VOLUME 2
2014

FIDUCIA
NEW EUROPEAN CRIMES AND TRUST-BASED POLICY

Edited by:
Stefano Maffei & **Lenga Markopoulou**

fiducia Justice Needs Trust

FP7 RESEARCH PROJECT FOR NEW EUROPEAN CRIMES AND TRUST-BASED POLICY

SEVENTH FRAMEWORK PROGRAMME

EUROPEAN COMMISSION
European Research Area

The research leading to these findings and results has received funding from the European Union's Seventh Framework Programme (FP7/2007-2013) under **Grant Agreement N° 290563**

Introduction

A rather simple and blunt question has dominated and defined criminology for years in Europe and all around the world: 'Why do people break the law?'. The FIDUCIA project inverts this question to discover reasons for compliance with the law by focusing on a different set of explanations. When it is asked why we ourselves obey the criminal law, most of the time, we immediately look to answers that are couched in terms of normative compliance. When people ask why others break the law, explanations tend to be in terms of instrumental factors, such as insufficient deterrence or insufficient responsiveness to deterrence.

The FIDUCIA project stemmed from the idea that "public trust in justice" is critical for social regulation, since it is tightly related to the respect attached to institutions, and therefore to personal compliance with the law. Without, of course, arguing that criminal law and its implementation is useless in crime prevention, FIDUCIA attempts to outline, in the long term, a variety of trust based policy guidelines designed to generate a change of direction in the way of giving criminal justice across Europe.

When submitted for consideration to the European Commission, the FIDUCIA project (named after the latin term for "trust"), which was designed by a network of European Universities and Research Centres, could not have predicted how important the very concept of "trust" would become for the future of Europe in the following years, even beyond the boundaries of criminal policy. What has emerged clearly over the past few years is that *Europe needs trust* to enable people to do business with each other and to ultimately guide global financial investments. Moreover, it is only by building trust among European Countries and citizens that successful policies can be developed. Thus, "trust" is not only an added value that generates wealth and economic prosperity, but also a crucial "pre-condition" for the establishment of a truly "common" European area of supra-national policy.

The FIDUCIA project attempts to shed light on a number of distinctively "new European" criminal behaviours that have emerged in the last decade as a consequence of technology developments and the increased mobility of populations across Europe. To put it simply, it assesses whether new ways of regulating the sorts of crime that are becoming more common as we move towards a more integrated Europe, with improved communication and large movements of citizens and non-citizens between Member States can be found. As explained in the proposal, the central idea behind the FIDUCIA project is that public trust in justice is important for social regulation; this is why the consortium proposes a "trust-based policy" model in relation to emerging forms of criminality.

What does the FIDUCIA team mean by "trust-based policy"? This is an important idea, which requires explaining. Typically, most people think that police and criminal justice systems control crime through systems of deterrent threat. They suppose that people obey the law because they want to avoid the costs of conviction and punishment. This is generally true, but it is only part of the story. Most people obey the law first of all because we think it is the right thing to do – this is called "normative commitment to the law". Obviously, the police and the courts play an important role in maintaining this commitment and they can do it best when they command legitimate authority. In fact, people are more likely to obey the law and to cooperate with police and justice officials when they regard them as legitimate. Moreover, public trust is crucial to legitimacy. Research carried out in the past by FIDUCIA members has demonstrated that the surest way of building the legitimacy of the police and courts is for justice officials to treat people fairly and respectfully, and to listen to what they have to say. This creates public trust in justice, which builds system legitimacy and improves public commitment to the law and cooperation with justice.

The FIDUCIA project can be regarded as a *umbrella* research effort, in which an array of interconnected *"micro-units"* have been developed in an attempt to: (a) monitor state policies in different areas of crime through appropriate case studies; (b) identify good and bad practices with regard to criminalization across Europe; and (c) investigate the four crime themes that are crucial to the FIDUCIA project, namely trafficking of human beings, trafficking of goods, the criminalization of migration and ethnic minorities and cybercrimes).

This is the second volume published by the FIDUCIA Consortium and it contains the findings of the project's second year of research, namely: a review of how normative and instrumental compliance interact (Deliverable 5.1), the latest statistical data on trafficking of human beings, trafficking of goods, criminalization of migration and cybercrimes (Deliverables 6.1, 7.1, 8.1 and 9.1), an analysis of alternatives to criminalization in the regulation of social conduct (Deliverable 10.1) and a report on comparative public attitudes towards legal authority (Deliverable 11.1).

Stefano Maffei
Coordinator of the FIDUCIA project

Contents

Work Package 5
Development of a Model
of "Trust-Based" Policy

5.1

Report on compliance with the law: how normative and instrumental compliance interact

by: Mike Hough and Mai Sato

EXECUTIVE SUMMARY

The FIDUCIA research project (New European Crimes and Trust-based Policy) is funded primarily by the European Commission through the Seventh Framework Programme for Research and Development. FIDUCIA will shed light on a number of distinctively "new European" criminal behaviours that have emerged in the last decade as a consequence of developments in technology and the increased mobility of populations across Europe. The central idea behind the project is that public trust in justice is important for social regulation: FIDUCIA will build on this idea and proposes a 'trust-based' policy model in relation to emerging forms of criminality.

Work package 5 is the conceptual work package of the FIDUCIA project. Its objective is to produce a model – or set of principles – for the application of 'trust-based' policy to the regulation of new forms of European crimes. The work-package will bring together elements of conceptual analysis and policy analysis to propose ways of achieving the best 'fit' between informal and formal systems of social control as cross-national and supranational systems of criminal justice become more significant across Europe.

In this deliverable (D5.1) the conceptual analysis will take as its starting point how normative compliance and instrumental compliance have traditionally interacted in European jurisdictions' systems of criminal justice, and will assess the scope for, and desirability of, getting formal system of regulation better aligned with informal systems of social control. The key issue here is the extent to which it is possible – or desirable – intentionally to infuse criminal justice systems with a normative element, so that people comply with the law less because it is in their self-interest and more because they think it is the right thing to do.

Building on this conceptual analysis, this deliverable (D5.1) lays the conceptual foundations in establishing the limits of this trust-based approach to social regulation, with particular reference to emerging forms of European criminality. The aim is to establish where trust-based policies can (and can't) work, and whether the scope of trust-based regulation is being underestimated by governments and supra-national institutions.

1. INTRODUCTION

WP5 is the conceptual work package of the FIDUCIA project. Its objective is to produce a model – or set of principles – for the application of 'trust-based' policy to the regulation of new forms of European crimes. The work-package combines elements of conceptual analysis and policy analysis to propose ways of achieving the best 'fit' between informal and formal systems of social control as cross-national and supranational systems of criminal justice become more significant across Europe. The conceptual analysis takes as its starting point how normative compliance and instrumental compliance have traditionally interacted in European jurisdictions' systems of criminal justice, and will assess the scope for, and desirability of, getting formal systems of regulation better aligned with informal systems of social control.

The key issue raised both in this deliverable and by the FIDUCIA project more generally is the extent to which is it possible intentionally to infuse criminal justice systems with a normative element, so that people comply with the law less because it is in their self-interest and more because they think it is the right thing to do. There is a growing body of research, some of it conducted as part of FIDUCIA and some as part of the Euro-justis project which laid the groundwork for FIDUCIA, to show that normative considerations play a very large part in determining when people do, and do not comply with the police and, to some extent, the courts. This points to the possibility that member states may be under-using normative strategies for securing compliance with various types of criminal law. We have used the term 'trust-based policies' as shorthand to refer to ways of referring to strategies of social control that rely on:

- consolidating the legitimacy of justice institutions and of the criminal law
- and thus improving compliance with the law
- by strengthening people's sense of the morally grounded obligation to obey.

Our conceptual analysis aims to establish the limits of this trust-based approach to social regulation, with particular reference to emerging forms of European criminality. There are specific questions to be addressed about the scope for introducing a normative dimension to the regulation of three emerging forms of crimes that have priority status in EU crime policy:

- Human trafficking (Work package 6)
- Trafficking in goods (Work package 7) and
- Cybercrime (Work package 9)

There are also important issues to be considered about a fourth set of issues, relating to the policing (or over-policing) of migrant and ethnic minority groups (Work package 8), and the impact of this on trust in justice. Finally, there are significant issues to be explored about the extent to which normative systems of social control 'travel' with people as they move beyond their own countries and cultures, and the extent to which they generalise from their home system of justice to that of other countries. In other words, do perceptions of institutional legitimacy (or lack of legitimacy) spill over from one system, and one country, to another?

Building on this conceptual analysis of D5.1, the aforementioned work packages mount policy analysis to identify the main components (both internal and external to the justice system) that are necessary for trust-based policies to emerge in relation to our 'FIDUCIA crimes' (human trafficking, trafficking of goods, cyber crime, or the over policing of migrants), and also the main obstacles that impede the implementation of such policies. The aim is to establish where trust-based policies can (and cannot) work, and whether the scope of trust-based regulation is being underestimated by governments and supra-national institutions.

Instrumental and normative compliance

The distinction between instrumental and normative compliance is a central one for FIDUCIA. *Instrumental compliance* occurs when an individual or an institution offers a reward to encourage others to do (or not to do) something, or threatens punishment to those who do (or fail to do) something. Instrumental strategies are a routine feature of everyday life. Rewards and punishment are widely used in schools to secure compliance; the workplace operates – at least on the face of it – as a reward-based system in which desired activities result in pay, promotion and status. And of course the criminal justice system – again on the face of it – is essentially a system of deterrent threat, whereby the state promises to punish those who break the law.

Normative compliance, by contrast, is socially motivated behaviour (cf Tyler, 2011), where people do what they are required or expected to do because they think it is the "right thing", and not simply in their own best interests. Normative compliance flows from internalised social norms. A moment's thought will tell us that most of us obey the criminal law most of the time, and very rarely if ever contemplate shoplifting or burgling our neighbours' houses. This reflects the fact that we have well-engrained habits of compliance with the law that originate from a sense that law-breaking is morally wrong.

Despite this – fairly obvious – reality, political and media discourse about crime control focusses almost entirely on instrumental compliance strategies of deterrence, and on strategies of obstruction or 'incapacitation' through imprisonment. The reasons probably lie in the increasingly 'punitive turn' that can be observed in many European countries, reflecting the interactions between political rhetoric about crime, media representations of crime, public concern about crime and political responsiveness to public concern.[1] In addition, survey research carried out by Sanderson and Darley (2002) showed that while respondents (the "law abiding majority") said that they obey the law because the laws reflect values and morals that they believe in rather than through fear of getting caught, they thought that "criminals" *are* motivated to obey the law due to the fear of punishment. There is potential very considerable cost in this over-focussing on instrumental strategies. It may lead member states to pursue sub-optimal crime control strategies: tough crack-downs on crime that have counterproductive effects in damaging the legitimacy of the institutions of justice, alienating those segments of the population who are most at risk at involvement in crime, and prompting defiance instead of compliance. The FIDUCIA project may go a little way towards redressing the balance.

2. DECONSTRUCTING NORMATIVE METHODS OF COMPLIANCE

Compliance theories have been well classified by Bottoms (2002), who proposed that there are four categories of explanation for compliance with authority in general and with the criminal law in particular. These are:

- prudential or self-interested calculations about the potential costs and benefits of punishment, which take into account the risks and costs of punishment;
- normative considerations about the 'rights and wrongs' of non-compliance;
- the impact of obstructive strategies, such as locking up offenders to prevent their reoffending, and locking up the targets of criminal attention, literally or metaphorically; and,
- habit.

This deliverable is concerned neither with obstructive (incapacitative) explanations nor with habit – though the latter is arguably the best explanation for why so many of us break the law so infrequently, and one that is much ignored by criminologists[2]. Both these explanations are in a sense secondary because they presuppose, respectively, that something led to offending at such a level or rate that imprisonment was needed, or else created the habit of compliance with the law. Our focus is whether normative explanations for compliance – and in particular those that appeal to the legitimacy of institutions of justice (Tyler, 2006a, 2006b, 2011) – are fuller and more satisfactory than those that simply invoke the rational calculations of *homo economicus*.

The last two decades have seen an exponential increase of interest within criminology in issues of institutional legitimacy and normative compliance. Properly speaking this is a rediscovery, as the intellectual origins can be traced back readily to Durkheimian and especially Weberian thinking about the roots of social order. On the one hand, there has been renewed interest over the last two decades in the relationship between crime and 'political economy' (cf. Reiner, 2007; Cavadino and Dignan, 2006, 2013), which has traced the connections between the social distribution of wealth and attachment to – or detachment from – social norms. The emergence of neo-liberal economic policies is obviously implicated in this trend. Theories of institutional anomie (cf. Messner and Rosenfeld, 2001, 2010) serve as good examples of this line of thought, whereby rapid transitions towards the values of free-market economies are thought to unbalance and weaken traditional normative systems of social control. More generally, the idea that high levels of income inequality fuel crime is almost a criminological truism, with a long sociological pedigree – even if the evidence is less conclusive than some would expect (see van Dijk, 2013, for a critique).

1. This dynamic is increasingly well understood. It is clear that there are widespread and systematic misperceptions across developed about crime – for example that trends are upward, that the justice system is over-lenient – that lead to public concern, and that politicians, especially in adversarial political systems, find themselves under strong pressure to respond to this concern.

2. A notable exception being the work of Wikström (eg Wikström *et al.*, 2012).

On the other hand, there are compliance theories about the effect on societal norms of the institutions of formal social control, such as the work of Robinson and Darley, and that of Tyler and colleagues. Thus, Robinson and Darley argue that if the law's potential for building a moral consensus is to be exploited, judicial outcomes, and especially court sentences, must be aligned at least to some degree with public sentiments (Robinson and Darley, 2007, 2010; Robinson, 2012). Their 'intuitive justice' arguments are partly retributivist in nature (that the least indefensible way of making judgements about relative offence gravity is by reference to public opinion) and partly consequentialist (that judicial decision-making needs to keep in step with public opinion if it is to command legitimacy). This second leg of their argument is about the role of *outcome justice* (or distributive justice) in securing the legitimacy of the institutions of justice, and the courts in particular.

Tyler and colleagues (e.g. Sunshine & Tyler, 2003; Tyler & Fagan, 2008; Kirk *et al.*, 2012; Huq *et al.*, 2012a, 2012b; Tyler *et al.*, 2010; Schulhofer *et al.*, 2011; Tyler *et al.*, 2007; Tyler & Wakslak, 2004) have developed a parallel set of consequentialist arguments, based on the role of procedural rather than outcome justice in shaping institutional legitimacy. This body of work emphasises the need for justice institutions to pursue fair and respectful *processes* – in contrast to *outcomes* – as the surest strategies for building trust in justice, and thus institutional legitimacy and compliance with the law. This is the central hypothesis in procedural justice theory. Some elaborations of procedural justice theory (eg Jackson *et al.*, 2012a, 2012b; European Social Survey, 2012; Hough *et al.*, 2013) propose that procedural justice and 'moral alignment' are the most critical factors in fostering or retaining institutional legitimacy, albeit with felt obligation and consent to legal authority also playing a role.

Stated at their most general level – that winning 'hearts and minds' is central to the effective use of authority – these consequentialist arguments about securing compliance through strategies of institutional legitimation are ones that have enjoyed political currency, with varying degrees of saliency, for many years. Thus in the UK, community policing enjoyed a vogue in the 1970s and 1980s (cf Alderson, 1984). The same basic ideas were reintroduced as 'Reassurance Policing' and 'Neighbourhood Policing' in the first decade of this century. However, politicians have tended not to articulate the rationales for these policing styles with any precision, and when they have done so, they have usually appealed to ideas about a partnership between the police and 'the law abiding majority' which would yield public cooperation in the 'fight against crime'. Very little has been made of the fact that legitimate institutions can command not only public cooperation but also compliance with the law – probably because few politicians are rash enough to suggest to their electorate that those who vote them into power are anything but law-abiding.

The two broad families of compliance theory – with their different emphasis on securing social justice and a fair system of justice – are obviously compatible. Social justice and fairness in the justice system are both likely to be preconditions for a well-regulated society. However, only the second family carries direct implications for policy and practice within criminal justice. Many criminologists would like to see the crime-preventive dividend of a fairer distribution of income and wealth, but for ministers of justice and for senior justice officials, these arguments are at best subsidiary to ones about what they should do in the 'here and now' of improving systems of justice. Policies to achieve social justice are probably best justified in their own terms, and not in terms of their spin-off benefits for crime control. And if one is interested in improving the legitimacy of the institutions of justice, then it is essential to have a clear idea of what is meant by legitimacy.

2.1 Defining institutional legitimacy

We suggested above that theories of normative compliance with the law have ebbed and flowed. Ideas about institutional legitimacy tended to get submerged in political – and criminological – debate in the 1990s, and only now seem to be resurfacing.[3] If the concept of legitimacy has only recently re-emerged as a key one in Anglophone criminology, political philosophers have devoted considerable energy to its analysis, showing how social institutions need legitimacy if they are to develop, operate, and reproduce themselves effectively (Easton, 1965).

One of the things that emerged most clearly at the conference leading to this book was that legitimacy is a 'slippery' concept to handle. Generally speaking, legitimacy is the right to rule and the recognition by the ruled of that right (Sternberger, 1968; Beetham, 1991; Coicaud, 2002; Tyler, 2006a; Bottoms and Tankebe, 2012). However, Hinsch (2008, 2010) has made a much quoted distinction between normative (or objective) legitimacy and empirical (or subjective) legitimacy. Legitimacy is, on the one hand, a normatively laden term used by political philosophers to describe whether states (or state institutions) meet certain desirable standards. In political debate we naturally and properly want to make value judgments about the extent to which regimes (or institutions within regimes) exercise legitimate authority, judged against external or 'objective' criteria.

On the other hand, the term is also used in a less value-laden way, to describe whether, "as a matter of fact", those who are subject to authority confer legitimacy on that authority (Hinsch 2010). The distinction is a real one, because one can envisage the possibility of regimes that enjoy substantial popular support – which can thus be said to enjoy 'empirical legitimacy' – whilst totally failing to meet basic standards of 'normative legitimacy'. Nazi Germany and the Khmer Rouge government are obvious examples, at least in their early periods. Whilst the distinction between normative and empirical legitimacy is an important one, it is often forgotten or ignored in academic and political discussion.

Normative legitimacy

A normative concept of legitimacy sets out some 'objective' criteria against which the legitimacy of an authority or institution might be judged (Hinsch, 2008). Normative legitimacy refers to whether the actions of authorities meet certain substantive requirements (usually of justice and rationality) for which objective evidence can be adduced. Legitimacy here is a property of organizational performance and institutional structure. It is conferred by or grounded in things that the justice system does, and in the objective relationships between system and citizen (such as those indicated by a freedom from arbitrary arrest). This 'system-conferred' legitimacy can be usefully measured by national-level statistics concerning efficiency, accountability, legality and so forth.

A normative conception of legitimacy has to justify selection of the specific criteria against which legitimacy is to be judged and this needs careful consideration. Because both empirical and normative legitimacy are needed if a fully rounded picture of the legitimacy of legal authorities is to be forthcoming (Bottoms and Tankebe, 2012), they need to refer to the same 'thing'. So both concepts require a shared theoretical grounding, otherwise comparison across the two would become impossible. Note, however,

3. See Hough, 2007, for an account of the way in which both criminal policy and criminology allowed the concept to disappear from usage in the 1990s in the United Kingdom – with the exception of Northern Ireland, where issues of police legitimacy forced themselves into the spotlight.

that the aim here is not to 'validate' the empirical by recourse to the normative; rather the purpose is to triangulate data in order to achieve a more accurate assessment of the legitimacy of a particular justice system.

What, then, should this theoretical grounding be? In a broadly Weberian framework, legitimacy is located in public acceptance of the right of an institution – such as the justice system – to wield power and define behaviour. Here, one might be tempted to apply just one criterion of normative legitimacy for the justice system: that people within the society consent willingly to its power and authority, for example they feel an obligation to obey the rules it embodies and enforces. Legitimacy might thus be indicated by some aggregate measure of citizen consent to the role and authority of criminal justice agencies. Here, the notions of empirical and normative legitimacy overlap.

Few, however, would be willing to accept this as a sufficient criterion of normative legitimacy, not least because it says so little about the form and nature of the social arrangements to which citizens are acquiescing. A broader definition is needed – one that captures not just expressed consent but also a wider recognition of the right of the justice system to wield power (Beetham, 1991). Here, legitimacy also resides in the extent to which justice institutions operate according to certain moral and ethical standards (according to accepted and justifiable standards of justice, rationality, accountability and transparency), while also working under the rule of law. This requires recourse to a broad yet deep definition of legality, whereby the system of law in question was consistent with conventions relating to human rights: a regime that had legislated to remove protections of due process, for example, might be observing legality in its own terms, without meeting internationally recognised standards of legality. Under such conditions, its claim to be legitimate in Hinsch's normative sense would be in doubt.

An observer looking at criminal justice systems across Europe, for example, would judge the standing of these systems by drawing upon data addressing such substantive requirements: a justice system is legitimate when it meets certain standards of effectiveness, fairness, accountability, rule of law, and so forth (using national-level statistics concerning efficiency, accountability, legality etc.). Conversely *empirical legitimacy*, to which we turn below, is found when and where individuals believe that the criminal justice system is legitimate. For example, we might then claim that the police are legitimate when the police find approval among the policed, when individuals commit themselves to the normative and inferential consequences of their beliefs and approval (in that, for example, they are more likely to cooperate with legal authorities and comply with the law, because they believe that to do so is to meet the expectations of legitimate authority). Yet, according to a normative account of legitimacy such a claim might well be premature. People acting within a system may see institutions as legitimate, and act accordingly, but if a certain set of substantive requirements are not met by the system, then the observer sitting outside it would not accept the truth (or validity) of people's beliefs (Hinsch, 2010: 42).

Empirical legitimacy

Social scientists have also been concerned with the measurement of empirical legitimacy, to assess whether the governed experience authority as legitimate, and more recently whether power-holders feel that they have an entitlement to command. This is a different enterprise from a normative assessment of an institution's success in meeting criteria of legitimacy as defined above. While one would expect to see *some degree* of correlation across jurisdictions between political scientists' assessments of normative legitimacy and measures of empirical legitimacy, there are good reasons for thinking that for cultural and historical reasons populations will differ in their orientation to authority, even when there is no objective difference in the quality of this authority.

Empirical legitimacy is a relational concept (cf Bottoms and Tankebe, 2012), in which the governed recognise an obligation to obey power-holders, believe that power-holders act according to appropriate normative and ethical frameworks, and believe that power-holders act under the rule of law (and the power-holders have a reciprocal sense of entitlement to command). In our survey work using the European Social Survey (Jackson *et al.*, 2011; European Social Survey 2011, 2012; Hough *et al.*, 2013), we have conceptualised empirical legitimacy as having three sub-components – obligation to obey, legality and moral alignment – and have constructed scales to measure each of these three components[4]. This definition follows David Beetham (1991) in arguing that an authority has legitimacy when three preconditions are met[5]:

1. The 'governed' offer their willing consent to defer to the authority
2. and this consent is grounded first on the authority's conformity to standards of legality (acting according to the law)
3. and this consent is grounded second on a degree of 'moral alignment' between power-holder and the governed, reflected in shared moral values.

According to this definition, legitimacy is not simply signified by a positive duty to obey authority and a perception of that authority's entitlement to command. The second and third pre-conditions of empirical legitimacy – legality and moral alignment – ensure that the obligation to obey is built on a combination of legality and the moral validity of institutions of justice. Legitimacy is thus defined as an additive function of all three components.

2.2 '*Mala in se*' and '*mala prohibita*': 'real crimes' and regulatory offences

Another useful distinction in thinking about normative compliance is between actions that are proscribed by the criminal law because they are deemed to be wrong in themselves ('*mala in se*') and those that are criminalised simply to enforce a convention ('*mala prohibita*'). The criminal law in most countries is loosely co-extensive with behaviour that is regarded as a serious breach of morality; however, some actions are criminalised even though they are not deemed to be intrinsically morally wrong. Many more such actions are subject to regulatory controls, for example through administrative law. Examples of mala prohibita may include a range of offences such as:

- Drug offences
- Alcohol offences
- Some sexual offences
- Driving offences
- Offences involving migration

Whether these are considered *mala prohibita* or *mala in se* varies from culture to culture, and within culture over time. Thus the selling of alcohol to minors may on the one hand be regarded as a regulatory offence and on the other as a serious offence against morals. The stance of the criminal law in many European countries a century ago towards homosexual behaviour seems, with the benefit of hindsight, bizarre – even if at the time it might have appeared as an entirely appropriate application of the criminal law.

The relationship between morality and the criminal law is obviously a central issue to penal philosophy. From a procedural justice perspective, there is a persuasive argument that the criminal law coinage is degraded through the inclusion of too many *mala prohibita* in its ambit. The implication of this is that the boundaries of criminal law need constant review to ensure that genuine evils – such as environmental pollution – fall within the ambit of the criminal law, and that infractions of religious or

4. We were concerned with measuring the legitimacy of both police and courts, and had separate measures for each institution.

5. This is a somewhat broader definition than that used by Tyler, at least in his early work, which tended to equate perceived legitimacy with deference to authority.

moral rules from past times are excluded. Laws against homosexual behaviour are the obvious example here.

Whilst there may be a case for ensuring that the criminal law in a jurisdiction does not become imbalanced by large numbers of *mala prohibita*, it is clear that a large amount of our everyday behaviour is quite effectively regulated simply through instrumental strategies of deterrent threat. Take the example of 'congestion charging', where drivers pay a fee to secure entitlement to drive in congested city centres at specified times. Compliance is very high (at least in the London scheme) because non-payment is tracked through the automatic surveillance of vehicle number plates, and the risks of a large penalty for non-payment of fees is high. Few would argue that that driving in a congestion zone area without a permit is intrinsically wrong, or that it is in any sense criminal. Conceptually, it may make sense to differentiate between *regulatory or administrative offences* and *criminal offences*. The latter carry a stigma, or a 'normative charge', whilst the former do not.

