania	small quantities for personal use	small quantities for personal use	small quantities for personal use	small quantities for personal use	small quantities for personal use
Belgium	3 g Cannabis	...	...	...	...
Czech Rep.	0.3 g THC	0.15 g	0.25 g	1 g	0.5 g
Estonia	small quantities for personal use	small quantities for personal use	small quantities for personal use	small quantities for personal use	small quantities for personal use
Germany	6 g Cannabis or 0.045 g THC	0.03 g	0.3 g	0.42 g MDE, 0.3 g MDMA or 0.36 g MDA	0.15 g amphetamine base
Greece	small quantities for personal use	small quantities for personal use	small quantities for personal use	small quantities for personal use	small quantities for personal use
Italy	1 g	0.25 g	0.75 g	0.75 g	0.5 g
Latvia	0.1 g (hashish) / 1.0 g (marijuana)	0.001 g	0.01 g	0.02 g	0.02 g
Netherlands	5 g		...	...	...
Portugal	possession for personal use	possession for personal use	possession for personal use	possession for personal use	possession for personal use
Russia	6 g	0.5 g	0.5 g	0.3 g	0.2 g
Ukraine	0.5 g	...	0.2 g	...	...

In several countries, the quantity of the drug is not (only) relevant for the definition of a “small” quantity in connection with personal use, but (also) as an aggravating circumstance for drug trafficking. The limits above which a drug trafficking offence is considered aggravated due to the large quantity are listed in table E.5. The countries not mentioned there responded that they do not define aggravated

drug trafficking via the quantity. For all countries, the quantities listed in table E.5 are very much higher than the ones listed in table E.4. Only few countries seem to define their drug offences mainly via the quantity, therefore having both a small and a large quantity limit (*Czech Republic, Estonia, Germany, Latvia, Russia, Ukraine*). Again, the limit is subject to strong variation between countries, for cannabis between 30 g (*Cyprus*) and 10,000 g (*Denmark*), for heroin between 1 g (*Latvia, Ukraine*) and 25 g (*Denmark*). *Lithuania* and *Ukraine* even have different quantity limits for large and very large quantities.

Table E.5: Lower limits for aggravated drug trafficking

	Cannabis	Heroin	Cocaine	Ecstasy	Ampheta- mines
Austria	20 g THC	3 g	15 g	30 g	10 g
Cyprus	30 g	10 g	10 g	20 g / 85 tablets	20 g
Czech Rep.	7.5 g THC	1.5 g	5 g	24 g	10 g
Denmark	10,000 g	25 g	25 g	150 – 200 tablets	50 g
Estonia	large quanti- ties	large quanti- ties	large quanti- ties	large quanti- ties	large quanti- ties
Finland	1,000 g	15 g	30 g	300 tablets	100 g
Germany	7.5 g THC	1.5 g	5 g	35 g	10 g amphet- amine base
Latvia	500 g	1 g	1 g	...	...
Lithuania	500 g / 2,500 g	2 g / 10 g	20 g / 100 g	20 g / 100 g	20 g / 100 g
Russia	100 g	2.5 g	5 g	2.5 g	1 g
Switzer- land	...	12 g	18 g	...	36 g
Ukraine	40 g / 500 g	1 g / 10 g	1 g / 15 g	...	...

Table E.6: Other aggravating circumstances for drug trafficking

	Organised criminal operations	Large monetary profits	As part of terrorist activities	In view of any other circumstances (<i>please specify</i>):
Albania	yes	no	yes	yes (by more than one person, repeated, supported by officials, financing)
Armenia	yes	yes	no	yes (at the place of imprisonment or arrest, in educational institution or recreational facilities)
Austria	yes	yes	no	yes (drugs offered to a minor by an adult who is at least two years older)
Belgium	...	...	...	...
Bulgaria	yes	yes	yes	no
Croatia	yes	no	no	no
Cyprus	no	no	no	no
Czech Rep.	yes	yes	no	yes (causing a serious bodily injury or death, commission in relation to a person under 15 / 18)
Denmark	no	yes	no	no
Estonia	yes	yes	no	no
Finland	yes	yes	no	yes (very dangerous drug, drug delivered to minors or in a very unscrupulous manner AND [also refers to sections a-c] the offence is assessed aggravated as a whole)
Georgia	yes	yes	yes	no
Germany	yes	no	no	yes (giving drugs to minors, irresponsibly causing the death of a person by giving him or her drugs, instigating minors to drug trafficking, possession of weapons while trafficking large quantities of drugs)
Greece	yes	no	yes	yes (trafficking / selling drugs in schools, military installations, gyms, prisons, etc.)
Hungary	yes	yes	yes	yes (giving drugs to minors)
Iceland	yes	yes	yes	yes (purity of the drug)
Ireland	...	...	...	...
Italy	yes	yes	no	no
Latvia	yes	no	no	no
Lithuania	no	no	no	no
Netherlands	...	...	...	...
Poland	yes	yes	yes	yes
Portugal	yes	yes	no	yes (consumer is a minor or helpless person, large number of consumers, offender has special public duties, drugs altered in an especially dangerous way, use of minors or helpless people for trafficking)
Russia	yes	yes	no	yes (against a legal minor, offence involving the use of one's professional opportunities)
Slovakia	yes	yes	yes	no
Sweden	yes	yes	no	yes (other especially dangerous or ruthless circumstances)
Switzerland	yes	yes	no	yes (quantity of drugs that may endanger the health of many people)
Turkey	...	...	...	...
Ukraine	yes	yes	no	yes (committed by a group of persons upon prior conspiracy, large amounts of especially dangerous narcotics or psychotropic substances, their analogues or precursors, smuggling of especially large amounts of narcotics or psychotropic substances, their analogues or precursors)
UK: E. & W.	...	...	...	...
UK: N. Irel.	...	...	...	...
UK: Scotl.	...	...	...	...

Table E.6 shows the other aggravating circumstances for drug trafficking. Several countries did not enter any information on aggravated cases, making clear that this concept does not exist (*Belgium, Ireland, the Netherlands, Turkey* and all parts of the UK). The most common aggravating circumstance is, according to our data, drug trafficking by organized criminal operations. Almost all countries that have a concept of aggravated drug trafficking consider this to be an aggravating circumstance. Many countries also consider large monetary profits, while few see trafficking as part of terrorist activities as an aggravating circumstance. Some countries also know other aggravating circumstances, normally with respect to certain consumers (like minors), certain places (like schools or prison) or special health risks.

All countries (with the exception of *Turkey*) were able to provide data on the total of drug offences on police level. The vast majority of countries was also able to provide data on drug trafficking. Only *Greece, Italy* and the *Netherlands* did not provide trafficking data on police level. The situation was very different for aggravated drug trafficking. Only 12 countries were able to give separate data for this offence: *Albania, Armenia, Bulgaria, Croatia, Denmark, Estonia, Finland, Germany, Iceland, Latvia, Poland, Russia*. Data availability on convictions level was not as good as on police level. While still a large majority of countries was able to provide data on the total of drug offences, only 22 countries were able to quote data on drug trafficking and 9 on aggravated drug trafficking.

5. Additional questionnaire and evaluation

In the additional questionnaire, it was asked whether the different concepts on the include / exclude list were separately identifiable in criminal law. The relevant part of the questionnaire had the following wording:

Drug offences: the definition is largely uniform through international conventions			
	Please indicate whether these items are separately identifiable in criminal law:		
	Yes	No	Remarks
Include the following:			
cultivation			
production			
sale			
supplying			
transportation			
importation			
exportation			
financing of drug operations			
consumption			
possession of larger quantities			
possession of small quantities			

Table E.7 presents the results of the evaluation of the trial questionnaire. It shows that in many responding countries the majority of drug offence concepts are separately identifiable in criminal law. However, some other countries (*Finland, Iceland, the Netherlands*) noted for all or most of the concepts that they are *not* separately identifiable in criminal law. This is usually due to the fact that drug offences in these countries, like explicitly stated in the questionnaire for *Iceland*, are all covered by the same article in criminal law. In such a situation, the question for separate identifiability is ambiguous, since it could be answered “yes” as soon as in one article a concept like “transportation” is mentioned among other concepts. But it could also be understood in the way that the answer is only “yes” if there is a *separate article* on transportation in drug laws. The latter will not be the case for many countries, e.g. *Germany*, where the concept, however, is *separately mentioned* in the article on drug offences. Combined with the results of table E.3.3, table E.7 makes clear that consumption is excluded from the data in *Albania, Germany* and *Ukraine* since it is not a legal concept identifiable in criminal law. In other words: Consumption is not an offence.

Table E.7: Drug offence concepts separately identifiable in criminal law

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.	Ukraine
Include										
cultivation	yes	no	yes	yes	no	no	yes	yes	yes	yes
production	yes	no	yes	yes	no	no	yes	yes	yes	yes
sale	yes	no	yes	yes	no	no	yes	yes	yes	yes
supplying	yes	no	yes	yes	no	no	yes	yes	yes	yes
transportation	yes	no	yes	yes	no	no	no	yes	yes	yes
importation	yes	no	yes	yes	no	no	no	yes	yes	yes
exportation	yes	no	yes	yes	no	no	no	yes	yes	yes
financing drug operations	yes	no	yes	yes	yes	no	no	yes	yes	no
consumption	no	yes	yes	no	no	no	no	yes	yes	no
possession of large quantities	yes	no	yes	yes	yes	no	yes, but no separation by quantities	yes	yes	yes
possession of small quantities	only if connected with personal use	no	no	yes	no	no	yes, but no separation by quantities	yes	yes	yes

6. Conclusions

All in all, the reformed standard definition for drug offences worked very well. Especially, it was very helpful to explicitly list the items “consumption” and “possession of small quantities” on the include list in order to get an idea in which countries these forms of behavior can be included and in which they are excluded, normally due to the fact that they are not considered an offence. Some countries were also able to provide limits for the definition of a small quantity (see above, table E.4).

Although only some countries were able to provide data on aggravated drug trafficking, still these data are very useful especially with respect to this study, since we were able to get detailed information on the different aggravating circumstances for drug trafficking in the responding countries (see tables E.5 and E.6). As these tables also show, most countries have such aggravating circumstances according to their law, many even multiple. Still, only few countries seem to be able to provide separate data for the aggravated cases.

F. Fraud

As a part of the project's goals, a new definition for fraud was introduced and tested. Also, it was checked whether data for fraud offences were available in the countries participating in the project.

1. First steps and development of draft definitions and questions

At the beginning the TRANSCRIME report on corruption, fraud, illicit trafficking, counterfeiting and child sexual exploitation and pornography based on 22 EU countries was presented to the group.³⁸ TRANSCRIME created categories based on the data they received from the countries. The group decided that this would be a good starting point for the development of new offence definitions regarding the offences of fraud and corruption which were decided to be included in the AGIS study.

³⁸ Study to assess the scope of and collect available statistics and meta-data on five crime types and propose harmonized definitions and collection procedures for the types of crime for the EU member states and the acceding countries, final report, 8 August 2006, financed by the European Commission – DG JLS (Contract No. DG.JLS/D2/2005/04).

The results of the TRANSCRIME report and especially the different legal rules for fraud offences in EU countries were checked. It was agreed that there does not seem to be a unique concept of fraud. In most countries there is a general one and some related specific types of crime. The general concept of fraud can be summarized as “benefit by deception”; different offences or acts gravitate around this central concept: forgery, money laundering, tax fraud, check fraud, subsidiary fraud, embezzlement, etc.

In order to integrate fraud in the Sourcebook, it was necessary to find out what is included in that general concept. It was also discussed that the police do not necessarily record all types of fraud offences, because some might go straight to other institutions (e.g. for tax fraud). It was decided to develop a standard definition for fraud as well as questions and tables.

A proposal for the fraud definition (complete with include / exclude rules) for use in the new 4th edition questionnaire was developed and discussed. It was agreed that the main offence of fraud contains the idea of exploiting a person’s error; the exploitation of a system should be included under the heading of computer fraud.

2. Trial and subsidiary questionnaires and evaluation

A new version of the special questionnaire on fraud was developed including a definition of fraud in the regular ESB format, i.e. a standard definition followed by include and exclude rules. Then the trial ESB questionnaire and a subsidiary questionnaire were distributed to the ESB expert group members.

The section of the subsidiary questionnaire on fraud did now not only feature computer fraud, but also other computer offences. This was necessary since this is an offence that could be considered as fraud or computer offence or both. Since computer offences were also introduced into the trial and final questionnaires with a standard definition, the special results on that are analyzed in a separate section.³⁹

The part of the subsidiary questionnaire regarding fraud had the following wording:

³⁹ See below, chapter G.

*Extract of the subsidiary questionnaire***S.2 Fraud**

Standard definition: Deceiving someone or taking advantage of someone's error with the intent to unlawfully gain financial benefits, thereby causing the deceived person to enter any operation that will be damaging to his or a third person's financial interests (including attempts).

A. Distinction between fraud and other property offences

There are several property offences, that, may be somehow related to fraud but that should be **excluded** from fraud data. Such offences include forgery of documents, tax offences, money laundering, breaching of trust/embezzlement, handling of stolen property, etc.

Beyond the data you provide, you are kindly requested to answer also the following questions regarding the legal situation in your country.

What are the essential elements of fraud in your country? Please mark them with an 'X' and give any additional observation.

	Not required in fraud	Observations
(1) Deception of victim by false representation		
(2) Transaction (i.e. transfer of property or money) by victim following deception		
(3) Damage to victim or a third party		
(4) Causal link between (1), (2) and (3)		
(5) Deception must not be trivial to discover		
(6) Consuming goods/services without intent to pay		
(7) Other (please specify)		

B. Distinction between fraud and forgery

Fraud can be committed making use of false documents etc. However, forgery in many countries is a separate offence punishable even if no fraud has been committed or attempted by making use of the false documents.

1. Are forgery offences (e.g. forgery of documents, identity cards, passports, money or payment instruments) **special offences** in the criminal law of your country, are they included in the basic legal concept of a general forgery offence or are they included in the basic legal concept of fraud?

Concept	Special offence	Included in basic legal concept of forgery	Included in basic legal concept of fraud
Forgery of identity cards / passports			
Forgery of money			
Forgery of payment instruments (<i>credit cards, bankcards, checks etc.</i>)			

2. Are forgery offences counted separately in **police statistics** or are they counted as general forgery or as fraud?

Concept	Separately	As general forgery	As fraud
Forgery of identity cards / passports			
Forgery of money			
Forgery of payment instruments (<i>credit cards, bankcards, checks etc.</i>)			

C. Minor fraud

Among the forms of behaviour that have to be considered as fraud according to the standard definition, there are minor cases (low / very low property damage) as well.

1. What are the main characteristics distinguishing minor from ordinary fraud?

	Always included	Not included in fraud	Prosecuted only at the victim's request
The low amount (please specify threshold amount)			
Other (please specify)			

2. If minor fraud is included in the basic legal concept of fraud, **how is it usually dealt with considering the Criminal Justice System** of your country? Check as many as apply.

Considering each check you made, please state whether cases dealt with in that way **are included in police and conviction data** on fraud.

	Usual form of dealing with minor fraud	Indicate whether included:	
		in police statistics (Y/N)	in conviction statistics (Y/N)
Subject to proceedings outside criminal justice system			
Prosecuted only at the victim's request			
Dropped, conditionally disposed of or sanctioned by the police			
Dropped, conditionally disposed of or sanctioned by the prosecutor			
Full trial			

D. Special fraud offences

There are several special types of fraud (in a broader sense), like tax fraud, subsidy fraud, social security fraud etc. These **special types of fraud** constitute special offences in most countries. In order to clarify these distinctions, please answer the following questions:

1. Are the following types of fraud (in a broader sense) **special offences** in the criminal law of your country or are they included in the basic legal concept of fraud?

Concept	Special offence	Punishable as general fraud	Indicate whether included:	
			in police statistics (Y/N)	in conviction statistics (Y/N)
Tax fraud				
Tax evasion				
Subsidy fraud				
Fraud with payment instruments				
Fraud with social security benefits				
Credit card fraud				
Consuming goods or services				
Other (please specify)				

E. Computer fraud

Does the standard definition of fraud also apply to computer fraud?

If the standard definition of fraud applies also to fraud where a computer rather than a human being has been manipulated, **computer fraud** should be **included** – if possible – in the data on fraud. If, however, computer fraud is a special offence, you should provide data on this form of fraud as well.

Standard definition for computer fraud: Manipulating any electronic system with the intent of obtaining undue financial benefits.

1. Is there a **special offence** punishing this kind of acts in your country?

Yes	No

If <u>'Yes'</u> , please specify section in your criminal law

If <u>'No'</u> , please explain how such cases are being dealt with

2. What are the essential elements of computer fraud in your country?

	Required	Not required	Observations
(1) 'Deception' (manipulation) of the system			
(2) Provoking the system to award undue benefits			
(3) Financial damage to the victim or a third party			
(4) Other (please specify)			

F. Other computer offences

There are several other computer offences, such as damaging data, illegal entry into a database ("hacking"), illegal downloading of programs or "theft" of data. In the *Sourcebook*, we try to see what data are available on a series of such offences. Here follows a list of such offences:

- "Theft" of electronic data or software (*gaining illegally access to any electronic database with the intent of obtaining dishonestly data*)
- Damage to electronic data (*altering, deleting or suppressing computer data or programs*)
- "Hacking" (*gaining illegally access to an electronic database*)
- Illegal downloading of software

Please indicate, in the following database, whether your country has special legal provisions covering these kinds of offences.

Concept	Special offence	Punishable as general fraud	Covered by another offence (please specify)	Available in the statistics	
				Police statistics	Conviction statistics
Theft of electronic data or software					
Damage to electronic data					

Hacking					
Illegal download of software					
Other <i>(please specify)</i>					

G. Additional comments on A. to F

The trial questionnaire featured a standard definition that had the following structure:

Fraud: Deceiving someone or taking advantage of someone's error with the intent to unlawfully gain financial benefits, thereby causing the deceived person to enter any operation that will be damaging to his or a third person's financial interests					
	Indicate whether separately identifiable in criminal law (Y/N)	Indicate whether <u>included</u> or <u>excluded</u>:			
		in police statistics		in conviction statistics	
		incl.	excl.	incl.	excl.
Include the following:					
attempts					
Exclude the following:					
receiving/handling a stolen property					
forgery of documents, passports etc.					
tax and customs offences					
subsidy fraud					
fraud involving welfare payments					
money laundering					
forgery of money/payment instruments					
credit card fraud					
consuming goods or services					

Table F.1: Results for the trial definition of fraud – police level

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
<i>include:</i>	...	+	+	+	+	+	+	+	+
<i>exclude:</i>	...	-	-	-	-	-	-	-	-
attempts	...	-	-	-	-	-	-	-	-
receiving / handling stolen goods	...	-	-	-	-	-	-	-	-
forgery	...	-	-	-	-	-	-	-	-
tax / customs offences	...	-	-	-	-	-	-	-	...
subsidy fraud	...	-	+	-	+	-	+	-	...
fraud with welfare payments	...	-	+	-	+	-	-	-	+
money laundering	...	-	-	-	-	-	-	-	-
forgery of payment instruments	...	-	-	-	-	-	-	-	+
credit card fraud	...	-	-	-	+	-	+	-	+
consuming goods / services	...	-	+	-	+	-	+	-	+
breaching of trust / embezzlement	...	-	+	-	-	-	+	-	+

Table F.2: Results for the trial definition of fraud – convictions level

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
<i>include:</i>	...	+	+	+	+	+	+	+	+
<i>exclude:</i>	-	-	-	-	-	-	-	-	-
attempts	-	-	-	-	-	-	-	-	-
receiving/handling stolen	-	-	-	-	-	-	-	-	-
forgery	-	-	-	-	-	-	-	-	-
tax/customs offences	-	-	-	-	-	-	-	-	...
subsidy fraud	-	-	+	-	+	-	+	-	...
fwith welfare payment	-	-	+	+	+	-	-	-	+
money laundering	-	-	-	-	-	-	-	-	-
forgery of payment instruments	-	-	-	-	-	-	-	-	+
credit card fraud	-	-	+	+/-	+	-	+	-	+
consuming goods	...	-	-	+/-	+	-	+	-	+
breaching of trust	...	-	+	-	-	-	+	-	+

For the trial questionnaire, nine countries gave their answers on the definition for fraud in the police and conviction statistics. The results showed that the standard definition with the given include and exclude rules could be met for most countries on police level and – to a somewhat lesser extent – on convictions level, too. However, especially the concepts of “credit card fraud”, “consuming goods or services” and “breaching of trust/embezzlement” were often indicated to be included in statistical data on fraud, especially on conviction level. But only for “credit card fraud” on conviction level, the majority of countries were not able to follow the given rule.

The subsidiary questionnaire should provide for a more in-depth look at the definition of and data availability for certain offences in the countries represented in the ESB group. A first question aimed at the essential elements of fraud in the meaning of necessary or sufficient conditions. The results for the responding countries are shown in table F.3. As can be seen from these results, in most of them the legal concept of fraud requires the deception of the victim by false representation, a transaction (i.e. transfer of property or money) by the victim following deception, damage to the victim or a third party and a causal link between these elements as necessary conditions for fraud. In all responding countries except *France* and *Switzerland*, the deception might even be a trivial one, as long as the victim believes in it. In *Germany* and *Switzerland*, a special intent of the offender is needed as another necessary condition. Consuming goods or services without the intent to pay is not generally considered fraud in most countries.

As table F.4 shows, the distinction between fraud and forgery is very clear. There are several special forgery offences, and a forgery in itself is normally not considered fraud.

According to the results in table F.5, most responding countries do not know a legal concept of minor fraud. Those that have such a concept do usually not differentiate between minor and regular fraud by the low amount of property damage, but assess the offence as a whole or consider offences committed by relatives etc. as minor cases. The ways of dealing with minor fraud differ significantly between countries. However, with the exception of *Finland* all of them have informal or less formal ways of dealing with such offences. Minor fraud is usually included in police statistics, but in most countries only reported in conviction statistics if there is a formal sanction imposed upon the offender.

With the exception of *England and Wales*, all responding countries at least know some special fraud-like offences separately from the general one. This is always (again, apart from *England and Wales*) the case with respect to tax offences (tax fraud/evasion). Apart from that, most of them also have a special rule on subsidy fraud and some also on fraud with payment instruments or social security benefits and credit card fraud. Only “consuming goods and services without the intent to pay” is not considered a special offence in most countries. Since such behavior is also not necessarily considered fraud, as the results from tables F.1 to F.3 show, it

might be assumed that this is not considered a criminal offence at all in some countries. However, some forms of behavior that might be put under this category might also be considered theft.