The distinction between *mala prohibita* and *mala in se*, which has its origins in mediaeval law, is hard to define precisely, and indeed there are risks in appealing to concepts rooted in the religious concept of sin. Equally, the distinction between regulatory offences and 'real crime' is hard to pin down definitively. But the basic insight that some offences are normatively toned, and carry a stigma, whilst other do not, is an important one. In particular, it has considerable policy relevance if it turns out that the legitimacy of the institutions of justice, and the legitimacy of the criminal law, is shaped at least in part by the balance that is struck between *mala in se* and *mala prohibita* – or between real crimes and regulatory offences.

2.3 The relationship between criminal law and morality: the Hart-Devlin debate

Viewed over the very long term, the criminal law in most European countries merged from religious regulation of moral norms. There has been an evolution from the enforcement of religious (or moral) norms to a narrower function restricted to the preservation of individual rights. Thus the criminal law in most member states has progressively shed laws that related to offences such as blasphemy, sacrilege, and homosexuality. The argument that the limits of the criminal law should be defined by reference to the preservation of individual liberty has – largely – been won. The most famous debate on this topic, at least in Common Law countries, was that between Herbert Hart and Lord Devlin in the run-up to the legalisation of homosexuality in the 1960s. Hart was a member of the Committee on Homosexual Offences and Prostitution, which led to the Wolfenden Report, recommending that homosexual behavior should be decriminalized. Devlin first responded to the Wolfenden Report in his 1959 British Maccabean lecture entitled, *The Enforcement of Morals*, arguing that the State is entitled to legislate in matters of morality and that the criminal lawshould be shaped by public morality (Miller 2010).

The Devlin-Hart debate prompted extensive academic analysis of the relationship between law and morality and the limits of the criminal law (see for example, Feinberg 1984; Miller 2010; Dworkin 1999; Cane 2006). Hart's argument was that homosexual behaviour between consenting adults involved no public harm – or no breach of rights – and that the law thus had no right to try to regulate that behaviour. He also argued that criminalizing behaviour that was regarded by the majority as immoral would lead to oppression of minorities and impose an unjustifiable brake on changes in social mores.

Devlin's counterargument prefigured those of Robinson and Darley, cited above, that some degree of correspondence between public morality and the criminal law was essential in ensuring the legitimacy of the justice system, and that legislators who retreated from this position were jeopardising the system's legitimacy. On the particular issue, Hart clearly held the winning cards, and homosexual acts between consenting adults were legalised in 1966. It is clear that the logic of Hart's argument could also point to the legalisation or decriminalisation of illicit recreational drug use – although the harms associated with drug use arguably run wider than those associated with homosexual sex (Smith 2002).

While it is generally accepted in modern criminal law that the law should not be used simply to enforce public morality, Dworkin (1999: 929–930) points out that the criminal law cannot operate without the concept of morality. He argues: 'Why then does the law protect citizens against, among others, injury, harm, offences, and indecency? Surely it is because for someone to inflict these on another without adequate justification and excuses is to act wrongly, i.e. immorally. Indeed if one begins to examine some of the more specific categories, the most prominent of which is 'harm', one reaches the conclusion that the term itself is a normative one."

More generally, the concept that the criminal law's main function is to secure compliance by threats of punishment and its 'coerciveness' should determine the limits of the criminal law, is a deficient understanding of the law (Cane 2006). Empirical research has shown that for a typical law-abiding citizen, the significance of law is not its coerciveness but in its normativity (Tyler and Colleagues listed above). In this light, Cane (2006: 45–46) questions whether the limits of law based on the assumption that law is seen purely as an invasion of citizens' autonomy (Hart's argument):

> Why should we determine the limits of law by reference to the perspective of the minority of people who obey it only because of its coercive capacity, rather than the perspective of those who view law as a legitimate source of standards of behavior? If law were viewed from this latter perspective, the idea that it might appropriately prescribe standard of behavior that express shared social values and aspirations would seem much less objectionable.

We would feel uncomfortable with any initiative to roll the clock back, and extend the reach of the criminal law back into areas of private morality and religious precept. At the same time, some sort of synthesis between the positions of Hart and Devlin seems necessary, because there is more than a grain of truth in Devlin's argument that the legitimacy of the criminal law depends on a degree of correspondence with public norms and values. The synthesis that we propose has two elements to it:

1. Any extension of the criminal law needs to be justified primarily by reference to the need to preserve human rights;
2. Any narrowing of the criminal law needs to be justified primarily by reference to the fact that the laws in question do nothing to secure or protect human rights;
3. Provided that these two conditions are met, it makes sense to maximize the degree of correspondence between the law and morality by ensuring that as far as possible behaviour proscribed by the criminal law carries a public stigma.

3. A TYPOLOGY OF 'TRUST-BASED' POLICIES

The definition of (empirical) legitimacy in the previous section implies a range of strategies for enhancing normative compliance by focussing on legitimacy. These include improving:

- Trust in the legitimacy of the police, the courts and other institutions of justice
  - By improving procedural fairness
  - By improving distributive or outcome fairness
  - By demonstrating moral alignment
  - By demonstrating competence
- Trust in the legitimacy of the criminal law
  - By building the legitimacy of the institutions of justice (as above)
  - By demonstrating the congruence of law and morality.

The paper will now take these strategies in turn, reviewing where they are most applicable to the issues on which FIDUCIA is focussing and assessing their scope for success.

3.1 Improving the legitimacy of the institutions of justice

There is now a very substantial body of research that demonstrates that procedural fairness on the part of the police improves their perceived legitimacy and promotes both compliance with the law and cooperation with justice officials. Procedural fairness involves:

- treating people with dignity and respect
- listening to them and giving them 'voice' (letting them have their 'say')
- acting legally and sticking to regulations.

The work of Euro-justis and subsequent analysis of the European Social Survey has shown that procedural justice may be central to legitimacy-building strategies, but other factors may also be important. The police need to demonstrate on the one hand, *moral alignment* with public values and on the other hand, a *basic level of competence*, if they are to secure or retain legitimacy.

How relevant are strategies to build police legitimacy to the four issues on which FIDUCIA is focussing? They clearly have relevance for the fourth FIDUCIA focus – the policing of ethnic minority groups and migrants. Across Europe there are tendencies for the most socially marginalised groups to get involved in a downward spiral of involvement in crime, becoming the focus of police suspicion, feeling over-policed, and getting locked into adversarial relations with the police. Principles of procedural justice may provide a starting point for a 'recovery strategy' to interrupt this downward spiral.

The impact of procedural justice strategies could prove to be effective in relation to buyers of trafficked goods and employers of trafficked people. Having the perception that the criminal justice institutions will treat them fairly could increase their likelihood of cooperation with them in terms of providing information based on their experience. However, it is harder to see how strategies of police legitimation will in the short-term impact on key participants in trafficking in persons, the trafficking of goods and cybercrime. The more that these participants are 'career criminals'[6] whose behaviour is instrumentally motivated, the less plausible it is that they will take any account of the quality of their interaction with the police. However, people do withdraw from engagement in crime – even those involved in organised crime – and it is not totally fanciful to think that the treatment they receive from the police may have some impact, at least at the margins.

Similar considerations apply to legitimation strategies for the other institutions of justice. The more that people's engagement with crime is marginal and equivocal, the more plausible it is that they will respond positively to normative levers that are applied by the prosecutors, courts, prisons and probation. The deeper their engagement with crime, and the more instrumental their motivations, the more likely it is that they will be unresponsive to normative strategies[7].

6. Bearing in mind that this is only a metaphor that imposes connotations of competence, commitment and instrumentality onto criminal activity.

7. Though Valerie Braithwaite's work on compliance with inland revenue regulations suggests that business people – who one would expect to be rational calculators – are responsive to procedural justice strategies. See http://regnet.anu.edu.au/ctsi/home

3.2 Improving the legitimacy of the criminal law

The ESS suggests that the legitimacy of the criminal law is a product, at least in part, of the legitimacy of the institutions of justice. However, there are also legitimation strategies that work beyond the framework of these institutions. These fall into two types:

- strategies to reconnect the criminal law with morality
- strategies to decriminalise (but rather regulate) offences which lack any moral underpinning

Both sets of strategies involve shifts in the ratio of 'real crimes' to regulatory offences – or the ratio between *mala in se* and *mala prohibita*.

Figure 1: Ideal scenarios

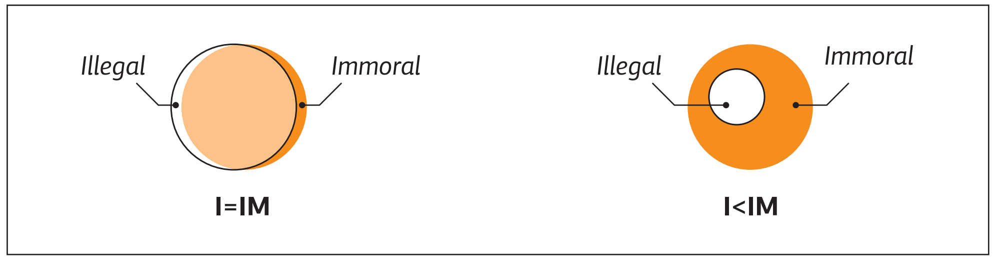
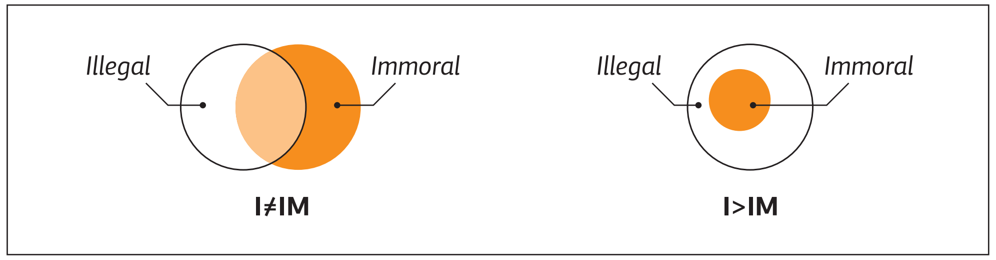


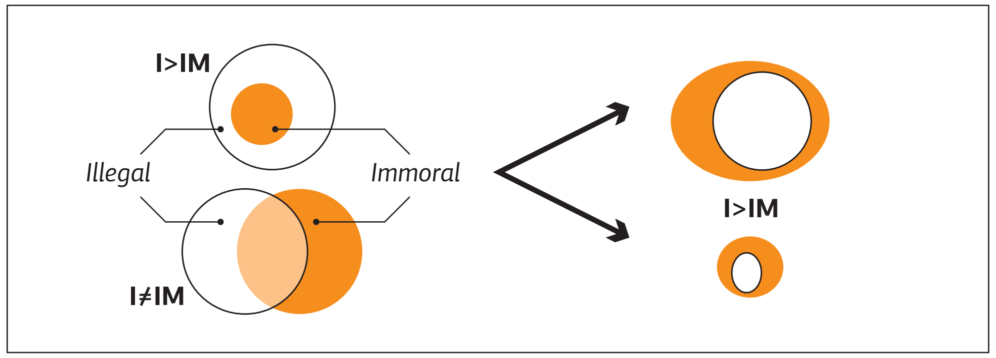
Figure 1 shows the two ideal relationships between illegality (what is criminalised) and immoral (what the public thinks as morally wrong). The first relationship is when there is a complete match between illegal and immoral, and the second relationship is when illegal is smaller than immoral and situated inside.

Figure 2: Problematic scenarios



Here, in Figure 2, we have two – slightly more – problematic scenarios where immoral and illegal are not sharing the same space (either having no overlap or having a minor overlap), or the area of criminalisation (illegal) is larger than what the public think is immoral.

Figure 3: Possible solutions



What we could do in the above two problematic scenarios is either to expand the area of immoral so that it will encompass what is criminalised, or to minimise the area of illegal so that the what is currently seen as immoral by the public will occupy a larger area. An example of the former is 'viral marketing campaigns' explained below, and the example of the latter is decriminalisation, also discussed below.

While the above focused mainly on the general public, we should include a word of caution concerning the effect of decriminalisation on supply reduction. In line with D 6.2 which focuses on human trafficking, it may be very risky to decriminalise without carefully enhanced *non-criminal* regulation by the state.

Reconnecting the criminal law with morality

A paradigmatic example of this can be found in the history of drink/drive legislation in the UK (and probably in other countries). The UK introduced legislation in 1967 to make it illegal to drive a vehicle when a given blood alcohol level had been exceeded. Initially this offence was treated simply as a *malum prohibitum* – something to be circumvented – but over the following 45 years, public attitudes towards the offence have changed, and it has acquired the connotations of a malum in se: people now tend to regard driving over the limit not merely as risky, but as wrong.[8] The change was effected largely through well-designed advertising campaigns which stressed not the penalties involved in conviction but the harm done to the victims of accidents associated with drunk driving.

There are examples of such strategies of direct relevance to FIDUCIA. In the US, various actors and celebrities have taken part in a 'viral marketing' campaign to change attitudes towards the sexual exploitation of women and girls. "Real men don't buy girls"[9] involves youtube videos by Demi Moore, Ashton Kutcher and other well-known people, using humour to convey their message. Whether the campaign has any real traction on the public is hard to say. Certainly its impact has been questioned. What it does demonstrate, however, is that there *may be* potential for changing the relationship between legal rules and morality. Given skilful advocacy, attitudinal shift may be achievable, for example, in relation to:

- the purchasing of sex
- the purchasing of unregulated drugs
- the consumption of pornography
- breaching of copyright through illegal downloads.

It has also been suggested that viral marketing campaigns, or straightforward advertising, could be used to damage the 'brand' of drugs such as cocaine, which acquired the connotations of a clean, smart, affluent lifestyle drug in the last two decades of the 20th century. Increasingly attempts are being made to undo this brand image, by stressing the costs of cocaine production, especially to people in producer countries, in terms of systemic violence, ill-health, bribery and corruption and, ultimately threats to the rule of law.

For the time being, we have little sense of whether such campaigns can significantly affect public attitudes towards the end-products of the activities of organised crime groups. Over the coming eighteen months FIDUCIA needs to map out more clearly what can and can't be done in this field, and to establish the 'grammar' and 'syntax' of effective campaigns. However, there clearly is a possibility that strategies to reduce public demand for the products of traffickers and cybercriminals may prove the most effective strategies for tackling these offences. Strategies of this sort are equivalent to 'demand reduction strategies' in the world of drug policing, which are usually contrasted to 'supply reduction'.

8. With exceptions, of course. The clearest example of this sort of dissent comes from Ireland, where councillors in Kerry recently voted to relax the enforcement of drink/drive laws. See http://www.bbc.co.uk/news/world-europe-21143199

9. Viral marketing is intended to be organic and self-replicating – whereby people exposed to the 'pitch' pass it on to others. For the Real Men videos, see http://www.youtube.com/playlist?list=PL353AAAF819D112CF

Decriminalisation

If it is impossible to connect *mala prohibita* with social norms, then a better alternative may be to regulate through means other than the criminal law. The clearest example of candidates for decriminalisation are, of course, the laws that prohibit the production, trafficking, possession and (in some jurisdictions) consumption of currently illicit drugs. If the current legislation and associated UN conventions on drugs become increasingly disconnected from social norms across Europe, (partial) decriminalisation may become the best option. Similar considerations may apply to the regulation of migrants.

From the procedural justice perspective, the case for or against decriminalisation turns on the impact on the legitimacy of justice of criminal laws that are only distantly connected to social norms. There are separate – and possibly more important - considerations, of course, about the relative costs and benefits of regulation through criminal law, through civil or administrative law or simply through interventions in the market place, for example through price maintenance or taxation.

Normative reintegration of offenders

We should consider one further set of normative strategies – those that target existing offenders, and aim to achieve forms of normatively grounded rehabilitation. It may seem sophistical to differentiate between rehabilitative strategies that aim to improve the instrumental decision-making of offenders on the one hand, and those that are designed to change their moral sensibility on the other. However, at a conceptual level the distinction can be made, the latter set aiming to improve the alignment between offenders' moral perspectives and wider social norms . And certainly there are important lessons from procedural justice theory about effective ways of engaging offenders in such strategies.

As discussed earlier, it may seem fanciful that an instrumentally skilled criminal entrepreneur could be reached by the usual rehabilitative programmes available within European justice systems. However, there is a better chance of such engagement if considerations of legitimacy in the eyes of offenders are inbuilt into these programmes. Some rehabilitative strategies also have a fairly explicit normative agenda to them. The clearest example is in restorative justice conferencing, the intention being that a powerful emotional experience should trigger a process of normative readjustment and reintegration.

There is some reason for thinking that procedural justice strategies may be of *particular relevance* in working with especially skilled and competent offenders. These are people whose self-identity is likely to include a strong sense of agency and personal power, which could obstruct the construction of effective relationships with probation staff. (These have an inbuilt imbalance of power in favour of the latter.) It may be especially important to observe the rituals of respect – or proper etiquette – in building such relationships, as these help the management of the imbalance of power between probation officer and offender.

4. INSTITUTIONAL LEGITIMACY AND INTERNATIONAL BOUNDARIES

A final set of issues for this paper are those that relate to the possibility that the legitimacy of one country's institutions of justice can 'spill over' into those of other member states. Our thinking here is at a very preliminary stage. We suspect but do not yet know that trust in foreign justice systems is generally much lower than trust in domestic systems, even amongst those with experience of both. A sensible life-rule is to distrust

the unknown, and if people apply this rule when travelling, this places the police at a disadvantage in relation to their interactions with migrants and non-nationals[10] The FIDUCIA survey of perceptions of justice abroad will shed some light on these issues.

A possible way forward is to develop communications strategies that provide well-targeted information to people who might encounter the police when in other countries. Targeting is needed because different sorts of traveller will have very different sorts of encounter with foreign police. Of course this suggestion starts from the unrealistic assumption that police in different member states deserve broadly similar levels of public trust. In reality we know from the ESS and elsewhere that the objective performance of police forces across Europe varies widely.

In the longer term, an increasingly integrated Europe will almost certainly require increasingly harmonised systems of justice. Precisely how integrated depends on many factors, including the growing anti-European politics in several member states. But if the aim is to achieve a popular perception of a uniform – and uniformly legitimate – system of justice across Europe, there is an obvious logic to harmonisation.

5. CONCLUSION

Procedural justice strategies to secure normative compliance are often misunderstood to be nothing more than 'soft' policing and soft justice – leading to questions about the role of coercion and punishment in justice. Procedural justice is about the fair and skilful use of authority – and that includes the use of coercive powers and – in the final analysis – the deployment of deadly force and the use of imprisonment as an incapacitative strategy. The idea that there is a *necessary* tension between instrumental strategies and procedural justice is not sustainable. However, instrumental strategies contain an inherent risk of backfiring, especially when they take the form of tough crackdowns. Strategies perceived to be unfair can secure short-term gains at the cost of long-term damage to institutional legitimacy. Exemplary sentences may have some impact – but they may also prompt defiance. The quality of procedural justice in any instrumental strategies may determine whether these prompt compliance or defiance.

In general, policies that pay close attention to the legitimacy of policing and crime reduction strategies are likely to prove benign, and to have few perverse effects. It is hard to see how unfair and disrespectful treatment of crime suspects, for example, would improve their commitment to the rule of law, and easy to see how fair and respectful treatment might foster compliance. We have suggested that principles of procedural justice should be especially useful in improving the policing of marginalised groups, such as disadvantaged ethnic minorities, where relations with the police are often strained and marked by suspicion. However there is a difference between simply offering a show of respect, and actually respecting people as individuals; it is conceivable that procedural justice strategies that rely heavily on 'scripts' will achieve little. Getting workforces sincerely to adopt the values implicit in procedural justice strategies is sometimes hard to achieve.

There are various factors which may constrain the impact of normative strategies grounded in procedural justice. We have suggested that those 'career criminals' who are heavily engaged in forms of organised crime are unlikely to be very responsive to normative pressures. On the other hand, even career criminals usually 'retire' as some stage, and treating them according to the precepts of procedural justice may accelerate the process. We have suggested that there may be considerably more scope to deploy normative strategies to reduce the *demand* for illegal services supplied by organised crime groups – whether these involve trafficked goods, trafficked and vulnerable indi-

10. A particular example of this general problem is the difficulty in getting the victims of human trafficking to engage with, and trust, the police and other legal authorities in destination countries.

viduals or goods and services provided illegally via the internet.

We have suggested that in building the legitimacy of the criminal law, and especially in building a sense of public intolerance of various crimes, there are forms of normative strategy that are unrelated to procedural justice. For examples various advertising campaigns have succeeded in stigmatising proscribed behaviour that was previously social acceptable, the obvious example being drunk driving. The scope for replicating these successes in other fields, such as illegal downloading or buying illicit pornography, and for finding new approaches for achieving the same ends, is unclear. The use of social media in 'viral marketing' campaigns remains still very much an unknown quantity. The FIDUCIA project needs to address these important practical questions.

Finally, there has to be a note of caution about the role of the state in shaping social norms and values. Too close an alignment of the criminal law with the moral – and religious – values of the majority carries clear risks, most obviously to the minorities who do not share these values. We think it important to keep in sharp focus questions about the desirability of the state – whether its legislature, its judiciary or its police – getting over-involved in 'moral engineering.

REFERENCES

Alderson, J. (1984) *Law and Disorder*. London: Hamish Hamilton.

Beetham, D. (1991) *The Legitimation of Power*. London: Macmillan.

Bottoms, A. (2002) 'Compliance and Community Penalties' (pp. 87–116), in Bottoms, A., Gelsthorpe, L., and Rex, S., *Community Penalties: Change and Challenges*. Cullompton: Willan.

Bottoms, A. and Tankebe, J. (2012) 'Beyond Procedural Justice: A Dialogic Approach to Legitimacy in Criminal Justice', *Journal of Criminal Law and Criminology* 102(1): 119–70.

Cane, P. (2006) 'Taking law seriously: starting points of the Hart/Devlin debate. *The Journal of Ethics*, 10(1/2): 21-51.

Cavadino, M. and Dignan, J. (2006) *Penal Systems. A Comparative Approach*. London: Sage Publications.

Cavadino, M. and Dignan, J. (2013) Political Economy and Legal Systems, in (eds.) Body-Gendrot, S., Lévy, R., Hough, M., Snacken, S. and Kerezsi, K. *The Routledge Handbook of European Criminology*. London: Routledge.

Dworkin, G. (1999) 'Devlin was right: law and the enforcement of morality' *William and Mary Law Review*, 40(3): 927-946.

Easton, D. (1965) *A Framework for Political Analysis*. Englewood Cliffs: Prentice-Hall.

European Social Survey (2011) 'Trust in Justice: Topline Findings from the European Social Survey', *ESS Topline Results Series Issue 1*. By Jackson, J., Hough, M., Bradford, B., Pooler, T.M., Hohl, K.. and Kuha, J.

European Social Survey (2012) 'Policing by Consent: Understanding the Dynamics of Police Power and Legitimacy', *ESS Country Specific Topline Results Series Issue 1 (UK)*. By Jackson, J., Hough, M., Bradford, B., Hohl, K., and Kuha, J.

Feinberg, J. (1984) *Harm to Others*. Oxford: Oxford University Press.

Hinsch, W. (2008) 'Legitimacy and Justice', in Kuhnelt, J. (ed), *Political Legitimation without Morality?* London: Springer.

Hinsch, W. (2010) 'Justice, Legitimacy, and Constitutional Rights', *Critical Review of International Social and Political Philosophy* 13(1): 39–54.

Hough, M (2007) 'Policing, New Public Management and Legitimacy', in Tyler, T. (ed), *Legitimacy and Criminal Justice*. New York: Russell Sage Foundation

Hough, M. and Sato, M. (eds) (2011) *Trust In Justice: Why it is Important for Criminal Policy, and how it can be Measured: Final Report of the Euro-Justis project*. Helsinki: HEUNI.

Hough, M., Jackson, J., and Bradford, B. (2013) 'Trust in Justice and the Legitimacy of Legal authorities: Topline Findings from a European Comparative Study' in Body-Gendrot, S., Hough, M., Levy, R., Kerezsi, K., and Snacken, S., *European Handbook of Criminology*. London: Routledge.

Huq, A. Z., Tyler, T. R. and Schulhofer, S. J. (2011a) 'How do the Purposes and Targets of Policing Influence the Basis of Public Cooperation with Law Enforcement?', *Psychology, Public Policy and the Law* 17(3): 419–50.

Huq, A. Z., Tyler, T. R. and Schulhofer, S. J. (2011b) 'Mechanisms for Eliciting Cooperation in Counterterrorism Policing: A Study of British Muslims', *Journal of Empirical Legal Studies* 8(4): 728–61.

Jackson, J., Bradford, B., Hough, M., Kuha, J., Stares, S.R., Widdop, S., Fitzgerald, R., Yordanova, M., and Galev, T. (2011) 'Developing European Indicators of Trust in Justice', *European Journal of Criminology* 8: 267–85.

Jackson, J., Bradford, B., Stanko, E. A., and Hohl, K. (2012a) *Just Authority? Trust in the Police in England and Wales*. London: Routledge.

Jackson, J., Bradford, B., Hough, M., Myhill, A., Quinton, P., and Tyler, T.R. (2012b) 'Why do People Comply with the Law? Legitimacy and the Influence of Legal Institutions', *British Journal of Criminology* 52(6): 1051–71.

Jackson, J., Huq, A., Bradford, B., and Tyler, T. R. (2013) 'Monopolizing Force? Police Legitimacy and Public Attitudes towards the Acceptability of Violence', *Psychology, Public Policy and Law*.

Kirk, D.S., Papachristos, A.V., Fagan, J., and Tyler, T.R. (2012) 'The Paradox of Law Enforcement in Immigrant Communities: Does Tough Immigration Enforcement Undermine Public Safety?', *The Annals of the American Academy of Political and Social Science* 641: 79–98.

Messner, S. and Rosenfeld, R. (2001) 'An Institutional-Anomie Theory of Crime', in Paternoster, R. and Bachman, R. (eds), *Explaining Criminals and Crime*. Los Angeles: Roxbury.

Messner, S. and Rosenfeld, R. (2010) 'Institutional-Anomie Theory: A Macro-Sociological Explanation of Crime', in Krohn, A. J. L. and Hall, G. P. (eds), *Handbook on Crime and Deviance*. New York: Springer.

Miller, W. (2010) 'Conservatism and the Devlin-Hart Debate' *International Journal of Politics and Good Governance*, 1(1.3), Quarter III: 1-20.

Pratt, J. (2007) *Penal Populism*, Milton Park, Abingdon: Routledge.

Reiner, R. (2007) *Law and Order: an Honest Citizen's Guide to Crime Control*. Cambridge: Polity Press.

Robinson, P. H. (2012) 'Criminalisation Tensions: Empirical Desert, Changing Norms, and Rape Reform', in Duff, R. A., Farmer, L., Marshall, S. E., and Tadros, V. (eds), *The Structures of the Criminal Law*. Oxford: Oxford University Press.

Robinson, R. H. and Darley, J. M. (1997) 'The Utility of Desert', *Northwestern University Law Review* 91: 453–99.

Robinson, P. H. and Darley, J. M. (2004) 'Does Criminal Law Deter? A Behavioural Science Investigation', *Oxford Journal of Legal Studies* 24: 173–205.

Sanderson, C. A. & Darley, J. M. (2002) '"I am moral, but you are deterred": differential attributions about why people obey the law' *Journal of Applied Social Psychology*, 32: 375-405.

Smith, P (2002) Drugs, morality and the law *Journal of Applied Philosophy*, 19(3), 234-243.

Sternberger, D. (1968) 'Legitimacy' (p. 244), in Sills, D.L. (ed), *International Encyclopedia of the Social Sciences* (vol. 9). New York: Macmillan.

Sunshine, J. and Tyler, T. (2003) 'The Role of Procedural Justice and Legitimacy in Public Support for Policing', *Law and Society Review* 37(3): 513–48.

Tankebe, J. (2013) 'Viewing things differently: the dimensions of public perceptions of legitimacy.' *Criminology*, 51, 1. 103-135.

Tyler, T. R. (2006a) 'Psychological Perspectives on Legitimacy and Legitimation', *Annual Review of Psychology* 57: 375–400.

Tyler, T. R. (2006b) *Why People Obey the Law*. Princeton: Princeton University Press.

Tyler, T. R. (2011) *Why People Cooperate: The Role of Social Motivations*. Princeton: Princeton University Press.

Tyler, T. R. and Fagan, J. (2008) 'Legitimacy and Cooperation: Why do People help the Police Fight Crime in their Communities?', *Ohio State Journal of Criminal Law* 6: 231–75.

Tyler, T. R. and Huo, Y. J. (2002) *Trust in the Law: Encouraging Public Cooperation with the Police and Courts*. New York: Russell-Sage Foundation.

Tyler, T. R., Schulhofer, S. J., and Huq, A. Z. (2010) 'Legitimacy and Deterrence Effects in Counter-Terrorism Policing: A Study of Muslim Americans', *Law and Society Review* 44(2): 365–401.

Tyler, T. R. and Wakslak, C. J. (2004) 'Profiling and Police Legitimacy: Procedural Justice, Attributions of Motive, and Acceptance of Police Authority', *Criminology* 42: 253–82.

van Dijk, J. (2013) 'It Is Not Just The Economy: Explaining Post World War II Crime Trends in the Western World', in Body-Gendrot, S., Hough, M., Levy, R., Kerezsi, K., and Snacken, S., *European Handbook of Criminology*. London: Routledge.

Wikström, P. O. H., Oberwittler, D., Trieber, K. and Hardie, B. (2012) *Breaking Rules: The Social and Situational Dynamics of Young People's Crime*. Oxford: Oxford University Press.

Work Package 6
Trafficking
of human beings

6.1

Trafficking of human beings: report on enforcement statistics, with accessible factsheets

by: Anniina Jokinen, Minna Viuhko, Miia Nikkilä, Matti Joutsen, Paolo Campana, Demelsa Benito

EXECUTIVE SUMMARY

The FIDUCIA research project (New European Crimes and Trust-based Policy) is funded primarily by the European Commission through the Seventh Framework Programme for Research and Development. FIDUCIA will shed light on a number of distinctively 'new European' criminal behaviours that have emerged in the last decade as a consequence of developments in technology and the increased mobility of populations across Europe. The central idea behind the project is that public trust in justice is important for social regulation: FIDUCIA will build on this idea and proposes a 'trust-based' policy model in relation to emerging forms of criminality.

Work package 6 (WP6 "Trafficking in human beings") aims at understanding the scope and the nature of human trafficking and reviewing the impact of relevant national and international policies. D6.1 looks into data collection on trafficking in persons and highlights different challenges in gathering and using such data. The particular focus is on enforcement statistics related to human trafficking: police, prosecutor and court data and the many problems in using such data for policy needs without analyzing the limitations and weaknesses of available sources of data.

This deliverable comprises of statistics on enforcement activity in relation to trafficking in human beings, as well as of information on the existing data collection mechanisms and on the difficulties related to measuring the extent of human trafficking. Although the focus is on enforcement statistics, the deliverable provides some information also on (the number of) trafficking victims.

The key findings are:

- Various international instruments and data collection efforts exist to map the extent of trafficking criminality in different countries and globally. These include efforts made by the United Nations Office of Drugs and Crime (UNODC 2009; 2012), the United States Department of State (2010; 2011), the International Organization of Migration (2012; 2006), the International Labour Organization (2012b) and the Eurostat (2013). Various actors and organizations have also developed guidelines and recommendations for improved data collection and listed relevant indicators of trafficking in persons.
- Data collection on human trafficking is very challenging due to several reasons. The phenomenon as a whole is very hidden and victims themselves rarely come forward. This places huge challenges in identification of potential cases. The trafficking cases that come to the attention of the criminal justice system are said to represent merely the tip of the iceberg when it comes to the trafficking phenomenon in general. While some efforts have been made to estimate the prevalence of human trafficking using survey data, reaching potential victims is notably difficult.
- Too often trafficking statistics are quoted without acknowledging the strengths and weaknesses of the data and the limitations of its use. Often there is surprisingly little information on how data has been collected in practice and how it has been analysed and compiled. Comparing country specific data is difficult without taking into account the country-specific contexts that affect the way the statistics are produced and how trafficking is defined, identified and measured in the first place. Moreover, simple absolute numbers do not also take into account the size of the population in different countries. Therefore it would be important to present figures also in per 100 000 population -format.
- According to the recent Eurostat (2013) report which covers the time period 2008–2010, the number of identified victims is increasing at the EU-level. At the same time, there was a decline of 17% in the number of suspected traffickers between 2008 and 2010. However, the total number of prosecuted traffickers increased in 2010. Nonetheless the number of convictions is decreasing at the EU-level which may be a sign of the challenges related to definition of human trafficking as well investigation of cases. The increased number of victims shown in the report could indicate that the human trafficking phenomenon in the EU Member States is on the rise. However, factors such as improved identification procedures, increased awareness of the phenomenon, changes in the legislation in the Member States and higher priority in addressing human trafficking can affect these statistics.
- There is intensifying discussion on the different forms of trafficking. While many data sources continue to show that trafficking for sexual exploitation is the most common form of trafficking, both UNODC (2012) and IOM (2012) have noted that the proportion of labour trafficking cases is increasing.
- It is in the interest of all parties to get as up-to-date and accurate information on trafficking in persons as possible. This is vital when planning anti-trafficking efforts and directing action and resources. Better data hopefully means also better policy.

1. INTRODUCTION

In recent years, trafficking in human beings has become a worldwide problem which is often linked to organised crime. Effective action to prevent and combat such a global problem requires a comprehensive international approach in the countries of origin, transit and destination that includes "measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights".[1] The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children defines trafficking in persons as follows:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. (United Nations 2000.)

Trafficking in persons consists of three elements: the act (e.g. recruitment, transportation etc.), the means (e.g. threat, use of force, deception etc.) and the purpose or the form of exploitation. Human trafficking is thus quite a complexly defined crime where especially the exploitation can have many forms such as sexual exploitation, forced labour and removal of organs, but also forced begging and forced criminality can take place. The complex nature of the crime has an impact on the understanding and awareness of the problem, the identification of trafficking victims and on collection of data on trafficking.

It has to be also noted that the Protocol applies to situations where offences are transnational in nature and involve an organised criminal group (United Nations 2000). However, human trafficking is not always transnational but also domestic/internal trafficking cases take place in individual countries. Furthermore, trafficking in human beings is not always organised by members of organised criminal groups. Legislation in individual member states is not necessarily limited to the trafficking cases that are transnational in nature or involve an organised criminal group.

This deliverable discusses the difficulties and challenges related to measuring the extent of trafficking in human beings. It also provides statistical information on traf-

1. Preambular paragraph 1 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, United Nations 2000.

ficking in persons at the EU-level based on various data sources and covers different aspects related to the quality of data and how it should be interpreted.

The report consists of five sections. First, we discuss the efforts and difficulties related to measuring the extent of human trafficking (chapter 2), Next, we present the existing data collection mechanisms (chapter 3). Chapter 4 describes the European enforcement statistics on trafficking in persons including some data on victims of trafficking. In the next chapter we provide information on Finnish trafficking in human beings statistics and we present the trafficking situation in Finland as a case example (chapter 5). Finally, we will draw some conclusions regarding the different issues related to trafficking data, existing data collection efforts and how the data should be used.

2. MEASURING THE EXTENT OF TRAFFICKING IN PERSONS –EFFORTS AND DIFFICULTIES

2.1 Introduction

The extent of human trafficking is notably hard to measure. A major problem in both studying and combating trafficking is the fact that existing data on trafficking in persons is often scarce, unreliable and non-comparable (e.g. Aromaa 2007). According to many sources, the cases of trafficking and/or victims that come to the attention of different authorities represent merely the tip of the iceberg (Jokinen *et al.* 2011, 16–17; Ollus & Jokinen 2011, Tyldum & Brunovskis 2005). At the same time, reliable statistics are essential when trying to understand the nature and extent of the trafficking phenomena and its causes and consequences and when planning preventative efforts. Goodey (2012, 40) also notes that, if robust data is absent, there is a risk that the policy responses that are developed do not reflect realities on the ground. This can in turn mean that initiatives are misdirected and their positive impact is limited. (*Ibid.*)

2.2 Challenges of data collection

First of all, finding accurate figures on trafficking in human beings is difficult because of the special nature of the crime (e.g. Ollus & Jokinen 2011; Jokinen *et al.* 2011). Problems of data collection have been discussed in detailed studies on research methods (e.g. Aromaa 2007; Kangaspunta 2007; Laczko 2007). Aromaa (2007) notes that there is a lack of common definitions and counting units as well as a general lack of adequate records regarding the phenomenon, which makes it difficult to monitor the extent of trafficking in persons. Drawing a fuller picture of the trafficking phenomenon would require combining law enforcement and NGO sources. (*Ibid.*) According to the Organization for Security and Cooperation in Europe (OSCE), it is difficult to collect data on human trafficking not only because of its criminal nature and its abstract definition, but also because countries are not collecting systematic information about the phenomenon and are not providing sufficient financing for research on the topic (OSCE 2006).

In recent years, however, several data collection projects have been carried out with the aim of enhancing information gathering on trafficking in persons. The European Commission has worked towards developing a coherent framework for collecting statistical information on crime and criminal justice, including developing guidelines for measuring trafficking in persons (Commission of the European Communities 2006).

Also a working group established by the European Commission (EC) has been discussing the harmonization of operational indicators on trafficking (Bogers 2010).

In addition, several data collection models have been developed with support from the EC. These include the joint project conducted by the International Labour Organization (ILO) and the EC, which developed operational indicators on trafficking in human beings for improved identification, characterisation and data collection, using the so-called Delphi methodology (ILO 2009b). With EC support, the International Organization for Migration (IOM) and the Ministry of the Interior of Austria have developed guidelines for collecting information on trafficking, including comparable statistical indicators (IOM & B.MI 2009). Also with EC support the International Centre for Migration Policy Development (ICMPD) has developed a data collection model together with the Czech Republic, Poland, Portugal and Slovakia. Using this model, one can collect victim-centred information as well as information on perpetrators and the functions of the criminal justice system (Surtees 2009). The MONTRASEC model, developed by the University of Ghent, proposes a model database with which to collect information on trafficking in human beings and the sexual exploitation of children (Vermeulen & Paterson 2010). In addition to these projects, Vermeulen has described different, earlier research efforts and trafficking projects to prepare EU monitoring on the matter (Vermeulen 2007).

Even with the above-mentioned data collection efforts it is possible to collect information only on known or suspected cases of trafficking in persons. The information in the various databases is usually based on cases that have come to the attention of the criminal justice system and different authorities, non-governmental organizations (NGOs) or other actors. However, the majority of cases of trafficking in human beings never come to the attention of any authorities or NGOs (see e.g. IOM & B.MI 2009, 49).

One option in measuring the extent of trafficking in persons would of course be victimisation surveys. However, it is notably hard to try to reach potential victim groups and get them to respond to such a survey, and thus such methods have been used quite rarely with the notable exception of some efforts made by the ILO (2012a; 2012b) and the IOM (2006). These organisations have for example tried to reach the hidden population by targeting households of (returned) migrants in the source country (*ibid.*). Tyldum and Brunovskis (2005) have noted that it is not possible to collect reliable information about forms of exploitation and abuse among victims currently experiencing such abuse. Persons experiencing the most serious forms of exploitation are less likely to be reached, and victims are reluctant to provide information that may put them in jeopardy. (*Ibid.*)

Nonetheless, victimization surveys can help researchers and decision makers to place the phenomenon in context and assess the impact on the population. In recent years notably the ILO (2012a) has put a lot of effort into developing and testing survey methodologies in order to estimate the number of adults and/or children in forced labour in different countries using existing national survey instruments. In 2008–2010, the ILO piloted surveys in ten countries around the world.[2] In 2012, the ILO published a manual on survey guidelines to estimate forced labour of adults and children. The manual emphasises that conducting surveys on trafficking and forced labour is difficult for various reasons: not the least of which is the fact that the people concerned may be unable or unwilling to acknowledge their situation and to identify themselves as victims. Also serious ethical considerations must be taken into account, according to the ILO. People who have suffered deception, violence or other means of coercion must be interviewed in accordance with strict ethical rules and guidelines.[3] (*Ibid.*)

Also the IOM (2006) has conducted nationally representative surveys in Belarus, Bulgaria, Moldova, Romania, and Ukraine with the objectives of analysing general

2. The surveys in Bangladesh, Bolivia, Côte d'Ivoire, Guatemala and Mali focused on child victims, while surveys in Nepal and Niger focused on both adult and child victims. The surveys in Armenia, Georgia and Moldova focused only on adults in forced labour. In Armenia and Georgia, the surveys were conducted as ad-hoc household surveys, while in Moldova a special labour migration module was included in the national labour force survey.

3. For example, the World Health Organisation has published ethical and safety recommendations for interviewing trafficked women (Zimmerman & Watts 2003).

public attitudes towards employment abroad and human trafficking as well as of estimating the prevalence of human trafficking in these five countries.

It must be concluded that if the phenomenon of trafficking is unknown, or if relevant actors do not identify potential cases and victims do not come forward, it is very difficult to collect information on the phenomenon using the different models and guidelines mentioned in this chapter. A considerable amount of information is still missing on trafficking in persons in the global, European and different national levels and there is much that we do not know.

2.3 Pitfalls of existing trafficking statistics/studies

It is quite clear that existing data on trafficking describe known cases rather than provide a comprehensive picture of the phenomenon of trafficking in human beings. Usually the available trafficking statistics do not differentiate between trafficking for sexual exploitation and trafficking for forced labour. In fact, until recently the global trafficking statistics usually referred almost exclusively to cases of trafficking for sexual exploitation. This is because trafficking for sexual exploitation had been the major target of many anti-trafficking efforts and policies during the 1990s and the early 2000s, and there was less focus on the phenomenon of labour trafficking (e.g. UNODC 2012, 19). For example, within Europe it has not been until after 2005 that there has been a greater focus on trafficking for forced labour, and the number of identified labour trafficking cases has increased.

Also the United Nations Office on Drugs and Crime (UNODC) has noted that among detected forms of trafficking in persons, cases of forced labour are increasing rapidly. Indeed the 18% share reported for the period 2003–2006 doubled for the period 2007–2010, reaching 36%. According to the UNODC, this increase is likely due to improved capacity to detect trafficking for forced labour as well as to legislative enhancements adopted to ensure that this type of trafficking is covered by law. (UNODC 2012, 11–12.)

Some actors argue that labour trafficking may in fact be more commonplace than trafficking for sexual exploitation (see e.g. IOM 2012), although it has simply not been identified as effectively. According to the ILO 2012 global estimate of forced labour, there are 20.9 million forced labourers in the world. 90% of these persons are exploited in the private sector by individuals or enterprises. Out of these, 4.5 million are victims of forced sexual exploitation, and 14.2 million are victims of forced labour exploitation in such economic activities as agriculture, construction, manufacturing or domestic work (ILO 2012b).

Some experts have noted a tendency to conflate trafficking with prostitution (e.g. Gallagher 2011, 386). This means that at least in some countries the trafficking figures that are provided do not actually refer only to trafficking in persons, but include different prostitution-related crimes. In some countries, trafficking statistics may also include offences related to the smuggling of migrants. For these reasons it is difficult to make comparisons between different countries using only trafficking statistics, since often these country-specific details must be taken into account before basing any analysis on the figures and drawing conclusions about them.

Di Nicola and Cauduro (2007) reviewed official statistics on trafficking for sexual exploitation and their validity for 25 EU countries in 2005. They ranked countries into three categories based on the reliability of their trafficking data: 1) high reliability countries with official databases on offences, offenders and victims, 2) medium reliability countries with (a) NGO data on victims and official data on offences/offenders or (b) official data on victims, and 3) low reliability countries with no standardised quantitative information trafficking for sexual exploitation. (*Ibid.*) While this classification is obviously out-dated because much has been done since 2005, it is still useful to note that the quality and reliability of national statistics on trafficking in persons varies a lot even among European Union member states.

Gallagher (2011) notes that currently there is an unhealthy fixation on numbers and statistics on trafficking in persons, which are sometimes manipulated in order to serve narrow policy goals or organisational requirements. It is very problematic that often the figures on the extent of trafficking are quoted without acknowledgement of the many well-known problems and limits of such data. Quoting simple statistics can also hide the elusiveness of trafficking itself: it is still extremely difficult to estimate when or how an exploitative situation morphs into trafficking or when a migrant worker in a difficult situation becomes a victim of trafficking. (Ibid, 392¬¬–393.) According to Tyldum and Brunovskis (2005), a distinction should be made among the (potential) victims between "persons at risk of being trafficked", "current victims of trafficking" and "former victims of trafficking".

Also Kelly (2005) has noted the problems and limitations of trafficking-related statistics and studies. In her article, Kelly takes a critical look at the research on trafficking in persons and lists methodological deficiencies, weaknesses and limitations in data and method. Kelly notes that the majority of the published studies on human trafficking say little, if anything, about the methods used to collect and analyse the data. The problems she mentions include "a lack of critical assessment of official statistics, a failure to draw on qualitative material in anything other than an illustrative way, and no discussion of the limitations of method and data" (*ibid.*, 237). Kelly particularly demands methodological transparency. Without transparency it is impossible to assess the depth and quality of research, as well as transfer the learning and knowledge gained from the research. (*Ibid.*)

Also several other researchers have highlighted the need for better data (see eg. Goodey 2008; Tyldum & Brunovskis 2005). According to Tyldum and Brunovskis (2005), the methodologies that have been applied are not always well suited for the purposes (estimates of the scope of the phenomenon, descriptions of trends, characteristics of victims), and inferences are often made on the basis of limited data. According to them, "inadequate data collection methods might result in descriptions that have little to do with reality" (ibid, 17). Tyldum and Brunovskis (ibid, 18) also note that "(u)ncritically using or publishing findings not based on sound methodologies may result in misinformation and hinder the creation of relevant policies and appropriate programmes".

Other challenges that make trafficking a difficult topic to study are the fact that trafficking concerns hidden populations (prostitutes, traffickers, victims etc.) and stigmatized or illegal behaviour (the persons involved do not want to cooperate in the study). Human trafficking is also a highly politicized issue. Furthermore, it is not even clear what is trafficking, what is not and who is a victim and who is not. Who should be counted as a trafficking victim? (Tyldum & Brunovskis 2005.)

3. INTERNATIONAL DATA COLLECTION ON TRAFFICKING IN PERSONS – EXISTING DATA COLLECTION MECHANISMS

3.1 Introduction

In this chapter, some key international data sources on trafficking in human beings are presented. Basic information is provided on data collection by the United Nations Office on Drugs and Crime, as well as the U.S. Department of State annual trafficking reports, with the intention of highlighting their contents, methodology and also to some extent the weaknesses of these data sources. Also the new Eurostat report on trafficking in human beings from 2013 is discussed in order to highlight its contents and methodology. Finally, some other relevant data collection efforts are described as potential sources of data.

3.2 UNODC data collection

The United Nations Office on Drugs and Crime maintains a database, based on open-source information, which includes data on victims and perpetrators of trafficking (UNODC 2006). Furthermore, the UN.GIFT project,[4] implemented by the UNODC, has collected statistics and estimates from UN Member States on trafficking in human beings. In 2009, the UNODC published its first global report on trafficking in persons (UNODC 2009). The second global report was published in 2012. The UNODC trafficking reports include information on global trafficking patterns and flows and well as country-specific profiles based on national statistics.

The majority of the recent UNODC data was collected 1) through a short questionnaire distributed to Governments,[5] 2) by utilising the relevant results of the regular United Nations Survey of Crime Trends and Operations of Criminal Justice Systems used to survey member states on official statistics on different forms of crime,[6] and 3) by collecting official information available in the public domain, including national police reports, Ministry of Justice reports, national trafficking in persons reports, etc. (UNODC 2012.)[7]

Information for the recent report was collected from 132 countries and territories.[8] However, not all information that was provided by the countries covered could be systematically used. Some countries only provided partial information or data in a non-standard format. The information collected tended to focus on the number and the profile (age, gender, nationality) of the victims detected, along with the number and profile (gender and nationality) of the persons prosecuted and convicted for trafficking in persons or related offences.[9] The time period covered was 2007–2010, or to a more recent date, unless otherwise indicated. (UNODC 2012.)

The UNODC trafficking reports have been criticised by some researchers. Gallagher (2011) argues that the usefulness of the UNODC report as a source of knowledge is severely constrained due to methodological and analytical weaknesses, which are demonstrated for example by the report's findings that 80% of trafficking is for sexual exploitation and that women comprise the majority of trafficking victims. According to Gallagher, these findings reflect nothing more than current self-reported patterns of investigations and prosecutions. Finally, Gallagher notes that the lack of a critical analysis of the UNODC report is a reflection on the poor state of the critical analysis and scholarship in the area of counter-trafficking. (Ibid, 390–391.)

The UNODC report does acknowledge that the report is likely to over-represent trafficking for sexual exploitation and thus overestimate the proportion of women victims of trafficking, because women represent the overwhelming majority of victims of trafficking for sexual exploitation. Similarly, the UNODC data may under-represent the prevalence of trafficking for forced labour. (UNODC 2012, 19.)

3.3 U.S. TIP Report

The U.S. Department of State publishes annual Trafficking in Persons (TIP) reports on the trafficking situation in countries across the world. The reports have been published annually since 2001. They are mandated by the U.S. Congress under Public Law 106-

4. HEUNI was involved in the data collection for the UN.GIFT project in Europe and North America.
5. About 66% of the information used in the report was obtained through the questionnaires.
6. About 3% of the information used in the report was collected through the UN Survey on Crime Trends and Operation of Criminal Justice Systems.
7. About 31% of the information used in the report was collected by the UNODC team by screening public domain sources.
8. However, in the present report we will concentrate on the figures related to EU27 countries.
9. This means that the report did not concentrate on collecting information on the number of persons investigated by / reported to the police.

386, entitled Victims of Trafficking and Violence Protection Act and passed in 2000. According to the U.S. Department of State, the report is the U.S. Government's principal diplomatic tool to engage foreign governments on the issue of human trafficking.[10] The reports contain information on 186 countries, first describing the general trafficking situation and then making country-specific recommendations. Moreover the country profiles provide information on prosecution, protection and prevention efforts made, and often mention at least some statistical information on the local trafficking situation. The data provided in the reports has been collected by the U.S. State Department from national authorities, NGOs, the media, researchers and other relevant actors.

In the annual TIP Report, the Department of State also ranks countries into one of four tiers based on the extent of their governments' efforts to comply with "the minimum standards for the elimination of trafficking". Tier 1 is the highest ("best") tier, while tier 3 is the lowest. Countries whose governments fully comply with the minimum standards set out in the Trafficking Victims Protection Act (TVPA) are placed into tier 1. Tier 2 is for countries that do not fully comply with the TVPA's minimum standards, but are making significant efforts to do so. The Tier 2 Watch list ranking is reserved for countries where the government does not fully comply with the TVPA's minimum standards, but is making significant efforts to do so, and in which: 1) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; 2) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year (in the form for example of increased investigations, prosecution, and convictions of trafficking crimes, increased assistance to victims), and decreasing evidence of complicity in severe forms of trafficking by government officials; or c) the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional steps over the next year. The lowest raking (tier 3) is for countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.[11]

The ranking system used in the TIP report has been heavily criticised by different countries, actors and organisations (e.g. Gallagher 2011; Trends in Organised Crime 2006; COHA 2011[12]). Many critics say that the rankings decisions made in the reports are not explained in detail and thus offer incomplete picture of the local situations (ibid). Also the quality of data has been criticised as unreliable, since the reports continue to rely on second-hand information that is not fully referenced or cited (Gallagher 2011, 386). Finally, the assessment of the compliance of different countries with the TVPA's minimum standards has been viewed to be subjective. In particular countries placed in the bottom tier have emphasized the biased nature of the reports (Trends in Organised Crime 2006).