Regarding statistical recording of the special fraud offences, data availability on police and conviction level is generally very good. An exception has to be made for tax offences. In many countries they are not counted in police statistics, possibly due to the fact that such offences tend to be investigated by specialized tax officers, like the *Icelandic* and *German* correspondents explicitly stated.

A final part of the subsidiary questionnaire on fraud dealt with computer fraud, i.e. a fraud offence where instead of a human being a computer system is deceived. Most responding countries have a special offence of computer fraud (table F.7), of which the structure is quite similar to the structure of fraud itself (see tables F.7 and F.3).

Table F.3: Essential elements of fraud

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
Necessary conditions	(1) deception of victim by false representation	required	required	required	required	not required	required	not required	required
	(2) transaction (i.e. transfer of property or money) by victim following deception	required	required	required	required	not required	required	required	required
	(3) damage to victim or a third party	required	required	required	required	required	required	required	not required
	(4) causal link between (1), (2) and (3)	required	required	required	required	required	required	required	not required
	(5) deception must not be trivial to discover	not required	required	not required	not required	not required	not required	not sufficient	not sufficient
Sufficient condition	(6) consuming goods/services without intent to pay	not sufficient	not sufficient, special offence	only sufficient under certain conditions	sufficient	sufficient	not sufficient	not sufficient	not sufficient
Other necessary conditions	(7) other (please specify)	...	...	intent of obtaining for oneself or a third party an illegal pecuniary advantage	...	...	...	intent of obtaining for oneself or a third party an illegal pecuniary advantage	...

Table F.5: Minor fraud

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
Distinction between minor and normal fraud	Low amount	always incl.	always incl.	prosecuted only at victim's request (threshold about 25€)	always incl., but practically, victim's request is needed	always incl.	always incl.	always incl.	always incl.
	Other (please specify)	circumstances, assessed as a whole as petty	-	prosecuted only at victim's request if the victim of fraud is a relative of the offender, his or her legal guardian or lives together with the offender in the same household	-	-	circumstances, assessed as a whole as petty; prosecuted only at victim's request if the victim of fraud is a close relative of the offender	prosecuted only at victim's request if the victim of fraud is a relative / family member of the offender	-
Usual way of dealing with minor fraud	...	full trial	outside cjs; drop / conditional disposal / sanction by police; full trial	prosecuted at victim's request (see above); drop / conditional disposal / sanction by prosecutor; full trial	drop / conditional disposal / sanction by police or prosecutor; full trial	...	outside cjs; prosecuted at victim's request (see above); drop / conditional disposal / sanction by police or prosecutor; full trial	prosecuted at victim's request (see above); drop / conditional disposal / sanction by police; full trial	drop / conditional disposal / sanction by police; full trial
Minor fraud included in police statistics	...	yes	yes (except if outside cjs)	yes	yes	...	yes (except if outside cjs or necessary request by victim is missing)	yes (except if necessary request by victim is missing)	yes
Minor fraud included in conviction statistics	...	yes	if full trial	if full trial or sanction by prosecutor	if full trial or drop / conditional disposal / sanction by prosecutor	...	yes (except if outside cjs or necessary request by victim is missing)	if full trial or drop / conditional disposal / sanction by prosecutor	if full trial

Table F.6: Special fraud offences

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
Tax fraud	special offence	yes	yes	yes	yes	yes	yes	yes	no
	counted in police statistics	...	yes	no	no	no	yes	...	yes
Tax evasion	counted in conviction statistics	yes	yes	yes	grave cases	yes	yes	yes	yes
	special offence	yes	yes	yes	yes	yes	yes	yes	no
	counted in police statistics	...	yes	no	no	no	yes	...	yes
	counted in conviction statistics	yes	yes	yes	grave cases	yes	yes	yes	yes
Subsidy fraud	special offence	yes	yes	yes	no	yes	yes	yes	no
	counted in police statistics	...	yes	yes	yes	no	yes	...	yes
Fraud with payment instruments	counted in conviction statistics	yes	yes	yes	yes	yes	yes	yes	yes
	special offence	yes	yes	partially	no	no	no	yes	no
	counted in police statistics	...	yes	yes	yes	yes	yes	...	yes
	counted in conviction statistics	yes	yes (incl. in fraud)	yes	yes	yes	yes	yes	yes
Fraud with social security benefits	special offence	yes	yes	no	no	yes	no	yes	no
	counted in police statistics	...	yes	yes	yes	no	yes	...	yes
	counted in conviction statistics	yes	yes	yes	yes	yes	yes	yes	yes
Credit card fraud	special offence	yes	yes	partially	no	no	no	yes	no
	counted in police statistics	...	yes	yes	yes	yes	yes	...	yes
	counted in conviction statistics	yes	yes (incl. in fraud)	yes	yes	yes	yes	yes	yes
Consuming goods or services	special offence	no	no	partially	no	no	no	yes	no
	counted in police statistics	...	yes	yes (incl. in fraud)	yes	yes	yes	...	yes
	counted in conviction statistics	yes	yes	yes	yes	yes	yes	yes	yes
Other (please specify)	special offence	...	insurance fraud	...	...	...	...	...	...
	counted in police statistics	...	yes	...	...	...	...	...	...
	counted in conviction statistics	...	yes	...	...	...	...	...	...
	counted in conviction statistics	...	yes	...	...	...	...	...	...

Table F.7: Existence and Essential Elements of Computer Fraud

Special offence Necessary conditions	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
	yes required	no ...	no ...	yes required	yes required	no ...	yes required	yes required	yes required
(1) 'deception' (manipulation) of the system	required	...	...	required	required	...	required	required	not required
(2) provoking the system to award undue benefits	required	...	...	required	not required	...	required	required	not required
(3) financial damage to the victim or a third party	...	...	...	intent of obtaining for oneself or a third party an illegal pecuniary advantage	...	...	intent to gain a benefit or to cause a loss	transfer of property or money	...

3. Final questionnaire and evaluation

With respect to the results of the trial and subsidiary questionnaire, the definition of fraud used in the trial version was only slightly modified for the final one: Minor fraud was added to the include list, credit card fraud was removed from the exclude list and computer fraud was introduced in order to allow a more accurate differentiation between fraud and computer offences. The new version had the following wording:

Fraud: deceiving someone or taking advantage of someone's error with the intent to unlawfully gain financial benefits, thereby causing the deceived person to enter any operation that will be damaging to his or a third person's financial interests				
	Indicate whether <u>included</u> or <u>excluded</u>:			
	in police statistics		in conviction statistics	
	incl.	excl.	incl.	excl.
Include the following:				
minor (<i>e.g. small value</i>) fraud (<i>even if subject to proceedings outside the criminal justice system</i>)				
attempts				
Exclude the following:				
receiving/handling a stolen property				
forgery of documents, passports etc.				
tax and customs offences				
subsidy fraud				
fraud involving welfare payments				
money laundering				
forgery of money/payment instruments				
computer fraud (<i>i.e. deception of a computer instead of a human being</i>)				
consuming goods or services				
breaching of trust / embezzlement				

Table F.8.1: Results for the final definition of fraud – part 1

	Minor (e.g. small value) fraud (even if subject to proceedings outside the criminal justice system)		Attempts		Receiving / handling stolen property		Forgery of documents, passports etc.	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	+	+	+	+	-	-	-	-
Armenia	+	+	+	+	-	-	-	-
Austria	+	+	+	+	-	-	-	-
Belgium	+	+	+	+	-	-	-	-
Bulgaria	-	-	+	+	+	+	+	+
Croatia	+	+	+	+	-	-	-	-
Cyprus	-	+	+	+	-	-	-	-
Czech Rep.	-	-	+	+	-	-	-	-
Denmark	+	+	+	+	-	-	-	-
Estonia	-	-	+	+	-	-	-	-
Finland	+	+	+	+	-	-	-	-
Georgia	+	+	+	+	-	-	-	-
Germany	+	+	+	+	-	-	-	-
Greece	+	+	+	+	-	-	-	-
Hungary	+	...	+	...	-	-	-	-
Iceland	+	+	+	+	-	-	-	-
Ireland	+	+	+	+	-	-	-	-
Italy	+	+	+	+	-	-	-	-
Lativa	-	-	-	-	-	-	+	+
Lithuania	+	+	+	+	-	-	-	-
Netherlands	+	+	+	+	-	-	-	-
Poland	+	+	+	+	-	-	-	-
Portugal	+	+	+	+	-	-	-	-
Russia	-	-	+	+	-	-	-	-
Slovakia	+	...	+	...	+	...	+	...
Sweden	+	+	+	+	-	-	-	-
Switzerland	-	-	+	+	-	-	-	-
Turkey	+	+	+	+	-	-	-	-
Ukraine	-	-	+	+	-	-	-	-
UK: E. & W.	+	+	+	+	-	-	-	-
UK: N. Irel.	+	+	+	+	-	-	+	+
UK: Scotl.	+	+	-	-	-	-	...	...

Table F.8.2: Results for the final definition of fraud – part 2

	Tax and customs offences		Subsidy fraud		Fraud involving welfare payments		Money laundering	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	-	-	-	-	-	-	-	-
Armenia	-	-	+	+	+	+	-	-
Austria	-	-	-	-	-	-	-	-
Belgium	-	-	-	-	-	-	-	-
Bulgaria	-	-	+	+	+	+	-	-
Croatia	-	-	+	+	+	+	-	-
Cyprus	-	-	+	+	+	+	-	-
Czech Rep.	-	-	-	-	-	-	-	-
Denmark	-	-	-	-	-	-	-	-
Estonia	-	-	-	-	-	-	-	-
Finland	-	-	-	-	-	-	-	-
Georgia	-	-	-	-	-	-	-	-
Germany	-	-	-	-	-	+	-	-
Greece	-	-	+	+	+	+	-	-
Hungary	-	-	-	-	-	-	-	-
Iceland	-	-	+	+	+	+	-	-
Ireland	-	-	-	-	-	-	-	-
Italy	-	-	+	+	+	+	-	-
Lativa	+	+	+	+	-	-	-	-
Lithuania	-	-	-	-	+	+	-	-
Netherlands	-	-	-	-	-	-	-	-
Poland	-	-	+	+	-	-	-	-
Portugal	-	-	-	-	-	-	-	-
Russia	-	-	-	-	-	-	-	-
Slovakia	+	...	+	...	+	...	+	...
Sweden	-	-	-	-	+	+	-	-
Switzerland	-	-	-	-	-	-	-	-
Turkey	-	-	-	-	-	-	-	-
Ukraine	-	-	+	+	+	+	-	-
UK: E. & W.	-	+	-	+	-	+	-	-
UK: N. Irel.	+	+	+	+	-	-	-	-
UK: Scotl.	...	+	...	...	...	...	-	-

Table F.8.3: Results for the final definition of fraud – part 3

	Forgery of money/payment instruments		Computer fraud (i.e. deception of a computer instead of a human being)		Consuming goods or services		Breaching of trust / embezzlement	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	-	-	-	-	+	+	+	+
Armenia	-	-	-	-	+	+	-	-
Austria	-	-	-	-	+	+	-	-
Belgium	-	-	-	-	-	-	-	-
Bulgaria	+	+	-	-	-	-	+	+
Croatia	-	-	-	-	+	+	-	-
Cyprus	-	-	-	-	-	-	-	+
Czech Rep.	-	-	+	+	+	+	-	-
Denmark	-	-	-	-	-	-	-	-
Estonia	-	-	+	+	-	-	-	-
Finland	-	-	-	-	-	-	-	-
Georgia	-	-	-	-	-	-	-	-
Germany	-	-	-	-	+	+	-	-
Greece	-	-	-	-	-	-	-	-
Hungary	-	-	-	-	-	-	-	-
Iceland	-	-	+	+	+	+	-	-
Ireland	-	-	-	-	-	-	-	-
Italy	-	-	+	+	+	+	-	-
Latvia	-	-	-	-	-	-	-	-
Lithuania	-	-	+	+	-	-	+	+
Netherlands	-	-	-	-	-	-	-	-
Poland	-	-	-	-	+	+	+	+
Portugal	-	-	-	-	-	-	-	-
Russia	-	-	-	-	-	-	-	-
Slovakia	+	...	-	...	-	...	+	...
Sweden	-	-	+	+	+	+	-	-
Switzerland	-	-	-	-	-	-	-	-
Turkey	-	-	-	-	-	-	-	-
Ukraine	-	-	+	+	-	-	-	-
UK: E. & W.	+	+	+	+	+	+	+	+
UK: N. Irel.	+	+	+	+	-	-	-	-
UK: Scotl.	-	-	...	...	...	...	-	-

The standard definition for fraud was met for most countries on both police and convictions level. For each item on the include / exclude list, most countries were able to follow the given rule. Only for some types of special fraud offences, a

relevant number of countries included such offences although they should be – if possible – excluded according to the standard definition. But even here, this was never the majority (see tables F.8.1 – F.8.3, above). For the 33 responding countries whose questionnaire was evaluated for the AGIS report, all were able to provide fraud data on police level. On convictions level, data availability was also very good, although not every country was able to provide data, often due to broader categories of statistical recording on convictions level.

4. Additional questionnaire and evaluation

In the additional questionnaire which was only filled by the countries represented in the ESB experts group, it was asked whether the different concepts on the include/exclude list were separately identifiable in criminal law. The relevant part of the questionnaire had the following wording:

Fraud: deceiving someone or taking advantage of someone's error with the intent to unlawfully gain financial benefits, thereby causing the deceived person to enter any operation that will be damaging to his or a third person's financial interests			
		Please indicate whether these items are separately identifiable in criminal law:	
		Yes	No
Include the following:			
minor (e.g. small value) fraud (even if subject to proceedings outside the criminal justice system)			
attempts			
Exclude the following:			
receiving/handling a stolen property			
forgery of documents, passports etc.			
tax and customs offences			
subsidy fraud			
fraud involving welfare payments			
money laundering			
forgery of money / payment instruments			
computer fraud (i.e. deception of a computer instead of a human being)			
consuming goods or services			
breaching of trust / embezzlement			

Table F.9 shows the results of the evaluation of the additional questionnaire. According to that, most of the concepts used on the include / exclude list are separately identifiable in criminal law in the majority of countries. Only “consuming goods or services” usually not is an offence separately identifiable in criminal

law.⁴⁰ Apart from that, a relevant number of countries also stated that subsidy fraud, fraud involving welfare payments, computer fraud and breaching of trust/embezzlement were concepts not separately identifiable in criminal law.

5. Conclusions

Fraud was a new offence to be included in the questionnaire. As the results on definitions and data availability show, the definition proved to be useful and was met by most countries. Data availability was excellent. The results of the subsidiary questionnaire also helped to show that the suggested definition reflects the legal and statistical situation in most countries as good as possible. Fraud will therefore definitely be covered in future editions of the ESB, too. The definition will be kept.

⁴⁰ Also see above, F.2.

Table F.9: Fraud concepts separately identifiable in criminal law

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.	Ukraine
Include										
minor fraud	yes	yes	...	yes	no	...	no	no	no	no
attempts	yes	yes	no	yes	no	yes	yes	yes	no	yes
Exclude										
receiving/handling stolen goods	no	yes	yes	yes	yes	yes	yes	yes	yes	no
forgery	yes	yes	yes	yes	yes	yes	yes	yes	no	no
tax / customs offences	yes	yes	yes	yes	yes	no	yes	yes	yes	no
subsidy fraud	yes	yes	yes	yes	no	no	no	yes	no	yes
fraud with welfare payments	yes	yes	yes	no	no	no	yes	no	yes	yes
money laundering	yes	yes	yes	yes	yes	yes	yes	yes	yes	no
forgery of payment instruments	yes	yes	yes	yes	yes	yes	yes	yes	no	no
computer fraud	no	yes	no	yes	no	yes	yes	yes	no	yes
consuming goods or services	no	yes	yes	yes	no	no	no	no	no	no
breaching of trust / embezzlement	no	yes	yes	yes	yes	yes	no	yes	no	no

G. Computer Offences

1. First steps and development of draft definitions and questions

The increasing availability of computers has opened new opportunities for offending. In most countries (i.e. those following the continental tradition), fraud, theft and damages are defined in a material way that does, by essence, not cover eventual offences committed against more abstract “goods” such as computer programs. In these countries, fraud typically covered the deception of human beings only, but not the “deception” of technical devices such as computer programs. Therefore, continental countries had to fill eventual gaps in their criminal law by creating new sections specifically criminalizing violations of the confidentiality, integrity and availability of computer data and systems (unauthorized entry into electronic systems, i.e. computers, or unauthorized use or manipulation of electronic systems, data or software). The aim of the project was to identify the way EU countries have dealt with this challenge and to assess the availability of any data collected on such offences, either at the police, the prosecutorial or the conviction stage.

The introduction of a draft definition for fraud also made it necessary to differentiate between fraud and “computer fraud”, i.e. “deception” of a computer rather than of a human being. Also, the Sourcebook group felt that it would be

important to also differentiate between computer fraud and other computer offences, like illegal access (i.e. intentional access to a computer system without right, e.g. 'hacking'), illegal interception (i.e. interception without right, made by technical means, of non-public transmissions of computer data), data interference (i.e. damaging, deletion, deterioration, alteration or suppression of computer data without right), system interference (i.e. serious hindering without right of the functioning of a computer system), misuse of devices (i.e. production, sale, procurement for use, import, or distribution of a device or a computer password/access code) and illegal downloading of data or programs.

2. Trial and subsidiary questionnaires and evaluation

Therefore, the group agreed to include a definition for computer offences in the trial questionnaire and collect data for these offences, too. Also, in the subsidiary questionnaire part on fraud, a separate section on computer offences was added. This section has already been reprinted above, under heading F.2.

The definition of computer fraud in the trial questionnaire was as follows:

Offences against the confidentiality, integrity and availability of computer data and systems: Unauthorized entry into electronic systems (computers) or unauthorized use or manipulation of electronic systems, data or software					
	Indicate whether separately identifiable in criminal law (Y/N)	Indicate whether <u>included</u> or <u>excluded</u> :			
		in police statistics		in conviction statistics	
		incl.	excl.	incl.	excl.
Include the following:					
illegal access (i.e. intentional access to a computer system without right, e.g. 'hacking')					
illegal interception (i.e. interception without right, made by technical means, of non-public transmissions of computer data)					
data interference (i.e. damaging, deletion, deterioration, alteration or suppression of computer data without right)					
system interference (i.e. serious hindering without right of the functioning of a computer system)					
misuse of devices (i.e. production, sale, procurement for use, import, or distribution of a device or a computer password/access code)					
illegal downloading of data or programs					
attempts					

The evaluation of the trial questionnaire showed that the definition of computer offences worked well for almost all the countries. They were able to follow almost all the include rules. However, illegal downloading of data and programs was not included in the data reported for the majority of countries (see tables G.1 and G.2). Data availability on computer offences was very good. Only *France* and *UK: England and Wales* stated that data were not available. The same was true for *Switzerland* on Police level.

The results of the subsidiary questionnaire can be found in table G.3. The results show that computer offences in some countries, like *France*, are not separate ones according to the law, but considered as another offence. Especially, “theft” of electronic data or software is actually considered “real” theft in some countries, like *Finland*, *France* and *UK: England and Wales*. Even more interesting were the results for illegal downloading. Only *Switzerland* stated to have a separate legal provision for this. All the other countries consider this as another offence, typically as a copyright violation, fraud or theft.

In countries where certain computer offences are not covered by special legal provisions, they are consequently not counted separately in statistics. Apart from this, in *France* even the offences of hacking and damaging electronical data, although separately identifiable in criminal law, are not counted individually in statistics, but only under the heading “other offences”. In *Switzerland* and *UK: England and Wales*, computer offences are not included in police data, according to the answers to table G.3.

Table G.1: Results for the trial definition of computer offences – police level

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
<i>include:</i>									
illegal access	...	+	...	+	-	+	+	...	+
illegal interception	...	+	...	+	+	+	+	...	+
data interference	...	+	...	+	+	+	+	...	+
system interference	...	+	...	+	+	+	+	...	+
misuse of devices	...	+	...	+	-	+	+	...	+
illegal downloading	...	+	...	-	-	-	+	...	+
attempts	...	+	...	+	+	+	...	...	...

Table G.2: Results for the trial definition of computer offences – convictions level

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
<i>include:</i>									
illegal access	...	+	...	+	-	+	+	+	+
illegal interception	...	+	...	+	+	+	...	+	+
data interference	...	+	...	+	+	+	+	+	+
system interference	...	+	...	+	+	+	+	-	+
misuse of devices	...	+	...	+	-	+	+	-	+
illegal downloading	...	+	...	-	-	-	+	-	+
attempts	...	+	...	+	+	+	...	+	...

Table G.3: Legal and statistical availability of computer offences

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
Theft of electronic data or software	special offence	... covered by theft or copyright offence	covered by theft	yes	yes / covered by theft	yes	yes	yes	covered by theft
	counted in police statistics	yes	yes, but not separately	yes	yes, as theft	yes	yes	no	...
	counted in conviction statistics	yes	yes, but not separately	yes	yes, as theft	yes	...	yes	...
Damage to electronic data	special offence	... covered by fraud	yes	yes	yes / covered by destroying / damaging	yes	yes	yes	yes
	counted in police statistics	yes	yes, but not separately	yes	yes, but not separately	yes	...	no	no
	counted in conviction statistics	yes	yes, but not separately	yes	yes, but not separately	yes	...	yes	yes
Hacking	special offence	... yes	yes	yes	no	yes	yes	yes	yes
	counted in police statistics	yes	yes, but not separately	yes	...	yes	...	no	no
	counted in conviction statistics	yes	yes, but not separately	yes	...	yes	...	yes	yes
Illegal download of software	special offence	... covered by fraud	covered by fraud	covered by copyright law	covered by another offence	covered by copyright law	yes / covered by theft	yes	covered by theft
	counted in police statistics	yes	yes, but not separately	not separately	...	...	...	no	...
	counted in conviction statistics	yes	yes, but not separately	not separately	...	...	...	yes	...
Other (please specify)	special offence	... offering programs for unloading of copy protection systems	...	...	...	...	...	...	...
	counted in police statistics	yes	...	...	...	...	...	...	...
	counted in conviction statistics	yes	...	...	...	...	...	...	...