3.4 Eurostat report on trafficking in human beings

The Eurostat published a first report covering statististical information on human trafficking at the EU level in 2013. The report includes statistical data for the years 2008–2010 from all 27 EU Member States, as well as Croatia, Iceland, Montenegro, Norway, Serbia, Switzerland and Turkey.[13] The data have been collected from various actors (authorities and civil society organizations) working in the field of human trafficking. The report contains statistics on trafficking victims, as well as on suspected, prosecuted and convicted traffickers. The information on the victims is disaggregated by gender, age and form of exploitation and it also contains statistics on victims' citizenship and type of assistance and protection received. The information on the traffickers is disaggregated by gender, citizenship and form of exploitation. The report

10. http://www.state.gov/j/tip/rls/tiprpt/
11. http://www.state.gov/j/tip/rls/tiprpt/2012/192352.htm
12. http://www.coha.org/the-trafficking-in-persons-report-who-is-the-united-states-to-judge/
13. The total number and percentages in the report are based on data from the EU Member States. Data from the non-EU countries have been highlighted separately in some sections.

focuses on statistical data from the registration systems, but also metadata from other sources such as projects, studies and reports were requested from the Member States. (Eurostat 2013.)

The data collection was based on a limited number of indicators which were selected based on the expertise of the European Commission and its different expert groups on crime statistics etc. The Commission prepared a list of common statistical indicators, definitions of the phenomenon and guidelines on how to collect the data. To make sure that the data collected was comparable, particular attention was paid to the definitions used which were edited to be as clear as possible. (Ibid, 19–20.)

The report notes "that the current state of the results does not entirely comply with the stringent requirements of the European Statistics Code of Practice and further development is planned to improve the quality in future collections" (ibid, 9). The figures in the report should be interpreted with caution and it is necessary to take the methodological notes and caveats into consideration. Furthermore, the increased number of victims shown in the report could indicate that human trafficking phenomenon in the EU Member States is on the rise. However, also better identification procedures, the involvement of more actors in the identification process, changes in the legislation in the Member States and higher priority in addressing human trafficking can have an influence on the recorded number of victims. (Ibid, 9–10.)

3.5 Other data

In 2008, the International Labour Office (ILO) collected data on trafficking in persons in Albania, Moldova, Romania and Ukraine by interviewing returned migrants using a standardised questionnaire. The main sampling method used was snowballing, but returned migrants were also approached in public spaces. The data collection resulted in a data base with 644 respondents of which 300 were identified as forced labour victims derived from results of standardised questionnaires. (Andrees 2008.)

The ILO describes openly the different methodological problems and limitations of the research in their report. It is pointed out that the results of the study are not representative and that the samples in the four countries imply a certain bias because snowballing was used to include an equal number of trafficking victims as opposed to successful migrants. Another problem possibly distorting the results is the elapsed time between the trafficking situation and return to the home country. Also the factors of social desirability may affect the research results, according to the ILO, since returned migrants tend to exaggerate the positive and underplay the negative which may lead to underestimation of the number of victims. Another shortcoming of the data mentioned in the report is the fragmented and missing data due to reluctance of interviewees to share sometimes very painful experiences. It is noted in the study, though, that overall the research results give important indications about the existence of human trafficking in the four countries. (Andrees 2008, 6–10.)

For more than ten years, the International Organisation for Migration (IOM) has collected information on victims of trafficking in human beings. This standardized counter-trafficking data management tool, the Counter-Trafficking Module (CTM), is the largest global database with primary data on victims of trafficking.[14] The database serves as a knowledge bank from which statistics and detailed reports can be drawn and information can be provided for research and policy-making. At the end of 2009, the database included details on more than 14,000 trafficking victims from more than 85 countries of origin and 100 countries of destination (IOM Global human trafficking database). By December 2011, the database contained primary data on 20,000 victims registered by IOM (IOM 2012).

14. http://www.iom.int/cms/countertrafficking

Some countries, such as Portugal, have developed their own detailed trafficking databases (Observatory on trafficking in human beings). In Finland and in the Netherlands, the National Rapporteur on trafficking in human beings collects comprehensive information on the phenomenon and publishes regular reports (e.g. National Rapporteur 2010; Bureau NRM 2010).

In the next chapter, enforcement statistics on trafficking in persons are presented in order to highlight the situation in EU Member States and to reflect the quality of existing trafficking data.

4. EUROPEAN ENFORCEMENT STATISTICS ON TRAFFICKING IN PERSONS

4.1 Introduction

In the following chapter, European enforcement statistics are provided from 27 EU Member States. Enforcement statistics refer to police, prosecution and court data which are produced by these criminal justice actors. The figures presented here are derived from the two reports published by the UNODC in 2009 and 2012, as well as from the U.S. State Department's Trafficking in Persons Reports from the years 2010 and 2011. The data from these two sources have been put into the same tables (years 2007–2010) in such a way that the figures in blue are from the United States Trafficking in Persons Reports, the figures in black are from the UNODC 2012 report and the figures in red are from the UNODC 2009 report.

In addition, some data from the new Eurostat trafficking report is provided on the number of suspected, prosecuted and convicted traffickers in EU Member states in 2008–2010. While some of the Eurostat data is identical to the data reported in the UNODC and the US TIP Reports, there are also differences. This is an example of how challenging international data collection is even when it covers only one specific offence. Finally some data is presented on the number of victims and the prevalence of human trafficking. While this report focuses on enforcement statistics, it is important to also take note of the victim statistics when analysing and describing the extent of trafficking criminality and the phenomenon as a whole at the EU-level. First, trafficking cases recorded by the police are presented.

4.2 Trafficking cases recorded by the police

All in all, the UNODC 2012 report contains quite limited data on cases of trafficking in persons recorded or investigated by the police. Therefore the figures presented in the following table are mainly derived from the U.S. TIP reports.

Table 1. Cases of Trafficking in Persons Investigated by the Police in 2007–2010.[15]

	2007	2008	2009	2010
Austria	-	-	-	-
Belgium	453	367	371	83
Bulgaria	-	187	131	160
Cyprus	-	29	17	29
Czech Republic	-	81	47	24
Denmark	11	-	44	38
Estonia	136	-	73	-

15. Statistics in BLUE are from the United States Trafficking in Persons Report (years 2010 and 2011); Statistics in RED are from the UNODC 2009 report. The statistics in BLACK are from the UNODC 2012 report.

	2007	2008	2009	2010
Finland	4	8	59	71
France	-	-	-	-
Germany	714	482	534	-
Greece	121	40	66	62
Hungary	-	21	27	8
Ireland	167	-	66	69
Italy	622	539	360	509
Latvia	-	9	7	4
Lithuania	-	19	11	7
Luxembourg	-	-	-	-
Malta	-	-	-	0
Netherlands	-	215	141	-
Poland	-	119	105	95
Portugal	-	-	-	-
Romania	-	494	759	717
Slovakia	11	18	9	15
Slovenia	-	7	28	12
Spain	1870	-	314	678
Sweden	-	23	59	84
United Kingdom of Great Britain and Northern Ireland	-	-	-	-

SOURCE: UNODC 2012; 2009; US TIP Reports 2010–2011

As can be seen from the table 1, there are surprisingly many gaps in the European police statistics on trafficking in persons, based on these two international data sources.[16] Finding some of the missing data should be possible using national databases, but that is not the purpose of this exercise.

Looking at the data itself, there is quite considerable country-specific variation in the number of cases investigated by the police. For example, the figures for Estonia seem very high at first glance for such a small country. However, when we have the background information that trafficking in persons was not criminalised as a specific offence in Estonia until 2012, the figures can be explained by the fact that they involve different offences such as facilitation of prostitution, which in Estonia is considered to be a crime similar to trafficking. Comparing these figures without such background knowledge from all the countries can be very risky, since it is highly likely that different countries report figures that are based on different definitions, systems and counting units. It is possible that while figures from one country include only trafficking offences, figures from another country include different prostitution-related offences or human smuggling related offences. This concern is very relevant especially when looking at older statistics, which may lack such differentiation between different crime labels. For example, in Spain trafficking and smuggling were punished under the same article until 2011, so the high figures for Spain are explained by this at least to some extent.[17]

Also the new Eurostat report on trafficking in human beings includes information on suspected trafficking within the EU. According to the Eurostat , a total of 1723 people were suspected of trafficking in 2008 in the EU Member States. The figure was 1896 in 2009 and 1701 in 2010. The Eurostat notes that for the 19 Member States which provided figures for all three years, there was a decline of 17% in the number of suspected traffickers between 2008 and 2010. About 45% of suspected traffickers held EU citizenship and most of these persons were from Bulgaria, Romania, Germany, France and Belgium. Most frequently suspected traffickers outside of the EU were from Nigeria, China or Turkey. (Eurostat 2013, 63–64.)

Furthermore, the Eurostat also reports that around 85% of suspected traffickers were suspected of trafficking for sexual exploitation between 2008 and 2010. The proportion of labour trafficking was 13% in 2008 and 2009, and 11% in 2010. The percentage of other forms of exploitation increased from 3% in 2008–2009 to 4% in 2010. Only Belgium reported that labour trafficking was a more common form of exploitation than sexual exploitation (Eurostat 2013, 70–72.) However, it should be noted that quite many EU countries did not report any figures for this question. There has been also some discussion that the proportion of labour trafficking is in fact increasing globally (e.g. ILO 2012b; IOM 2012). We also know that in some EU Member States, such as Finland and Netherlands, which did not report figures for the Eurostat questionnaire regarding this matter, the proportion of labour trafficking is quite high (e.g. Jokinen *et al.* 2011).

Comparing individual figures from UNODC (2009; 2012) reports, US TIP Reports (2010; 2011) and Eurostat report (2013) is not necessarily wise, since these data collection instruments may use slightly different definitions in the first place. In addition, the data may have been corrected or adjusted by different national statistical authorities over time or collected and calculated by different organisations or persons, which again will affect which total is being reported.

16. The reports do not contain information on the reasons for the lack of statistics for the number of cases of trafficking in persons investigated or recorded by police.

17. Before January 2011 trafficking in persons was simply considered as an aggravating circumstance in cases related to smuggling (see Article 318 bis of the Spanish criminal code).

4.3 Persons prosecuted for trafficking in persons

The following statistics (see table 2 – years 2007–2010) are based mainly on the Global Report on Trafficking in Persons by the UNODC (2012) and they have been supplemented with information from the U.S. TIP report. Finally, some statistics are presented from the recent Eurostat report on human trafficking.

Table 2. Persons Prosecuted for Trafficking in Persons in 2007–2010.[18]

	2007	2008	2009	2010
Austria	13	4	34	16
Belgium	-	-	387	-
Bulgaria	107	107	131	134
Cyprus	105	118	90	64
Czech Republic	20	22	32	35
Denmark	22	25	29	13
Estonia	135	144	200	155
Finland	2	7	2	7
France	-	523	543	-
Germany	-	178	189	-
Greece	121	162	240	246
Hungary	20	17	16	14
Ireland	148	-	6	5
Italy	461	550	602	362
Latvia	-	1	11	2
Lithuania	3	22	11	19
Luxembourg	-	7	6	4
Malta	6	3	0	0
Netherlands	281	214	141	215
Poland	62	79	79	77
Portugal	4	6	7	-
Romania	429	324	262	415
Slovakia	16	12	6	5
Slovenia	2	4	8	12
Spain	-	86	147	202
Sweden	5	5	16	18
United Kingdom of Great Britain and Northern Ireland	27	61	47	30

SOURCE: UNODC 2012; 2009; US TIP Reports 2010–2011.

As can be seen from table 2, the number of prosecuted persons varies considerably both between different countries and also between different years in a specific coun-

18. Statistics in BLUE are from the United States Trafficking in Persons Report (years 2010 and 2011); Statistics in RED are from the UNODC 2009 report.

try. It seems that as far as the human trafficking offence is concerned, the fluctuations between different years are relatively high when compared to many other offences (e.g. homicide rates are usually quite stable, see e.g. European Sourcebook 2010). It is difficult to assess whether the fluctuations have to do with the nature of the trafficking offence or whether some other explanations lie behind the variation in the numbers. Such explanation may include shifts in the resources of the police, increased awareness or training of different authorities and changes in their resources, for example.

The Eurostat data collection on trafficking in persons also covers some statistical information on the number of prosecuted traffickers. According to Eurostat, a total of 1119 persons were prosecuted for trafficking in persons in 2008 in 27 EU Member States, while the figure was 1103 in 2009 and 1214 in 2010. Thus, the total number of prosecuted traffickers has increased in 2010. A majority of prosecuted traffickers had EU citizenship (76% in 2010). 75% of prosecuted traffickers are male and 25% women, according to the Eurostat figures and around 70% were prosecuted for trafficking for sexual exploitation. The proportion of labour trafficking is around 20% among prosecuted traffickers. (Eurostat 2013, 73–78.)

In general, it should be noted that the prosecution statistics are not as developed as police and court statistics and they are often less detailed. Often, there are fewer prosecutorial statistics available when compared to other enforcement statistics, and they are more problematic to interpret because often times prosecutions statistics are based on the number of prosecuted cases and not on the number of prosecuted persons (often one case may involve multiple persons) (see e.,g. European Sourcebook 2010 on the quality of prosecution data).

4.4 Persons convicted of trafficking in persons

The Eurostat (2013) report also includes information the number of convicted traffickers and their gender. It shows that the proportion of female traffickers (convicted persons) is relatively high; in many countries one fourth or more of all convicted persons. The proportion of women out of suspected and prosecuted traffickers is also one fourth at the EU level on average. The following table includes information on the total number of convicted traffickers and their gender in 27 EU Member States.

Table 3. Number of convicted traffickers (1).

	2008			2009			2010		
	% Male	*% Female*	*Total*	*% Male*	*% Female*	*Total*	*% Male*	*% Female*	*Total*
Austria	67	33	18	81	19	32	64	36	14
Belgium	:	:	198	:	:	132	:	:	64
Bulgaria	:	:	69	:	:	108	:	:	106
Cyprus	60	40	25	20	80	5	0	100	1
Czech Republic	67	33	3	100	0	1	:	:	10
Denmark	29	71	7	80	20	10	64	36	11
Estonia	:		66	:	:	67	:	:	47
Finland	60	40	5	0	0	0	0	0	0
France	72	28	608	74	26	558	72	28	577
Germany	82	18	155	79	21	148	75	25	131
Greece	:		:	:	:	:	:	:	:
Hungary	82	18	34	82	18	22	100	0	14
Ireland	:		:	:	:	:	:	:	:
Italy	50	50	4	59	41	17	:	:	:
Latvia	50	50	2	0	100	1	67	33	3
Lithuania	64	36	14	85	15	13	73	27	11
Luxembourg	0	100	1	50	50	2	50	50	4
Malta	100	0	1	0	0	0	0	0	0
Netherlands	90	10	78	80	19	69	89	11	79
Poland	:	:	5	:	:	19	:	:	20
Portugal	67	33	3	80	20	5	0	100	1
Romania	73	27	191	77	23	183	72	28	203
Slovakia	75	25	16	90	10	10	67	33	6
Slovenia	:	:	:	:	:	:	:	:	:
Spain	:		:	:	:	:	:	:	:
Sweden	0	0	0	25	75	4	63	38	8
UK: England and Wales (2)	78	22	37	68	32	56	76	24	29

(1) Total reflects the number of convicted traffickers (including gender unknown).

(2) 2008: Break in the series

: Data not available

SOURCE: Eurostat

In total 1534 traffickers were convicted at the EU-level in 2008, while the figure was 1445 in 2009 and 1339 in 2010. Thus the total number of convicted traffickers within the EU has decreased in 2008–2010. When looking at the country-specific data, there are quite a lot of variations to this overall trend, but indeed the number of convictions has decreased in such big EU Member States as Germany and France. However, the number of convicted traffickers has increased in Romania and Poland, for example.

The enforcement statistics presented above demonstrate very well also the problem of attrition. The figures are lower for each criminal justice actor that is next in line. Because of the difficulty and elusiveness of the definition of the trafficking offence, there are many difficulties in the gathering of evidence and in the investigation of trafficking cases. Because of these factors, the prosecution and court statistics are often very low in comparison to police statistics. The prosecutors cannot prosecute cases because of lack of evidence and courts are unable to pass judgment for the same reasons. In addition, the criminal justice process is very lengthy and especially court statistics lag behind by several years.

4.5 EU-level data on the number of victims and survey data

The new Eurostat report on human trafficking includes interesting data on the number of identified and presumed victims in EU Member States. While the purpose of this report is to focus on enforcement data, some victim data is presented here as a comparison to the picture of the European trafficking situation gained from the enforcement statistics. It is important to note that different sources of information give a different picture of the extent of trafficking criminality in different countries. Often times the victim figures are higher than enforcement figures because for example different civil society organisations can identify victims that are not reported to different authorities such as the police. The Eurostat report mentions that multiple data sources were used at least in some countries to collect statistics on trafficking victims. While the police is still the principal source of victim data used in the report, also various other sources such as NGOs, social services, victim services as well as immigration authorities, and border guards have been utilized.

The Eurostat victim data is presented in the next table in absolute figures as well as per 100.000 population. Victims who have been formally identified by relevant authorities are considered identified victims, while presumed victims include persons who fulfil the definition of human trafficking but who have not been formally identified.

Table 4. Number of identified and presumed victims (per 100 000 inhabitants) for 2008–2010.

	2008		2009		2010	
	Total (Id + Pr)	*Victims per 100 000 inhabitants*	*Total (Id + Pr)*	*Victims per 100 000 inhabitants*	*Total (Id + Pr)*	*Victims per 100 000 inhabitants*
EU Total (¹)	6 309	1.3	7 795	1.6	9 528	2.0
Austria	36	0.4	109	1.3	62	0.7
Belgium	196	1.8	158	1.5	130	1.2
Bulgaria	250	3.3	346	4.5	432	5.7
Cyprus	58	7.3	113	14.2	52	6.3
Czech Republic	143	1.4	55	0.5	83	0.8
Denmark	28	0.5	47	0.9	53	1.0
Estonia	55	4.1	78	5.8	57	4.3
Finland	29	0.5	64	1.2	79	1.5
France	822	1.3	779	1.2	726	1.2
Germany	692	0.8	733	0.9	651	0.8
Greece	76	0.7	121	1.1	92	0.8
Hungary	10	0.1	9	0.1	10	0.1
Ireland	:	:	66	1.5	78	1.7
Italy	1 624	2.7	2 421	4.0	2 381	3.9
Latvia	22	1.0	16	0.7	19	0.8
Lithuania	25	0.7	14	0.4	3	0.1
Luxembourg	7	1.4	3	0.6	8	1.6
Malta	1	0.2	0	0.0	4	1.0
Netherlands	826	5.0	909	5.5	993	6.0
Poland	66	0.2	66	0.2	278	0.7
Portugal	25	0.2	24	0.2	8	0.1
Romania	1 240	5.8	780	3.6	1 154	5.4
Slovakia	28	0.5	36	0.7	38	0.7
Slovenia	29	1.4	30	1.5	31	1.5
Spain	:	:	443	1.0	1 605	3.5
Sweden	21	0.2	44	0.5	74	0.8
United Kingdom	:	:	331	0.5	427	0.7

(¹) The EU total reflects the total for a given year based on the countries which provided data for the year. Not all EU Member States provided data for all three reference years and direct comparisons of EU totals between years may therefore be misleading.

: Data not available

SOURCE: Eurostat

Based on the Eurostat data, the number of identified victims has increased within the EU between 2008 and 2010. In some EU Member States, such as Finland, the Netherlands, Denmark and Sweden, the number of victims increased in all three reference years, while some countries reported a decrease in the number of identified and presumed victims. For example, in Belgium, France, Lithuania and Portugal, the number of identified victims decreased in all reference years. It is important to note that since the country-specific figures are also presented as the number of victims per 100.000 population, it is easier to compare the situation between different countries. This is because absolute figures do not take into account the different size of the population in different countries. Cyprus, Estonia, Bulgaria, Netherlands and Romania reported the highest numbers of identified and presumed victims per 100.000 inhabitants, while these figures were the lowest in Portugal, Hungary and Malta.

It must be pointed out that the decrease or increase in the number of victims does not necessarily mean that the actual number of victims is decreasing or increasing. These fluctuations in the statistics may indicate an improvement in the reporting rate of the phenomenon or in the identification of victims, increased awareness or training by the authorities on human trafficking related issues or a change in the recording

system, for example. The Eurostat notes that a decrease especially in the last reference year may be due to a delay in the recording. (Eurostat 2013, 29–30.)

The Eurostat further reports that around 15% of identified and presumed trafficking victims within the EU are children. A vast majority of victims (around 80%) are women, and 20% of victims are male, based on EU-level victim data. A majority of the victims (around 62%) had encountered trafficking for sexual exploitation, while labour trafficking accounts for about 25% and other forms of exploitation around 14%. However, only 16 EU Member States were able to report data on this. The Eurostat report notes that the percentage of labour trafficking cases is surprisingly low when taking into account the increased attention given to identification and investigation of trafficking for forced labour in the EU Member States. (Eurostat 2013, 32–41.) It may, however, be that the statistics on labour trafficking reflect the particularly difficult problems of defining trafficking for forced labour and the particular problems of identification and investigation of such cases (e.g. Jokinen et al; Ollus & Jokinen 2011). The trend may be increasing after 2010 which is not covered by the Eurostat report (see. e.g. Ministry of Justice 2012).

Unfortunately, there are no survey data available on trafficking in persons from most EU-countries. The ILO survey efforts have not been conducted in the EU Member States. The IOM survey from 2006 includes data from Bulgaria and Romania, which were not EU Member States at the time, as well as from Moldova, Ukraine and Belarus.[19] The most common trafficking situation detected in the IOM survey in Belarus, Bulgaria, Moldova, Romania and Ukraine was related to forced labour and domestic servitude, while the least common was sexual exploitation. Interestingly, the IOM survey results indicated that contrary to most victim statistics that are dominated by female victims it was in fact men of different ages who dominate among those who have said that human trafficking situations have happened to them personally. The IOM notes that this surprising result may be explained with the survey evidence that most of the identified trafficking cases were related to labour exploitation at enterprises, factories, or agricultural fields. (IOM 2006.)

5. CONCLUSIONS

Trafficking in persons is a worldwide problem and a phenomenon which takes many forms. While traditionally more focus has been put on trafficking for sexual exploitation, also other forms of trafficking such as trafficking for forced labour, forced begging and forced criminality have become more salient in the recent years. While awareness of the many forms of trafficking has increased, there has been a growing need for statistical information on the extent of trafficking criminality in a global scale. Such information is vital for policy makers and various authorities and stakeholders when planning various anti-trafficking efforts, victim services and other responses.

Many international data collection efforts have taken place in order to estimate the extent of trafficking in human beings and to gather statistics from different countries around the world. Most notably the United Nations Office on Drugs and Crime has produced two global reports on trafficking in human beings (UNODC 2009; 2012). Also the United States Department of States produces yearly reports which highlight the trafficking situation in 186 countries around the world. Most recently, the Eurostat has produced a trafficking report on the situation in Europe (Eurostat 2013).

The statistical part of such data collection efforts are often based on a collection of different enforcement statistics: police, prosecution and court data. Of course such statistics capture merely the tip of the iceberg when it comes to the trafficking phenom-

19. As explained in chapter 3.5, survey respondents were presented with the list of three human trafficking situations and were asked to say whether such situations happened to them personally or to members of their family (parents, children, spouse and siblings), as well as to their distant relations (other relatives, friends). Unfortunately, the methodological problems and the limitations of the collected survey data are not discussed in particular detail in the report.

enon as a whole. Trafficking criminality is extremely hidden in nature and the victims rarely come forward themselves and ask for help. Identification of trafficking victims and cases is very challenging as is the investigation of cases and the whole criminal justice process itself. Not all cases that come to the attention of different civil society organisations, trade unions, labour inspectors or other organisations are reported to the police. Thus also other means of data collection have been used and should be used. The International Labour Organization (2012a) and the International Organization for Migration (2006) have tried to develop surveys which could be used to estimate prevalence of trafficking in certain source countries, for example. However, it is very difficult to reach hidden populations of the vulnerable people that are most likely to become victims or who have been victims of trafficking.

It must be concluded that data collection on a phenomenon as complex as trafficking in persons is very challenging as we have highlighted in chapter 2. Yet often times different trafficking figures are reported and used without acknowledging the limitations and weaknesses of the data. Too little attention is also paid to reporting how the data has been collected and analysed in the first place. It should be kept in mind that trafficking statistics do not necessarily say much about the activity itself (see also UNODC 2009) but rather they reflect the operation of the criminal justice system and the quality of the compilation of statistics in a specific country, as well as the activities, resources and priorities of the authorities and general awareness of the phenomenon of trafficking in that country.

Also contextual data on the country-specific situations is very important to keep in mind when looking at absolute figures on the number of suspected or convicted traffickers, for example. In some countries, the trafficking figures also include other offences, such as human smuggling or different prostitution-related offences. It is therefore good to realise that the figures are not in fact very comparable at all or only to some extent. Of course, absolute figures also do not take into account the size of the population in different countries. Therefore it would be important to present figures also in per 100 000 population -format. In addition different countries may use different counting units or different definitions which also affect the data produced.

In recent years, in particular the discussion on the different forms of trafficking has been intensifying. While many sources still indicate that as much as up to 60–80% of trafficking criminality is related to trafficking for sexual exploitation or that the majority (up to 80–90%) of trafficking victims identified has encountered this form of exploitation, it does not mean that this is an up-to-date picture of the trafficking phenomenon as a whole. For example, the IOM (2012) and the UNODC (2012) have noted that the proportion of labour trafficking is increasing globally and more cases of labour exploitation are being identified. The recent Eurostat (2013) report did not show evidence of this at the EU-level despite growing attention being paid to labour trafficking in Europe. It is, however, likely that the available statistics are lagging behind in this regard and that this is actually a reflection of the particular problems of identification and definition of trafficking for forced labour (e.g. Ollus & Jokinen 2011; Jokinen *et al.* 2011).

According to Goodey (2012), data collection on human trafficking should be improved by laying more emphasis on a dialog between the users and producers of data in order to determine what is possible and useful to collect. Goodey notes that policy makers and politicians often call for improved data collection with limited information on what this might mean with respect to the need to reform and harmonize the ways different jurisdictions and agencies currently operate. She also reminds us that the definition even of conventional crimes, such as assaults or burglaries, is not standardized across much of the EU. (*Ibid.*)

To conclude, while it is very important for multiple actors to get up-to-date statistical information on the scope and nature of trafficking in persons, we argue that the available data should be used with caution, openly acknowledging also its limitations especially when doing comparisons between different countries. There has been a significant improvement in the quality of the data in the recent years, as was demonstrated earlier in this report. Getting better data is in the interest of all relevant actors in order to improve their response to trafficking and to better target their resources in helping victims and others affected by this phenomenon. In the best case scenario, better data also means better policy response.

REFERENCES

Andrees, Beata (2008): *Forced labour and trafficking in Europe: How people are trapped in, live through and come out.* Geneva: ILO.

Aromaa, Kauko (2007): Trafficking in Human Beings: Uniform Definitions for Better Measuring and for Effective Counter-Measures. In Savona, Ernesto and Stefanizzi, Sonia (eds.): *Measuring Human Trafficking. Complexities and Pitfalls.* ISPAC. New York: Springer, 13–26.

Bogers, Gert (2010): *European Commission activities in gathering key indicators for data collection of trafficking in human beings. International working-level expert meeting on trafficking for forced labour and labour exploitation.* HEUNI Helsinki 1 December 2010.

Bureau NRM (2010): *Trafficking in Human Beings. Ten Years of Independent Monitoring.* The Hague: Bureau of the Dutch National Rapporteur.

COHA (2011): *The Trafficking in Persons Report: Who is the United States to Judge?* Council on Hemispheric Affairs. 2011. Available online at: http://www.coha.org/the-trafficking-in-persons-report-who-is-the-united-states-to-judge/

Commission of the European Communities (2006): *Developing a comprehensive and coherent EU strategy to measure crime and criminal justice: An EU Action Plan 2006–2010. Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee.* Brussels, 7 August 2006 COM(2006) 437 final.

Di Nicola, Andrea & Cauduro, Andrea (2007): Review of Official Statistics on Trafficking in Human Beings for Sexual Exploitation and their Validity in the 25 EU Member States from Official Statistics to Estimates of the Phenomenon. In Savona, Ernesto and Stefanizzi, Sonia (eds.): *Measuring Human Trafficking. Complexities and Pitfalls.* ISPAC. New York: Springer, 13–26.

European Sourcebook (2010): *European Sourcebook of Crime and Criminal Justice Statistics -2010.* Fourth edition. The Hague: WODC.

Eurostat (2013): *Trafficking in human beings.* 2013 edition. Eurostat Methodologies and Working papers. Luxembourg: Eurostat.

Gallagher, Anne T. (2011): Improving the Effectiveness of the International Law of Human Trafficking: A Vision for the Future of the US Trafficking in Persons Reports. *Human Rights Rev* 12 (2011), 381–400.

Goodey, Jo (2012): Data on Human Trafficking: Challenges and Policy Context. In Winterdyk, John, Perrin, Benjamin & Reichel, Philip (eds.):*Human Trafficking. Exploring the International Nature, Concerns, and Complexities.* Boca Raton: Taylor & Francis Group, CRC Press.

Goodey, Jo (2008): Human trafficking: Sketchy data and policy responses. *Criminology and Criminal Justice*, Vol 8(4), 421–442.

ILO (2012a): *Hard to see, harder to count. Survey guidelines to estimate forced labour of adults and children.* Geneva: ILO.
Available online: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/--declaration/documents/publication/wcms_182096.pdf

ILO (2012b): ILO Global Estimate of Forced Labour. Results and methodology. International Labour Office (ILO) Special Action Programme to Combat Forced Labour (SAP-FL) 2012. Geneva: ILO.

ILO (2009b): *Operational indicators of trafficking in human beings. Results from a Delphi survey implemented by the ILO and the European Commission.* Revised version of September 2009. Geneva: ILO. Available online at: http://www.ilo.org/sapfl/Informationresources/Factsheetsandbrochures/lang-en/docName--WCMS_105884/index.htm

IOM (2012): *Counter Trafficking and Assistance to Vulnerable Migrants. Annual Report of Activities 2011.* Geneva: IOM.
Available online: http://www.iom.int/files/live/sites/iom/files/What-We Do/docs/Annual_Report_2011_Counter_Trafficking.pdf

IOM (2006): *Human trafficking survey: Belarus, Bulgaria, Moldova, Romania, and Ukraine.* Prepared by GfK Ukraine for the International Organization for Migration, Mission in Ukraine. Kyiv: IOM.
Available online: http://www.childcentre.info/projects/traffickin/dbaFile13968.pdf

IOM & BM.I (2009): *Guidelines for the collection of data on trafficking in human beings, including comparable indicators.* Vienna: International Organization for Migration (IOM) and Federal Ministry of the Interior of Austria (BM.I)

Jokinen, Anniina, Ollus, Natalia & Viuhko, Minna (2011): Work on Any Terms: Trafficking for Forced Labour and Exploitation of Migrant Workers in Finland. In Jokinen, Anniina, Ollus, Natalia and Aromaa, Kauko (eds.). *Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia.* HEUNI Reports 68. Helsinki: HEUNI. 2011, 31–164.

Joutseno Reception Centre (2012): *Personal communication regarding statistics on the victims accepted into the assistance system for victims of trafficking in persons in Finland.*

Kangaspunta, Kristiina (2007): Collecting Data on Human Trafficking: Availability, Reliability and Comparability of Trafficking Data. In Savona, Ernesto U. & Stefanizzi, Sonia (eds.): *Measuring Human Trafficking. Complexities and Pitfalls.* New York: Springer, 27–36.

Kelly, Liz (2005): "You Can Find Anything You Want": A Critical Reflection on Research on Trafficking in Persons within and into Europe. *International Migration* Vol. 43(1/2), 235–265.

Laczko, Frank (2007): Enhancing Data Collection and Research on Trafficking in Persons. In Savona, Ernesto U. & Stefanizzi, Sonia (eds.): *Measuring Human Trafficking. Complexities and Pitfalls.* New York: Springer, 37–44.

Ministry of Justice (2012): Ihmiskauppatyöryhmän mietintö [Report of the Trafficking in Human Beings Working Group] *Mietintöjä ja lausuntoja* [Publication of the Ministry of Justice] 63/2012. Helsinki: Ministry of Justice.

National Rapporteur (2010): *The Finnish National Rapporteur on Trafficking in Human Beings – Report 2010: Trafficking in human beings, phenomena related to it, and implementation of the rights of human trafficking victims in Finland.* Helsinki: Ombudsman for Minorities.

Ollus, Natalia & Jokinen, Anniina (2011): Trafficking for Forced Labour and Labour Exploitation – Setting the Scene. In Jokinen, Anniina, Ollus, Natalia and Aromaa, Kauko (eds.). *Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia.* HEUNI Reports 68. Helsinki: HEUNI. 2011, 11–30.

OSCE (2006): *From Policy to Practice: Combating Trafficking in Human Beings in the OSCE Region.* 2006 Annual Report Submitted by the Anti-Trafficking Assistance Unit, OSCE Secretariat.

Surtees, Rebecca (2009): *Anti-Trafficking Data Collection and Information Management in the European Union – a Handbook. The situation in the Czech Republic, Poland, Portugal and the Slovak Republic.* International Centre for Migration Policy Development. Vienna: ICMPD.

Trends in Organised Crime (2006): Human Trafficking: Better Data, Strategy and Reporting Needed to Enhance U.S. Anti-Trafficking Efforts Abroad. In *Trends in Organized Crime* Vol 10, No. 1, 2006, 16–38.

Tyldum, Guri & Brunovskis, Anette (2005): Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking. *International Migration*, Vol 43(1/2), 17–34.

United Nations (2000): *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.*

UNODC (2012): *Global Report on Trafficking in Persons.* December 2012. Vienna: UNODC.

UNODC (2009): *Global Report on Trafficking in Person*s. UN.GIFT. February 2009. Vienna: UNODC.

US TIP Report (2011): *Trafficking in Persons Report.* 11th edition. U.S. Department of State Publication. Office of the Under Secretary for Democracy and Global Affairs and Bureau of Public Affairs. Washington: Department of State.

US TIP Report (2010): *Trafficking in Persons Report.* 10th edition. U.S. Department of State Publication. Office of the Under Secretary for Democracy and Global Affairs and Bureau of Public Affairs. Revised June 2010. Washington: Department of State.

Vermeulen, Gert (2007): The Long Road from Rhetoric to Evidence on Trafficking in Human Beings: About Research Efforts to Prepare Proper EU Monitoring on the Matter. In Savona, Ernesto U. & Stefanizzi, Sonia (eds.): *Measuring Human Trafficking. Complexities And Pitfalls.* New York: Springer, 107–123.

Vermeulen, Gert & Paterson, Neil (2010): The MONTRASEC demo. A benchmark for member state and EU automated data collection and reporting on trafficking in human beings and sexual exploitation of children. *IRCP-series* volume 36. Antwerpen: Maklu.

Zimmerman, Cathy & Watts, Charlotte (2003): *WHO ethical and safety recommendations for interviewing trafficked women.* Geneva: World Health Organization

Work Package 7
Trafficking of goods

7.1

Trafficking of goods: report on the latest statistics, with accessible factsheets

by: Rita Haverkamp, Susanne Knickmeier, Mike Hough, Mai Sato, Skirmantas Bikelis, Hasan Buker

* Special thanks go to Dr Christopher Murphy, who provided translation and editing support.

EXECUTIVE SUMMARY

The FIDUCIA research project (New European Crimes and Trust-based Policy) is co-funded by the European Commission through the Seventh Framework Programme for Research and Development.

The FIDUCIA project will shed light on a number of distinctively "new European" criminal behaviours which have emerged in the last decade as a consequence of developments in technology and the increased mobility of populations across Europe. The central idea behind the project is that public trust in justice is important for social regulation, which is why FIDUCIA proposes a "trust-based" policy model in relation to emerging forms of criminality.

Work Package 7 (WP 7) explores legal, criminological and sociological aspects surrounding the trafficking of goods. The scale of illicit markets is firstly described with the aid of statistical data (D 7.1). Thereafter political, practical and legal measures preventing and tackling the trafficking of goods (D 7.2), the structure of illicit markets (D 7.3) as well as public attitudes (D 7.4) are analysed. Finally, conclusions are provided as to whether criminal policy on the trafficking of goods has to be changed (D 7.5). WP 7 is led by the MPICC with contributions from the BBK, ASI, TEISE and the University of Parma.[1]

D 7.1 contains a statistical summary of the prevalence and enforcement of trafficking of goods. The objective of Task 7.1 is to organise the broad range of statistics available at a national and supranational level. Various techniques for assessing the scale of illicit markets are used, e.g., extrapolations from seizure statistics or "mirror statistics" (comparing estimates of illicit commercial activity with statistics on legitimate commercial activity).

Illicit markets are closely connected to a borderless European Union (EU), which in turn is an important precondition for the intra-trade within and economic strength of the EU. As the very nature of illicit markets means that no official data are available, several international, European and national level sources have to be used to estimate their scale. However, such estimations are never certain, especially when coupled with the challenge of obtaining comparable data from several Member States to assess the illicit trade.

The illicit markets in WP 7 include the following products: alcohol, cigarettes, drugs (heroin, cannabis, ecstasy), works of art/antiques and product piracy. The illicit alcohol and tobacco markets seem to share tax evasion and/or tax avoidance similarities. The illicit drug market, in turn, cannot be compared with any legal market. Very little information is available about the illicit market for art and antiques, though little is known about the legal market either. It would seem that product piracy and counterfeiting are among the fastest growing illicit markets.

1. CROSS-BORDER TRADE AND ILLICIT MARKETS IN THE EUROPEAN UNION

Article 1 of the Treaty of Amsterdam (1997) establishes the EU as an area of freedom, security and justice. One of the EU´s most important freedoms is the free movement of goods, including the related promotion of intra-community trade and the abolition of customs tariffs. Under the Ankara Association Agreement (1963), the European Community and Turkey agreed to the establishment of a customs union that came into force in 1996.[2] It stipulates the free movement of goods between Turkey and the EU as well as the alignment of common customs tariffs and the approximation of customs laws.

1. Special thanks go to Dr Stefano Maffei and Matteo Allodi for their contributions on trafficking of goods.

2. Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union.

Table 1: EU Export and Import, 2011

GDP at market prices in million € (2010)	12,279,914.7
Exports (2010)	€ 1,349.2 billion (16% of world trade)
Imports (2010)	€ 1.509.1 billion (17.3% of world trade)

SOURCE Eurostat (2011), *External and Intra-EU trade – a statistical yearbook*

Internal and external trade is economically important for the EU. The Union´s exports accounted for €1,349.2 billion[3] in 2010, which means 16% of world trade, while the import accounted for €1,509.1 billion (17.3% of world trade) (cf. European Commission - eurostat, 2011, pp. 15, 17). Since the Treaty of Maastricht (1993), movements of goods are no longer controlled within the EU, but rather at the external borders. Additionally, national customs authorities can enforce so-called "mobile controls" of people and goods to maintain security (cf. Bundesministerium der Finanzen - Zoll, 2011, p. 11).

It is, however, not only the legal market that has benefited from the abolished controls and political changes, but also traffickers on the illegal markets, whose possibilities to transport illegal goods within the EU have increased. The trafficking of goods can cause enormous damages, e.g., lost tax revenue, distortion of competition in relation to legal markets, loss of income on the legal job market and dangers to people´s health (e.g., due to drug abuse or counterfeit medicine). Another problem is the widespread acceptance of several illegal markets and, therewith, a missing sense of guilt for a threat to the rule of law. According to estimates, the largest illegal market is the drug market, followed by the market for counterfeit and pirated products and counterfeit and stolen art (cf. Wehinger, 2011, p. 124).

Trafficking of goods is closely linked to illicit markets.[4] As such, all types of illegal and illicit trade are to be considered. The phrase "trafficking of goods" used in WP 7 refers to all cross-border criminal activities which involve the illicit trading, selling, dealing, possession or use of/in goods.

2. METHODOLOGY

Collecting comparable data within the EU is challenging. First, traders on the illicit market do not record their activities like on the legal market. Moreover, many Member States prefer their own methods of data collection (cf. von Lampe, 2007, p. 6). Law enforcement agencies sometimes don´t publish all their collected data or the database is not publicly assessable for further analysis (cf. Joossens, 2011, p. 1). For example, Lithuanian customs did not give access to specialised data (cf. information from TEISE). Differences in crime definitions, laws, criminal proceedings and crime data recording methods lead to difficulties in statistics. Further problems are caused by different kinds of data collection mechanisms (recorded data and survey-based data). In WP 2, it was apparent that difficulties still exist to obtain reliable and comparable datasets on criminal offences within the EU. In 2012, the European Commission published a Communication about "Measuring Crime in the EU: Statistics Action Plan 2011-2015." The Commission emphasised the indispensability of reliable and comparable statistics within the EU for evidence-based criminal policy (cf. European Commission, 2012, p. 2).

In D 7.1 the data were collected through statistics and surveys. The data collection was limited to quantitative information at an international, European and national level.[5] A time period of ten years was selected for comparing developments in illegal markets, but the data were not always available for this time period. Although different

3. Throughout this report, billion refers to 1000 million.

4. While the term "illegal" refers to behaviour that is contrary or forbidden by law, especially criminal law, the term "illicit" includes behaviour forbidden by law or other (social) rules (cf. Oxford Dictionary.).

5. The national level refers to Germany, Lithuania, the United Kingdom, Turkey (as Partner Countries of Work Package 7) and special contributions from the University of Parma.

data sources are used for assessing the scale of illegal markets, estimations contain limitations and uncertainties and cannot reflect illegal markets in all probability. For the description of illegal markets, 66 international, European and national statistics and surveys were exploited. The combination of official recorded crime data and survey-based data seems to be the best way to assess delinquency and crime, because all statistics, surveys and reports have their limitations. Selection criteria for statistics, reports and surveys were the comparability of data as well as their validity, significance and reliability. For this reason, European databases were, in as far as possible, preferred to national databases. To infer information of the legal market to illegal markets, mirror statistics and extrapolations are used. Seizure statistics present detected cases/articles and enable the illustration of the minimum scale of illegal markets. Mirror statistics – reconstructed on the basis of data concerning legal markets – can only provide an idea of the scale of illegal markets; they cannot reflect the real size of the overall illegal market. Extrapolation, subject to uncertainty, is a process of estimation used when little information is available. Known variables are extended to unknown areas like illegal markets. It depends on the individual product if, and how, the illegal market could be extrapolated. In the case of cigarettes and alcohol, for example, self-reported consumption can be compared with consumption calculated by tax-sales. The calculation of the extrapolations is explained under “Measuring methods” of the individual products.

3. RESULTS “ILLICIT MARKETS”

Trafficking of goods causes enormous damage to legal markets, job markets, tax revenues, customs tariffs, human life and social health. It is assumed that illicit markets are dependent on economic and employment developments (cf. Schneider/Boockmann, 2013, p. 1). While excise duties on goods belong to national revenues, customs tariffs that come from exports outside the EU belong to European revenue. The clandestine nature of illicit markets makes it difficult to determine their scale and structure.

3.1 Alcohol

The alcohol market plays a central role in the EU. A quarter of the world´s alcohol and over the half of the world´s wine production comes from Member States of the EU (cf. Anderson/Baumberg, 2006, p. 47). The Europeans per capita consumption is the highest worldwide (cf. European Commission - Eurobarometer 331, 2010, p. 2).

3.1.1. General remarks on the illicit alcohol market

The area of “trafficking of alcohol” is limited to home-made, illegally produced or smuggled beer, wine, fermented beverages (i.e., those not subject to excise duties),[6] alcohol surrogates (that are not intended to be consumed by humans) and home-produced alcohol sold within the EU. The European Council defines the following categories of alcohol and alcoholic beverages that are subject to excise duties if consumed by humans:

1. Beer (minimum strength of 0.5% alcohol by volume),
2. Wine (minimum strength of 1.2% alcohol by volume),
3. fermented beverages other than beer and wine, e.g., cider and perry, intermediate products, e.g., port and sherry, (minimum strength of 1.2% alcohol by volume), and
4. ethyl alcohol (i.e., distilled beverages/spirits) (minimum strength of 22% alcohol by volume).

6. Further information about definitions of the mentioned alcohol beverages is available in the Combined Nomenclature which is published in Annex I of the Council Regulation (EEC) N 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff. (The Combined Nomenclature is also used in intra-community trade statistics).

Although conditions for charging excise duties on goods are harmonised within the EU in order to ensure the functioning of the internal market,[7] their amount is still determined by the tax taken by national Member States and differs, for example, in 2006 from € 0.04 per 0.5 litre of beer in Germany to € 0.99 per 0.5 litre of beer in Ireland(cf. Cnossen, 2006, p. 6). Also, value added tax (VAT) – a consumption tax – differs according to alcohol from 15% in Luxembourg to 25% in Sweden.

3.1.2. Measuring methods

To better measure the illicit market of alcohol, the legal market is described through the following indicators: export, import, trade balance, turnover and taxes published by Eurostat as well as (per capita) consumption published by the WHO in “Global Status Report on Alcohol and Health 2011.” Statistical data about the legal market are used to develop mirror statistics. Additionally, seizure statistics of the European Commission – Taxation and Customs Union as well as statistics on non-reported consumption of alcoholic beverages by the WHO are used.

The minimum scale of the illicit market is described by the amount of seized products. For extrapolations of the illicit market of alcoholic beverages, the unreported per capita consumption has to be adjusted by an estimated percentage of legally not tax paid alcoholic beverages. The adjusted number is extrapolated to the population over 15 years. Additionally, the percentage of illicitly consumed alcohol per capita in relation to the reported consumption per capita is calculated. This percentage can be used to calculate the illicit part of the turnover of the legal market as well as the damage to tax revenue.

The WHO per capita consumption statistics are based on production and figures of sales data collected by various sources. They do not include consumption of home-made or illegally imported alcohol (cf. Rehm, p. 966 et. al). Nevertheless, it must be taken into account that mistakes can occur as the representative sample cannot fully reflect reality. The data for per capita consumption of alcohol are presented in litres of pure alcohol to make them comparable.

One common method to measure illicit trade is through a comparison of tax paid sales and individually reported consumption. In the case of the illicit alcohol market, data of individually reported consumption are not available at a European level. The per capita consumption data by the WHO as well as data from the Eurobarometer “EU citizens´ attitudes towards alcohol” are not suitable. The Eurobarometer “EU citizens´ attitudes toward Alcohol” is based on alcohol and public health, including some information about self-reported consumption of alcoholic beverages. The questions concern several attitudes of drinking alcohol, which makes it impossible to get suitable data through an extrapolation of the number of self-reported consumption.

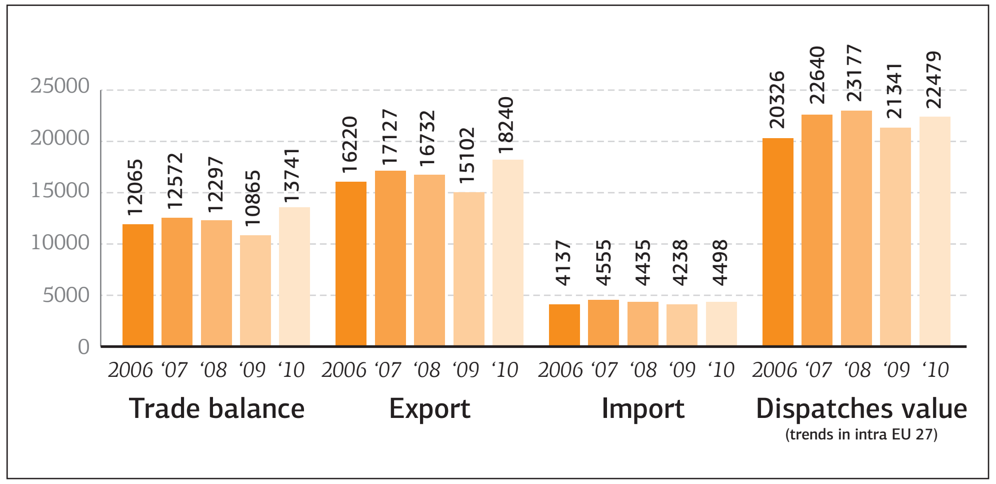
Seizure statistics are also lacking at a European and national level. Trafficked alcoholic beverages can be seized by customs or (border) police if they are counterfeited or an object of a criminal offence. The European Commission – TAXUD has published annual reports on customs enforcement of intellectual property rights. In its reports, alcohol and cigarettes are listed as a part of counterfeiting. But the reports only contain statistical information about detentions made under customs procedure. There is no officially published equivalent about detentions made under (border) police procedure.

Additional difficulties concern the presentation of data. While TAXUD presents the number of cases, number of articles (without information about the scale) and retail value of the original good, the Lithuanian border police have published the scale of articles in litres, whereas it is not said if it “litres” mean pure alcohol or litres of the seized product.

Another problem concerns inaccuracies in collecting data referring to the same

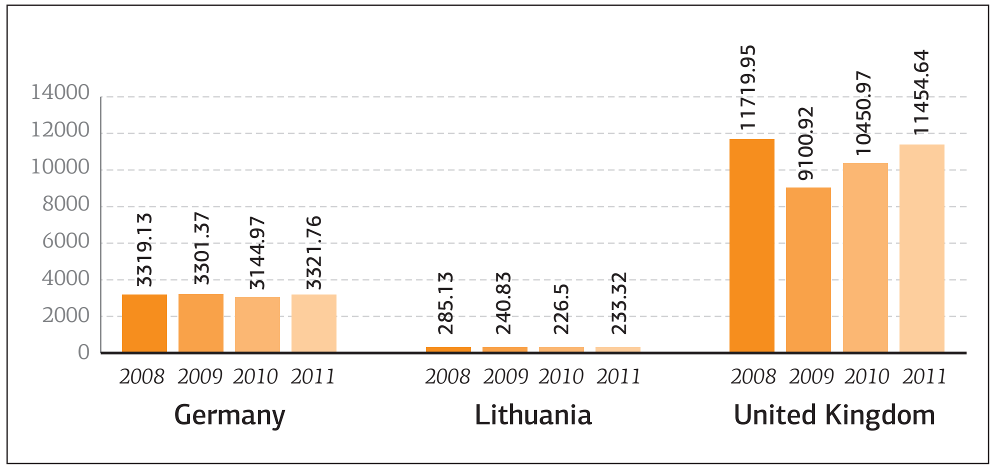
7. See: Council Directive 2008/118/EC.

Table 2: Trends in extra and intra-EU trade in million euros



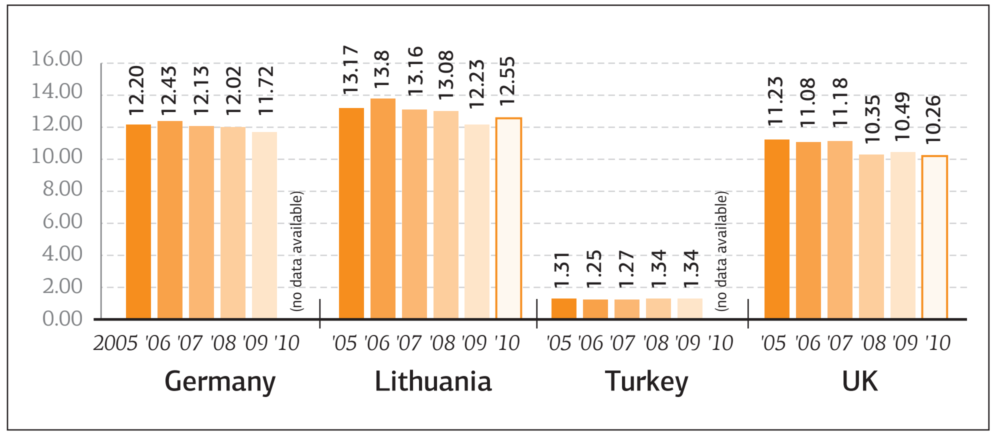
SOURCE European Commission - eurostat, 2011, pp. 54, 55, 57, 79

Table 3: Alcoholic beverages: revenue from taxes on consumption in million euros



SOURCE European Commission - TAXUD, 2012a, p. 5 et seqq.

Table 4: Alcohol: per capita consumption in litres (total)



SOURCE WHO (2013a): Global Health Observatory Data Repository

problem. Both the German Federal Statistical Office and the German "Brauwirtschaft" have published data about consumption of beer in the last 10 years. Although the trend is the same the amount differs slightly.