3. Final questionnaire and evaluation

The definition of computer offences was revised based on the results of the trial phase. Computer fraud was added to the include list in order to differentiate more precisely between fraud and computer offences. Also, illegal downloading was changed from “include” to “exclude” due to the results of the trial phase. It was also decided that illegal downloading of data or programs should not be considered a computer offence, given that it does not affect the confidentiality, integrity or availability of a computer (but eventual copyrights of third parties).

The definition in the final questionnaire had the following wording:

Offences against the confidentiality, integrity and availability of computer data and systems: unauthorized entry into electronic systems (computers) or unauthorized use or manipulation of electronic systems, data or software				
	Indicate whether <u>included</u> or <u>excluded</u>:			
	in police statistics		in conviction statistics	
	incl.	excl.	incl.	excl.
Include the following:				
illegal access (<i>i.e. intentional access to a computer system without right, e.g. 'hacking'</i>)				
illegal interception (<i>i.e. interception without right, made by technical means, of non-public transmissions of computer data</i>)				
data interference (<i>i.e. damaging, deletion, deterioration, alteration or suppression of computer data without right</i>)				
system interference (<i>i.e. serious hindering without right of the functioning of a computer system</i>)				
misuse of devices (<i>i.e. production, sale, procurement for use, import, or distribution of a device or a computer password/access code</i>)				
computer fraud (<i>i.e. deception of a computer instead of a human being</i>)				
attempts				
Exclude the following:				
illegal downloading of data or programs				

The full survey of all countries covered in the 4th edition has revealed that only the *Czech Republic, Estonia, Iceland, Italy, Lithuania, Sweden, Ukraine, UK: England and Wales* and *Northern Ireland* include computer fraud in their statistics on general fraud (see above, table F.8.3).

Regarding computer offences and criteria (1) to (4) of the standard definition almost all countries were able to provide data without any deviation (see table

G.4.1). Three responding countries do not include computer offences in their statistical data at all (*Greece, UK: Northern Ireland and Scotland*). A few others did not provide complete information on all items. Only *Switzerland* explicitly stated to exclude *system interference*. All other items are – if a country provided information at all – included everywhere.

With regard to criteria (5) to (8), the situation is similar. *Illegal downloading of programmes* is included in computer offences in only eight countries, and *computer fraud* is included in all but six countries (usually the same where computer fraud is considered as a form of general fraud). *Misuse of devices* (i.e. production, sale, procurement for use, import, or distribution of a device or a computer password/access code) is included among computer offences in all but four countries, and attempts are excluded nowhere.

This allows to conclude that the standard definition, as adopted by the experts group, has been fairly well in line with general trends, and that complexity is, compared to other offence definitions, less pronounced in this area across Europe.

The survey of all participating countries showed that 24 countries could provide data on police-recorded computer offences (although not necessarily for all relevant years). Only 9 were unable to do so. The figures indicate that there is some variety, probably reflecting the varying importance of computer services in everyday life, but also existing differences in the legal provisions, especially with respect to the differentiation between computer and other offences (also see above, table G.3).

Regarding convictions, 21 countries provided figures while 12 were unable to do so.

Table G.4.2: Results for the final definition of computer offences – part 2

[illegible]

4. Additional questionnaire and evaluation

The feasibility of the definition of computer offences was also tested through a complimentary questionnaire designed for the countries represented in the European Sourcebook Experts Group. The additional questionnaire featured the following section on computer offences:

Offences against the confidentiality, integrity and availability of computer data and systems: unauthorized entry into electronic systems (computers) or unauthorized use or manipulation of electronic systems, data or software			
	Please indicate whether these items are separately identifiable in criminal law:		
	Yes	No	Remarks
Include the following:			
illegal access (<i>i.e. intentional access to a computer system without right, e.g. 'hacking'</i>)			
illegal interception (<i>i.e. interception without right, made by technical means, of non-public transmissions of computer data</i>)			
data interference (<i>i.e. damaging, deletion, deterioration, alteration or suppression of computer data without right</i>)			
system interference (<i>i.e. serious hindering without right of the functioning of a computer system</i>)			
misuse of devices (<i>i.e. production, sale, procurement for use, import, or distribution of a device or a computer password/access code</i>)			
computer fraud (<i>i.e. deception of a computer instead of a human being</i>)			
attempts			
Exclude the following:			
illegal downloading of data or programs			

Table G.5: Computer offence concepts separately identifiable in criminal law

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	Ukraine	UK: E. & W.
Include										
illegal access	no	yes	...	yes	no	yes	no	yes	yes	no
illegal interception	yes	yes	...	yes	yes	yes	no	yes	yes	no
data interference	no	yes	...	yes	yes	yes	yes	yes	yes	no
system interference	no	yes	...	yes	yes	no	yes	no	yes	no
misuse of devices	no	yes	...	yes	yes	no	yes	no	no	no
computer fraud	no	yes	...	yes	no	...	yes	yes	no	no
attempts	...	yes	...	yes	no	yes	yes	yes	yes	no
Exclude										
illegal downloading	...	yes	...	no	yes	no	no	yes	yes	no

Here are the results of the replies of these countries (see table G.5):

In *Albania*, none of the items (1) and (3) to (8) are separately identifiable in criminal law. There are, with the exception of illegal interception of computer transmissions, no special provisions regarding computer offences in the criminal code. Computer fraud is not included in the definition of general fraud. All items are separately identifiable in criminal law in *Finland*. Computer fraud is not included in general fraud. For *France*, no information is available. In *Germany*, all items are separately identifiable in criminal law, except illegal downloading, which cannot be separated from other copyright offences. Computer fraud is not included in general fraud. Illegal access is not considered an offence in *Iceland*. Items (2) to (5) are separately identifiable. Computer fraud is included in general fraud. In the *Netherlands*, all items are separately identifiable in criminal law, except items (4) and (5) and illegal downloading. Computer fraud is not included in general fraud. For *Poland*, all items are separately identifiable in criminal law, except items (1) and (2). Computer fraud is not included in general fraud. In *Switzerland*, all items are separately identifiable in criminal law, except items (4) and (5). Computer fraud is not included in general fraud. For the *Ukraine*, all items are separately identifiable in criminal law, except items (5) and (6). Computer fraud is, in statistics, included in general fraud. Finally, in the *UK: England and Wales*, none of the items (1) to (8) are separately identifiable in criminal law. No data are available. Computer fraud is, in statistics, included in general fraud.

In sum, computer offences seem to be criminalized and defined relatively similarly across continental Europe, perhaps with the exception of *Albania* where the need to criminalize such offences may have been less evident up to the recent past. *France* and *UK: England and Wales* do not provide any data on these offences.

5. Conclusion

In comparison to other offences, including some classical ones such as burglary or assault, computer offences seem to be fairly standardised across Europe, and data on police-recorded offences and offenders as well as on convictions are widely available.

H. Money Laundering

1. First steps and development of draft definitions and questions

At the beginning, the group agreed that money laundering as an offence is often associated with other crimes, such as drug trafficking for example. For countries with a principal offence rule, it will therefore not be possible to get information when money laundering is a subsidiary offence.

Official units of different countries in charge of reporting suspicious transactions probably have different ways of defining a suspicion. It is necessary to collect various information: the number of suspicious transactions reported by official units and the proportion of these known to the police, also the number of suspected offenders on police level and the proportion of offenders prosecuted, sentenced, or in prison, respectively.

More generally, this new offence brought back the discussion regarding the use of other – not ‘classical’ – sources of data. Offences like money laundering will make it necessary for national correspondents to look for data in such other sources, e.g. with respect to suspicious transaction reports. Some members were reluctant to give additional work to national correspondents. However, knowing that OECD requests this sort of data, it should be possible for the national corre-

spondents to find them. The validity and reliability of the data collected from these 'other' sources was considered satisfactory.

2. Trial and subsidiary questionnaire and evaluation

The group agreed on a new offence definition for money laundering. It was introduced into the trial questionnaire and had the following wording:

Money laundering: specific financial transactions to conceal the identity, source, and/or destination of money					
	Indicate whether separately identifiable in criminal law (Y/N)	Indicate whether <u>included</u> or <u>excluded</u> :			
		in police statistics		in conviction statistics	
		incl.	excl.	incl.	excl.
Include the following:					
receiving and handling illegally obtained non-monetary property					
attempts					
Exclude the following:					
receiving/handling stolen property					
violations of the 'know-your-customer' rule (i.e. negligence in identification of customer's identity or origin of funds)					

In addition to the regular data tables of the ESB questionnaire, the group also decided to introduce special tables on the reporting of suspicious transactions into the police chapter.

These new tables had the following structure:

Extract of the trial questionnaire

1.3 Recorded money laundering activities

The following tables refer to money laundering. The information required concerns also the levels of prosecution and conviction. Please use the data from whatever agency responsible for collecting them.

Table 1.3.1 Suspicious transactions

	Number of suspicious financial trans- actions re- ported to the financial au- thorities	Number passed to law enforcement authorities for investigation	Number of resulting prose- cutions	Defensive reporting by institutions and recording after investigations	Number of convictions under money laundering laws	Amount of property temporarily frozen	Amount of property confiscated and assets recovered
Please specify authority collecting data							
Please insert definitions and units of count							
2001							
2002							
2003							
2004							
2005							
2006							
2007							

Table 1.3.2: Criminal nature of suspected property laundered in 2006
If data for 2006 are not yet available, please give data for the latest available year and indicate the year of reference in the table.

Year of reference if other than 2006:	Number of suspicious financial transactions reported to the financial authorities	Number passed to law enforcement authorities for investigation	Number of resulting prosecutions	Defensive reporting by institutions and recording after investigations	Number of convictions under money laundering laws	Amount of property temporarily frozen	Amount of property confiscated and assets recovered
Please insert definitions and units of count							
Property offences							
Drug offences							
Corruption							
Tax Offences							
Any other offences							

Table 1.3.3: Cases handled in 2006, by amounts involved (in €)
If data for 2006 are not yet available, please give data for the latest available year and indicate the year of reference in the table.

Year of reference if other than 2006:								
	Number of sus- picious financial transactions reported to the financial authori- ties	Number passed to law enforcement authorities for investigation	Number of resulting prosecutions	Defensive reporting by institutions and recording after investigations	Number of convictions under money laundering laws	Amount of property temporarily frozen	Amount of property confiscated and assets recovered	
Please insert definitions and units of count								
1,000 or less								
1,001-10,000								
10,001-50,000								
50,001-100,000								
100,001-500,000								
500,001-1,000,000								
1-10 million(s)								
10-50 millions								
50-100 millions								
100 millions or more								

In addition to these questions in the trial questionnaire, the subsidiary questionnaire also featured a section on this offence. It had the following structure:

S.3 Money laundering Money laundering is the practice of engaging in specific financial transactions to conceal the identity, source, and/or destination of money. It is usually connected with organized crime but can arise from other activities such as tax evasion or false accounting. Money laundering is carried out in a multitude of different ways, all involving the passage of money or assets via any organisation that facilitates the passage of money. Does the concept of money laundering in your country include the following elements?		
	Indicate if included in legal provisions on money laundering (Y/N)	Indicate if included in a different legal provision (please specify section)
The conversion or transfer of property , knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action.		
The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property , knowing that such property is derived from criminal activity or from an act of participation in such activity.		
The acquisition, possession or use of property , knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity; participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing points		
Other unusual transactions such as high demand for 500 Euro notes.		

Table H.1: Results for the trial definition of money laundering – police level

	Albania	Finland	France	Germany	Iceland	Nether-lands	Poland	Switzer-land	UK: E. & W.
<i>include:</i>									
receiving/handling illegally obtained non-monetary property	...	+	specific sources	+	+	+	+	+	+
attempts	...	+	specific sources	+	+	+	...	+	+
<i>exclude:</i>									
receiving/handling stolen property	...	+	specific sources	-	-	-	+	-	...
violation of know-your-customer rule	...	+	specific sources	-	-	-	-	+	+

Table H.2: Results for the trial definition of money laundering – convictions level

	Albania	Finland	France	Germany	Iceland	Nether-lands	Poland	Switzer-land	UK: E. & W.
<i>include:</i>									
receiving/handling illegally obtained non-monetary property	...	+	+	+	+	+	+	+	+
attempts	...	+	+	+	+	+	...	+	+
<i>exclude:</i>									
receiving/handling stolen property	...	+	-	-	-	-	+	-	...
violation of know-your-customer rule	...	+	-	-	-	-	-	-	+

Table H.3: Data availability for tables 1.3.1 – 1.3.3 of the trial questionnaire⁴¹

	Finland	France	Germany	Poland	Switzerland	UK: E. & W.
1.3.1 Suspicious transactions	some data	some data	some data	...	very few	very few
1.3.2 Criminal nature of property laundered	some data	very few	...	...	...	very few
1.3.3 Cases by amounts involved, in €	very few	...	...	...	...	very few

Table H.4: Concepts included in the legal provisions on money laundering

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
Conversion or transfer of property	+	+	+	+	+	+	+	+	+
Concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property	+	+	+	+	+	+	+	+	+
Acquisition, possession or use of property	+	+	probably excl., but incl. in a general receiving / handling offence	incl., but might also be covered by a receiving / handling offence	+	+	incl., but might also be covered by a receiving / handling offence	+	+
Other unusual transactions	-	-	-	-	-	-	-	-	-

⁴¹ Only for countries that provided figures for the police chapter during the trial phase.

The evaluation of the trial questionnaire showed that the definition for money laundering worked very well in the responding countries. All of them were able to follow the include rules on both police and convictions level (tables H.1 and H.2). *France* stated that data on money laundering were not available in regular police statistics, but only from specific sources.

Regarding the exclude rules, more deviations were identified. Receiving and handling of stolen property is included in the data of *Finland* and *Poland*, while violations of the “know-your-customer-rules” are included in crime data of *Finland*, *UK: England and Wales*, and on the police level also in *Switzerland*.

If the responses to the subsidiary questionnaire are also considered (table H.4), the problem regarding receiving and handling of stolen property becomes even more obvious. There it was asked whether legal provisions on money laundering included the *acquisition, possession or use of property*, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity; participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing points. *France* responded that these forms of behavior are probably excluded, but covered by a separate receiving / handling offence, while *Germany* and *Poland* stated that the forms are included, but might also be covered by other legal provisions.

The reason for these answers to table H.1, H.2 and H.4 might be that money laundering is a quite new offence, while receiving and handling of stolen property or property derived from other property offences had been criminalized for a long time before. Therefore, in many countries there will be a conflict between the old legislations on receiving and handling of stolen property (etc.) and the fairly new ones on money laundering.

As table H.3 shows, data availability on table 1.3.1 to 1.3.3 of the trial questionnaire was very poor. Only for table 1.3.1 (Suspicious transactions reported) most countries were able to provide at least some information. However, even for table 1.3.1, not a single country was able to fill the table to full completeness. Also, data availability on the different items of table 1.3.1 differed remarkably between countries. On the other hand, data availability on the offence of money laundering on police and convictions level was reasonably good. Also see table H.7 with details.

3. Final questionnaire and evaluation

Based on these results of the trial phase, the group decided to collect data on money laundering in the final questionnaire, but drop the tables 1.3.1 to 1.3.3. Additionally, a clarifying change of the standard definition of money laundering was suggested. The first version did not refer to the criminal origins of the money. Also, transactions regarding non-monetary property were suggested to be added

to the standard definition itself (instead of only to the include list). Apart from that, there was a conflict between the include rule regarding non-monetary property and the exclude rule regarding stolen property.

Thus, the group decided to change the definition. The new version included in the final questionnaire read as follows:

Money laundering: specific financial transactions to conceal the identity, source, and/or destination of money or non-monetary property deriving from criminal activities				
	Indicate whether <u>included</u> or <u>excluded</u>:			
	in police statistics		in conviction statistics	
	incl.	excl.	incl.	excl.
Include the following:				
receiving and handling illegally obtained (<i>but not stolen</i>) non-monetary property				
attempts				
Exclude the following:				
receiving/handling stolen property				
violations of the 'know-your-customer' rule (<i>i.e. negligence in identification of customer's identity or origin of funds</i>)				

Table H.5 shows that this new offence definition could be followed by most of the countries and that data availability was very good, too: 24 of 33 responding countries were able to provide figures on money laundering on police level as well as 20 countries for convictions. However, figures for convictions were very low, for the majority of countries lower than 10 per year. Only very few countries had more than 100 convictions in any year for money laundering.

Table H.5: Results for the final definition of money laundering

	Receiving and handling illegally obtained (<i>but not stolen</i>) non-monetary property		Attempts		Receiving/handling stolen property		Violations of the 'know-your-customer' rule (<i>i.e. negligence in identification of customer's identity or origin of funds</i>)	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	+	+	+	+	-	-	-	-
Armenia	+	+	+	+	-	-	-	-
Austria	+	+	+	+	-	-	-	-
Belgium	+	+	+	+	+	+	-	-
Bulgaria	+	+	+	+	-	-	-	-
Croatia	+	+	+	+	-	-	-	-
Cyprus	+	+	-	-	+	+	+	+
Czech Rep.	+	+	+	+	-	-	-	-
Denmark	...	...	...	...	...	...	...	...
Estonia	+	+	+	+	-	-	-	-
Finland	+	+	+	+	+	+	+	+
Georgia	+	+	+	+	-	-	-	-
Germany	+	+	+	+	-	-	-	-
Greece	...	+	...	+	...	-	...	-
Hungary	+	...	+	...	-	-	-	-
Iceland	+	+	+	+	-	-	-	-
Ireland	+	+	+	+	-	-	-	-
Italy	+	+	+	+	-	-	-	-
Latvia	+	+	+	+	-	-	-	-
Lithuania	+	+	+	+	-	-	-	-
Netherlands	+	+	+	+	-	-	-	-
Poland	+	+	+	+	-	-	...	...
Portugal	+	+	+	+	-	-	-	-
Russia	+	+	+	+	+	+	+	+
Slovakia	+	...	+	...	+	...	-	...
Sweden	...	...	...	...	...	...	...	...
Switzerland	+	+	+	+	-	-	+	-
Turkey	+	...	+	...	-	...	-	...
Ukraine	+	+	+	+	-	-	-	-
UK: E. & W.	+	+	+	+	-	-	-	-
UK: N. Irel.	...	...	...	...	...	...	...	...
UK: Scott.	+	+	-	-	-	-	...	-

4. Additional questionnaire and evaluation

In the additional questionnaire, there were different parts on money laundering. For all elements of the standard definition it featured the question on separate identifiability in criminal law. That section had the following structure:

Money laundering: specific financial transactions to conceal the identity, source, and/or destination of money or non-monetary property deriving from criminal activities			
	Please indicate whether these items are separately identifiable in criminal law:		
	Yes	No	Remarks
Include the following:			
receiving and handling illegally obtained (<i>but not stolen</i>) non-monetary property			
attempts			
Exclude the following:			
receiving/handling stolen property			
violations of the 'know-your-customer' rule (<i>i.e. negligence in identification of customer's identity or origin of funds</i>)			

The questionnaire also featured the tables on suspicious transactions and other specific money laundering issues dropped after the trial phase (see above).

As table H.6 shows (and as fits into the assumptions made above on the relationship between money laundering and receiving / handling stolen property or property deriving from other property crimes), both “receiving/handling illegally obtained non-monetary (but not stolen) property” and “receiving/handling stolen property” are separately identifiable in criminal law of most countries.

Attempts of money laundering are also separately identifiable in criminal law of most countries. Violations of the “Know-your-customer” rule are, on the other hand, not separately identifiable in most responding countries. This will be due to the fact that these violations are not considered criminal offences in most responding countries, although they might lead to a suspicion of money laundering activity.

Table H.7 shows the results of the evaluation of table A.1.1 – A.1.3 of the additional questionnaire, which were identical to the tables 1.3.1 – 1.3.3 of the trial version as reprinted above (section H.2). Data on money laundering are usually not obtainable by the criminal nature of property laundered or by the amount. On the other hand, basic information on suspicious transactions and the outcome of such cases is available for all responding EU and EEA/EFTA countries, at least data on reported suspicious transactions and on the number of cases passed to the law enforcement agencies. Most countries are also able to provide the number of

convictions resulting from these reports. Data is usually obtainable from the financial intelligence units of the responding countries.

Table H.6: Money laundering concepts separately identifiable in criminal law

	Albania	Finland	France	Germany	Iceland	Nether-lands	Poland	Switzer-land	Ukraine	UK: E. & W.
Include										
receiving/handling illegally obtained non-monetary (but not stolen) property	yes	yes	no	no	yes	yes	no	yes	yes	yes
attempts	yes	yes	no	yes	no	yes	yes	yes	yes	no
Exclude										
receiving/handling stolen property	no	yes	yes	yes	yes	no	yes	yes	no	yes
violation know-your- customer rule	no	yes	no	no	no	no	yes	yes	no	yes

Table H.7: Data availability on reported suspicious transactions and other money laundering related issues

	Albania	Finland	France	Germany	Iceland	Poland	Switzerland	Ukraine	UK: E. & W.
Suspicious transactions	...	# ⁴² suspicious transactions reported; # passed to LEA; ⁴³ amount temporarily frozen; amount confiscated	# suspicious transactions reported; # passed to LEA; # convictions under ML ⁴⁴ laws	# suspicious transactions reported; # passed to LEA; # resulting prosecutions; # convict. under ML laws	# suspicious transactions reported; # passed to LEA	# suspicious transactions reported; # passed to LEA; # resulting prosecutions; # convict. under ML laws; amount temporarily frozen	# suspicious transactions reported; # passed to LEA; # resulting prosecutions; # convict. under ML laws	...	# suspicious transactions reported; # passed to LEA; # convictions under ML laws
Criminal nature of suspected property laundered	...	# passed to LEA	# convictions under ML laws	...	...	...	# suspicious transactions reported; # passed to LEA; # resulting prosecutions; # convictions under ML laws	...	...
Cases handled by amount	...	# passed to LEA	...	...	# suspicious transactions reported	...	# suspicious transactions reported; # passed to LEA; # resulting prosecutions; # convictions under ML laws	...	...

⁴² # = number.

⁴³ LEA = law enforcement agencies.

⁴⁴ ML = money laundering.

5. Conclusion

The newly introduced definition on money laundering worked very well. Data collection is feasible and useful in European context. However, detailed information on reported suspicious transactions and the further consequences of such reports is often not available. Financial intelligence units (or other national agencies) of all responding EU and EEA/EFTA countries provide at least data on reported suspicious transactions, the number of cases passed to the law enforcement agencies and often also the number of convictions resulting from these reports.