3.1.3. Statistical description

Legal market

The Europeans Union's trade balance, export, import and intra-EU dispatches of beverages have remained relatively stable. Nearly four times more beverages are exported than imported (in 2010: export: €18,240 million, import: €4,498 million). The dispatches of intra-European trade account for an average of €22,000 million.

The same nearly stable development appears relating to the revenue from taxes on consumption of alcoholic beverages. The average revenue of the United Kingdom between 2008 and 2011 accounts for approximately €11,000 million, the average tax revenue of Lithuania accounts for €250 million and of Germany it accounts for €3,000 million. In 2006, the turnover concerning alcoholic beverages[8] accounted for €90,894 million (cf. European Commission - eurostat, 2009, p. 109).

Consumption

The per-capita consumption, measured by the WHO or national offices, is an important indicator to extrapolate estimations. To get comparable data, the recorded per-capita consumption by the WHO are used.

According to the WHO, the total adult per capita (APC):

> "is defined as the total (sum of recorded APC average for 2003-2005 and unrecorded APC for 2005) amount of alcohol consumed per adult (15+ years) over a calendar year, in litres of pure alcohol. Recorded alcohol consumption refers to official statistics (production, import, export, and sales or taxation data)" (WHO, 2013a, Levels of Consumption).

The per capita consumption of alcohol within the four selected countries has decreased slightly. In 2009 the per capita consumption accounted for 11.72 litres in Germany, 12.23 litres in Lithuania, 1.34 litres in Turkey and 10.49 litres in the UK.

Referring to the WHO's statistics from 2005, it would appear that nearly 22% of the total consumed alcohol beverages in Europe were unreported. That is (visible in Table 4) 1 litre (7.81%) of pure alcohol in Germany, 3 litres (19.96%) in Lithuania, 1,5 litres (52.26%) in Turkey and 1,7 litres (12.72%) in the United Kingdom in 2005 (WHO, 2013a, Levels of consumption). The WHO defines the number of unrecorded APC consumption as the amount of alcohol which is not taxed and is outside the usual system of governmental control. The number of tourists per year is considered and deducted from the country's recorded APC. To get the amount of unrecorded APC consumption, the WHO converts survey questions on consumption of unrecorded alcohol into estimates per year of unrecorded APC.

> "In countries where survey based estimates exceeded the recorded consumption, unrecorded was calculated as total consumption estimated from survey minus recorded APC. In some countries, unrecorded is estimated based on confiscated alcohol confiscated by customs or police" (WHO, 2013a, Unrecorded per capita consumption).

8. Alcoholic beverages include: distilled potable alcoholic beverages, production of ethyl alcohol from fermented materials, wines, cider and other fruit wine, other non-distilled fermented beverages, beer.

Seizure

Table 5: Seizures of European Customs Authorities, Alcohol

.	2009[9]	2010[10]	2011[11]
Number of cases	3	9	8
Number of articles	34,495	129,145	74,689
Retails value		693,056	955,580

The annual report on "EU customs enforcement of intellectual property rights" by the European Commission Taxation and Customs Union includes information of national customs authorities. "Cases" represent an interception by customs and cover a certain amount of individual articles. Until 2009, alcoholic beverages were presented together with other foodstuffs. While the number of seized articles decreased from 129,145 to 74,689, the retails value of the original product increased from €693,056 to €955,580 (cf. European Commission - TAXUD, 2012, p. 22).

Damage

Similar to other illicit markets, it is impossible to quantify the value of the illicit alcohol market. The European High Level Group for Fraud has estimated that €1,500,000,000 was lost to alcohol fraud. It proceeded on the assumption that the intra-European cross-border trade increased due to the fact that travellers transport more alcohol from lower cost countries in the EU (cf. Anderson/Baumberg, 2006, p. 47). Tax can be legally avoided if alcoholic beverages are bought in low-price European country and transported by the individuals themselves to a high-price country (beer in Denmark costs 40% of the price in Sweden) (cf. Anderson/Baumberg, 2006, p. 53).

3.1.4. Surveys, reports

Several studies, surveys and reports refer to health damages of alcohol, but there are only a small number of reports concerning unrecorded consumption of or illicit trade with alcohol beverages at a national, European or international level.

- HM Revenue & Customs calculates the gaps of tax revenues annually based on a detailed and efficient system that considers several uncertainties relating to estimations.[12] In 2012, HM Revenue Customs estimates that "alcohol duty is damaging the legitimate UK alcohol industry resulting in losses of up to £1.2bn (€1.39bn) per annum to the UK taxpayer" (HM Revenue and Customs, 2012, p. 2).
- In their study "Alcohol in Europe," Anderson and Baumberg (2006) note that the

    "only existing estimate for the EU15 [that] comes from the European High Level Group on Fraud, which estimated that €1.5bn was lost due to fraud in 1996, equivalent to around 8% of the total alcohol excise duty at the time" (Anderson/Baumberg, 2006, pp. 52, 53).

  Furthermore they explain that "any highly-taxed good like alcohol is susceptible to smuggling, but price differences in Europe play little part" (Anderson/Baumberg, 2006, p. 53). According to them, it is difficult to get reliable data about illicit trade on the alcohol market. Lachenmeier (2010) added in the study "Alcohol in the EU" that estimations about the size of the illicit market is lacking, as too are measurements concerning the amount of alcohol consumed(cf. Lachenmeier, 2012, p. 32).

3.1.5. Conclusion

The legal market, measured through the factors "trade balance, export, import, dispatches and excise duties" remains, with some fluctuations, as stable as the average adult per capita consumption in Germany, Lithuania, Turkey and the United Kingdom.

Referring to the number of seized products by custom authorities within the EU, the minimum scale of the illicit alcohol market accounted for 129,145 articles in 2010 (2011: 74,689 articles) and €693,056 worth of retail value in 2010 (2011:€955,580).

9. European Commission - TAXUD, p. 20.
10. European Commission - TAXUD, p. 22.
11. European Commission - TAXUD, p. 22.
12. For more information: HM Revenue and Customs (2012): Methodological annex for measuring tax gaps 2012.

For extrapolation, the mentioned numbers of unrecorded adult per capita consumption of pure alcohol calculated by the WHO are used. They come to 1 litre (7.81%)[13] in Germany, 3 litres (19.96 %) in Lithuania, 1.5 litres (52.26 %) in Turkey and 1.7 litres (12.72 %) in the United Kingdom and an average of 22% in the EU.

Compared with the average tax revenue from 2008-2011 seen in Table 3, the size of the illicit market can be estimated as follows: approximately €25,553 million in Germany, approximately €49 million in Lithuania and approximately €1,359 million in the United Kingdom. This final estimation for the United Kingdom is quite similar to the estimation of HM Revenue & Customs of €1,390 million (see above).

The illicit alcohol market in the European Union accounts for an average of 22% of the legal market; large differences exist between the individual Member States.

3.2 Cigarettes

Tobacco is considered one of the biggest risk factors for ill-health in the EU (cf. Europäische Kommission GD Health and Consumers, 2009, p. 1). For this reason the EU and its Member States try to reduce the consumption of cigarettes(cf. European Commission, 2007, p. 7). Tax increases are seen as one effective possibility to reduce consumption, while tax evasion and tax avoidance undermine such measures (cf. Joossens/Raw, 2012, p. 232). In 2005, the WHO Framework Convention on Tobacco Control (in the following: WHO FCTC) entered into force. It is an international treaty, "developed in response to the globalisation of the tobacco epidemic" (WHO FCTC, p. V). Referring to Article 15 of the WHO FCTC the illicit trade in tobacco products includes "*smuggling, illicit manufacturing and counterfeiting.*"

3.2.1. General remarks on the illicit tobacco products market

Although the illicit market of cigarettes (boxed and hand-rolled) is generally mentioned, the market is not limited to cigarettes, but includes other tobacco products (e.g., cigars and pipe tobacco), too.

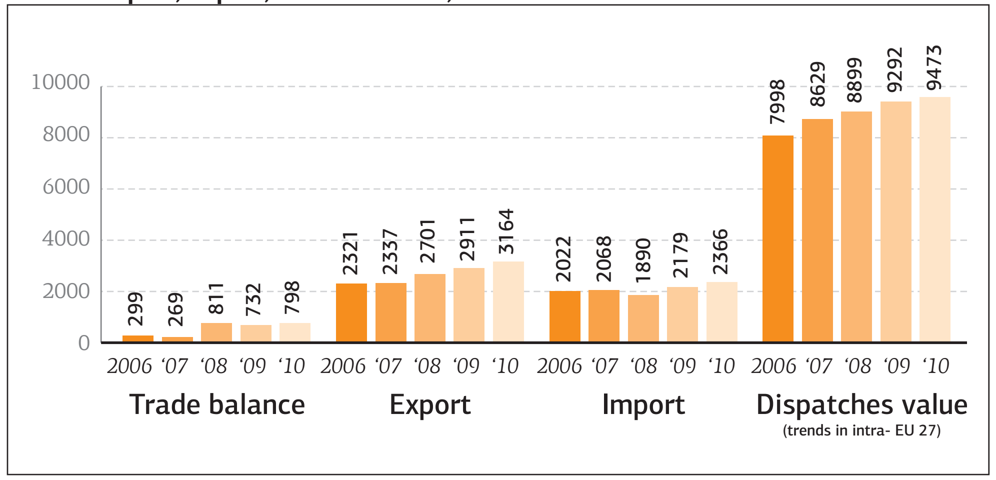
The WHO FCTC defines tobacco products as "products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing." The British Tobacco Product Duty Act (1979) has listed the following products as "tobacco products": cigarettes, cigars, hand-rolling tobacco, other smoking tobacco, chewing tobacco (Section 1 of Tobacco Products Duty Act). The German "Tabaksteuergesetz" additionally includes products that are similar to tobacco but are produced from other substances. Additional state controls concerning ingredients are also in place. For example, in Germany, maximums for tar, nicotine, carbon monoxide and other substances are regulated. As illicitly traded tobacco products are not controlled, they may exceed these maximum limits.

3.2.2. Measuring methods

As Joossens mentioned in his study "Illicit tobacco trade in Europe issues and solutions," the data collection as well as the measurement of the illicit tobacco market are difficult (cf. Joossens, 2011, p. 7). He assesses three methods to measure the illicit tobacco trade: 1.) comparison of tax paid sales and self-reported consumption, 2.) surveys of tobacco users´ purchasing behaviour and 3.) observational data collection (e.g., collection of empty cigarette packs) (cf. Joossens, 2011, pp. 1, 11,12). Merriman added that, indeed, reliable statistics about tax paid sales are usually available and published by (tax) authorities. It is, however, difficult to get reliable independent data of tobacco consumption (cf. Merriman, p. 22). With regard to self-reported consumption data, the danger of underestimation has to take into account, as participants may be unwilling

13. Percentage of legal consumption.

Table 7: Export, Import, Extra-EU trade, Intra-EU trade



SOURCE (Export, Import: Eurostat (online data code: tet00038), Extra-EU trade, Intra-EU trade: Eurostat (online data code: ext_lt_intratrd)

Table 8: Revenue from taxes on consumption

(excise duties and similar charges) other than VAT

Country	2008	2009	2010	2011
Germany [14]	13562,75	13357,16	13478,28	14403,67
Lithuania [15]	198,18	199,94	160,49	186,42
UK	11022,43	8569,19	10152,56	11049,43

SOURCE European Commission - TAXUD, 2012b, p. 5 et seqq.

to admit to unhealthy behaviour.

Measuring the illicit tobacco market most closely corresponds to "measuring methods" in the section about the illicit alcohol market. The legal market is described through the following indicators: export, import, trade balance, turnover and tax revenue published by Eurostat. The data concerning the average consumption of smokers are used through Eurobarometer "Attitudes of Europeans towards tobacco." Seizure statistics of the European Commission – Taxation and Customs Union as well as national customs authorities are used to describe the minimum scale of the illicit tobacco trade. Additionally, results from reports and a study about smuggling cigarettes in Germany (published by Hamburg Institute of International Economics) are considered. The latter study refers to 12,000 empty packages of cigarettes that are collected and analysed monthly to get data on the illicit market.

The unreported number of consumed cigarettes, respectively the percentage of legal markets, is determined through the following indicators: Eurobarometer for per capita consumption and the average calculated estimation of reports to get a percentage of the legal market. Subsequently, a percentage of legally not tax paid tobacco products is deducted. The result is extrapolated to the European population in the case of per capita consumption and compared with tax revenues.

Although cigarettes are usually measured separately, it is not always clearly defined whether only boxed cigarettes are included or also hand-rolled cigarettes. Hand-rolled cigarettes are self-made using fine cut tobacco. In some cases, fine cut tobacco is listed with cigarettes (as self-made cigarettes), for example in Eurobarometer; sometimes it is assessed separately, e.g., consumption overview by the European Commission; sometimes it is placed together with other tobacco products (e.g., customs statistics). Further tobacco products are usually either summarised, e.g., customs statistics, or not mentioned, e.g., consumption overview published by the European Commission.

14. Information about cigars was not available.

15. No further information about cigars.

3.2.3. Statistical description

Trade, tax revenue

Despite of several political action plans to reduce smoking, the European intra-EU dispatches and the export of cigarettes/tobacco products increased by €7,998 million from €2,321 million in 2006 to €9,473 million to €3,164 million in 2010. The import increased slightly from €2,022 million in 2006 to €2,366 million in 2010. The trade balance increased sharply from €299 million in 2006 to €811 million in 2008; is then decreased to €798 million in 2010 (Table 7).

Matching the numbers concerning trends in extra- and intra EU trade, the revenue from taxes on consumption slightly increased in Germany and the United Kingdom, though in the United Kingdom the revenue decreased from 2008 to 2009. In Lithuania, a drop of nearly 8% from 2008 to 2011 can be seen, but the revenue has increased again from 2010 to 2011.

Number consumption

While the consumption of cigarettes within the EU and Lithuania has steadily declined since 2006 from €716 bn (Lithuania €5 bn) in 2006 to €586 bn (Lithuania nearly €3 bn), the consumption in Germany and the United Kingdom has decreased slightly from €93 bn (UK €48 bn) in 2006 to €87 bn (UK €41 bn) in 2011 (Table 9). Conversely, the consumed amount of fine cut tobacco has sharply increased within the EU (around 40%) as well as in Germany, Lithuania and the United Kingdom (Table 10).

The Eurobarometer survey "Attitudes of European's towards Tobacco" (2012) is a household survey analysing the public attitudes towards tobacco, e.g., smoking behaviour, reasons for stopping smoking. According to the survey, 28% of the European population over 15 years smokes cigarettes, cigars or a pipe (cf. European Commission - Eurobarometer 385, 2012, p. 6). 7,366 smokers within the EU were asked how many cigarettes they smoke each day on average (cf. European Commission - Eurobarometer 385, 2012, p. 21). They consume an average of 14.2 cigarettes per day. Experiences with illicit tobacco trade are not measured in the survey.

Seizure

The annual report on "EU customs enforcement of intellectual property rights" by

Table 9: Releases for consumption of cigarettes 2006-2011

Country	2006	2007	2008	2009	2010	2011
EU	716,846,142	713,756,109	696,722,771	626,584,157	598,905,312	586,221,658
Germany	93,465,500	91,497,320	87,978,850	86,606,770	83,564,540	87,555,780
Lithuania	5,216,700	4,724,283	5,682,676	4,187,810	2,497,415	2,798,971
UK	48,962,000	45,749,000	45,733,000	47,575,000	45,235,000	41,986,000

source: European Commission – TAXUD (n.d.): Releases for consumption of cigarettes and fine cut tobacco)

Table 10: Release for consumption of fine cut tobacco

Country	2006	2007	2008	2009	2010	2011
EU	61,682,438	66,609,055	65,732,939	77,754,896	82,193,242	85,930,379
Germany	18,747,400	22,381,170	21,849,270	24,403,690	25,486,420	27,043,240
Lithuania	12,718	14,678	16,437	19,923	30,136	31,208
UK	3,454,000	3,644,000	4,144,000	5,079,000	5,378,000	5,850,000

SOURCE: European Commission – TAXUD (n.d.): Releases for consumption of cigarettes and fine cut tobacco

Table 11: Seizures of cigarettes and other tobacco products

.	Product	2006	2007	2008	2009	2010	2011
Number of cases	*Cigarettes*	300	418	445	133	107	67
	other tobacco products	n/a	n/a	n/a	7	1	43
	Total	- n/a	n/a	n/a	140	108	110
Number of articles	*Cigarettes*	73,920,446	27,161,056	41,907,847	22,352,851	34,646,097	20,234,352
	other tobacco products	n/a	n/a	n/a	18,632,187	8,174,565	75,579
	Total	n/a	n/a	n/a	40,985,038	42,820,662	20,309,931
Retail value original goods	*Cigarettes*	- n/a	n/a	n/a	n/a	124,625,672	87,963,597
	other tobacco products	n/a	n/a	n/a	n/a	1,476,280	1,039,607
	Total	n/a	n/a	n/a	n/a	126101952	89003204

SOURCE European Commission-TAXUD, 2012: p.23

the European Commission TAXUD includes information from national customs authorities. The report contains no retail value of the original goods prior to 2010. From 2006 to 2009, only cigarettes were listed.

However, as seen in Table 11, the number of cases as well as the number of seized articles concerning cigarettes had undergone some fluctuations, though it has declined steadily from 2006 to 2011.In 2011, the lowest number of cases, articles and retail value of all tobacco products was seized. As mentioned above, the reason for the decrease may either be less trafficking of tobacco products or fewer articles are being detected by accident.

3.2.4. Surveys, reports

Surveys and reports relating to tobacco use focus primarily on health risks and measures designed to regulate smoking; very few reports deal with illicit trade in general or the estimation of its size.

A useful analysis about the illicit tobacco trade is conducted by Joossens and Raw. They collected data on estimations of the illicit trade in cigarettes from several sources (e.g., academic articles, government publications, estimates of companies). They estimated that in 2007, 657 billion cigarettes were illicitly traded worldwide: 533 billion in low-income and middle-income countries and 124 billion in high-income countries (cf. Joossens/Raw, 2012, p. 232).

OLAF mentioned in its 2011 summary of achievements that

> “although accurate statistics are difficult to obtain, the direct loss in customs revenue as a result of cigarette smuggling in the EU is estimated to amount to more than €10 billion a year” (OLAF, 2012, p. 19).

The EU´s law enforcement agency Europol assumes that the illicit tobacco trade costs the EU about €10 billion in lost tax revenue every year, though no further information is provided on how this assumption was reached (cf. Europol, 2011, p. 15).

- The United Nations Office on Drugs and Crime (UNODC) estimated the share of national tobacco markets that are illicit[16] in the EU[17] at 8% in 2007 (UNODC, 2009).
- In 2012, a report concerning the “Economic analysis of the EU market of tobacco, nicotine and related products” was produced under the Health Programme of the European Commission and conducted by Matrix Insight. The report found that the European cigarette market was 608.8 billion sticks in 2010, corresponding to an overall market value of €121.3 billion (cf. Matrix Insight, 2012, p. 22).[18] Illicit trade is defined as non-duty paid cigarettes. Data was available for 24 Member States of the EU. In 2010, the overall size of non-duty paid cigarettes was 80.5 billion sticks (cf. Matrix Insight, 2012, p. 27). An increase in the illicit trade at a rate of around

16. Recent low end estimates.

17. Without Bulgaria and Romania.

18. The data about the illicit market were collected by Euromonitor (an independent company for market research) and are not available as primary data.

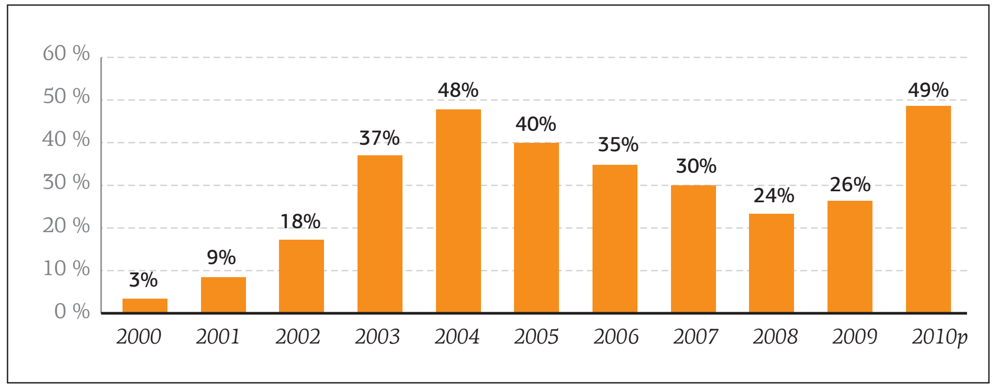
1% per year was expected (cf. Matrix Insight, 2012, p. 28). The illicit cigarettes trade represented 8.25% of total trade for the EU, but there are significant differences between the Member States (e.g. 27.1% for Lithuania and 1% for Denmark).

- Estimates from the U.S. and Europe suggest that cross-border shopping, tourist shopping, duty free sales, and bootlegged cigarettes can account for about three percent of consumption (cf. Merriman, p. 51). Bootlegging tobacco products contains legally bought products in a low-tax country, which are illegally re-sold in a high-tax country (cf. Transcrime, 2012a, p. 8).
- The professional service company KPMG prepared a report on the illicit tobacco market for Philip Morris International. According to their estimation, in 2011 nearly 65.3 bn cigarettes (64.2 bn in 2010) where consumed illegally, which accounted for10.4% of all cigarettes consumed (cf. Philip Morris International, 2012).
- In 2010, the Hamburg Institute of International Economics (HWWI) published a study about the economic consequences of unpaid cigarette tax. Their study was based on the monthly analysis of 12,000 packages of cigarettes. These empty packages were collected at recycling and disposal points. According to their findings, 20% of cigarettes consumed in Germany had not been taxed.
- The German “Zigarettenverband”[19] assumes that in 2011, 23.5 billion not tax paid cigarettes were smoked. 19.9 billion out of 23.5 billion cigarettes (85%) were bought in another Member State of the EU or as duty-free goods. The association estimates a tax losses of €4.2 billion (for 23,5 billion cigarettes) (cf. Deutscher Zigarettenverband, 2012).
- In their 2012 study on “Plain Package and illicit trade in the UK,” the Joint Research Centre on Transnational Crime published a table about estimates of the size of the UK illicit cigarette market and (in brackets below) the hand-rolled tobacco market in percentage of the total market (see: Table 12). While the four estimations differ noticeably, they all found that illicit trade decreased (Transcrime, 2012b).
- *Smuggled cigarettes in total number of consumed cigarettes in Lithuania:* The share of smuggled cigarettes in Lithuania decreased steadily between 2004 and 2008, it increased slightly in 2009 and, according to estimations, rose dramatically in 2010.

Table 12: Estimations of illicit cigarette trade in the UK

Source	2006	2007	2008	2009
HMRC[20]	15 (56)	14 (50)	13 (50)	10 (46)
Euromonitor	17	16.7	16.5	15.9
KPMG	13	15.8	15.6	12.6
TMA[21]	27 (69)	27 (67)	24 (62)	21 (57)

Table 13: Smuggled cigarettes in total number of consumed cigarettes in Lithuania



SOURCE: Institutas

19. The “DeutscherZigarettenverband” is an association representing cigarette companies and smokers.

20. HM Revenue and Customs.

21. TMA= Tobacco Manufacturers´Association UK.

3.2.5. Conclusion

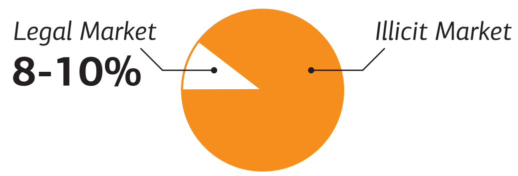
The legal market, measured through indicators like “trade balance, export, import, dispatches, turnover and excise duties” is seen to be slightly increasing, while the number of seized articles as well as their retail value has decreased. Corresponding to the illicit alcohol market, there are no statistical data about offences relating to smuggling of tobacco products available.

Referring to the number of seized products by customs authorities within the EU, the minimum scale of the illicit tobacco market accounted for 42,820,662 articles in 2010 (2011: 20,309,931 articles) which were worth €126,101,952 at retail value (2011: €89,003,204).

For extrapolation purposes, self-reported consumption is used. On average, 28% of the population smoke in the EU; each of these smokers consumes, on average, 14.2 cigarettes per day. This is equal to an approximated amount of 615,025 million smoked cigarettes per year. In 2011, 586,222 million cigarettes were released. The adjusted number (export is nearly 34 % higher than import) accounts for an approximate amount of 386,000 million cigarettes. According to this calculation, 229,000 million (approximately 40%) of cigarettes are smoked without being released in the EU. This number is very high, because it includes the unknown number of cigarettes that are bought in foreign countries and imported legally for private use. There is no suitable number for the EU about legally imported and not tax paid cigarettes. HWWI calculated that in Germany, tax is not paid for nearly 85% of cigarettes smoked. If this percentage is related to the number of cigarettes not released in the EU, the estimation has to be adjusted to 6% (that means 6% of consumed cigarettes are illegally not tax paid). The estimation still includes uncertainties and is based on partially dissimilar data (e.g., some data are from 2012, some from 2011). The estimated scale of 6% fits with most estimations of authorities, organisations and companies.

The estimated average percentage of the illicit cigarette market found by other reports (e.g., UNODC, KPMG, Matrix Insight) is between 8 and 10% of the total market.

Table 14: Legal and illicit tobacco market



3.3 Drugs

Contrary to the other products covered by WP 7, the drug market is a purely illicit market. WP 7 concentrates on heroin (as a hard drug), cannabis (as a soft drug) and ecstasy (as a synthetic drug).

3.3.1. General remarks on the illicit drug markets

According to theWHO, drugs refer in common usage “[...] specifically to psychoactive drugs, and often, even more specifically, to illicit drugs, of which there is non-medical use in addition to any medical use”(WHO, 2013b). The drugs playing a role in this deliverable are defined by the United Nations Office on Drugs and Crime in their report “Get the facts about drugs.”