I. Corruption

1. First steps and development of draft definitions and questions

At the beginning the TRANSCRIME report on *corruption, fraud, illicit trafficking, counterfeiting and child sexual exploitation and pornography* based on 22 EU countries was presented.⁴⁵ TRANSCRIME created categories based on the data they received.

The group decided it would be easier to start with data and not with definitions, and try to produce crosstabs for countries, starting with available data and looking at how relevant they could be for each column. Review of the current situation was based on the TRANSCRIME report.

It was realized that the main difficulty was to find a definition offering a maximum of consistency across countries, especially because for most countries – if not all – corruption is not named this way (but instead e.g. bribery). Afterwards,

⁴⁵ Study to assess the scope of and collect available statistics and meta-data on five crime types and propose harmonized definitions and collection procedures for the types of crime for the EU member states and the acceding countries, final report, 8 August 2006, financed by the European Commission – DG JLS (Contract No. DG.JLS/D2/2005/04).

a first proposal for the standard definition of corruption was developed, based on the above-mentioned study on five crime types.⁴⁶

Based on the TRANSCRIME report, it was concluded that including the offence of public corruption in the ESB was possible, as its definition is usually included in the criminal code. However, the offence of private corruption revealed a more complicated issue, as it could appear under different headings (e.g. unfair competition). According to the TRANSCRIME report, only eleven European countries have laws on corruption in the private sector. Therefore, it was decided to collect data only for public corruption.

2. Trial and subsidiary questionnaires and evaluation

The following standard definition of corruption in the public sector was drafted.

Corruption in the public sector: offering or accepting financial or any other advantage in exchange of favorable treatment by public officials					
	Indicate whether separately identifiable in criminal law (Y/N)	Indicate whether <u>included</u> or <u>excluded</u> :			
		in police statistics		in conviction statistics	
		incl.	excl.	incl.	excl.
Include the following:					
active and passive corruption					
instigation to corruption					
complicity					
corruption of domestic officials					
corruption of foreign officials					
extortion by public officials					
offering officials advantages without immediate interest					
attempts					
Exclude the following:					
corruption in the private sector					
extortion					
bribery of the electorate					

As can be seen in Table I.1, most countries could meet the include rules for corruption in the public sector on police level. Two items proved slightly problematic for three countries (i.e. *Finland*, *Poland* and *Switzerland*): the corruption of foreign officials and the extortion by public officials. *Poland* and *Switzerland* also

⁴⁶ pp. 1162.

were not able to fully include both active and passive corruption. In addition, to be noted, *England and Wales* could not follow the exclude rules. In *Poland* only corruption in the private sector was excluded according to the rules, but not the two other concepts (i.e. extortion and bribery of the electorate).

Three countries could fully meet the standard definition for collecting police statistics, namely *Germany*, *Iceland* and the *Netherlands*, and they were also able to follow the standard definition on convictions level (see table I.2).

Deviations on convictions level are quite similar to the deviations on police level, as table I.2 shows.

Table I.1: Results for the trial definition of corruption in the public sector – police level

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
<i>include:</i>									
active/passive corruption	...	+	...	+	+	+	-	-	+
instigation	...	+	...	+	+	+	+	-	+
complicity	...	+	...	+	+	+	+	-	+
corruption of domestic officials	...	+	...	+	+	+	-	-	+
corruption of foreign officials	...	-	...	+	+	+	-	-	+
extortion by public officials	...	-	...	+	+	+	-	-	+
offering officials advantages	...	+	...	+	+	+	+	-	+
attempts	...	+	...	+	+	+	...	-	+
corruption in private sector	...	-	...	-	-	-	-	-	+
extortion	...	-	...	-	-	-	+	-	+
bribery of electorate	...	-	...	-	-	-	+	-	+

Table 1.2: Results for the trial definition of corruption in the public sector – conviction level

	Albania	Finland	France	Germany	Iceland	Nether-lands	Poland	Switzer-land	UK: E. & W.
<i>include:</i>	active/passive cor- ruption	+	+	+	+	+	-	+	+
	instigation	+	...	+	+	+	+	+	+
	complicity	+	+	+	+	+	+	+	+
	corruption of domes- tic officials	+	+	+	+	+	-	+	+
	corruption of foreign officials	-	+	+	+	+	-	+	+
	extortion by public officials	-	-	+	+	+	-	-	+
	offering officials advantages	+	+	+	+	+	+	+	+
<i>exclude:</i>	attempts	+	+	+	+	+	...	+	+
	corruption in private sector	...	-	-	-	-	-	-	+
	extortion	...	-	-	-	-	+	-	+
	bribery of electorate	...	-	-	-	-	+	-	+

A section of the subsidiary questionnaire asked for other valuable information about the offence of corruption:

S.4 Corruption	
The offence of corruption implies offering or accepting financial or any other advantages in exchange of favorable treatment by public officials or civil servants. A standard definition of corruption can be drawn looking at the existing EU definition of corruption, which is made up of four different criminal conducts. Please indicate for each element whether it is punishable in your country.	
Does the concept of corruption in your country include the following elements?	
	Indicate whether punishable in your country (Y/N)
Passive corruption in the public sector: "the deliberate action of an official, who, directly or through an intermediary, <u>requests or receives advantages</u> of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, <u>to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties</u> "	
Active corruption in the public sector: "the deliberate action of whosoever <u>promises or gives</u> , directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him <u>to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties</u> "	
Active corruption in the private sector: " <u>promising, offering or giving</u> , directly or through an intermediary, to a person who in any capacity directs or works for a private-sector entity an undue advantage of any kind, for that person or for a third party, <u>in order that that person should perform or refrain from performing any act, in breach of that person's duties</u> "	
passive corruption in the private sector: "directly or through an intermediary, <u>requesting or receiving</u> an undue advantage of any kind, or accepting the promise of such an advantage, for oneself or for a third party, while in any capacity directing or working for a private-sector entity, <u>in order to perform or refrain from performing any act, in breach of one's duties</u> "	
Active corruption of foreign public officials	
Intermediation in corruption	
Extortion by public officers	
Public officers receiving property to show favor/indirect bribery in public sector/trading in influence in public sector	
Bribery of electorate	
Instigation to corruption	

As can be seen in Table I.3, active and passive corruption in the *public* sector is punishable under the law in all countries. The same is true for the *private* sector, for active corruption of foreign public officials, intermediation in corruption (missing data for the *Netherlands*), extortion by public officers, public officers receiving property to show favor / indirect bribery in public sector / trading in influence in public sector (missing data for *Albania* and *England and Wales*). Instigation to corruption is punishable in six out of the nine responding countries. No answer was provided for *France*, the *Netherlands* and *England and Wales*. Only for bribery of electorate one country out of nine responding countries (*France*) responded that this is not considered a criminal offence (no answer for *England and Wales*).

Table I.3: Corruption concepts punishable under criminal law

	Albania	Finland	France	Germany	Iceland	Nether-lands	Poland	Switzer-land	UK: E. & W.
Passive corruption in the public sector: the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties	yes	yes	yes	yes	yes	yes	yes	yes	yes
Active corruption in the public sector: the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties	yes	yes	yes	yes	yes	yes	yes	yes	yes
Active corruption in the private sector: promising, offering or giving, directly or through an intermediary, to a person who in any capacity directs or works for a private-sector entity an undue advantage of any kind, for that person or for a third party, in order that that person should perform or refrain from performing any act, in breach of that person's duties	yes	yes	yes	yes	yes	yes	yes	yes	yes
Passive corruption in the private sector: directly or through an intermediary, requesting or receiving an undue advantage of any kind, or accepting the promise of such an advantage, for oneself or for a third party, while in any capacity directing or working for a private-sector entity, in order to perform or refrain from performing any act, in breach of one's duties	yes	yes	yes	yes	yes	yes	yes	yes	yes
Active corruption of foreign public officials	yes	yes	yes	yes	yes	yes	yes	yes	yes
Intermediation in corruption	yes	yes	yes	yes	yes	...	yes	yes	yes
Extortion by public officers	yes	yes	yes	yes	yes	yes	yes	yes	yes
Public officers receiving property to show favor / indirect bribery in public sector / trading in influence in public sector	...	yes	yes	yes	yes	yes	yes	yes	...
Bribery of electorate	yes	yes	no	yes	yes	yes	yes	yes	...
Instigation to corruption	yes	yes	...	yes	yes	...	yes	yes	...

3. Final questionnaire and evaluation

Based on the evaluation of both the trial and the subsidiary questionnaire, the following definition was introduced in the final version:

Corruption in the public sector: offering or accepting financial or any other advantage in exchange of favorable treatment by public officials				
	Indicate whether <u>included</u> or <u>excluded</u>:			
	in police statistics		in conviction statistics	
	incl.	excl.	incl.	excl.
Include the following:				
active and passive corruption				
instigation to corruption				
complicity				
corruption of domestic officials				
corruption of foreign officials				
extortion by public officials				
offering officials advantages without immediate interest				
attempts				
Exclude the following:				
corruption in the private sector				
extortion (<i>except by public officials</i>)				
bribery of the electorate				

Table I.4.1: Results for the final definition of corruption – part 1

	Active & passive corruption		Instigation		Complicity		Corruption of domestic officials	
	pol. stats.	conv. stats.	pol. stats.	conv. stat.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	+	+	+	+	+	+	+	+
Armenia	+	+	+	+	+	+	+	+
Austria	+	+	+	+	+	+	+	+
Belgium	+	+	+	+	+	+	+	+
Bulgaria	+	+	+	+	+	+	+	+
Croatia	+	+	+	+	+	+	+	+
Cyprus	+	+	+	+	+	+	+	+
Czech Rep.	+	+	+	+	+	+	+	+
Denmark	+	+	+	+	+	+	+	+
Estonia	+	+	+	+	+	+	+	+
Finland	+	+	+	+	+	+	+	+
France	...	+	...	+	...	+	...	+
Georgia	+	+	+	+	+	+	+	+
Germany	+	+	+	+	+	+	+	+
Greece	+	+	...	+	...	+	...	+
Hungary	+	+	...	...	+	...	+	...
Iceland	+	+	+	+	+	+	+	+
Ireland	+	+	+	+	+	+	+	+
Italy	...	+	...	+	...	+	...	+
Latvia	+	+	+	+	+	+	+	+
Lithuania	+	+	+	+	+	+	+	+
Netherlands	+	+	+	+	+	+	+	+
Poland	+	+	+	+	+	+	+	+
Portugal	+	+	-	-	-	-	+	+
Russia	+	+	+	+	+	+	+	+
Slovakia	+	...	+	...	+	...	+	...
Sweden	...	+	...	+	...	+	...	+
Switzerland	...	+	...	+	...	+	...	+
Turkey	+	+	+	+	+	+	+	+
Ukraine	+	+	+	+	+	+	+	+
UK: E. & W.	+	+	+	+	+	+	+	+
UK: N. Irel.	...	...	...	...	...	...	...	...
UK: Scotl.	...	+	...	+	...	+	...	+

Table I.4.2: Results for the final definition of corruption – part 2

	Corruption of foreign officials		Extortion by public officials		Offering officials advantages		Attempts	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	convict. stats.
Albania	+	+	+	+	+	+	+	+
Armenia	+	+	+	+	+	+	+	+
Austria	+	+	-	-	-	-	+	+
Belgium	+	+	+	+	+	+	+	+
Bulgaria	+	+	+	+	+	+	+	+
Croatia	+	+	+	+	+	+	+	+
Cyprus	+	+	+	+	+	+	+	+
Czech Rep.	+	+	-	-	+	+	+	+
Denmark	+	+	-	-	+	+	+	+
Estonia	+	+	+	+	+	+	+	+
Finland	-	-	-	-	+	+	+	+
France	...	+	...	-	...	+	...	+
Georgia	+	+	+	+	+	+	+	+
Germany	+	+	+	+	+	+	+	+
Greece	...	+	...	+	...	+	...	+
Hungary	...	...	+	...	+	+	+	...
Iceland	+	+	+	+	+	+	+	+
Ireland	+	+	+	+	+	+	+	+
Italy	...	+	...	+	...	+	...	+
Latvia	+	+	+	+	+	+	+	+
Lithuania	+	+	+	+	+	+	+	+
Netherlands	+	+	+	+	+	+	+	+
Poland	+	+	+	+	+	+	+	+
Portugal	-	-	+	+	+	+	+	+
Russia	-	-	+	+	+	+	+	+
Slovakia	+	...	+	...	+	...	+	...
Sweden	...	+	...	-	...	+	...	+
Switzerland	...	+	...	+	...	+	...	+
Turkey	+	+	+	+	+	+	+	+
Ukraine	+	+	+	+	+	+	+	+
UK: E. & W.	+	+	+	+	+	+	+	+
UK: N. Irel.	...	...	...	...	...	...	...	...
UK: Scotl.	...	+	...	+	...	+	...	+

Table I.4.3: Results for the final definition of corruption – part 3

	Corruption in the private sector		Extortion except by public officials		Bribery of the electorate	
	pol. stats.	conv. stats.	pol. stats.	conv. stats.	pol. stats.	conv. stats.
Albania	-	-	...	...	-	-
Armenia	-	-	-	-	-	-
Austria	-	-	-	-	-	-
Belgium	-	-	-	-	-	-
Bulgaria	+	+	+	+	+	+
Croatia	-	-	-	-	-	-
Cyprus	-	-	-	-	-	-
Czech Rep.	-	-	-	-	-	-
Denmark	-	-	-	-	-	-
Estonia	+	+	-	-	-	-
Finland	-	-	-	-	-	-
France	...	-	...	-	...	-
Georgia	-	-	-	-	-	-
Germany	-	-	-	-	-	-
Greece	...	-	...	-	...	-
Hungary	...	...	-	-	-	...
Iceland	-	-	+	+	+	+
Ireland	-	-	-	-	-	-
Italy	...	-	...	-	...	-
Latvia	+	+	-	-	+	+
Lithuania	+	+	-	-	-	-
Netherlands	-	-	-	-	-	-
Poland	-	-	-	-	-	-
Portugal	-	-	-	-	-	-
Russia	+	+	+	+	+	+
Slovakia	+	...	+	...	+	...
Sweden	...	+	...	-	...	-
Switzerland	...	-	...	-	...	-
Turkey	+	-	+	-	+	-
Ukraine	-	-	-	-	-	-
UK: E. & W.	-	-	+	+	-	-
UK: N. Irel.	...	...	...	...	...	...
UK: Scotl.	...	-	...	-	...	-

According to the results of the evaluation (see table I.4.1 to I.4.3), active and passive corruption is generally included. No deviations have been found. Only *Portugal* indicate that instigation and complicity are not included in the data on corruption. This country having, however, a codified continental system, one

should expect that these forms of participation are covered by the general rules on complicity and instigation (although they might not be included in statistical data).

Corruption of *domestic* officials is generally included, as well as corruption of foreign officials except in *Finland, Portugal, Russia*.

A few countries excluded extortion by public officials (*Austria, Czech Republic, Denmark, France, Finland, Sweden*). Almost all respondents stated that offering officials advantages without immediate interest is included in their data (except *Austria, Finland*). All countries include attempts in the data.

Some countries were not able to exclude all items on the exclude list. Corruption in the private sector is included in *Bulgaria, Estonia, Latvia, Lithuania, Russia, Slovakia, Turkey* (the latter in police level only); extortion (by an offender other than a public official) and bribery of the electorate are included in *Bulgaria, Georgia, Iceland, Latvia* (bribery of the electorate only), *Russia, Slovakia, Turkey* (police level only).

Still, quite a few countries were able to fully follow the include / exclude rules of the standard definition (*Albania, Armenia, Belgium, Croatia, Cyprus, Germany, Greece, Ireland, Italy, Netherlands, Poland, Turkey, Ukraine, UK: Scotland*). However, *Albania* did not provide information concerning the exclusion of “extortion (except by public official)” and the state has only recently changed the penal code so that it matches the requirements of international documents. There may be a lag between implementation and results.

Among the 33 questionnaires returned at the time the the AGIS report was written, 10 national correspondents were not able to provide police-level data on corruption for their respective countries, namely *France, Greece, Italy, Latvia, the Netherlands, Sweden, Switzerland, UK: England and Wales, and UK: Northern Ireland*. Conviction data were available in almost all countries, with the exception of *Iceland, Ireland, Latvia, Sweden, and UK: England and Wales*.

4. Additional questionnaire and evaluation

In the additional questionnaire, ESB group members were asked to look at the legal concept of corruption in the public sector, and indicated, for each concept, whether it was separately identifiable in criminal law:

Corruption in the public sector: offering or accepting financial or any other advantage in exchange of favorable treatment by public officials			
	Please indicate whether these items are separately identifiable in criminal law:		
	Yes	No	Remarks
Include the following:			
active and passive corruption			
instigation to corruption			
complicity			
corruption of domestic officials			
corruption of foreign officials			
extortion by public officials			
offering officials advantages without immediate interest			
attempts			
Exclude the following:			
corruption in the private sector			
extortion (except by public officials)			
bribery of the electorate			

Table I.5 provides the results of the additional questionnaire. As can be seen, not all concepts were separately identifiable:

Active and passive corruption is separately identifiable in the criminal law of all the ten countries considered and represented in the ESB group. In *Germany* both active and passive corruption are individual criminal offences. *Instigation of corruption* is separately identifiable in the criminal law of six out of ten countries. It is not separately identifiable in *France, Iceland, the Netherlands, England and Wales*. *Complicity* is separately identifiable in the criminal law of five out of ten countries, but not in *France, Iceland, the Netherlands, England and Wales*. No answer was provided for *Albania*. Since many of these countries have, however, a codified continental system, one should expect that these forms of participation are covered by the general rules on complicity and instigation.

The same should be true for attempts: *Attempts* are separately identifiable in the criminal law of seven out of the ten countries, while they are not in *France* and *Iceland* (but see above). *England and Wales* did not answer this question.

Corruption of domestic officials is separately identifiable in the criminal law of eight out of the ten countries considered and represented in the ESB group, though not in the *Netherlands* and in *England and Wales*. *Corruption of foreign officials* is also separately identifiable in the criminal law of eight out of the ten countries, with the exception of *Albania* and *England and Wales*. The *Albanian* correspondent remarked that the corruption of foreign officials is included under the same article as the corruption of domestic officials.

Extortion by public officials is separately identifiable in the criminal law of seven out of the ten countries, but not in *Albania* and *England and Wales*. In *Germany* extortion by public officials is covered by the standard legal definition of passive corruption, but also considered extortion. *Offering officials advantages without immediate interest* is separately identifiable in the criminal law of five out of ten countries. It is not separately identifiable in *Albania, Iceland, Poland, the Netherlands, England and Wales*. *Corruption in private sectors* is separately identifiable in the criminal law of eight out of ten countries, with the exception of *England and Wales* and the *Ukraine*. *Extortion (by an offender other than a public official)* is separately identifiable in the criminal law of six out of ten countries, though not in *Albania, the Netherlands, England and Wales* and *Ukraine*. *Bribery of the electorate* is separately identifiable in the criminal law of eight out of the ten countries considered and represented in the ESB group. It is not separately identifiable *England and Wales* and *Ukraine*.

J. Human trafficking

One goal of the AGIS project was to introduce new offence definitions, especially for offences subject to EU-harmonized legislation. Human trafficking was one of these "new" crimes to be considered.

The ESB group discussed the concept of human trafficking in detail. Traditionally, this type of behavior was criminalized in reference to other offences. Today, it seems that a basic concept of human trafficking exists in most countries, as EU countries have adopted the new EU regulation. However, this is not the case for the aggravated concept of human trafficking. Anyway, it may be true that, practically, many countries are still using their "old" rules and not the ones imposed by the EU, which could possibly explain the small number of cases.

One of the initial ideas of the ESB group was to find out how the EU concept was integrated in national legislations and to get information on possible overlap of human trafficking with other laws or legislations. Because human trafficking is often spotted in conjunction with other offences, information on the *purpose* of trafficking was considered potentially valuable.

After preliminary research, the ESB group noticed the expansion of definitions on human trafficking. The group also learnt that parallel projects in the area of human trafficking were carried out. At that time, a sub-group of experts composed by experts from international organizations, experts from the academia, and practitioners was working on the *Policy needs for data on trafficking in human beings*,

within the framework of the ongoing EU work towards comparable information on crime and victimization.

Also, UNODC research work within the UN-GIFT⁴⁷ was implicated in a *Global survey on criminal justice responses*. A questionnaire (checklist) had been developed for data collection through a network of regional consultants and HEUNI was in charge of collecting data in the European region.

Finally, UNODC research work within the area of crime trends was to be considered: (a) Trafficking questions within the questionnaire of the *Tenth Survey of Crime Trends and the Operations of Criminal Justice Systems*;⁴⁸ and (b) Development of operational definitions and trafficking indicators for future data collection (*Expert Group Meeting, held end January 2009*).

The above mentioned projects were considered promising, especially with respect to definitions and indicators. Therefore and after discussion, the ESB group decided to postpone data collection on human trafficking. It was decided to wait upon the conclusions and recommendations of these parallel projects before trying to operationalize a standard definition of human trafficking in order to integrate it into an ESB questionnaire.

⁴⁷ <http://www.ungift.org/>.

⁴⁸ http://www.unodc.org/unodc/en/crime_survey_tenth.html.

K. Prosecution

1. Starting point

The work on this chapter was characterized by the implementation of findings of another AGIS-project which took place partially in parallel with this project.⁴⁹

Based on former experiences of the ESB project, a study on the function of the Public Prosecution Service (PPS) in European comparison was conducted. The production of the ESB chapter on public prosecution had highlighted a lack of comparable statistical and legal information. Thus the idea for an in-depth study on PPS functions was born.

Starting point of this comparative study was the assumption that European Criminal Justice Systems are under pressure of a high work load: In consequence of this, large proportions of mass crimes are not brought before court, but are ended at earlier stages of the criminal justice system with the Public Prosecution Service (PPS) as the key player in terms of selection and diversion of criminal cases. However, this selective function of PPS differs from country to country according to its legal status and competencies. Especially when certain forms of

⁴⁹ See above, A.2.2. Also see JEHLE / WADE (eds.): *Coping with Overloaded Criminal Justice Systems*, Heidelberg: Springer 2006 and the articles published in the *European Journal on Criminal Policy and Research*, issues 2-3, vol. 14, 2008: Special Issue: Prosecution and Diversion within Criminal Justice Systems in Europe, guest edited by WADE / JEHLE.

offences are decriminalised or when the police have the power of discretion the input into the PPS is reduced; therefore the need of selection at PPS level is lowered. If on the other hand the police hand all offences on to the PPS the Criminal Justice System will have to allow for considerable discretion. Therefore the prosecutorial decision can not be treated in isolation, but in dependence of its role within the respective criminal justice system (cjs) and of the input and output at this level. In this respect a set of selected, but representative criminal justice systems of *Croatia, England and Wales, France, Germany, Hungary, the Netherlands, Poland, Spain, Sweden, Switzerland* and *Turkey* has been studied.

The prosecution service's workload depends on the input from the police level. How a prosecution service can deal with the cases falling into its mandate is a subject of great variation within Europe. The basic structures are as follows:

There are countries (e.g. *Poland*) in which the prosecuting authority has neither the discretion to drop a case nor the ability to impose conditions/sanctions upon an offender; in accordance with a strict principle of legality the prosecuting authority merely has the function of preparing a case for court. Here the input is identical to the output; all cases have to be brought before a court (except evidentially insufficient cases etc. which can, of course, be dropped in accordance with the principle of legality).

In many European countries the prosecuting authority doesn't only drop cases in accordance with the principle of legality but additionally has discretion whether or not to prosecute (i.e. to drop a case completely if there is no public interest in prosecution).

Furthermore, in some countries the prosecuting authority has not only a discretion whether to prosecute or not, but also the ability to conditionally drop the case, i.e. to bind or sanction the suspected offender, e.g. to pay a sort of fine as in *Germany* and the *Netherlands*. This is only possible if s/he agrees to the measure (otherwise the case will go to court). As the condition is "voluntarily" fulfilled, this sort of "sanction" is not seen as a conviction.

Another case ending decision on prosecution level can be seen as a real sanction, the so called penal order. In some countries, like in *Sweden*, it is an autonomous decision of the Prosecutor, in other countries like in *Germany* the prosecution service files for court approval in summary, i.e. written, proceedings. The court can only entirely reject the application and this happens very rarely. Functionally this can be understood as a prosecution service decision which is checked and approved by the court. But unlike a conditional disposal it is formally a conviction.

As a result of these findings improved categories for PPS decisions could be developed and implemented in this project.

2. Preliminary discussion and development of draft definitions and questions

The 3rd edition of the ESB did not feature a prosecution chapter. This was due to the fact that after evaluation of the answers to the prosecution part of the 2nd edition it was felt that this chapter was problematic with respect to data availability and comparability and should be revised, based on the results of the abovementioned PPS projects. This was done for the 4th edition during this AGIS project:

For the ESB it was decided to keep the approach more simple in order to get answers from most of the countries. Nevertheless it was considered useful to try to collect data also by offence type (differently from earlier editions).

In a first draft of the prosecution questionnaire specific problems were addressed: In order to be able to establish a timeline, it would be necessary to know at least how many cases were pending at the beginning of the year. Unknown offenders need to be identified; they should be included in the output statistics, but if possible separate data on this category should be provided. Correspondents should explain / specify whether and how unknown offenders are counted in their respective country. Regarding disposals, in *France* for example, prosecutors can order measures such as caution (*rappel à la loi*); these measures are not convictions but should be considered.

3. Trial questionnaire and evaluation

The trial questionnaire featured a new prosecution chapter. Apart from prosecutorial input, output, pending cases, case-ending decisions and staff of the prosecuting authority, for the first time the ESB group also tried to collect data on pre-trial detention and other compulsory measures. The results for these measures will be presented in the following chapter (I.). With respect to the issues covered here, the trial questionnaire had the following wording:

Extract of the trial questionnaire

The counting unit required here is the **case** (in the sense of proceedings relating to one person only). One case may combine several offences; one offence may lead to several cases. Where the use of the case as the counting unit is not possible, **proceedings** (i.e. not necessarily related to only one person) should be used. If both do not apply, the **person** is the counting unit. Persons are counted if each suspect is counted only once each year, although there might be many proceedings against him or her in the given year.

What is the counting unit used?

Case (= proceedings relating to one person only)	Proceedings	Person	Other (please explain)

It is important to distinguish between ‘input’ and ‘output’ statistics. The ‘output’ (i.e. disposals made by the prosecuting authority) are the preferred statistics. In addition, the figures for pending cases, i.e. those cases that enter the prosecution stage in the reference year but are not disposed of in the same year should be provided if possible.

Definitions**Input cases:**

All cases of criminal offences, which are passed to the prosecuting authority for disposal in the reference year

Output cases:

All disposals made by the prosecuting authority in the reference year

Pending cases:**All cases pending at the end of reference year**

Connection between input, output and pending cases:

For each year: Output = pending of previous year + input - pending of current year

Which authority collects these statistics?

Concerning the <u>criminal cases</u> handled by the prosecuting authority (input, output and, pending cases)		
	Indicate whether included or excluded	
	incl.	excl.
Include the following:		
Cases reported to the prosecuting authority by other institutions (e.g. customs, other non-police authorities)		
Cases where the offender remained unknown (if applicable, if not please specify)		
Exclude the following		
Cases dropped, conditionally disposed of or sanctioned by the police (see below, question G to tables 2.1 and 2.2)		

The differentiation between ‘cases brought before a court’ (formal charge) and the different types of prosecutorial decisions is not simple. It depends on how far the court is involved in the public prosecutor’s decision-making. For example, the prosecutor may be empowered to impose conditions for dropping the case, with or without the court’s consent.

In other cases, sanctions can be imposed by the public prosecutor (or by the court, but on application of the prosecutor and without a formal court hearing). These lead to a formal verdict and count as a conviction (e.g. a penal order – *Strafbefehl* in Germany, where the prosecutor brings a motion for a fine to be issued by the court after a summary review). This could be regarded (or counted in the statistics) as a sanction of the public prosecutor or a case brought before the court. If possible, it should be counted as a sanction imposed by the prosecutor.

Disposal categories (output data)		
	Indicate whether included or excluded (if n/a, please explain why)	
	incl.	excl.
Cases brought before a court (e.g. indictment, acte d'accusation, Anklageschrift)		

Sanctions imposed by the prosecutor (or by the court, but on application of the prosecutor and without a formal court hearing) that lead to a formal verdict and count as a conviction (e.g. penal order, Strafbefehl)		
Conditional disposals by the prosecutor without formal verdict (i.e. the case is dropped when condition is met by the suspect)		
Proceedings dropped in combination with a cautioning of the suspect		
Proceedings dropped unconditionally due to lack of public interest or for efficiency reasons		
Proceedings dropped for legal or factual reasons		
Include the following:		
Lack of evidence		
Act not an offence		
No criminal responsibility		
No complaint from victim (where this is required for a prosecution) or complaint withdrawn		
Ne bis in idem		
Statute of limitation		
Offender not available		
Exclude the following:		
Offender unknown		
Proceedings dropped because offender remained unknown		
Other disposals		
Include the following:		
No competence		
Transfer to another domestic authority		
Transfer to a foreign authority		
Private criminal prosecution recommended		
<i>Explanation of options available to prosecutors</i>		

Table 2.1 Criminal cases handled by the prosecuting authorities

		2003	2004	2005	2006	2007
Input cases						
Cases pending on 31 st December 2002:	Pending cases on 31 st December of each year:					
Output cases	Total					
	<i>of which:</i> Cases brought before a court					
	<i>of which:</i> Sanctions imposed by the prosecutor <i>(or by the court, but on application of the prosecutor and without a formal court hearing)</i> that lead to a formal verdict and count as a conviction					
	<i>of which:</i> Conditional disposals					
	<i>of which:</i> Proceedings dropped in combination with a cautioning of the suspect					
	<i>of which:</i> Proceedings dropped unconditionally due to lack of public interest					
	<i>of which:</i> Proceedings dropped for legal or factual reasons					
	<i>of which:</i> Proceedings dropped because offender remained unknown					
	<i>of which:</i> Other disposals					

Source of the data in Table 2.1 – see General Remarks (paragraph 3)

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Comments on Table 2.1 – see General Remarks (paragraph 3)

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Type of offence	Total output	Cases brought before a court	Sanctions imposed by the prosecutor	Conditional disposals	Proceedings dropped with cautioning of suspect	Proceedings dropped due to lack of public interest	Proceedings dropped for legal or factual reasons	Proceedings dropped because offender remained unknown	Other disposals
Sexual abuse of minors									
Robbery									
Theft	Total								
	of which: Theft of a motor vehicle								
	of which: Burglary (total)								
	of which: Domestic burglary								
Fraud									
Offences against computer data and systems									
Money laundering									
Corruption									
Drug offences	Total								
	of which: Drug trafficking								
	of which: Aggravated drug trafficking								

Source of the data in Table 2.2 – see General Remarks (paragraph 3)

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Comments on Table 2.2 – see General Remarks (paragraph 3)

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2.2.A Do the offence definitions used in Table 2.2 differ from those in the ‘Definitions’ section?

Yes	No

Explanation of the differences

2.2.B Are there written rules regulating the way in which the data shown in Tables 2.1 and 2.2 are recorded?

Yes	No

2.2.C How are individual proceedings counted if more than one person is involved?

- see Introduction (paragraph 4)

As one case	As two or more cases

2.2.D How are multiple offences counted?

- see Introduction (paragraph 4)

As one case	As two or more cases

2.2.E How is a person counted who is subject to two or more proceedings in one year?

- see Introduction (paragraph 4)

As one case	As two or more cases

2.2.F Are data collected by other authorities (apart from the prosecutor or examining judge) included?

- see Introduction (paragraph 4)

Included	Excluded

2.2.G Do the police have separate powers to drop proceedings, conditionally dispose of them or issue a penal order that counts as a conviction? If yes, which powers do they have?

No, none of these	Yes, they have the following powers				
	Drop because offender remains unknown	Drop for other factual or for legal reasons	Drop for public interest reasons	Conditional Disposal	Penal Order

Please explain the options available

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2.2.H Have the data recording methods described above been substantially modified between 2003 and 2007?

- see General Remarks (paragraph 3)

Yes	No

Explanation of the changes

Additional comments on questions 2.2.A – 2.2.H

After these parts of the 2nd chapter of the trial questionnaire, there were questions and tables regarding compulsory measures included (these are printed in chapter L of this book). Finally, a table on prosecutorial staff was featured in the trial version.

The evaluation in the nine countries concerned shows that the counting unit in prosecution statistics differs: Some countries count cases, some proceedings, and one counts persons, too. Differences occur as to the counting of unknown offenders as well. The proposed disposal categories work for most of the countries, but a breakdown by offence groups is provided for in only a few of them.

The following tables (K.1 – K.5) show the results of the evaluation in detail:

Table K.1: Counting unit used – results from trial version

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
case		X		X	...	X		...	X
proceedings	X	X	X		...		X	...	
person		X			...			...	
other					...			...	

Table K.2: Definition of criminal cases handled by the prosecuting authority – results from trial version

	Albania	Finland	France	Germany	Iceland	Poland	Netherlands	Switzerland	UK: E. & W.
<i>include:</i>									
reported by other institutions	+	+	+	+	...	+	+	...	+
offender unknown	+	-	+	-	...	+	n.a.	...	-
<i>exclude:</i>									
cases dropped by police	-	-	-	-	...	-	-	...	-

Table K.3: Disposal categories – results from trial version

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
cases brought before court	+	+	+	+	...	+	+	...	+
sanctions by prosecutor	n.a.	+	+	+	...	n.a.	n.a.	...	n.a.
conditional disposal by prosecutor	n.a.	+	+	+	...	+	n.a.	...	n.a.
dropped with cautioning	n.a.	+	+	n.a.	...	+	n.a.	...	-
lack of public interest	n.a.	+	+	+	...	+	n.a.	...	-
dropped for legal/factual reasons									
<i>include:</i>									
lack of evidence	+	+	+	+	...	+	+	...	+
act not an offence	+	+	+	+	...	+	+	...	...
no criminal responsibility	+	+	+	+	...	+	+	...	...
no complaint	+	+	(+)	+	...	+	+	...	...
ne bis in idem	+	+	+	+	...	+	+	...	...
statute of limitation	...	+	+	+	...	+	+	...	...
offender not available	+	+	+	+	...	+	+	...	...
offender unknown	+	-	-	-	...	n.a.	-	...	-
<i>exclude:</i>									
offender unknown	...	-	+	-	...	n.a.	+	...	-
other disposals									
<i>include:</i>									
no competence	+	+	n.a.	+	...	+	+	...	...
transfer to another domestic authority	+	+	n.a.	+	...	n.a.	+	...	...
transfer to foreign authority	+	+	n.a.	+	...	+	+	...	...
private criminal prosecution	-	-	n.a.	+	...	n.a.	+	...	...

Table K.4: Data availability for Table 2.1 of the trial questionnaire (Criminal cases handled by the prosecuting authorities)

	Albania	Finland	France	Germany	Iceland	Nether-lands	Poland	Switzer-land	UK: E. & W.
Input cases	OK	OK	...	OK	...	...	OK	...	...
Pending cases	OK	OK	...	OK	...	...	OK	...	...
Output cases	OK	OK	OK	OK	...	...	OK	...	...
Total	OK	OK	OK	OK	...	...	OK	...	OK
of which: Cases brought before a court	...	OK	OK	OK	...	...	...	...	...
of which: Sanctions imposed by the prosecutor that lead to a formal verdict and count as a conviction	...	...	OK	OK	...	...	...	...	...
of which: Conditional disposals	...	...	OK	OK	...	...	...	...	OK
of which: Proceedings dropped in combination with a cautioning of the suspect	...	...	OK	...	...	...	...	...	OK
of which: Proceedings dropped unconditionally due to lack of public interest or for efficiency reasons	...	OK	OK	OK	...	...	...	...	OK
of which: Proceedings dropped for legal or factual reasons	OK	OK	OK	OK	...	...	...	...	OK
of which: Proceedings dropped because offender remained unknown	OK	...	OK	...	...	...	OK	...	...
of which: Other disposals	OK	OK	...	OK	...	...	OK	...	OK

Table K.5: Data availability for Table 2.2 of the trial questionnaire (Types of prosecutorial disposal decisions by offence group in 2006)⁵⁰

		Albania	Finland	France	Germany
Criminal offences	total	OK	OK	-	OK
	minor	-	-	-	-
	major traffic	OK	OK	-	OK
Intentional homicide	total	OK	OK	-	partially
	completed	-	OK	-	-
Bodily injury	total	OK	OK	-	OK
	aggravated	OK	-	-	-
Rape		OK	OK	-	-
Sexual assault		-	-	-	-
Sexual abuse of minors		-	OK	-	-
Robbery		OK	OK	-	-
Theft	total	OK	OK	-	(OK)
	motor vehicle	OK	OK	-	-
	burglary	-	-	-	-
	domestic burglary	-	-	-	-
Fraud		OK	OK	-	(OK)
Offences against computer data		OK	-	-	-
Money laundering		OK	-	-	partially
Corruption		OK	-	-	partially
Drug offences	total	OK	OK	-	OK
	trafficking	OK	OK	-	-
	aggravated trafficking	OK	OK	-	-

4. Final questionnaire and evaluation

As the trial questionnaire had proved its quality, only few changes were made for the final questionnaire. Since data availability for table 2.2 of the trial questionnaire was poor, it was decided to modify the table, asking now only for an offence breakdown for input and output data (total). The questionnaire part on prosecution had the following wording:

⁵⁰ Countries that did not provide any data (Iceland, the Netherlands, Poland, Switzerland, UK: England & Wales) are excluded from this table.

Extract of the final questionnaire

The counting unit required here is the **case** (in the sense of proceedings relating to one person only). One case may combine several offences; one offence may lead to several cases. Where the use of the case as the counting unit is not possible, **proceedings** (i.e. not necessarily related to only one person) should be used. If both do not apply, the person is the counting unit. Persons are counted if each suspect is counted only once each year, although there might be many proceedings against him or her in the given year.

What is the counting unit used?

Case (= proceedings relating to one person only)	Proceedings	Person	Other (please explain)

It is important to distinguish between ‘input’ and ‘output’ statistics. The ‘output’ (i.e. disposals made by the prosecuting authority) are the preferred statistics. In addition, the figures for pending cases, i.e. those cases that enter the prosecution stage in the reference year but are not disposed of in the same year should be provided if possible.

Definitions
Input cases: All cases of criminal offences, which are passed to the prosecuting authority for disposal in the reference year
Output cases: All disposals made by the prosecuting authority in the reference year
Pending cases: All cases pending at the end of reference year
Connection between input, output and pending cases: For each year: Output = pending of previous year + input - pending of current year

Concerning the <u>criminal cases</u> handled by the prosecuting authority (input, output and pending cases)		
	Indicate whether <u>included</u> or <u>excluded</u> :	
	incl.	excl.
Include the following:		
Cases reported to the prosecuting authority by other institutions (<i>e.g. customs, other non-police authorities</i>)		
Cases where the offender remained unknown (<i>if applicable, if not please specify</i>)		
Exclude the following:		
Cases dropped, conditionally disposed of or sanctioned by the police (<i>see below, question G to tables 2.1 and 2.2</i>)		

The differentiation between ‘cases brought before a court’ (formal charge) and the different types of prosecutorial decisions is not simple. It depends on how far the court is involved in the public prosecutor’s decision-making. For example, the prosecutor may be empowered to impose conditions for dropping the case, with or without the court’s consent.

In other cases, sanctions can be imposed by the public prosecutor (or by the court, but on application of the prosecutor and without a formal court hearing). These lead to a formal verdict and count as a conviction (e.g. a penal order – *Strafbefehl* in Germany, where the prosecutor brings a motion for a fine to be issued by the court after a summary review). This could be regarded (or counted in the statistics) as a sanction of the public prosecutor or a case brought before the court. If possible, it should be counted as a sanction imposed by the prosecutor.

Disposal categories (output data)		
	Indicate whether included or excluded : (if n/a, please explain why)	
	incl.	excl.
Cases brought before a court (e.g. indictment, acte d'accusation, Anklageschrift)		
Sanctions imposed by the prosecutor (or by the court, but on application of the prosecutor and without a formal court hearing) that lead to a formal verdict and count as a conviction (e.g. penal order, Strafbefehl)		
Conditional disposals by the prosecutor without formal verdict (i.e. the case is dropped when condition is met by the suspect)		
Proceedings dropped in combination with a cautioning of the suspect		
Proceedings dropped unconditionally due to lack of public interest or for efficiency reasons		
Proceedings dropped for legal or factual reasons		
Include the following:		
Lack of evidence		
Act not an offence		
No criminal responsibility		
No complaint from victim (where this is required for a prosecution) or complaint withdrawn		
Ne bis in idem		
Statute of limitation		
Offender not available		
Exclude the following:		
Offender unknown		
Proceedings dropped because offender remained unknown		
Include the following:		
Offender unknown		
Other disposals		
Include the following:		
No competence		
Transfer to another domestic authority		
Transfer to a foreign authority		
Private criminal prosecution recommended		

Explanation of options available to prosecutors

Table 2.1 Criminal cases handled by the prosecuting authorities

		2003	2004	2005	2006	2007
Input cases						
Cases pending on 31 st December 2002:	Pending cases on 31 st December of each year:					
Output cases	Total					
	<i>of which:</i> Cases brought before a court					
	<i>of which:</i> Sanctions imposed by the prosecutor (or by the court, but on application of the prosecutor and without a formal court hearing) that lead to a formal verdict and count as a conviction					
	<i>of which:</i> Conditional disposals					
	<i>of which:</i> Proceedings dropped in combination with a cautioning of the suspect					
	<i>of which:</i> Proceedings dropped unconditionally due to lack of public interest or for efficiency reasons					
	<i>of which:</i> Proceedings dropped for legal or factual reasons					
	<i>of which:</i> Proceedings dropped because offender remained unknown					
<i>of which:</i> Other disposals						

Source of the data in Table 2.1 – see General Remarks (paragraph 3)

Comments on Table 2.1 – see General Remarks (paragraph 3)

Tables 2.2 Prosecutorial input and output by offence group in 2006

If data for 2006 are not yet available, please give data for the latest available year and indicate the year of reference in the table.

Year of reference if other than 2006: _____			
Type of offence		Total input	Total output
Criminal offences	Total		
	of which: Major traffic offences		
Intentional homicide	Total		
	of which: Completed		
Bodily injury (assault)	Total		
	of which: Aggravated bodily injury		
Rape			
Sexual assault			
Sexual abuse of minors			
Robbery			
Theft	Total		
	of which: Theft of a motor vehicle		
	of which: Burglary (total)		
	of which: Domestic burglary		
Fraud			
Offences against computer data and systems			
Money laundering			
Corruption			
Drug offences	Total		
	of which: Drug trafficking		
	of which: Aggravated drug trafficking		

Source of the data in Table 2.2 – see General Remarks (paragraph 3)

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Comments on Table 2.2 – see General Remarks (paragraph 3)

--

2.2.A Do the offence definitions used in Table 2.2 differ from those in the ‘Definitions’ section?

Yes	No

Explanation of the differences

2.2.B Are there written rules regulating the way in which the data shown in Tables 2.1 and 2.2 are recorded?

Yes	No

2.2.C How are individual proceedings counted if more than one person is involved?

As one case	As two or more cases

2.2.D How are multiple offences counted?

- see Introduction (paragraph 1.3)

As one case	As two or more cases

2.2.E How is a person counted who is subject to two or more proceedings in one year?

- see Introduction (paragraph 1.3)

As one case	As two or more cases

2.2.F Are data collected by other authorities (apart from the prosecutor or examining judge) included?

Included	Excluded

2.2.G Do the police have separate powers to drop proceedings, conditionally dispose of them or issue a penal order that counts as a conviction? If yes, which powers do they have?

No, none of these	Yes, they have the following powers				
	Drop because offender remains unknown	Drop for other factual or for legal reasons	Drop for public interest reasons	Conditional Disposal	Penal Order

Please explain the options available

--

2.2.H Have the data recording methods described above been substantially modified between 2003 and 2007?

- see General Remarks (paragraph 3)

Yes	No

Explanation of the changes

Additional comments on questions 2.2.A – 2.2.H

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In most of the responding countries the counting unit is “proceedings”. The categories for the prosecutorial case ending disposals seem to work, but are not applicable in every country due to different competencies of the public prosecution. The question if unknown offenders are excluded or included in the statistics influences very strongly the number of cases recorded; at least because of the respective answers we can explain the differences to some extent. A breakdown by the offence groups is not provided for in most of the countries. But nonetheless the collection of data seems to be worth while because the response rate varies at least from 10 to 17 countries according to different offence groups. For details, see tables K.6 – K.8.4 below.