Heroin is described as an

> “addictive drug with pain-killing properties processed from morphine, a naturally occurring substance from the opium poppy plant. Pure heroin is a white powder. Street heroin is usually brownish-white because it is diluted or “cut” with impurities, meaning each dose is different” (UNODC, 2008, p. 8).

Cannabis is

> “a tobacco-like greenish or brownish material made of the dried flowering tops and leaves of the cannabis (hemp) plant. Cannabis resin or “hash” is the dried black or brown secretion of the flowering tops of the cannabis plant, which is made into a powder or pressed into slabs or cakes. Cannabis oil or “hash oil” is a liquid extracted from either the dried plant material or the resin” (UNODC, 2008, p. 4).

Ecstasy is

> “a psychoactive stimulant, usually made in illegal laboratories. In fact, the term “ecstasy” has evolved and no longer refers to a single substance but a range of substances similar in effect on users. Frequently, any tablet with a logo is now referred to as “ecstasy” regardless of its chemical makeup. While the drug is usually distributed as a tablet, it can also be a powder or capsule. Tablets can have many different shapes and sizes” (UNODC, 2008, p. 7).

3.3.2. Measuring methods

According to Reuter/Trautmann there is no valid method to measure drug trafficking. The only available indicator is seizures of drugs (cf. Reuter/Trautmann, 2009, p. 261). As mentioned above, the significance of seizures statistics is limited, but the minimum scale can be described. The European Monitoring Centre for Drugs and Drug Addicted (EMCDDA) pointed out another problem:

> “data on drug seizures relate to all seizures made in each country during the year by all law enforcement agencies (police, customs, national guard, etc.). Caution is required in relation to double-counting that might occur within a country - although it is usually avoided - between various law enforcement agencies” (EMCDDA, 2012).

EMCDDA and Europol confirmed in their study “EU Drugs Market Report” that “systematic and routine information on illicit drug markets and trafficking is still limited” and that there is a lack of sophisticated information systems related to drug supply” (cf. EMCDDA/Europol, 2013, p. 17). A further indicator of developments in illicit trade includes data about recorded offences and offenders. Additionally, reports and data collected by the WHO or the EMCDDA relating to estimates of the scale of the illicit drug trade are used.

3.3.3. 3.3 Statistical description

Seizure

Table 15 describes the development of the number of seized heroin, cannabis (resin and herbal) and ecstasy in Germany, Lithuania, the United Kingdom and Turkey. The number of seizures is described based on “number of cases.” This factor was preferred to the category “value” to avoid fluctuations in the development due to a small number of

Table 15: Number of drugs seized by cases

Product by cases	Country	2002	2003	2004	2005	2006	2007	2008	2009	2010
Heroin	*UK*	15432	12965	11668	14072	13942	14186	13302	12836	10812
	GER	6658	6138	6608	6691	6763	6853	6638	6183	5645
	LIT	132	40	67	99	190	272	282	381	212
	TR	477	401	588	1381	795	1100	1507	2714	4155
	Total	22699	19544	18931	22243	21690	22411	21729	22114	20824
Cannabis (herbal)	*UK*	41810	36839	43203	76337	110135	138337	145353	144456	139209
	GER	13380	12374	17151	22257	23506	21831	24594	24135	24710
	LIT	75	117	239	158	218	259	249	313	268
	TR	3357	3539	4875	2868	5132	10454	11959	26619	46122
	Total	58622	52869	65468	101620	138991	170881	182155	195523	210309
Cannabis (resin)	*UK*	62796	60068	37060	43540	34028	32350	35795	24339	18293
	GER	13953	10267	12648	13030	11764	9762	10313	9294	7427
	LIT	10	10	23	24	30	14	19	33	11
	TR	907	522	304	814	234	638	731	8564	16775
	Total	77666	70867	50035	57408	46056	42764	46858	42230	42506
Ecstasy	*UK*	8342	7577	6573	6944	8595	7609	5218	3724	2535
	GER	3417	2571	3463	3238	2382	2495	2698	1761	1209
	LIT	9	72	98	92	85	114	94	88	23
	TR	154	306	599	1893	874	783	569	411	1371
	Total	11922	10526	10733	12167	11936	11001	8579	5984	5138

SOURCE EMCDDA: statistical bulletin 2012 – drug seizure

large seizures, for example. The number of seizures of cannabis (herbal) increased dramatically from 2002-2010 and accounted in 2010 for 210,309 (in total). It is the most commonly seized drug. In contrast, the total number of seized cannabis (resin) cases declined rapidly in the corresponding period. The same trend can be noticed within Germany, Lithuania and the United Kingdom, while in Turkey the number of seized cannabis (resin) cases increased strongly. The number of cases concerning seized heroin and seized ecstasy decreased steadily in England and Germany from 2002 to 2010. In Lithuania, seized ecstasy cases decreased, with fluctuations, whereas the number of seized heroin increased until 2009, before it declined rapidly from 88 to 23 cases. In Turkey, the number of seized heroin cases rose steadily, while the number of seized ecstasy cases curved upwards from 2002 to 2009 with a peak in 2005 and then again increased in 2010 from 411 to 1,371 cases. According to EMCCDA and Europol, the reason for the reversal of the European trend in Turkey may be changes in trafficking flows as well as in law enforcement activities (cf. EMCDDA/Europol, 2013, p. 30).

Offences

In its statistics on crime and criminal justice, Eurostat collects the number of criminal offences recorded by the police. According to Eurostat, drug trafficking includes the

> "illegal possession, cultivation, production, supplying, transportation, importing, exporting, financing etc. of drug operations which are not solely in connection with personal use" (European Commission-Eurostat, 2012, p. 4)

While the trend for total recorded crime steadily has decreased in the last ten years, the number of drug trafficking offences seems to be stable within the EU (cf. Eurostat:

Table 16: Number of seized drugs

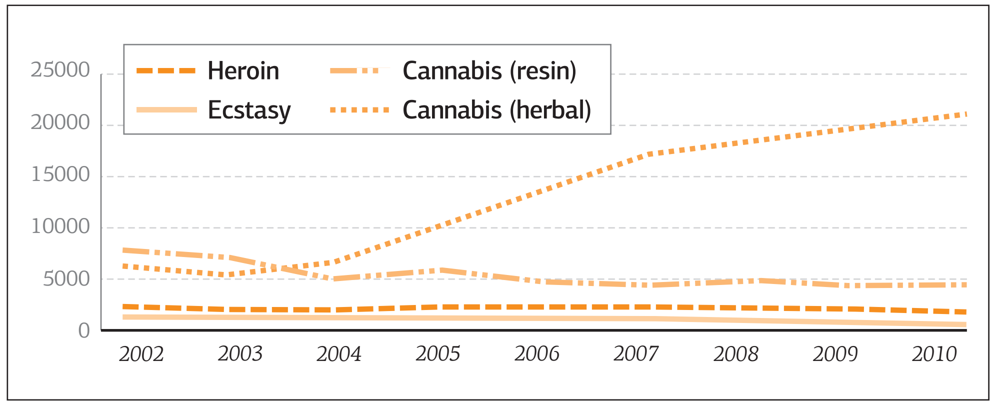


Table 17: Drug trafficking[22], recorded cases by police

Country	2003	2004	2005	2006	2007	2008	2009
Germany	73375	75347	72002	64865	64093	55905	50965
Lithuania	509	711	999	704	765	793	874
UK	34077	33898	35238	48269	38686	40816	42900
Turkey	5036	6720	7550	10508	13649	15366	

SOURCE Eurostat: Statistic in focus 2003-2009)

Statistic in focus 2003-200). Referring to Table 14 about recorded cases of drug trafficking in Germany, Lithuania, the UK and Turkey, the number of recorded cases in Germany (without external land and sea borders) decreased steadily between 2003 and 2009, while the number in Lithuania, the UK (with external borders) and Turkey (as a neighbour to the EU) increased.

3.3.4. 3.4 Survey, reports

The drug market is a well analysed research area; it appears in a large amount of surveys and reports usually concentrated on different kinds of drugs, drug addicts, criminal offences related to drug addiction, health consequences, production, drug use, other drug related problems and drug policies. Notwithstanding, access to systematic information on illicit drug markets is still limited (cf. EMCDDA/Europol, 2013, p. 17). Beneficial sources for information on drug trafficking are the used data collected by the WHO or the EMCDDA as well as the report on "Global Illicit Drugs Markets 1998-2007" by Reuter and Trautmann and the "EU Drug Markets Report – a strategic analysis" published by Europol and the EMCDDA in January 2013.

- The EMCDDA estimates that nearly 2500 tons of cannabis are consumed annually within the European Union and Norway. This amount corresponds to an estimated value of the cannabis market at street level between €18 and €30 billion (cf. EMCDDA/Europol, 2013, p. 134).
- Referring to heroin, the EMCDDA observed, as mentioned in their 2012 annual report, less available heroin in supply and therewith fewer consumers (cf. EMCDDA, 2012a).
- Reuter/Trautmann calculated, as accurately as possible, on the basis of surveys and with factors like the estimated "*number of users*", "*price per gram or tablet*" or "*consumed gram per day*" an average retail spending. The results can be used for an approximate characterisation of the illicit drug trade relating to heroin, cannabis and ecstasy. Due the large range of uncertainties, they presented high and low estimates.

22. Referring to Eurostat "Statistics in focus 2003-2009" drug trafficking includes illegal possession, cultivation, production, supplying, transportation, importing, exporting, financing etc. of drug operations which are not solely in connection with personal use (cf. Eurostat: Statistic in focus 2003-2009: 11).

The following tables present the expenditures for cannabis, heroin and ecstasy, circa 2005, issued by Reuter and Trautmann:

Table 18: Size of the retail cannabis market, around 2005

(Euros in millions; MT= metric tons consumed)

Product	Country		Low	Best	High	Best/GDP
Cannabis	*Germany*	€	974.1	2182.2	4545.2	0.09%
		MT	148.2	332.0	691.5	
	Lithuania	€	13.2	29.6	61.9	0.14%
		MT	1.8	3.9	8.2	
	UK	€	677.0	1414.8	3151.6	0.08%
		MT	201.3	450.4	937.1	

SOURCE: (Reuter/Trautmann, 2009, p. 115)

Table 19: Heroin expenditures by assumed purity at retail level (€ millions), 2005

Product	Country	20%pure	40%pure	60%pure
Heroin	*Germany*	981.9	491.0	327.3
	Lithuania	67.5	33.7	22.5
	UK	4,606.7	2,303.4	1,535.6

SOURCE: Reuter/Trautmann, 2009, p. 123

Table 20: Ecstasy: expenditures

Product	Country	Retail spending LOW (000s €)	Retail spending HIGH (000s €)
Ecstasy	*Germany*	99,385	767,002
	Lithuania	1,29	10,594
	UK	152,310	1,250,976

SOURCE: Reuter/Trautmann, 2009, p. 136

The prices that have to be paid for drugs depend on the kind of drug and the country. As a hard drug, heroin is the most expensive drug. Heroin and cannabis are most expensive in Lithuania, where cannabis resin costs three times more than in the United Kingdom.

- As mentioned above, the EMCDDA and Europol launched the "EU Drug Markets Report – a strategic analysis" in January 2013. They collect data on drug offences, drug seizures and drug purity (and potency) as well as drug retail prices in Europe. Table 35 presents an overview about their estimations of users, the number of seizures and the mean retail price within the European Union.

3.3.5. Conclusion

According to seizure statistics, the illicit drug markets for heroin, cannabis (resin) and ecstasy has slightly decreased in the last years within the EU (without Turkey) and account for 16,669 cases of heroin, 25,731 cases of cannabis (resin) and 3,767 cases of ecstasy in 2010. The illicit market on cannabis (herbal) increased and accounted for 164,187 cases in 2010. The number of offences related to drug trafficking has increased slightly within the EU, although in Germany the number of offences has slightly decreased. Concerning the total number of offences, drug offences come to the following percentage: in Germany the share felt from 1.03% in 2006 to 0.84% in 2009. In spite of this result, the percentage of drug offences increased: in Lithuania from 0.93% in 2006 to 1.15% in 2009, in the United Kingdom from 0.81% in 2006 to 0.9% in 2009 and in Turkey from 1.07% in 2006 to 1.56% in 2008.[23]

Reuter/Trautmann gave a deep insight into the individual drug markets. Referring to their calculations, the best price for the cannabis market accounts for €2.18billion in Germany, €29.6 million in Lithuania and €1.41 billion in the United Kingdom,

23. Data for 2009 were not available.

Table 21: Price per gram for cannabis, heroin and ecstasy.

Product	Country	Price per gram in Euros
Cannabis resin	Germany	7.10
	Lithuania	9.9
	UK *	3.3
	Turkey	8.5
Cannabis herbal	Germany	8.7
	Lithuania	10.1
	UK *	3.3
	Turkey	5.0
*Heroin***	Germany	36.2
	Lithuania	57.6
	UK	46.7
	Turkey	n/a
*Ecstasy****	Germany	6.6
	Lithuania	3.5
	UK	3.5
	Turkey	7.0

* Price of cannabis, both resin and herb

** Heroin undistinguished

*** Price per tablet

SOURCE: (UNODC, 2011, pp. 209, et. seq.)

Table 22: Overview Drug Markets

			Heroin (tonnes)	Cannabis, resin (tonnes)	Cannabis, herbal (tonnes)	Ecstasy (million tablets)
Estimated number of users (million)			1.4	80.5[b]		11.5[b]
Seizures [a]	*Quantities*	*EU (including Croatia, Norway, Turkey)*	5 (12)	490 (514)	90 (146)	4 5.4
	Number	*EU (including Croatia, Norway, Turkey)*	44 000 (49 000)	348.000 (370.000)	389.000 (439.000)	9.600 (12.500)
Mean retail price (per gram/tablet) in €			24-143	3-18	5-24	4-17

a. Data of the UK are estimated, because they were not available

b. Estimated number of users lifetime in the age of 15-64

SOURCE EMCDDA/Europol, 2013, pp. 25, 55, 95

while on the heroin market €981.9 million in Germany, €67.5 million in Lithuania and €4,606.7 million in the United Kingdom are paid for 20% pure heroin. For ecstasy, an amount is estimated between €99,385,000 and €767,002,000 in Germany, €129,000 to €10,594,000 in Lithuania and €152,310,000 to €1,250,976,000 in the United Kingdom. The estimations through the EMCDDA and Europol refer to the EU in 2011. The heroin market accounts[24] for €420 million, the market for cannabis (resin) for €5,145 million, the market for cannabis (herbal) for €1,305 million and the ecstasy market for €42 million. Reuter/Trautmann estimated the ecstasy market at €800 million to €6.3 billion in 2005 (cf. Reuter/Trautmann, 2009, p. 136). The difference can be explained as follows: Although the number of ecstasy related seizures in the EU has decreased slightly, the number of seized tablets has fallen sharply from 13 million tablets in 2005 to 3 million tablets in 2010 (EMCDDA, 2012b, Table SZR 14). Furthermore, the first calculation refers to seized tablets in 2011, while Reuter/Trautmann estimated the number of consumed tablets.

All in all, the scale of the illicit drug market within the EU seemed to be stable (according to offences, seizures (except cannabis herbal) in the last years and amount to several billion Euros in total.

24. For the following extrapolations the mean of the range of means as well as the number of seizures, mentioned in Table 36, were taken to get a summarised overview. Turkey is not included.

3.4 Works of Art/Antiques

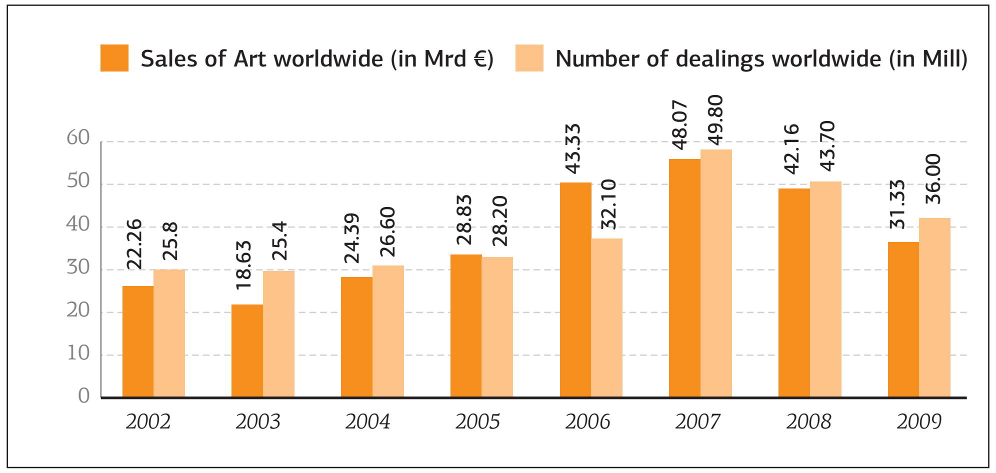
The turnovers and profits for tradespersons involved in the marketplace for works of art and antiques account for several million Euros. The fact that only a limited number of new products enter the marketplace means that competition is high, which in turn seems to be an "invitation" for traffickers to become involved with counterfeit, forged or stolen products.

3.4.1. General remarks on the illicit market of works of art and antiques

The illicit trade in cultural property and works of art is estimated to be one of the largest and most challenging markets(cf. Chonaill, et al., 2011, p. VII). WP 7 deals with works of art and antiques as an important part of cultural property.

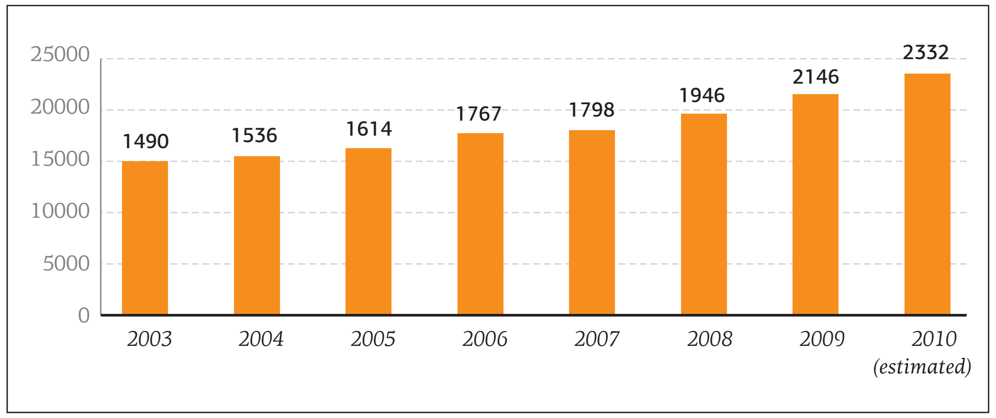
The term "art" is quite extensive and open to interpretation which makes it difficult to define (cf. Kinzig, 2012, p. 124). The current Deliverable is restricted to fine art in order to distinguish it from performing arts. Fine art includes paintings, photographs, prints, drawing and sculptures (cf. Conklin, 1994, p. 2). Antiques, on the other hand, are defined as "a piece of furniture, tableware or similar property, made at a much earlier period than the present" (cf. International Foundation for Art Research, "antiquity"). It is a matter of debate as to whether antiques have to be older than 50 or 100 years. Referring to Annex I of the Council Regulation on the export of cultural goods (EC) N 116/2009, antiques are defined as articles more than 100 years old or special articles between 50 and 100 years.

Table 23: Art market worldwide



SOURCE Mc Andrew, 2010, p. 21

Table 24: Turnover Germany (in million Euros)



SOURCE Söndermann, 2010, p. 127

3.4.2. Measuring methods

As Conklin declares, there is a lack of statistical information about the illicit market of art works and antiques(cf. Barrett, 1996, p. 335). Nevertheless, some data about the legal market, seizures and offences relating to art crime and lost art could be collected. The legal market is assessed through numbers of art worldwide, dealings worldwide, import, export and turnover. Furthermore, databases about lost art guided by Interpol, Lost Arts and German Federal Police Office, are used.

The estimated scale of the illicit market of works of art and antiques can neither be extrapolated nor calculated and presented by mirror statistics. The art market is an autonomous market (cf. Beckert/Rössel, 2004, p. 48). Prices, usually constructed, depend on cultural value judgements rather than commercial calculations. It is difficult to find an indicator for the formation of prices (cf. Beckert/Rössel, 2004, pp. 33, 34). Additionally, Durney/Proulx emphasise that "estimations of the global prevalence, economic impact, and frequency of art crimes have been problematic." (Durney/Proulx, 2011, p. 127). This viewpoint is seconded by Interpol:

> "We do not possess any figures which would enable us to claim that trafficking in cultural property is the third or fourth most common form of trafficking, although this is frequently mentioned at international conferences and in the media. In fact, it is very difficult to gain an exact idea of how many items of cultural property are stolen throughout the world and it is unlikely that there will ever be any accurate statistics" (Interpol, 2013).

Moreover, statistical inaccuracies are caused by unreported cases of illegally transferred cultural property (cf. Anton, 2010, pp. 49, Rn 11).

3.4.3. Statistical description

Legal market

As mentioned above, the commercial value of art differs and depends more on cultural value judgements than economic calculations, while private sales are hidden from view (cf. Beckert/Rössel, 2004, pp. 33, 34). Due to the fact that it was impossible to get data about the European art market, data describing the market worldwide are used.

The total turnover of the art market in the Europe Union was €9,299.3 million in 2008 and €6,766.1 million in 2009. Worldwide, it was €1,8970.9 million in 2008 and €1,2936.7 million in 2009 (cf. Mc Andrew, 2010, p. 21). The European market equates to around 50% of the world market.

The sale of art worldwide increased between 2002 and 2007 from €22.26 bn to €48.7 bn. Experts estimate that the incentive of art market offences has increased due to the fact that turnovers on the art market have not been dented by the worldwide financial crisis (cf. Kinzig, 2012, p. 137). This estimation cannot be completely confirmed by worldwide numbers. The obvious decrease in turnover, sales and number of dealings in 2008 and 2009, probably connected to the worldwide financial crisis, could be seen in some countries. That said, in Germany, for example, turnover has increased (Table 24). However, turnover is only one indicator; the number of sold articles must also be taken into account. Although turnover may decline, it could be that fewer articles are sold for more money, which may also be a reason for traffickers to become involved.

No data or information is available about seized work of arts and antiques within the EU. Statistical data about offences are not generally available. In Germany, for example, theft of art is not reported as theft of art but by the circumstances of the theft. The Turkish National Police Anti-Smuggling and Organised Crime Department report cultural goods and natural goods together (cf. information from ASI). Altogether there were 464 operations conducted in Turkey in 2011 (Table 25). In those operations, 1,083

Table 25: Seizures of Cultural and Natural Assets

Year	Operations	Suspects
2007	349	788
2008	299	761
2009	402	1002
2010	391	821
2011	464	1083

SOURCE: Turkish Anti-Smuggling and Organised Crime Department, 2011, p. 13

Table 26: Overview estimations illegal art market

UNESCO, FBI (2009)	Annual turnover of $6-8 billion on the illegal market.
RAND (2011)	Illicit trade in stolen art and antiques is worth up to $6 billion annually.
Interpol (2006, 2011)	Database (containing stolen art reported by 125 countries worldwide): 30,108 pieces (2006), 38,247 pieces (2011).
London Metropolitan Police (2013)	54,000 items of stolen property.
Art Loss Database (2012)	Art Loss Database: 300,000 objects

suspects were captured and 25,273 units of cultural and natural assets were seized (cf. Turkish Anti-Smuggling and Organised Crime Department, 2011, p. 14). In recent years, the number of suspects as well as the number of operations has fluctuated and increased slightly.

Further data about reported cases of trafficking of works of art and antiques are published by the Italian Police. The number of reported cases declined steadily from 1,142 cases in 2006 to 740 cases in 2010 (cf. information by University of Parma).Cases reported to the Carabinieri revealed the same changes from 1,212 cases in 2006 to 817 cases in 2010 (cf. information by University of Parma).

3.4.4. Survey, reports

According to the FBI, Scotland Yard and Interpol, the illicit market for art and antiques is the third largest behind the illicit markets for drugs and weapons. But it is impossible to assess the economic impact of stolen/forged works of art and antiques or to assess how much damage has been caused by the theft of archaeological items (cf. Durney/Proulx, 2011, p. 128). The value of art and antiques can differ between source countries (where the works of art or antiques were stolen) and destination countries. Moreover, the price of art depends on demand on the art market.

- Although it is nearly impossible, UNESCO and the FBI estimate an annual turnover of $6-8 billion on the illegal market (Ulrich, 2009).
- In their study "Assessing the illegal trade in cultural property from a public policy perspective," the RAND Corporation estimates that the scale of "the illicit trade in stolen art and antiques is worth up to $6 billion annually" (Chonaill, et al., 2011, p. vii).
- Interpol points to the fact that estimation of the scale is nearly impossible, because theft is not detected and not all countries have statistics containing recorded cases about stolen art (cf. Kinzig, 2012, pp. 130, 131) also: (cf. Anton, 2010, pp. 71, Rn 4). The Interpol database (containing stolen art reported by 125 countries worldwide) counted 30,108 pieces of lost art in 2006 and 38,247 in 2011 (cf. Interpol: Annual Report).
- In 1996, Barrett estimated that the sale of counterfeit art generates tens of millions of dollars a year. According to Barrett, "Thomas Hoving of New York´s Metropolitan Museum of Art stated he believes that 60% of the art he has seen has been faked or forged. Fakes are reproductions made to resemble existing works of art, and forgeries are original pieces someone attributes to another artist" (cf. Barrett, 1996, p. 342).
- To estimate the damage caused by the illicit market of works of art and antiques, databases containing stolen art or antiques are used. The numbers mentioned below reflect the total number of lost art. The London Metropolitan Police inform that: "The London Stolen Arts Database currently stores details and images of 54,000 items of stolen property.[...]The database includes the following categories: Paintings, furniture, books, maps, manuscripts, carpets, rugs, clocks, watches, coins, medals, glass, ivory, jade, musical instruments, postage stamps, pottery, porcelain, silver, gold textiles and toys and games" (cf. London Metropolitan Police, n.d.). According to their own statements, the Art Loss Database (based in Great Britain) holds 300,000 objects. The database increases by around 10,000 registrations per year (cf. The Art Loss Register, 2013).
- Another reference point that provides an overview about lost art and antiques is that in Iraq, 9,000 out of 15,000 stolen exhibits were still missing when the national museum in Bagdad reopened in 2009 (cf. Ulrich, 2009).