Table K.6: Counting unit used – results from final version

	Counting unit	If "other", please explain
Albania	Other	When a case was registered for two or more offences, the more serious crime will be registered. When in the cases there are more than one persons who have been accused for different crimes, the more serious crime will be registered.
Armenia	Proceedings	...
Austria	Proceedings	...
Belgium	Proceedings	...
Bulgaria	Proceedings	...
Croatia	...	...
Cyprus	Case	...
Czech Rep.	Proceedings and Person	...
Denmark	...	...
Estonia	Proceedings	...
Finland	Case, Proceedings and Person	...
France	Proceedings	...
Georgia	Case	...
Germany	Proceedings	...
Greece	Proceedings	...
Hungary	Case	...
Iceland	Other	The counting unit is number of crimes handled by the prosecution each year (information on time of offence is not available).
Ireland	Case	...
Italy	Other	Offence
Latvia	Proceedings	...
Lithuania	Proceedings	...
Netherlands	Case	...
Poland	Proceedings	...
Portugal	Proceedings	...
Russia	Other	In prosecution statistics the general counting unit is the case, though it means that it is NOT necessarily related to one person only. However, here we use as a counting unit a 'crime that was sent to a court for legal procedures.
Slovakia	...	...
Sweden	Other	Offence
Switzerland	...	...
Turkey	Proceedings	...
Ukraine	Proceedings	...
UK: E. & W.	Case	...
UK: N. Irel.	...	...
UK: Scotl.	...	...

Table K.7: Definition of criminal cases handled by the prosecuting authority – results from final version

	Cases reported to the prosecuting authority by other institutions (e.g. customs, other non-police authorities)	Cases where the offender remained unknown (if applicable, if not please specify)	Cases dropped, conditionally disposed of or sanctioned by the police (see below, question G to tables 2.1 and 2.2.)
Albania	+	+	-
Armenia	+	+	+
Austria	+	-	...
Belgium	+	+	-
Bulgaria	+	+	-
Croatia	...	...	...
Cyprus	+	+	-
Czech Rep.	+	-	+
Denmark	...	...	...
Estonia	+	+	...
Finland	+	-	-
France	+	+	...
Georgia	+	+	-
Germany	+	-	...
Greece	+	+	-
Hungary	+	+	-
Iceland	+	-	-
Ireland	+	-	...
Italy	+	+	-
Latvia	+	-	...
Lithuania	+	+	-
Netherlands	+	-	-
Poland	+	+	-
Portugal	+	+	-
Russia	+	-	-
Slovakia	...	...	...
Sweden	+	-	-
Switzerland	...	...	...
Turkey	+	+	-
Ukraine	+	+	+
UK: E. & W.	-	-	+
UK: N. Irel.	...	...	...
UK: Scotl.	...	...	...

Table K.8.1: Disposal categories – results from final version, part 1

+ =Included - =Excluded	Cases brought before a court (e.g. <i>indictment</i> , <i>acte d'accusation</i> , <i>Anklageschrift</i>)	Sanctions imposed by the prosecutor (or by the court, but on applica- tion of the prosecutor and without a formal court hearing) that lead to a formal verdict and count as a conviction	Conditional disposals by the prosecutor without formal verdict (i.e. <i>the case is dropped when condition is met by the suspect</i>)	Proceedings dropped in combination with a caution- ing of the suspect	Proceedings dropped unconditionally due to lack of public interest or for efficiency reasons
Albania	+	...	...	...	...
Armenia	+	-	+	+	+
Austria	+	+	+	+	+
Belgium	+	...	+	+	+
Bulgaria	+	-	+	-	+
Croatia	...	...	...	...	...
Cyprus	+	+	+	+	+
Czech Rep.	+	+	+	-	+
Denmark	...	...	...	...	...
Estonia	+	...	+	...	+
Finland	+	+	...	...	+
France	+	+	+	+	+
Georgia	+	+	+	+	+
Germany	+	+	+	...	+
Greece	+	-	-	-	-
Hungary	+	+	+	+	+
Iceland	+	+	+	+	+
Ireland	+	...	...	...	+
Italy	...	...	...	...	...
Latvia	+	...	...	...	...
Lithuania	+	+	+	-	+
Netherlands	+	...	+	...	+
Poland	+	...	+	...	+
Portugal	+	...	+	...	...
Russia	+	...	...	...	...
Slovakia	...	...	...	...	...
Sweden	+	+	-	+	+
Switzerland	...	...	...	...	...
Turkey	+	+	+	...	...
Ukraine	+	+	-	-	-
UK: E. & W.	+	-	-	+	+
UK: N. Irel.	...	...	...	...	...
UK: Scotl.	...	...	...	...	...

Table K.8.2: Disposal categories – results from final version, part 2: Proceedings dropped for legal or factual reasons, part 1

	Lack of evidence	Act not an offence	No criminal responsibility	No complaint from victim (where this is required for a prosecution) or complaint withdrawn
Albania	+	+	+	+
Armenia	+	+	+	+
Austria	+	+	+	+
Belgium	+	+	+	+
Bulgaria	+	+	+	+
Croatia	...	...	...	...
Cyprus	+	+	+	+
Czech Rep.	+	+	+	+
Denmark	...	...	...	...
Estonia	+	+	+	+
Finland	+	+	+	+
France	+	+	+	...
Georgia	+	+	+	+
Germany	+	+	+	+
Greece	+	+	+	+
Hungary	+	+	+	+
Iceland	+	+	+	+
Ireland	...	...	...	...
Italy	...	...	...	...
Latvia	-	-	-	...
Lithuania	+	+	+	+
Netherlands	+	+	+	+
Poland	+	+	+	+
Portugal	+	+	+	+
Russia	+	+	+	...
Slovakia	...	...	...	...
Sweden	-	-	-	-
Switzerland	...	...	...	...
Turkey	+	+	+	+
Ukraine	+	+	+	+
UK: E. & W.	+	+	+	+
UK: N. Irel.	...	...	...	...
UK: Scotl.	...	...	...	...

Table K.8.3: Disposal categories – results from final version, part 3: Proceedings dropped for legal or factual reasons, part 2

	Ne bis in idem	Statute of limitation	Offender not available	Offender unknown
Albania	+	+	+	-
Armenia	+	+	+	-
Austria	+	+	+	-
Belgium	+	+	+	+
Bulgaria	+	+	+	-
Croatia	...	...	...	...
Cyprus	+	+	+	-
Czech Rep.	+	+	-	-
Denmark	...	...	...	...
Estonia	+	+	+	-
Finland	+	+	+	-
France	+	+	+	-
Georgia	+	...	+	-
Germany	+	+	+	-
Greece	+	+	+	-
Hungary	+	+	+	-
Iceland	+	+	+	-
Ireland	...	...	...	...
Italy	...	...	...	...
Latvia	...	...	...	-
Lithuania	+	+	+	-
Netherlands	+	+	+	...
Poland	+	-	+	-
Portugal	+	+	+	+
Russia	+	+	+	-
Slovakia	...	...	...	...
Sweden	-	-	-	-
Switzerland	...	...	...	...
Turkey	+	+	+	+
Ukraine	+	+	+	-
UK: E. & W.	...	+	+	-
UK: N. Irel.	...	...	...	...
UK: Scotl.	...	...	...	...

Table K.8.4: Disposal categories – results from final version, part 4: Offender unknown and other disposals

+ =Included - =Excluded	Proceedings dropped because the offender remained unknown	Other disposals			
		No compe- tence	Transfer to another domestic authority	Transfer to a foreign authority	Private crimi- nal prosecu- tion recom- mended
Albania	+	+	+	+	...
Armenia	+	+	+	+	-
Austria	+	+	+	+	+
Belgium	-	+	+	+	+
Bulgaria	+	+	-	+	-
Croatia	-	-	...	...	...
Cyprus	+	+	+	+	+
Czech Rep.	+	+	+	+	-
Denmark	...	...	...	...	...
Estonia	+	...	+	...	...
Finland	-	+	+	+	-
France	+	...	...	...	...
Georgia	+	+	+	+	-
Germany	-	+	+	+	+
Greece	+	+	+	-	...
Hungary	+	...	...	+	+
Iceland	-	+	+	+	+
Ireland	...	...	...	...	...
Italy	...	...	...	...	...
Latvia	...	...	...	...	...
Lithuania	-	-	-	-	-
Netherlands	...	+	+	+	...
Poland	+	-	-	-	-
Portugal	...	...	...	...	...
Russia	+	+	-	+	-
Slovakia	...	...	...	...	...
Sweden	-	-	-	-	-
Switzerland	...	...	...	...	...
Turkey	+	+	...	...	...
Ukraine	+	+	+	+	-
UK: E. & W.	+	+	-	-	-
UK: N. Irel.	...	...	...	...	...
UK: Scotl.	...	...	...	...	...

5. Conclusions

As the above results show, the revised prosecution chapter worked very well. Data for the different disposal categories are available in many countries. Of course, due to differences in criminal procedure law, the range of available disposal categories differs between countries. Even data collection by offence group seems to be feasible, at least with respect to the total of input and output.

L. Pre-Trial Detention and Other Compulsory Measures

1. First steps and development of draft definitions and questions

One conclusion at the beginning was that there is a need for data on pre-trial detention and detainees and other related data, starting at the prison level and going back in the criminal justice process:

- *conviction level*: number of persons held in pre-trial detention before conviction, by type of offence
- *prosecution level*: see if data exists at this level, maybe for the total of offences
- *police level*: how many people are submitted to some form of police custody

One question was whether the ESB should also include confiscation measures, telephone taps etc. The group decided members should look if these data are accessible in their respective countries and where these can be found.

The improvements in SPACE⁵¹ European data collection and in particular in the tables giving the breakdown of prison population by legal status (SPACE

⁵¹ Council of Europe Annual Penal Statistics: http://www.coe.int/t/e/legal_affairs/legal_cooperation/prisons_and_alternatives/statistics_space_i/List_Space_I.asp.

2005, table 4) and the proportion of entries before final sentence (table 12) were discussed. SPACE results show a complex situation. Pre-trial detention may be at some high level for a country for both indicators. In other countries a low rate (in comparison with the median) of untried prisoners (or not serving a final sentence) can be observed with a rather high (or at least moderately high) proportion of entries before final sentence. The pre-trial detention length may be one of the reasons for this diversity.

But SPACE results could be fruitfully compared with other data related to pre-trial detention at the different stages of the criminal procedure. Since it seems quite difficult to collect data by offence type for prison flows, the possibility to collect data on pre-trial detention by offence type could be explored in the other chapters of the European Sourcebook. A first proposal, including new tables about restrictions of freedom before trial in each chapter (police custody in chapter 1, pre-trial detention and bail in chapter 2, persons convicted after pre-trial detention in chapter 3) was discussed. But this solution seemed too ambitious for many countries where the breakdown by offence type for pre-trial detainees etc. is not available at police level or at prosecution level.

On the other hand, the idea to collect data on different forms of compulsory measures was revisited. Some of these measures belong to chapter 2 and not to chapters 3 or 4. The following categories were suggested:

- a) detention and its substitutes
 - police custody
 - numbers of persons held in pre-trial detention
 - number of persons held under control through (1) bail, (2) electronic monitoring, or (3) other control measures
- b) financial restrictions
 - orders of seizures: number of decisions and amount seized
- c) other restrictions
 - orders to supervise telephone lines
 - orders to supervise personal mobility
- d) international legal cooperation
 - number of requests received (from other countries, EU vs. non-EU)
 - number of requests sent out (to other countries, EU vs. non-EU)
 - number of persons extradited to other countries (EU vs. non-EU)
 - number of persons extradited by other countries (EU vs. non-EU)
 - number of persons arrested under an *European arrest warrant*, at the request of other countries
 - number of persons whose arrest was requested under an *European arrest warrant*

After discussion it was decided to introduce some tables about restrictions of freedom before trial and other supervision measures in chapter 2 (prosecution).

For these tables, no breakdown by offence type would be required. At conviction level (chapter 3), the trial questionnaire would include this breakdown. For each specific offence and for a given year, a table should collect the number of convicted persons who were held in pre-trial detention at least temporarily among all the convicted persons.

2. Trial questionnaire and evaluation

Below, excerpts from the trial questionnaire regarding the measures discussed are reprinted. The results of the trial questionnaire are shown after each table and the consequences for the final version are also included.

2.1 Restrictions of freedom of movement

Extract of the trial questionnaire

Table 2.3.1 Persons whose freedom of movement was restricted in 2006

This Table refers to decisions through which movement of persons has been restricted before final conviction during 2006 while they were, as suspects, under criminal investigation. Such measures can be ordered by the police, the prosecutors, the court or, in some cases, other authorities.

Decisions made outside a criminal procedure (such as, e.g., measures of constraints against illegal immigrants), should, if possible, be excluded from this Table. If it is not possible to exclude these cases, please give us a number in the comments section.

The ‘Total for pre-trial detention’ should refer to the number of people entering pre-trial detention for all offences according to table 4.1.2.

If data for 2006 are not yet available, please give data for the latest available year and indicate the year of reference in the table.

Year ____	Ordered by the police	Ordered by a prosecutor	Ordered by court	Ordered by another authority
Persons in police custody				
Persons in pre-trial detention				
Persons under bail				
Persons under electro-nic monitoring				

Table L.1: Data availability for Table 2.3.1 of the trial questionnaire (Restriction of freedom of movement 2006)

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E & W.
Persons in police custody	...	(OK)	OK	...	...	...	...	...	OK
Persons in pre-trial detention	...	OK	OK	...	...	...	OK	...	OK
Persons under bail	...	...	OK	...	...	...	OK	...	OK
Persons under electronic monitoring	...	...	OK	...	...	...	...	...	-

Answers for this table were provided by five countries only and just one of them could not give any data at all (*Germany*). Of course, non-response by *Albania*, *Iceland*, *the Netherlands* and *Switzerland* to this specific question might also be connected with data being unavailable. However, it was decided to keep the table for the final questionnaire, including the item about persons under electronic monitoring even if it appeared that this solution was not frequently documented or available.

2.2 Supervision

Extract of the trial questionnaire

Table 2.3.2 Persons under supervision in 2006

This Table refers to decision through which communications of unconvicted persons have been supervised during 2006. Such measures can be ordered by the police, the prosecutors, the court or, in some cases, other authorities. If data for 2006 are not yet available, please give data for the latest available year and indicate the year of reference in the table.

Year of reference if other than 2006: _____				
	Ordered by the police	Ordered by a prosecutor	Ordered by court	Ordered by another authority
Persons whose telephone lines were supervised ('tapped')				
Persons whose electronic mail communications were under supervision				
Persons whose mail communications were under supervision				
Persons whose movements were under supervision				

Table L.2: Data availability for Table 2.3.2 of the trial questionnaire (Supervision 2006)

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
Persons whose telephone lines were supervised ('tapped')	...	OK	...	OK	...	...	...	...	...
Persons whose electronic mail communications were under supervision	...	...	...	...	...	...	...	...	...
Persons whose mail communications were under supervision	...	...	...	...	...	...	...	...	...
Persons whose movements were under supervision	...	...	...	...	...	...	OK	...	...

2.3 Freezing of assets

Extract of the trial questionnaire

Table 2.4 Freezing of assets in 2006

This Table refers to decisions to freeze assets during a criminal investigation (before a final ruling) in 2006. Such measures can be ordered by the police, the prosecutors, a court or, in some cases, other authorities.

If data for 2006 are not yet available, please give data for the latest available year and indicate the year of reference in the table.

Year of reference if other than 2006: _____				
	Ordered by the police	Ordered by a prosecutor	Ordered by court	Ordered by another authority
Decisions to freeze assets				

Table L.3: Data availability for Table 2.4 of the trial questionnaire (Freezing of assets 2006)

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
Decisions to freeze assets	...	OK	...	OK	...	...	...	...	...

2.4 International legal cooperation

Extract of the trial questionnaire

Table 2.5 Operations of international legal cooperation in 2006

This Table refers to international legal cooperation during 2006. Requests for international cooperation concern, most of the time, seizure of documents or evidence, arrest of persons, extradition, or hearing of witnesses. Such measures can be ordered by the police, the prosecutors, the court or, in some cases, other authorities.

If data for 2006 are not yet available, please give data for the latest available year and indicate the year of reference in the table.

<i>Year of reference if other than 2006: _____</i>					
		Ordered by the police	Ordered by a prosecutor	Ordered by court	Ordered by another authority
Total of requests received from other countries					
Total of requests sent to other countries					
Number of persons arrested at the request of other countries	Total				
	<i>of which: number of arrest under an Euro- pean arrest warrant</i>				
Number of persons extradited					

Table L.4: Data availability for Table 2.5 of the trial questionnaire (International legal cooperation 2006)

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
Total of requests received from other countries	...	OK	...	...	...	...	OK	...	...
Total of requests sent to other countries	...	OK	...	...	...	...	OK	...	...
Number of persons arrested at the request of other countries: Total	...	(OK)	...	...	...	...	...	...	...
of which: number of arrests under an European arrest warrant	...	(OK)	...	...	...	...	...	...	OK
Number of persons extradited	...	(OK)	...	OK	...	...	...	...	...

According to these results, very few data would be collected through these three tables about supervision before trial, freezing of assets and international legal cooperation. After evaluation, it was therefore decided to keep these tables only for the additional questionnaire (countries represented by expert group members only); see below.

2.5 Persons held in pre-trial detention among persons convicted

Extract of the trial questionnaire

3.3 Persons held in pre-trial detention (at least temporarily) among persons convicted in 2006

The 'Total for persons convicted' should refer to the number of people convicted according to Table 3.1.1 in 2006. By pre-trial detention, we understand any detention before conviction ordered by a judge.

If data for 2006 are not yet available, please give data for the latest available year and indicate the year of reference in the table.

Year of reference if other than 2006: _____			
Type of offence		Total of persons convicted	<i>of which</i> held in pre-trial detention (at least temporarily)
Criminal offences	Total		
	<i>of which</i> : Major traffic offences		
Intentional homicide	Total		
	<i>of which</i> : Completed		
Bodily injury (assault)	Total		
	<i>of which</i> : Aggravated bodily injury		
Rape			
Sexual assault			
Sexual abuse of minors			
Robbery			
Theft	Total		
	<i>of which</i> : Theft of a motor vehicle		
	<i>of which</i> : Burglary (total)		
	<i>of which</i> : Domestic burglary		
Fraud			
Offences against computer data and systems			
Money laundering			
Corruption			
Drug offences	Total		
	<i>of which</i> : Drug trafficking		
	<i>of which</i> : Aggravated drug trafficking		

Table L.5: Data availability for Table 3.3 of the trial questionnaire (Persons held in pre-trial detention 2006)⁵²

		Albania	Finland	France	Germany
Criminal offences	total	...	OK	OK	OK
	major traffic	...	OK	OK	OK
Intentional homicide	total	...	OK	OK	OK
	completed	...	OK	...	...
Bodily injury	total	...	OK	OK	OK
	aggravated	...	...	OK	OK
Rape		...	OK	OK	OK
Sexual assault		...	...	OK	OK
Sexual abuse of minors		...	OK	OK	OK
Robbery		...	OK	...	OK
Theft	total	...	OK	OK	OK
	motor vehicle	...	OK	...	...
	burglary	...	...	...	OK
	domestic burglary	...	...	...	OK
Fraud		...	OK	OK	OK
Offences against computer data		...	OK	...	OK
Money laundering		...	OK	...	OK
Corruption		...	OK	OK	OK
Drug offences	total	...	OK	OK	OK
	trafficking	...	OK	OK	...
	aggravated trafficking	...	OK	...	OK

It should be kept in mind that the definition of “pre-trial” detention, from a statistical point of view, may not be the same in every country. This can be seen from a table in chapter 4 (this table is a standard one already used in previous Sourcebook surveys):

⁵² Countries that left the whole table empty without explicitly stating that data are unavailable (*Iceland, the Netherlands, Poland, Switzerland, UK: England & Wales*) are not included in this table.

Extract of the trial questionnaire

Pre-trial detainees: Persons held in penal institutions while a <u>final</u> court decision concerning their case has not been reached yet	
	Indicate whether 'included' or 'excluded'
Include the following:	
Untried detainees (i.e. no court decision finalized yet)	
Convicted but not yet sentenced detainees	
Sentenced detainees who have appealed or who are within the statutory limit for doing so	

Table L.6: Definition of “pre-trial detainee” in the trial questionnaire

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	UK: E. & W.
Untried	+	+	+	+	...	+	+	...	+
Convicted but not yet sentenced	+	+	+	n.a.	...	+	+	...	+
Appealed	+	+	+	+	...	+	+	...	-

2.6 Confiscation of assets

*Extract of the trial questionnaire***3.4 Decisions of confiscation of assets in 2006**

Please note that confiscation of assets previously seized is, as a rule, ordered by the court at moment of the offender's conviction. Confiscation means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence, resulting in the final deprivation of property.

The ‘Total for persons convicted’ should refer to the number of people convicted according to Table 3.1.1 in 2006.

If data for 2006 are not yet available, please give data for the latest available year and indicate the year of reference in the table.

Year of reference if other than 2006: _____				
Type of offence		Total of persons convicted	Number of decisions of confiscation of assets	Total amount of assets ordered to be con-fiscated (in €)
Criminal offences	Total			
	of which: Major traffic offences			
Intentional homicide	Total			
	of which: Completed			
Bodily injury (assault)	Total			
	of which: Aggravated bodily injury			
Rape				
Sexual assault				
Sexual abuse of minors				
Robbery				
Theft	Total			
	of which: Theft of a motor vehicle			
	of which: Burglary (total)			
	of which: Domestic burglary			
Fraud				
Offences against computer data and systems				
Money laundering				
Corruption				
Drug offences	Total			
	of which: Drug trafficking			
	of which: Aggravated drug trafficking			

Table L.7: Data availability for Table 3.4 of the trial questionnaire (Confiscation of assets 2006)⁵³

		Albania	Finland	France	Germany	UK: E. & W.
Criminal offences	total	...	...	OK	OK	...
	major traffic	...	...	OK	OK	...
Intentional homicide	total	...	...	OK	(OK)	...
	completed	...	...	...	...	...
Bodily injury	total	...	...	OK	(OK)	...
	aggravated	...	...	OK	OK	...
Rape		...	...	OK	...	...
Sexual assault		...	...	OK	...	...
Sexual abuse of minors		...	...	OK	...	...
Robbery		...	...	...	(OK)	...
Theft	total	...	...	OK	OK	...
	motor vehicle	...	...	...	...	...
	burglary	...	...	...	OK	...
	domestic burglary	...	...	...	...	...
Fraud		...	...	OK	OK	...
Offences against computer data		...	...	...	...	...
Money laundering		...	...	...	...	...
Corruption		...	...	OK	...	...
Drug offences	total	...	...	OK	OK	...
	trafficking	...	...	OK	...	OK
	aggravated trafficking	...	...	...	...	...

Since evaluation of results on table 3.4 of the trial questionnaire showed that data availability on confiscation of assets was quite poor on conviction level, that table was also dropped from the final questionnaire.

⁵³ Countries that left the whole table empty without explicitly stating that data are unavailable (*Iceland, the Netherlands, Poland, Switzerland*) are not included in this table.

3. Final questionnaire and evaluation

The final version of the questionnaire did not change in its structure for pre-trial detention (and police custody). Only the two tables on pre-trial detention were included after evaluation of the trial questionnaire. The other topics (supervision, freezing and confiscation of assets and international legal cooperation) were only introduced in the additional questionnaire (Sourcebook group members only); see below.

The relevant parts of the final questionnaire have the following structure:

*Extract of the final questionnaire***2.3 Persons whose freedom of movement was restricted in 2006**

This Table refers to decisions through which movement of persons has been restricted before final conviction during 2006 while they were, as suspects, under criminal investigation. Such measures can be ordered by the police, the prosecutors, the court or, in some cases, other authorities.

Decisions made outside a criminal procedure (such as, e.g., measures of constraints against illegal immigrants), should, if possible, be excluded from this Table. If it is not possible to exclude these cases, please give us a figure in the box after **question 2.2.A**.

If data for 2006 are not yet available, please give data for the latest available year and indicate the year of reference in the table. Please use **flow data**, if possible. If using stock data instead, please state the reference date in **question 2.2.B**.

Year of reference if other than 2006: _____				
	Ordered by the police	Ordered by a prosecutor	Ordered by court	Ordered by another authority
Persons in police custody				
Persons in pre-trial detention				
Persons under bail				
Persons under electronic monitoring				

Source of the data in Table 2.3 – see General Remarks (paragraph 3)

--

Comments on Table 2.3 – see General Remarks (paragraph 3)

--

Yes	No

Flow	Stock

3.3 Persons held in pre-trial detention (at least temporarily) among persons convicted in 2006

The 'Total for persons convicted' should refer to the number of people convicted according to Table 3.1.1 in 2006. By pre-trial detention, we understand any detention before conviction ordered by a judge.

If data for 2006 are not yet available, please give data for the latest available year and indicate the year of reference in the table.

Year of reference if other than 2006: _____			
Type of offence		Total of persons convicted	<i>of which</i> held in pre-trial detention (at least temporarily)
Criminal offences	Total		
	<i>of which:</i> Major traffic offences		
Intentional homicide	Total		
	<i>of which:</i> Completed		
Bodily injury (assault)	Total		
	<i>of which:</i> Aggravated bodily injury		
Rape			
Sexual assault			
Sexual abuse of minors			
Robbery			
Theft	Total		
	<i>of which:</i> Theft of a motor vehicle		
	<i>of which:</i> Burglary (total)		
	<i>of which:</i> Domestic burglary		
Fraud			
Offences against computer data and systems			
Money laundering			
Corruption			
Drug offences	Total		
	<i>of which:</i> Drug trafficking		
	<i>of which:</i> Aggravated drug trafficking		

Source of the data in Table 3.3 – see General Remarks (paragraph 3)

Comments on Table 3.3 – see General Remarks (paragraph 3)

The following table gives an overview of the available data on police custody, pre-trial detention and bail collected with the final questionnaire in chapters 2, 3 and 4.

Table L.8: Data availability for police custody, pre-trial detention and bail in the final questionnaire

Sourcebook 4 th edition Final questionnaire X = data col- lected	PROSECUTION				CONVICTION		CORRECTION	
	Police custo- dy	Pre- trial deten- tion	Bail	Flow (F) or stock (S)	Pre-trial among persons convicted total	Pre-trial among persons convicted by of- fences	Pre-trial detainees flow 2006	Pre-trial detainees stock 2006
Albania	X	X	X	F				X
Armenia	X	X	X	F				X
Austria	X	X		S			X	X
Belgium		X		S			X	X
Bulgaria		X		S			X	X
Croatia					X	X	X	X
Cyprus							X	X
Czech Rep.	X	X		F	X	X	X	X
Denmark	X	X		F				X
Estonia	X	X		F				X
Finland		X			X	X	X	X
France	X	X	X	F	X	X	X	X
Georgia		X	X		X			X
Germany					X	X		X
Greece							X	X
Hungary		X	X		X	X		X
Iceland				F			X	X
Ireland							X	X
Italy		X		F				X
Latvia								X
Lithuania		X	X	F			X	X
Netherlands				F	X	X		X
Poland	X	X	X	F	X		X	X
Portugal	X	X		F	X	X	X	X
Russia		X		S				X
Slovakia					X	X	X	X
Sweden		X		S				X
Switzerland					X	X		X
Turkey	X	X						X
Ukraine		X	X	F				X
UK: E. & W.					X		X	X
UK: N. Irel.							X	X
UK: Scotl.							X	X

In the *prosecution* chapter, data was provided by twenty countries, at least for one item of the table (most of the time pre-trial detention), though five countries mentioned that it was stock data. The stock may be the number of pre-trial detainees (prison statistics) or the number of persons under warrant on a given day. For fifteen countries data about pre-trial detention could be flow data but the situation is not quite clear at least for four of them (no answer to the question). Data collected in this table will be compared to correctional statistics which are available for all countries in stocks.

In the *convictions* chapter, only 13 countries provided some figures at least for the total of persons convicted. Two of them cannot give the number of convicted persons held in pre-trial detention by offences. Some others are not able to collect data for all offences. In four countries, even if the amount of convicted persons is available for some specific offences, data about pre-trial detention are not collected in the same way (they may be produced according to different offence classifications).

For two other countries the national correspondents put in this table stock figures coming from prisons statistics. These figures will be removed from the final data base.

4. Additional questionnaire and evaluation

The additional questionnaire featured the tables from the trial questionnaire which were dropped while producing the final version. For the relevant parts, the structure of these tables is identical to the one used in the trial questionnaire (see above). Therefore, they are not reprinted again.

Although the additional questionnaire was answered by one more country (*Ukraine*) than the trial version, data availability on measures of *supervision* remained as poor as in the trial phase: only two countries were able to provide information on telephone tapping (*Finland, Germany*). Different from the trial version, *Poland* now stated that there are no data available at all, while before it had replied that data on supervision of movement would be available (see above).

Three countries responded that they were able to provide data regarding the *freezing of assets*. *Finland* stated that these data referred to police ordered freezing measures, *Poland* stated these were prosecutor ordered and *Germany*: court ordered. Still, most of the responding countries were unable to provide the data requested. With respect to the *confiscation of assets* by the court (convictions chapter), as in the trial phase, only *Germany* and *France* were able to provide data.

For international legal cooperation, now apart from the countries already having responded this way in the trial version, *Albania* was also able to provide some data. The new results were:

Table L.9: Data availability for Table A.2.2.3 of the additional questionnaire (International legal cooperation 2006)

	Albania	Finland	France	Germany	Iceland	Netherlands	Poland	Switzerland	Ukraine	UK: E. & W.
Total of requests received from other countries	prosecutor ordered	police ordered	...	...	...	...	court ordered	...	...	...
Total of requests sent to other countries	prosecutor ordered	police ordered	...	...	...	...	court ordered	...	...	...
Number of persons arrested at the request of other countries	...	...	...	...	...	...	court ordered	...	...	...
Number of persons extradited	prosecutor ordered	...	...	court ordered	...	...	court ordered	...	...	...

One difficulty among others in data collection on this topic is probably that the information relies on specific agencies within the criminal justice system and not on the ordinary criminal statistics.

5. Conclusions

Evaluation made clear that availability of data on compulsory measures is still poor in Europe. This is especially true for measures of supervision, freezing and confiscation of assets. Data availability for operations of international legal cooperation is somehow better, but still not satisfactory. Only for persons held in pre-trial detention or under other measures of restriction of movement, the situation is already quite good, although most countries are only able to provide data on pre-trial detention itself. For police custody and bail, the situation is significantly worse, and for electronic monitoring only very few countries provided information. However, it has to be considered that the latter measure is legally unavailable in many countries.

EU countries should be encouraged to improve their data collection in the area of compulsory measures, also with respect to the sensitivity of these measures with respect to human rights issues.

M. Sanctions

In the former editions of the European Sourcebook of Crime and Criminal Justice Statistics, the collection of data was limited to traditional sanctions which were commonly in use across Europe, such as custodial sanctions, either suspended or immediate, as well as to (custodial) measures whose length often remains undefined, but depends on the offender's dangerousness to the community. Despite certain shortcomings, it was also possible to collect valuable information on the length of custodial sanctions, including the average length of sentences for some countries.

The 3rd edition of the ESB then did not feature a section on sanctions and measures because it was felt that this part should be thoroughly revised in order to reflect more strongly the complex reality of sanctions in European comparison.

1. First steps and development of draft definitions and questions

The group decided to extend the information on pre-trial detention by asking (in Table 3.3) for the number of convicted persons who have spent, before trial, at least some time in pre-trial detention. This information is valuable since mere figures on sentences do not reflect this far more complex reality – many convicted

persons have spent often substantial periods of time under a regime of pre-trial detention even if, in the end, they were not actually sentenced to immediate custody.⁵⁴

Beyond these data, the group realised that so-called community sanctions have gained considerable importance across Europe. The reality is complex, of course, and cannot be reflected in full detail since many combinations exist in many countries. Community service, as well as suspended custodial sanctions, can be combined with some form of supervision by the probation service, but this may not be necessarily so. In the same line, community service may be combined with a suspended custodial sanction. In addition to these combinations, fines play obviously an increasingly important role throughout Europe.⁵⁵ Further, new sanctions have been developed over the last years in many countries, such as curfew orders with or without electronic monitoring.

Apart from this, in the very beginning of the project the issue of data on minors was raised. These are not included in conviction data in some countries. Apart from this, they are often subject to special sanctions according to juvenile criminal law. Therefore it necessary for the new edition to differentiate between sanctions imposed upon adults and those imposed upon minors.

The group decided to have distinct tables on the type of sanctions / measures imposed for both adults and minors. Questions regarding sentence length should only concern adults, as it would be too complicated to collect these data for minors, too.

2. Trial questionnaire and evaluation

Trial versions of the new sanctions tables were drafted and introduced into the trial questionnaire and read as follows:

⁵⁴ This part of the new convictions chapter has already been addressed in detail in chapter I of this report.

⁵⁵ Fines have of course already been covered in the 2nd edition of the ESB.

Extract of the trial questionnaire

3.2 Sanctions and measures imposed

Table 3.2.1 Type of sanctions/measures imposed upon adults in 2006

The 'Total' for criminal offences should refer to the number of sanctions/measures imposed for all offences and not just the offences mentioned in this table. If data for 2006 are not yet available, please give data for the latest available year and indicate the year of reference in the table.

Year of reference if other than 2006: _____															
Type of offence		Total sanctions and measures		Verdict / admonition only		Fines		Non-custodial sanctions and measures		Suspended custodial sanctions and measures		Unsusended custodial sanctions and measures		Other measures (please specify)	
Criminal offences	Total	of which: (Major) traffic offences						Total	of which: Community service		of which: Comb. w. community service		of which: Comb. w. Supervision		
Intentional homicide	Total														
Bodily injury (assault)	Total														
	of which: Aggravated bodily injury														
Rape															
Sexual assault															

Type of offence	Total of which: Drug trafficking of which: Aggravated drug trafficking
Total sanctions and measures	
Verdict / admonition only	
Fines	
Non-custodial sanctions and measures	Total
	of which: Community service
	of which: Supervision
Suspended custo- dial sanctions and measures	Total
	of which: Comb. w. community service
	of which: Comb. w. Supervision
Unsuspend custodial sanctions and measures	
Other measures (please specify)	

Type of offence	Total sanctions and measures	Verdict / admonition only	Fines	Non-custodial sanctions and measures	Suspended custodial sanctions and measures	Unsuspected custodial sanctions and measures	Other measures (please specify)
Robbery							
Theft							
	Total						
	of which: Theft of a motor vehicle						
	of which: Burglary (total)						
	of which: Domestic burglary						
Fraud							
Fraud using electronic systems							
Illegal entry into electronic systems (computers)							
Money laundering							
Corruption							

[illegible]

Source of the data in Table 3.2.2 – see General Remarks (paragraph 3)

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Comments on Table 3.2.2 – see General Remarks (paragraph 3)

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3.2.2.A What are the reactions to offences committed by minors in your country?

Exactly the same sanctions and measures as for adults	Principally the same sanctions and measures as for adults, but milder punishment	Special sanctions for minors imposed in criminal proceedings	Criminal sanctions for minors only in case of (very) serious offences, otherwise treated outside the criminal justice system

3.2.2.B Is the age bracket for minors used in Table 3.2.2 different from the one used in Table 3.1.2 (see question 1.2.2.A)?

Yes	No

If YES, please specify the age bracket (i.e. the minimum and maximum age) used for minors in Table 3.2.2

Minimum age Over _____ years	Maximum age Under _____ years
Comments	

3.2.2.C Are there written rules regulating the way in which the data shown in Tables 3.2.1 and 3.2.2 are recorded?

Yes	No

3.2.2.D At what stage of the process does the data refer to? - see Introduction (paragraph 1.3)

Before appeals	After appeals

3.2.2.E Is a principal offence rule applied (*i.e. two or more sanctions or measures are applied, only one – the main sanction – is counted for statistical purposes*)?

- see General Remarks (paragraph 3)

Yes	No

Explanation of the rule

3.2.2.G How is a person who is convicted of more than one offence of the same type counted? For example, several cases of theft

- see Introduction (paragraph 1.3)

As one person	As two or more people	Other (please explain)

3.2.2.H How is a person dealt with more than once during the same year counted?

- see Introduction (paragraph 1.3)

As one person	As two or more people	Other (please explain)

3.2.2.I Have the data recording methods described above been modified between 2003 and 2007?

- see General Remarks (paragraph 3)

Yes	No

Explanation of the changes

Additional comments on questions 3.2.2.A – 3.2.2.I

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[illegible]

Compared with the last ESB questionnaire that featured a chapter on sanctions (2nd edition), the only difference of the new table on sentence lengths of unsuspended custodial sanctions was the restriction to adults. This change did not pose any significant problems, but helped to improve data quality instead. Data on the length of sentences imposed upon minors will be subject to remarkable variation between European countries and were therefore excluded for good. All responding countries were able to provide information on sentence lengths for most offence groups.

Data availability was also very good regarding sanctions imposed upon adults (tables 3.2.1 of the questionnaire). All responding countries were able to provide information, also differentiated by offence groups. Of course, not every country was able to provide data for every sanction category provided in the table. This is, however, not primarily a problem of data availability, but reflects the differences in criminal law. Not all countries have all possible types of sanctions in their criminal code. Data availability for sanctions imposed upon minors (table 3.2.2 of the trial questionnaire) was also very high. Only *Poland* stated to have no data available.

3. Final questionnaire and evaluation

For the final questionnaire, the introducing comments on table 3.2.1 and 3.2.2 were modified for clarification reasons. Apart from that, minor editorial changes were applied since the trial tables 3.2.1 and 3.2.2 accidentally featured an outdated offence list.

The new versions of these tables, complete with introducing remarks and technical questions, have the following wording:

[illegible]

[illegible]

Source of the data in Tables 3.2.1 and 3.2.2

– see General Remarks (paragraph 3)

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Comments on Tables 3.2.1 and 3.2.2 – see General Remarks (paragraph 3)

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3.2.2.A How do reactions differ for offences committed by minors in your country?

Exactly the same sanctions and measures as for adults	Principally the same sanctions and measures as for adults, but milder punishment	Special sanctions for minors imposed in criminal proceedings	Criminal sanctions for minors only in case of (very) serious offences, otherwise treated outside the criminal justice system

3.2.2.B Is the age bracket for minors used in Table 3.2.2 different from the one used in Table 3.1.2 (see question 3.1.2.A)?

Yes	No

If YES, please specify the age bracket (i.e. the minimum and maximum age) used for minors in Table 3.2.2

Minimum age Over _____ years	Maximum age Under _____ years
Comments	

3.2.2.C Are there written rules regulating the way in which the data shown in Tables 3.2.1 and 3.2.2 are recorded?

Yes	No

3.2.2.D At what stage of the process does the data refer to?

- see Introduction (paragraph 1.3)

Before appeals	After appeals

3.2.2.E Is a principal sanction rule applied (*i.e. two or more sanctions or measures are applied, only one – the main sanction – is counted for statistical purposes*)?

- see General Remarks (paragraph 3)

Yes	No

Explanation of the rule

3.2.2.G How is a person who is convicted of more than one offence of the same type counted? For example, several cases of theft

- see Introduction (paragraph 1.3)

As one person	As two or more people	Other (please explain)

3.2.2.H How is a person dealt with more than once during the same year counted?

- see Introduction (paragraph 1.3)

As one person	As two or more people	Other (please explain)

3.2.2.I Have the data recording methods described above been modified between 2003 and 2007?

- see General Remarks (paragraph 3)

Yes	No

Explanation of the changes

Additional comments on questions 3.2.2.A – 3.2.2.I

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In the final questionnaire, we have asked countries to indicate first the total number of convictions (column 1) and then to indicate the number of verdicts without any sentence being imposed (column 2), reflecting cases where the offender has been found guilty, but – in the end – has been admonished only, but not actually punished. In column (3), fines (or any financial sanctions) had to be listed. Under this category, according to the counting rules, only cases had to be indicated had to be indicated where no other sanction had actually been imposed. In Column (4), the total of (other) non-custodial sanctions and measures had to be provided. Column (5) invited countries to indicate the number of (4) that actually concerned community service, being understood that there exist other types of “alternative” or community sanctions that are not included here. In column (6), we asked for how many among the total of all community sanctions (whatever their nature), given under column (4) imply some sort of supervision (usually by the probation service).

Columns 7 to 9 concern custodial sanctions that have been suspended. The total of suspended custodial sentences is indicated in column (7), while the number out of the total of (7) that actually had, as a condition of having their custodial sanction suspended, to perform some sort of community service, is shown in column 8. In column (9), again as a fraction of the total given under column (7), the number of suspended custodial sanctions that implied some sort of supervision had to be provided.

Column (10) concerns actual (immediate) custodial sanctions and measures that were not suspended. This information is logically related to chapter 4 on correctional services. Finally, in column (11) any sanctions and measures that could not be listed among the other columns were to be indicated.

The replies to the final questionnaire show that most countries have not been able to provide data on all these categories. This is, as mentioned before, not primarily a problem of data availability, but reflects the differences in criminal law. Not all countries have all possible types of sanctions in their criminal code.

For *sanctions and measures imposed upon adults*, 28 out of 33 countries provided data on the *total of offences*, broken down by the type of sanction imposed. In almost all cases, this was a complete breakdown, listing all sanctions available and used for a certain offence. Not for all of these countries a breakdown was also available for the different offence groups. 22 were, for example, able to provide a breakdown by sanction for *homicide total*. The same number of countries provided data on *theft total*. For “new” offence types like money laundering (11 countries) or corruption (17 countries) data availability was worse.

Regarding *sanctions and measures imposed upon minors*, fewer countries were able to provide data than for sanctions imposed upon adults. 21 were able to provide a breakdown for the *total of offences* by type of sanction imposed. Again, data availability was worse if looking at the different offence groups. Still, 15 countries were able to provide a breakdown for *theft total* and 14 for *robbery*.

The question how reactions on offences committed by minors differ from reactions on offences committed by adults (3.2.2.A) was answered by the majority of countries, even by those that were not able to provide data on juvenile sanctions in table 3.2.2. The answers to this question are shown in table M.1, below. The results make clear that in all countries some kind of differentiation is made between adults and minors, since none of the correspondents chose option “1”.

Table M.1: How do reactions differ for offences committed by minors in your country?

	1= Exactly the same sanctions and measures as for adults 2= Principally the same sanctions and measures as for adults, but milder punishment 3= Special sanctions for minors imposed in criminal proceedings 4= Criminal sanctions for minors only in case of (very) serious offences, otherwise treated outside the criminal justice system
Albania	2
Armenia	3 and 4
Austria	3
Belgium	3 and 4
Bulgaria	2 and 3
Croatia	...
Cyprus	2
Czech Rep.	3
Denmark	2 and 3
Estonia	4
Finland	3
France	2 and 3
Georgia	2
Germany	3
Greece	3
Hungary	3
Iceland	...
Ireland	...
Italy	3
Latvia	2
Lithuania	2
Netherlands	2 and 3
Poland	4
Portugal	3
Russia	2 and 4
Slovakia	2
Sweden	3 and 4
Switzerland	3
Turkey	2
Ukraine	...
UK: E. & W.	2 and 3
UK: N. Irel.	2
UK: Scott.	4

4. Conclusions

The changes in the tables on sanctions and measures were apparently useful. Data availability for sanctions imposed upon on adults and minors is good. However, the data only very roughly reflect the complex reality of sanctions and measures in European comparison. The issues of community sanctions and measures and probation on the one hand and sanctions according to juvenile law on the other are still in need of in-depth research. These areas should therefore be addressed in more detail in another research project the ESB group might be involved in in the future.

N. Prison Population

As a part of the project goals, new questions on the prison population that are usually not included in the available international data collections such as the *Council of Europe Annual Penal Statistics* (SPACE), the *European Sourcebook of Crime and Criminal Justice Statistics*, and the *United Nations Survey on Crime Trends* were introduced. One of the goals was to figure out whether data on foreigners could be broken down into foreigners holding an EU citizenship and other foreigners (also see chapter O).

1. First steps and development of draft definitions and questions

At the beginning it was thought about adding questions to the new questionnaire regarding (1) the length of sentence, and (2) the use of community sentences.

It was discussed what level of detail the questionnaire should achieve, and consequently, how it should be related to the SPACE II⁵⁶ work. There were different possibilities: SPACE II statistics could be used with comments, they could be summarized or the ESB could have no data on community sentences at all. In

⁵⁶ See http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Prisons_and_alternatives/Statistics_SPACE_II/.

addition, it should be clarified that it is useful to deal with final decisions, wherever this is possible; basically, it is needed to ask precisely what the nature of the data we are getting is.

The main question was whether the ESB should collect correction data or whether it should utilize data provided by SPACE. The existing overlap between Sourcebook and SPACE questionnaires may have pernicious side effects. The group was somewhat reluctant to give up its network of national correspondents. The two questionnaires are not identical; the timetables may also differ. The group decided to keep the questionnaire for chapter four of the Sourcebook, improving definitions with the help of SPACE I work. For alternatives to prison, one would need to draft a short questionnaire based on SPACE II work. It was also decided to collect information on (a) the number of inmates who have been in pre-trial detention (flow) and (b) the number of persons under pre-trial detention (stock) at the corrections level (also see chapter L).

The group decided as far as possible not to duplicate SPACE work and also refrained from collecting data on community sanctions and measures or probation. This had already been tried in the 2nd edition questionnaire, but not very successfully. In order to reflect the complex reality of community sanctions and measures and probation across Europe, an in-depth study on that topic would be very useful. Still, several changes were introduced in the corrections chapter, namely it was tried to collect more differentiated data on certain groups of prisoners. Also, it was tried for the first time to collect data on the *effective length of term served by convicted prisoners*. In the convictions chapter, only data on the length of the sentence imposed by the court is collected. Changes, e.g. due to conditional release from prison, are therefore not taken into account in that section.

2. Trial questionnaire and evaluation

The group finally agreed on a version that was piloted in the trial questionnaire. It read:

*Extract of the trial questionnaire***4.1 Prison population**

Data should refer to the situation at 1 September of each year. This date has been chosen because it is the one used for the Council of Europe's Annual Penal Statistics (SPACE⁵⁷). **If data are not available for this date, please specify the date chosen.**

The tables cover all penal institutions, of whatever nature, that come under the responsibility of the prison administration: institutions for those held in pre-trial detention on remand and institutions for sentenced prisoners, including those reserved for special categories (e.g. institutions for minors and hospitals run by the penal administration). If, for any reason, certain penal institutions are excluded, please give the reasons.

Prison population	
	Indicate whether 'included' or 'ex- cluded'
Include the following:	
Pre-trial detainees	
Persons held in institutions for juvenile offenders	
Persons held in institutions for drug-addict offenders	
Mentally ill offenders held in psychiatric institutions or hospitals	
Offenders serving their sentence under electronic surveillance (e.g. home detention curfew prior to final release from prison)	
Persons held in facilities under the responsibility of any other Ministry than the Ministry of Justice	
Exclude the following:	
Asylum seekers or illegal aliens <u>held for administrative reasons</u> *	

* If included, please indicate their number: _____

⁵⁷ The statistical system, SPACE ("Annual Penal Statistics") - established in 1983 - mainly concerns the prison populations. Annual data are published in the *Penological Information Bulletin* (http://www.coe.int/T/E/Legal_affairs/Legal_cooperation/Prisons_and_alternatives/Bulletin/Bulletin.asp)

Pre-trial detainees: Persons held in penal institutions while a final court decision concerning their case has not been reached yet

	Indicate whether 'included' or 'excluded'
Include the following:	
Untried detainees (i.e. no court decision finalized yet)	
Convicted but not yet sentenced detainees	
Sentenced detainees who have appealed or who are within the statutory limit for doing so	

4.2 Data

STOCK

This means the number of prisoners under the responsibility of the prison administration at a given date (1 September). If data are not available for this date, please specify the date chosen or give the average for the year.

FLOW

This refers to the number of entries into penal institutions during one year. For example, an offender who is committed to prison four times in the same year will be counted as four entries.

Flow	
	Indicate whether 'included' or 'excluded'
Exclude the following:	
Entry following a transfer from one penal institution to another in the same country	
Entry following the detainee's removal from the institution in order to appear before a judicial authority (i.e. <i>investigating judge, court</i>)	
Entry following a prison leave or a period of absence by permission	
Entry following an escape, after re-arrest by the police	

Table 4.1.1 Prison population (including pre-trial detainees): STOCK

STOCK: at 1 September		2003	2004	2005	2006	2007
Total						
<i>Of which:</i>						
Pre-trial detainees						
Females						
Aliens	<i>Total number of aliens</i>					
	<i>Of which: EU citizens</i>					
	<i>Total number of aliens in pre-trial detention</i>					
	<i>Of which: EU citizens</i>					
Minors (<i>i.e. persons held in institutions for juvenile offenders</i>)						
Persons held in institutions for drug-addict offenders						
Mentally ill offenders held in psychiatric institutions or hospitals						
Offenders serving their sentence under electronic surveillance (<i>e.g. home detention curfew prior to final release from prison</i>)						
Persons held in facilities under the responsibility of any other Ministry than the Ministry of Justice						

Table 4.1.2 Prison population (including pre-trial detainees): FLOW

FLOW: number of entries/receptions		2003	2004	2005	2006	2007
<i>Total</i>						
<i>of which: Pre-trial detainees</i>						
<i>of which: Females</i>						
<i>of which: Aliens</i>	<i>Total</i>					
	<i>of which: EU citizens</i>					
<i>of which: Minors</i>						

Source of the data in Tables 4.1.1 and 4.1.2

– see General Remarks (paragraph 3)

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Comments on Table 4.1.1 and 4.1.2 – see General Remarks (paragraph 3)

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Table 4.2 **Convicted prison population by offence on 1 September 2006**

The 'Total for criminal offences' should refer to all convicted (by final court decision) prisoners and not just those convicted for the offences mentioned in this table.
 If data for 2006 are not yet available, please give data for the latest available year and indicate the year of reference in the table.

<i>Year of reference if other than 2006:</i> _____						
Type of offence	Total	Number of females	Number of minors	Number of aliens Total	of which: EU citizens	
Criminal offences	Total					
	<i>of which: Major traffic offences</i>					
Intentional homicide	Total					
	<i>of which: Completed</i>					
Bodily injury (assault)	Total					
	<i>of which: Aggravated bodily injury</i>					
Rape						
Sexual assault						
Sexual abuse of minors						
Robbery						

Type of offence	Total	Number of females	Number of minors	Number of aliens Total	of which: EU citizens
Theft	Total				
	of which: Theft of a motor vehicle				
	of which: Burglary (total)				
Fraud	of which: Domestic burglary				
Offences against computer data and systems					
Money laundering					
Corruption					
Drug offences	Total				
	of which: Drug trafficking				
	of which: Aggravated drug trafficking				

Source of the data in Table 4.2 – see General Remarks (paragraph 3)

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Comments on Table 4.2 – see General Remarks (paragraph 3)

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4.2.A If the ages used for minors in Tables 4.1.1, 4.1.2 and 4.2 is different from those in Table 1.2.2 (question 1.2.2.A) please give the minimum and maximum ages used

Minimum age Over _____ years	Maximum age Under _____ years
Comments	

4.2.B If the definition of aliens used in Tables 4.1.1, 4.1.2 and 4.2 is different from the one used in Table 1.2.2 (question 1.2.2.B) please give an explanation.

Explanation of the differences

4.3 Length of term served

In many countries the growth in prisons numbers is due to the increase of sentences effectively served. We are interested in these trends in your country over the years 2003 to 2006.

Table 4.3: Effective length of term served by convicted prisoners

This table refers to the duration of prison stay served by convicted prisoners. Please use as reference the number of prisoners released each year and indicate the length of their prison stay.

	2003	2004	2005	2006	2007	Please give any further information
Total number of prisoners released						
<i>Of which</i> having served:						
Under 6 months						
6 months to under 1 year						
1 year to under 2 years						
2 years to under 4 years						
4 years to under 10 years						
10 years or over						
Life imprisonment						
Other indeterminate						

Source of the data in Table 4.3 – see General Remarks (paragraph 3)

Comments on Table 4.3 – see General Remarks (paragraph 3)

Compared to the earlier versions of this chapter, table 4.2 was not changed (except due to the changes in the offence group covered, as discussed in the previous chapters). It did not pose problems in the trial phase.

The evaluation of the trial questionnaire made clear that most countries were not able to provide a breakdown for all requested sub-categories of the total prison population in tables 4.1.1 and 4.1.2 of the trial questionnaire. This is especially true for the sub-category of imprisoned aliens stemming from another EU country, but also for the sub-categories of persons held in institutions for drug-addict offenders, mentally ill offenders held in psychiatric institutions or hospitals, offenders serving their sentence under electronic surveillance (e.g. home detention curfew prior to final release from prison) and persons held in facilities under the responsibility of any other Ministry than the Ministry of Justice.

Table 3.3 on the effective length of prison sentence served could also not be completed by most responding countries. Only *Finland* and *UK: England & Wales* provided data.

3. Final questionnaire and evaluation

Due to these results, table 3.3 was not included in the final questionnaire. Also, several of the newly introduced sub-categories of table 4.1.1 were deleted for the final version. Table 4.1.2 was not changed.

The new version of table 4.1.1 had the following wording:

Table 4.1.1 Prison population (including pre-trial detainees): STOCK						
STOCK: at 1 September		2003	2004	2005	2006	2007
Total						
Of which:						
Pre-trial detainees						
Females						
Aliens						
Total number of aliens						
	Of which: EU citizens					
	Total number of aliens in pre-trial detention					
	Of which: EU citizens					
Minors (if possible, please use the same age range for minors you already used in tables 3.1.2 – 3.2.2)						

3.1 Stock: Total

The evaluation of the final questionnaire showed that all responding countries were able to provide data on the total number of persons held in penal institutions

(stock). However, the definition of persons held in penal institutions varies from one country to another. The main problem comes from the fact that some countries include certain categories of persons and others not.

The problematic categories are the following:

Minors (i.e. persons held in institutions for juvenile offenders)

Persons held in institutions for drug-addict offenders

Mentally ill offenders held in psychiatric institutions or hospitals

Offenders serving their sentence under electronic surveillance (e.g. home detention curfew prior to final release from prison)

Persons held in facilities under the responsibility of any other Ministry than the Ministry of Justice

Asylum seekers or illegal aliens held for administrative reasons

As far as minors are concerned, they are usually held in separate institutions. As a consequence, sometimes they do not appear in the penitentiary statistics of the country.

The persons held in institutions for drug-addict offenders are usually offenders found guilty but sent to a special institution because of their drug addiction. However, in some countries, this category may include persons who were considered as not criminally responsible for their behaviour because they acted under the influence of drugs, but who have been sentenced to a measure that includes treatment for drug addiction. For some countries, the key element is that these persons are deprived of freedom, and therefore they are counted in their penal statistics; for other countries, the key element is that these persons were not considered as offenders by the court (i.e. they were not responsible for their acts) and therefore they are not considered as prisoners.

The same reasoning applies to mentally ill offenders held in psychiatric institutions or hospitals.

As far as offenders serving their sentence under electronic surveillance are concerned, in some countries they are not included because they are not considered as prisoners, while in others they are and therefore are included in the total number of persons deprived of freedom.

Nowadays, persons held in facilities under the responsibility of any other Ministry than the Ministry of Justice are usually persons arrested in police facilities. Even if they remain there only for one day, some countries include them in their penal statistics and others do not.

Even if asylum seekers or illegal aliens held for administrative reasons must not be considered as offenders to the criminal code, some countries include them in the total number of persons deprived of freedom. Possible reasons may be that they are held in prisons because there are not enough special facilities for them,

that they are held in prisons in connection with an offence while the administrative authorities make a decision about their residence status, or that the country considers that each person deprived of freedom should be included in their penal statistics.

As a conclusion, any questionnaire on prison population should include subsidiary questions about the inclusion or exclusion of the categories mentioned above and, whenever possible, about the number of persons that fall under each of these categories. Thus, it would be possible to adjust the total prison population of the different countries, by adding or subtracting these categories, in order to make comparisons possible.

The evaluation of the trial questionnaire, however, made clear that data for the full breakdown of the different categories were not available for many countries. But to understand the total, the respective definitional table on what is included in prison was of course kept. Results for the different countries are listed in table N.1.

Table N.1: Definition of prison population (stock and flow)

	Pre-trial detainees	Persons held in institutions for juvenile offenders	Persons held in institutions for drug-addicts offenders	Mentally ill offenders held in psychiatric institutions or hospitals	Offenders serving their sentence under electronic surveillance	Persons held in facilities under the responsibility of any other Ministry
Albania	+	...	...	+	...	-
Armenia	+	+	+	+	-	-
Austria	+	+	+	+	+	-
Belgium	+	+	+	+	+	+
Bulgaria	+	+	+	+	-	-
Croatia	+	+	-	-	-	-
Cyprus	+	+	+	+	-	-
Czech Rep.	+	+	-	-	...	...
Denmark	+	-	+	-	+	-
Estonia	+	+	...	-	-	-
Finland	+	+	+	-	...	+
Georgia	+	+	-	-	-	-
Germany	+	+	-	-	...	+
Greece	+	+	+	+	-	-
Hungary	+	...	...	...	...	...
Iceland	...	...	...	...	...	...
Ireland	+	-	-	-	-	-
Italy	+	+	+	+	-	-
Latvia	-	+	+	-	-	-
Lithuania	+	+	+	-	-	-
Netherlands	+	+	+	+	+	+
Poland	+	-	-	-	-	-
Portugal	+	-	-	+	-	-
Russia	+	+	+	+	...	-
Slovakia	+	+	-	-	-	-
Sweden	+	-	-	-	-	-
Switzerland	+	-	-	-	-	-
Turkey	+	+	+	+	...	-
Ukraine	+	+	+	+	...	...
UK: E. & W.	+	+	+	-	-	-
UK: N. Irel.	+	-	+	+	+	+
UK: Scotl.	+	+	-	-	-	-

3.2 Stock: Pre-trial detainees

Almost all countries can provide figures on the number of pre-trial detainees held in penal institutions.

Usually, the total number should include untried detainees, persons convicted but not yet sentenced, and sentenced detainees who have appealed or are within the statutory limit for doing so. However, in some countries, the latter are not counted as pre-trial detainees but as sentenced prisoners.

3.3 Stock: Females

Almost all countries can provide figures on female detainees.

3.4 Stock: Aliens

Almost all countries can provide figures on aliens held in prison. However, this category is not as straightforward as it may seem because, as mentioned before, in some countries it includes asylum seekers and illegal aliens held for administrative reasons; which should not be considered as detainees.

Very few countries can provide a breakdown of aliens according to their nationality (i.e. EU citizens vs. non EU citizens).

3.5 Stock: Minors

Countries that include minors in their total prison population can inform about the number of minors among the total prison population.

From a statistical point of view, the category of minors can be problematic because sometimes young adults (usually aged 18 to 21 or even 25) are kept in facilities for minors. Thus, in countries that do not include minors in their total prison population, these young adults will not appear in the statistics. On the other hand, in countries that include them, some of the persons classified as minors will be young adults.

3.6 Flow: Total

The concept of flow refers to the number of persons that entered into penal institutions during one year.

Almost all countries can provide figures of flow. However, in some of them, the concept of flow reflects not only new entries into prison but also movements of prisoners. In particular, some countries count a new entry in one or more of the following cases:

- Entry following a transfer from one penal institution to another in the same country
- Entry following the detainee's removal from the institution in order to appear before a judicial authority (*i.e. investigating judge, court*)
- Entry following a prison leave or a period of absence by permission
- Entry following an escape, after re-arrest by the police

When these movements are counted as entries, the total flow is artificially inflated.

The consequences of such a way of counting entries into prison are quite important. On the one hand, one could have the impression that the country has a high rate of incarceration when that is not the case. On the other hand, as the flow is regularly combined with the stock in order to calculate an estimate of the length of the stay in prison, a high number of entries will produce a length of the stay in prison that is lower than the real figure. Thus, one could have the impression that the country applies short prison sentences when in fact that is not the case.

3.7 Flow: Subcategories

Most countries can indicate the number of *pre-trial detainees* among the total flow. The same is true for *females* and *minors*. However, as far as minors are concerned, it must be kept in mind that in some countries they are not included in penal statistics.

On the other hand, few of them can provide a *breakdown* for foreigners among the total flow, and almost none can indicate how many of these detainees were EU citizens and how many were not.

3.8 Stock: Convicted prison population by offence

Most countries can provide a breakdown of the prison population by offence (as requested in table 4.2 of the final questionnaire). In particular, it is possible to obtain figures of persons sentenced for serious offences such as homicide, rape, robbery, theft, drug offences, fraud, as well as for traffic offences. For other offences such as theft of a motor vehicle, burglary, domestic burglary, offences against computer data and systems, money laundering and corruption as well as drug trafficking, figures are seldom available.

The main problem in this context is that quite often a person is sentenced for more than one offence. As a consequence, some countries include double countings (*i.e.* the person is counted once for each offence) when giving the breakdown of prisoners by offence. In order to solve this problem, a principal offence rule must be applied (*i.e.* the person is counted only for the most serious offence). Most countries do so, although it is not clear if the classification of offences by seriousness is the same in different countries.

Some countries can also breakdown the figures of the prison population by offence according to the *gender* of the prisoners, and –whenever they are counted under the total number of prisoners – according to their age (*i.e. minors vs. adults*). However, few countries can indicate the number of foreigners included in each category and almost none can indicate if these foreigners were EU citizens or not.

4. Additional questionnaire and evaluation

The tables that were dropped when compiling the final version of the questionnaire were reintroduced into the additional questionnaire that was filled in by the ESB group members. This is the case for the full table 4.1.1 on prison population: stock used in the trial version and for table 4.3 on the effective length of term served by convicted prisoners. Both tables did not change compared to the trial versions printed above.

As table N.2 shows, data availability on the different subcategories of the prison population stock is quite poor in most countries. This is of course in many cases due to the fact that the category for which data are not available is a category that is not at all included under the total of the prison population. Please refer to table N.1 in comparison to table N.2 for details.

Regarding the effective length of term served by convicted prisoners, the results did not change compared to the trial phase: Only *Finland* and *UK: England & Wales* are able to provide data.

The question included in the questionnaire asked the correspondents to use as reference the number of prisoners released each year and indicate the length of their prison stay. One of the main problems in this context is to know whether the time served in pre-trial detention is counted or not when the total length of the prison stay is calculated. For example, in a country where criminal proceedings – including appeals – take a long time, an important part of the sentence could be served under pre-trial detention. If this period is not taken into account when calculating the effective length of the term served, the figure produced by the country will be artificially low.

5. Conclusions

Although overall data availability for the corrections chapter is very good, the newly introduced sub-categories in tables 4.1.1 and 4.1.2 did not work very well due to poor data availability. Especially data on aliens stemming from EU countries was seldom available. Data on the effective length of term served by convicted prisoners are also almost always unavailable.

Table N.2: Data availability on different subcategories of the prison population: stock

	Albania	Finland	France	Germany	Iceland	Poland	Ukraine	UK: E. & W.
Pretrial	...	OK	OK	OK	OK	OK	...	OK
Females	OK	OK	OK	OK	OK	OK	OK	OK
Aliens	...	OK	OK	...	OK	OK	...	OK
<i>of which EU</i>	...	...	...	...	...	OK	...	OK
Aliens in pretrial	...	OK	...	...	OK	OK	...	...
<i>of which EU</i>	...	...	...	...	...	OK	...	...
Minors	OK	OK	...	OK	OK	OK	...	OK
Persons held in institutions for drug addicts	...	...	...	...	OK	OK	...	...
Mentally ill offenders	OK	...	...	...	OK	OK	...	...
Offenders serving sentence under electronic monitoring	...	...	OK	...	...	...	...	...
Persons held in facilities under the responsibility of another Ministry than the Ministry of Justice	...	...	...	OK	...	OK	...	...

O. Data on EU Citizens

As an overarching issue, the project also aimed at collecting data on aliens stemming from other EU countries on all levels of the criminal justice process. In all tables that collected information on the rate of aliens among suspects, convicted persons or prison population, both the trial and final questionnaire asked for data on the sub-category “of which: EU citizens”.

Data evaluation of the final questionnaire showed that on all levels of the criminal justice process data availability on EU citizens was very poor:

Table 1.2.2 (*Number of females, minors and aliens among suspected offenders in 2006*) shows that, while 24 countries were able to provide data on the total of suspected offenders for criminal offences total and 20 also provided data on aliens, only 10 countries were able to provide the number of EU citizens among aliens. The situation for table 3.1.2 (*Number of females, minors and aliens among convicted persons in 2006*) was even worse: 31 countries reported the total, 15 the number of aliens and only 7 the number of EU citizens among aliens.

In the corrections chapter, data on aliens was asked for in tables 4.1.1 (*Prison population [including pre-trial detainees]: stock*), 4.1.2 (*Prison population [including pre-trial detainees]: flow*) and 4.2 (*Convicted prison population by offence on 1 September 2006*). While 32 countries provided an amount for the total stock in table 4.1.1 and 26 provided the number of aliens, only 11 were able to provide the number of aliens from other EU countries. Also, 20 countries were able to provide the number of *aliens*

in pre-trial detention, while only 8 were able to say how many of these were EU citizens.

In table 4.1.2, 24 countries provided the total flow, 17 the number of aliens and 8 also the number of EU citizens from other countries. Finally, in table 4.2, 28 countries were able to provide the total number of convicted offenders in prison, 17 the number of aliens and 7 the number of EU citizens.

These results make clear that availability of differentiated data on aliens, especially with respect to the proportion of aliens stemming from EU countries, is only seldom available. This will, however, often not be a problem of data collection, but a problem of data aggregation in published crime and criminal justice statistics: Even if the nationality of an offender is recorded, in statistical publications aggregate data are used, often only differentiating between citizens of the country and aliens. Access to the original databases is not provided in many countries.

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The study presented in this book is a direct response to the needs for defining and registering criminal and judicial data on the European level. Based upon work done in creating the European Sourcebook of Crime and Criminal Justice Statistics (ESB), the project results will improve and complement the standards developed so far for definitions and statistical registration in four fields (police, prosecution, courts, prison), in order to contribute to the picture of criminal justice in Europe. Possibilities to optimize the offence definitions used so far in the ESB context were explored. Also, further crime types, especially those subject to EU-harmonized definition, were tested and introduced. Apart from this, the prosecution chapter of the ESB questionnaire was changed and expanded. Data collection possibilities regarding compulsory measures in the investigatory stage were tested, and a more sophisticated approach for recording sanctions and measures as well as prison data was developed. The study explored how far national statistics can provide such data and developed a concept for collation on European level. It was funded by the European Commission under the AGIS 2006 program.



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