3.4.5. Conclusion

Brodie/Doole/Watson mentioned that the illicit trade in cultural material is hidden from view and therefore it is difficult to quantify the damage or assign the structure (Brodie, et al., 2000, p. 19).

It is not even possible to get reliable data from the legal market. Data on turnover, exports and imports only refer to that provided by auctioneers. There are no indications about private sales and it is a matter of conjecture that there is a big private market. Even museums buy on the private market. Numbers of insurance policies for artworks and antiques are not officially published. As such, the illicit market cannot be extrapolated due to missing reliable data concerning the legal market.

The mentioned databases provide some indicators, though they present only reported stolen art. Not every stolen piece of art or every stolen antique is reported. Sometimes people/museums try to find a solution without the help of authorities or, in the case of antiques, they have no idea about missing pieces (due to un-registered pieces or political trouble in their country). Furthermore, forged works of art are usually not reported in databases about stolen art. It can only be guessed how many works of art are forged, because not all pieces are checked or if they are checked, not necessarily detected. Reported numbers of seizures are also of little use in inferring the scale of illicit markets, as the detection rate is too dependent on the number of operations, the controlled sample and the knowledge of customs authorities.

The number of suspects decreased in Turkey, and there were fewer cases reported to the Italian police between 2006 and 2010. However, as mentioned, the number of reported cases is a weak indicator for assessing the scale due to dependence on law enforcement activities and knowledge.

In conclusion, the scale of the illicit market for works of art and antiques accounts for probably several billion euros. Although its size cannot be defined more exactly, what is clear is that it has a sizable impact on the destruction of human heritage worldwide (cf. Kaiser, 1991, p. 90).

3.5 Product Piracy

Product piracy and counterfeiting are a widespread, well-known worldwide problem with a long history of at least 2,000 years (cf. Chaudhry/Zimmerman, 2009, p. 7). The legal markets of the EU are assessed as a destination area for counterfeit products. Product piracy and counterfeiting affect the classical market dichotomy of supply and demand. Tackling piracy and counterfeiting is a major challenge for policy makers, law enforcement agencies and the legal market, because product piracy and counterfeiting directly affect the economic growth within the EU and, therewith, the job market. For traffickers, product piracy is attractive. The risk of detection is comparatively low and it enables high profits from low investments(cf. SOCA (Serious Organised Crime Agency), 2013).

Due to the fact that WP 9 is about cybercrime, WP 7excludes all products that are commonly understood as part of this criminal phenomenon.

3.5.1. General remarks on the illicit product piracy market

Though not legally defined, the term "product piracy" is (cf. Brun, 2009, pp. 2, 3) regularly classed with intellectual property crime, which covers counterfeiting and piracy of goods. While counterfeiting assess the unauthorised imitation of a branded good, piracy is the unauthorised exact copy of an item covered by an intellectual property right (cf. europa.eu, 2010). The United Nations Economic Commission for Europe defines a counterfeit or pirated product as one that "infringes on an intellectual property right" (United Nations Economic Commission for Europe, 2007). For example, product piracy includes the following categories: fashion wear, (luxury) clothing and footwear, pharmaceuticals, automotive parts, electrical items and other manufactured goods (SOCA (Serious Organised Crime Agency), 2013). In turn, counterfeiting and distributing these goods requires different levels of expertise or techniques and attracts criminals of all types.

3.5.2. Measuring methods

The measurement of the scale and effects of the illicit product piracy market is marked by a wide range of estimations. In addition to the above mentioned problem that seizure statistics are the only available indicator, controversy exists concerning the factors which are used to calculate the scale of the problem (cf. Chaudhry/Zimmerman, 2009, p. 9). The damage caused by product piracy and counterfeiting include tax gaps (like value added taxes (VAT)), in some cases excise duties, income taxes (if jobs are lost), corporate income tax, lack of social security contributions (due to reduced jobs), less fees for intellectual property holders as well as less turn over and earnings for companies. But it is nearly impossible to estimate how many jobs are lost because other factors influence the job situation, too. Furthermore, it is extremely difficult to assess the scale of income or corporate income taxes due to the variation of influencing factors.

Nevertheless, also on the illicit market of product piracy first the legal market is described through the indicators "market value" and "turnover". Additionally seizure statistics as well as surveys and reports are pulled up. It has to be considered that estimates of companies but also authorities involve - next to above mentioned uncertainties and errors of estimations - the danger to be influenced by their aims.

The minimum scale of the illicit market is described by the amount of seized products. Seizure statistics are an important indicator, but their limitations and high margin of error have to be taken into account.

Due to these difficulties, extrapolation is impossible. Mirror statistics can also not be created, as product piracy concerns many different product groups, meaning that the legal market cannot be described in total. Insights can, however, be gained if one concentrates on a special counterfeit product sector, e.g., counterfeit medicine.

3.5.3. Statistical description

Legal Market

The gross domestic product (GDP) is used as an indicator to describe the market value of all officially recognised goods and services produced within a country. Product

Table 27: Detention of IPR by customs, EU

Detention Totals	2010	2011
Cases	79,112	91,245
Articles	103,306,928	114,772,812
Domestic Retail value	1,110,052,402	1,272,354,795

piracy and counterfeiting have a huge impact on the legal market in several sectors. In recent years, the GDP of the EU has remained stable, despite numerous financial crises.

The annual report on "EU customs enforcement of intellectual property rights" by the European Commission (TAXUD) includes information of all national customs authorities of the European Member States. It also includes seizure number concerning alcoholic beverages and tobacco products that are described above.Violations of intellectual property rights are also recorded. As can be seen, the total number of cases, articles and the domestic retail value increased between 2010 and 2011 (Table 27) (European Commission – Report on EU customs enforcement of intellectual property rights, p. 3).

In Table 28, the top categories of seized products are classified by articles, by cases and by value. Almost one out of four seized articles in 2011 were medicines, while referring to cases especially non-sport shoes were seized. The highest value was accounted for by watches (European Commission - TAXUD, 2012) (cf. European Commission, Report on EU customs enforcement of intellectual property rights, p. 13, 14).

Table 28: Top categories of seized products, EU

By articles	By cases	By value
medicines (23.93%)	non-sports shoe (27.94%)	watches (22.73%)
packaging materials (21.21%)	clothing (19.68%)	clothing (9.71%)
cigarettes (17.63%)	bags, wallet, purses (7.53%)	bags, wallets, purses (7.83%)
clothing (3.52%)	electrical household goods (6.37%)	non-sports shoes (6.95%)
mobile phone accessories (2.73%)	watches (5.03%)	Cigarettes (6.91%)
labels, tags, stickers (2.1%)	sport shoes (5.80%)	sport shoes (6.63%).

(EUROPEAN Commission – Report on EU customs enforcement of intellectual property rights, p. 13, 14)

3.5.4. Surveys, reports

Product piracy concerns several kinds of different products and industries. Information about special product sectors is sometimes available, though comprehensive analyses are usually missing. Some countries, like the United Kingdom, publish reports on tax gaps or an annual fraud indicator. The fraud indicator provides an overview about profits generated by piracy, fraud and illicit online sales, though the listed losses are not suitable for product piracy and counterfeiting in general, due to several offences relating to one loss.

- In 2007, the OECD published a report about "The economic impact of counterfeiting and piracy" and emphasised that no quantitative analysis has been carried out to measure counterfeiting and piracy(cf. OECD - Secretary General, 2007, p. 5). According to the report, internationaltrade in counterfeit and pirated products could have been up to US$200 billion in 2005 (total does not include domestically produced and consumed products and pirated digital products being distributed via the Internet)(cf. OECD – Secretary General, 2007, p. 15).Furthermore, the OECD estimates that international infringements of intellectual property account for more than €150 billion per year (higher than the GDP of more than 150 countries).
- In 2011, the German Engineering Federation published a study concerning product piracy in their product sector. They estimated that about €7.9 billion were lostin

their market due to product piracy (for comparison: with a turnover of €7.9 billion Euros it would be possible to secure 37,000 jobs) (cf. VDMA, 2012, 5).

- BASCAP (Business Action to Stop Counterfeiting and Piracy) estimates that counterfeiting costs the UK €4.1 billion in lost taxes and higher welfare spending, as well as 380,000 short term and 31,000 long term jobs (cf. BASCAP, n.d).

3.5.5. Conclusion

Counterfeiting and infringements of intellectual property not only hurt legitimate commercial interests, but also put the health and safety of European consumers at risk.

In 2010, the GDP for the EU amounted to €12,279 billion. The retail value of seized products on the other hand accounted for €1,110,052,402. The minimum scale of the illicit product piracy and counterfeiting market is nearly 4% of the GDP of Lithuania. Referring to the number of seized products by custom authorities within the EU, the minimum scale of the illicit product piracy market accounted for 103,306,926 articles in 2010 (2011: 114,772,812 articles).

4. CONCLUSION

Two common characteristics of illicit markets are that (1) no official data are available and (2) assessing their scale depends on estimations which are subject to a wide margin of error.

In referring to the validity of the data, one has to be aware of the estimated large field of unreported cases. Consumers of trafficked goods (e.g., drugs, smuggled alcohol, cigarettes or counterfeit products) are generally not interested in uncovering illegal products. Beyond unreported cases, other factors that can affect the extrapolation of statistics concern mistakes in their measurement and the individual selection of indicators. Thus, although the data and estimations in this deliverable are the most useful approximations available, estimating the extent of illicit markets is still a very difficult task.

The illicit markets for tobacco products and alcoholic beverages can be reasonably well estimated. The legal alcohol market is an important market for the EU. A quarter of the world´s alcohol and over half of the world´s wine production comes from Member States of the EU (cf. Anderson/Baumberg, 2006, p. 47). The minimum scale of the illicit alcohol and tobacco market can be measured through seizure statistics. In 2011, European customs authorities seized 74,689 articles of alcoholic beverages (129,145 in 2010) and 20,309,931 articles of tobacco products (42,820,662 in 2010). A further indicator for assessing the illicit market is the self-reported consumption in relation to reported consumption. Additionally, studies on the illegal cigarettes market refer to samples of analysed empty cigarettes packages. All in all, it is estimated that the illicit alcohol market in the EU account for, on average, 22% of the legal market. The illicit tobacco products market, in turn, amounts to 8 to 10% of the legal European market. Both markets include large differences in the individual Member States.

Although estimations of the drug market are accompanied by uncertainties, several insights enable the estimation of a scale for individual drugs. Regularly used indicators to assess the illicit drugs market are drug seizures, recorded cases by police or surveys relating to drug users, which are used to gain an insight into the number of users, the scale of drug markets and prices. According to estimates of the EMCDDA, the value of the European illicit drug trade accounts for €18-30 billion. According to the estimations of the EMCDDA and Europol, the heroin market amounts to €420 million, the market for cannabis (resin) to €5,145 million, the market for cannabis (herbal) to €1,305 million and the ecstasy market to €42 million.

As already noted, it is impossible to reliably calculate the estimated size of the illicit market for either works of art and antiques or for product piracy and counterfeiting; there exists too little reliable data and too many uncertainties. Concerning works of art and antiques, even the legal market is nearly impossible to determine, because trades are often hidden from view. All in all, the scale of the illicit works of art and antiques market is approximately several billion euros. Law enforcement agencies like the FBI, Scotland Yard and Interpol actually believe that the illicit art and antiques market is the third largest. Product Piracy and counterfeiting are an increasing problem for legal markets. In 2011, nearly 115 million articles (in 2010: 103 million) were seized by European custom authorities.

In conclusion, although the scale of illicit markets is difficult to assess, it is clear that they account for several billion euros. The European shadow economy is estimated at around 18% of the EU's GDP in 2013 (cf. Schneider, 2013, p. 5).[25] The extent of the problem not only damages the European economy (fewer taxes collected, fewer jobs, fewer social security contributions) but also endangers the lives and health of the EU's citizens through the consumption of counterfeit medicine, cigarettes or drugs.

LIST OF TABLES

25. According to the "Institut für angewandte Wirtschaftsforschung e.V.", the term "shadow economy" covers not only the trafficking of goods, but also: (1.) illicit employment (working without paying tax and contributions for the social security system), (2.) unlawful employment (jobs done by people without work permit) and (3.) criminal activities (e.g., trafficking of goods, smuggling, human trafficking). To calculate the size and development of the shadow economy, Schneider uses the MIMIC (Multiple Indicators and Multiple Courses) estimation procedure. "Using the MIMIC estimation procedure one gets only relative values and one needs other methods like the currency demand approach, to calibrate the MIMIC values into absolute ones. For a detailed explanation see Friedrich Schneider, editor, Handbook on the Shadow Economy, Cheltenham (UK): Edward Elgar Publishing Company, 2011." (Schneider 2013: 1).

REFERENCES

Anderson, Peter/Baumberg, Ben (2006): *Alcohol in Europe - a public health perspective. Online:* http://ec.europa.eu/health/ph_determinants/life_style/alcohol/documents/alcohol_europe.pdf.

Anton, Michael (2010): *Illegaler Kulturgüterverkehr.* Berlin [u.a.].

Barrett, John A., Jr. (1996): Crimes Involving Art. In: *The Journal of Criminal Law and Criminology* (1973-) 87 1, p.^pp. 334-358.

Beckert, Jens/Rössel, Jörg (2004): Kunst und Preise. In: *KZfSS Kölner Zeitschrift für Soziologie und Sozialpsychologie* 56 1, p.^pp. 32-50.

Brodie, Neil/Doole, Jenny/Watson, Peter (2000): *Stealing History: The illicit trade in cultural material.* London.

Brun, Simon (2009): Begriff und Erscheinungsformen der Produktpiraterie. In: Münch, Peter/Brun, Simon (ed.): *Produktpiraterie.* Zürich ; Basel ; Genf, p.^pp. XIII, 202.

Bundesministerium der Finanzen - Zoll (2011): *Reisezeit - Ihr Weg durch den Zoll. Online:* http://www.bundesfinanzministerium.de/Content/DE/Downloads/Broschueren_Bestellservice/reisezeit-ihr-weg-durch-den-zoll.pdf?__blob=publicationFile&v=8.

Chaudhry, Peggy/Zimmerman, Alan (2009): *The economics of counterfeit tradegovernments, consumers, pirates and intellectual property rights.* Berlin ; Heidelberg.

Chonaill, Siobhán Ní/Reding, Anais/Valeri, Lorenzo (2011): *Assessing the illegal trade in cultural property from a public policy perspective. Online:* http://www.rand.org/content/dam/rand/pubs/documented_briefings/2011/RAND_DB602.pdf.

Cnossen, Sijbren (2006): *Alcohol Taxation and Regulation in the European Union.*

Conklin, John E. (1994): *Art crime.* Westport, Conn.; .

Deutscher Zigarettenverband (2012): *Schmuggel.Online*: http://www.zigarettenverband.de/de/224/Themen/Schmuggel.

Durney, Mark/Proulx, Blythe (2011): Art crime: a brief introduction. In: *Crime, Law and Social Change* 56 2, p.^pp. 115-132.

EMCDDA (2012a): *Annual Report 2012*: Highlights 2. *Online:* http://www.emcdda.europa.eu/news/2012/11.

EMCDDA (2012b): *Statistical bulletin 2012. Online:* http://www.emcdda.europa.eu/stats12.

EMCDDA/Europol (2013): *EU Drug Markets Report - a strategic analysis.*

europa.eu (2010): *Counterfeiting and Piracy - frequently asked questions.*2010. *Online:* http://europa.eu/rapid/press-release_MEMO-10-272_en.htm.

Europäische Kommission GD Health and Consumers (2009): *Eindämmung des Tabakkonsums in der EU. Online:* http://ec.europa.eu/health/archive/ph_information/documents/tobacco_control_de.pdf.

European Commission - Eurobarometer 331 (2010): *EU citizens´ attitudes towards alcohol. Online:* http://ec.europa.eu/public_opinion/archives/ebs/ebs_331_en.pdf.

European Commission - Eurobarometer 385 (2012): *Attitudes of Europeans towards tobacco. Online:* http://ec.europa.eu/health/tobacco/docs/eurobaro_attitudes_towards_tobacco_2012_en.pdf.

European Commission - eurostat (2009): *European Business - Facts and Figures. Online:* http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-BW-09-001/EN/KS-BW-09-001-EN.PDF.

European Commission - eurostat (2011): *External and intra-EU trade - a statistical yearbook.*

European Commission - TAXUD (2010): *Report on EU customs enforcement of intellectual property rights. Online:* http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/statistics_2009.pdf.

European Commission - TAXUD (2011): *Report on EU customs enforcement of intellecutal property rights. Online:* http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/statistics_2010.pdf.

European Commission - TAXUD (2012a): *Excise Duty Tables-Alcoholic beverages. Online:* http://ec.europa.eu/taxation_customs/resources/documents/taxation/excise_duties/alcoholic_beverages/rates/excise_duties_alcohol_en.pdf.

European Commission - TAXUD (2012b): *Excise Duty Tables - Manufactured Tobacco. Online:* http://ec.europa.eu/taxation_customs/resources/documents/taxation/excise_duties/tobacco_products/rates/excise_duties_tobacco_en.pdf.

European Commission - TAXUD (2012): *Report on EU customs enforcement of intellectual property rights - results at the EU border 2011. Online:* http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/statistics_2010.pdf

http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/2012_ipr_statistics_en.pdf.

European Commission (2007): *Together for Health: A Strategic Approach for the EU 2008-2013.*

European Commission (2012): *Measuring Crime in the EU: Statistics Action Plan 2011-2015. Online:* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0713:FIN:EN:PDF.

HM Revenue and Customs (2012): *Alcohol Fraud - Legislative measures to tackle existing and emerging threats to the UK alcohol duty regime.^*

institutas, Lietuvos laisvosios rinkos (2010): *Tabako akcizų politikos ir jos pasekmių Lietuvoje 2002-2010* m.tyrimas. *Online:* http://files.lrinka.lt/analitiniai%20darbai/tabako%20tyrimas%202010.pdf.

International Foundation for Art Research *Glossary. Online:* [07.09.2012].

Interpol (2013): *Cultural Property -Frequently Asked Questions,* 2013.

Joossens, Luk (2011): *Illicit tobacco trade in Europe: issues and solutions. Online:* http://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CD0QFjAA&url=http%3A%2F%2Fwww.ppacte.eu%2Findex.php%3Foption%3Dcom_docman%26task%3Ddoc_download%26gid%3D187%26Itemid%3D29&ei=UB4nUeWbF8z74QSx5YGIDQ&usg=AFQjCNGeWXPhdZjTV0Lk3puqagfhutI_fw&bvm=bv.42768644,d.bGE.

Joossens, Luk/Raw, Martin (2012): From cigarette smuggling to illicit tobacco trade. In: *Tobacco Control 21* 2, p.^pp. 230-234.

Kaiser, Timothy (1991): The Antiquities Market. In: *Journal of Field Archaeology* 18 1, p.^pp. 87-103.

Kinzig, Jörg (2012): Kunstfälschung - Anhand des Falles “Sammlung Werner Jägers”. In: *Rengier, Eric Hilgendorf; Rudolf* (ed.): Festschrift für Wolfgang Heinz zum 70. Geburtstag. Baden-Baden, p.^pp. 124-140.

Lachenmeier, Dirk (2012): Unrecorded and illicit alcohol. In: Anderson, Peter, et al. (ed.): *Alcohol in the European Union - Consumption, harm and policy approaches.* Copenhagen, p.^pp. 29-34.

Matrix Insight (2012): *Economic analysis of the EU market of tobacco, nicotine and related products. Online:* http://ec.europa.eu/health/tobacco/docs/tobacco_matrix_report_eu_market_en.pdf.

Mc Andrew, Clare (2010): *The International Art Market 2007-2009.*

Merriman, David Tool 7. *Understand, Measure, and Combat Tobacco. Online:* http://130.203.133.150/viewdoc/summary?doi=10.1.1.198.1811.].

OECD - Secretary General (2007): *The Economic Impact of Counterfeiting and Piracy. Online:* http://www.oecd.org/industry/industryandglobalisation/38707619.pdf.

OLAF (2012): *Summary of OLAF´s achievements in 2011.*^

Oxford Dictionary “illicit”, “illegal”.

Philip Morris International (2012): *KPMG Study on Illicit Cigarettes in the EU.2012. Online:* http://investors.pmi.com/phoenix.zhtml?c=146476&p=irol-newsArticle&ID=1706757&highlight=.

Rehm, Jürgen et al. *Alcohol Use.* In., p.^pp. 959-1108.

Reuter, Peter/Trautmann, Franz (2009): *A Report on Global Illicit Drugs Markets 1998-2007. Online:* http://ec.europa.eu/justice/anti-drugs/files/report-drug-markets-full_en.pdf.

Schneider, Friedrich/Boockmann, Bernhard (2013): *Prognose zur Entwicklung der Schattenwirtschaft* 2013, Tübingen.

SOCA (Serious Organised Crime Agency) (2013): *Intellectual property crime. Online:* http://www.soca.gov.uk/threats/intellectual-property-crime.

Söndermann, Michael (2010): *Monitoring zu ausgewählten wirtschaftlichen Eckdaten der Kultur- und Kreativwirtschaft* 2010.

Transcrime (2012a): *Analysis of the Draft Protocol to Eliminate Illicit Trade in Tobacco Products.*

Transcrime (2012b): *Plain Packing and Illicit Trade in the UK - Study on the risks of illicit trade in tobacco products as unintended consequences of the introduction of plain packaging in the UK. Online:* http://transcrime.cs.unitn.it/tc/fso/pubblicazioni/AP/Transcrime-Plain_packaging_and_illicit_trade_in_the_UK.pdf.

Turkish Anti-Smuggling and Organised Crime Department (2011): *Report of Anti-Smuggling and Organised Crime.*

Ulrich, Andreas (2009): Leichtes Spiel für die Antikenmafia - Handel mit irakischen Artefakten. In: *Spiegel Online*, 26.06.2009. *Online:* http://www.spiegel.de/wissenschaft/mensch/handel-mit-irakischen-artefakten-leichtes-spiel-fuer-die-antikenmafia-a-632049.html.

United Nations Economic Commission for Europe (2007): *Counterfeiting and Piracy Project.2007. Online:* [26.02.2013].

UNODC (2008): *Get the facts about drugs.*

UNODC (2009): *World Drug Report 2009. Online:* http://www.unodc.org/documents/wdr/WDR_2009/WDR2009_eng_web.pdf.

UNODC (2011): *World Drug Report 2011. Online:* http://www.unodc.org/documents/data-and-analysis/WDR2011/StatAnnex-consumption.pdf.

von Lampe, Klaus (2007): *Assessing Organised Crime by a new common European approach. Online:* http://www.organized-crime.de/AOC-DLV33-vF1.pdf [20.08.2012].

Wehinger, Frank (2011): *Illegale Märkte - Stand der sozialwissenschaftlichen Forschung.* Köln.

WHO (2013a): *Global Health Observatory Data Repository. Online:* http://apps.who.int/gho/data/?showonly=GISAH&vid=52140

WHO (2013b): *Lexicon of alcohol and drug terms published by the WHO. Online:* http://www.who.int/substance_abuse/terminology/who_lexicon/en/.

Work Package 8
Criminalization of migration
and ethnic minorities

8.1

Criminalization of migrants and ethnic minorities: an analysis of the latest statistical data

by: Elena Vaccari, Matteo Allodi, Stefano Maffei,
Laure Guille, Joanna Parkin

EXECUTIVE SUMMARY

The FIDUCIA research project (New European Crimes and Trust-based Policy) is funded primarily by the European Commission through the Seventh Framework Program for Research and Development. FIDUCIA will shed light on a number of distinctively "new European" criminal behaviours that have emerged in the last decade as a consequence of developments in technology and the increased mobility of populations across Europe. The central idea behind the project is that public trust] in justice is important for social regulation: FIDUCIA will build on this idea and proposes a "trust-based" policy model in relation to emerging forms of criminality.

D.8 investigates the assumption that there is the construction of a "risk category" by which irregular immigration and certain ethnic groups are linked with criminality across Europe. In particular, it investigates the following criminalization trends: a) criminalization of undocumented migrants; b) criminalization of solidarity and c) criminalization of Roma communities. Moreover, D.8 aims at d) analysing populist discourses linking "migration and crime"; e) assessing the correlation between immigrants and crime level in the EU and f) identifying positive, "trust-based" practices on irregular migration and ethnic minorities.

These objectives will be achieved through an analysis of those "criminal behaviours" that are often linked to migrants; review of the legislation, policies and practical measures to prevent and tackle "illegal migration" at both Member State and EU level; study of the public perceptions in selected Members States as regards the scope of the problem and the effectiveness of the measures against it; and examination of the ethical implications that the criminalization of vulnerable groups of individuals (i.e. undocumented migrants and ethnic minorities) has on the fundamental rights envisaged by the EU Charter.

D.8.1, in particular, will offer a review of the official statistics that are available on enforcement action where suspects or defendants are foreigners. The analysis will provide an essential statistical backdrop against which national and EU policies can be assessed. In this perspective, the material will be summarised through accessible figures and tables.

1. MIGRATION CHALLENGES IN EUROPE

Irregular immigration has been a top priority issue for years in Europe. Even though immigration allows diversifying and enriching societies, and brings economic dynamism and prosperity,[1] the threat element has undeniably appeared to dominate public and political discourses in recent decades. Indeed, certain immigrant groups and ethnic groups are popularly associated with criminality, illegality and insecurity (Semyonov, Raijman and Gorodzeisky, 2008; Vollmer, 2011; Marshall, 1997). This stigmatization and negative stereotyping are being fuelled by new immigration policies and the mass media, having a direct impact on European citizens. As a consequence, the equation "immigrant = crime" has attracted fear and social anxiety amongst the population (De Giorgi, 2010; Palidda, 1996), which has been exploited by governments in order to justify, create and implement more punitive immigration policies (Carrera, 2012; Lee, 2005; Angel-Ajani, 2003a).

European states have hardened their legislations through repressive migration policies in order to be seen as having immigration flows under control, thus addressing the population's need for securitization. A few examples of such enforcement measures are the Immigration Law 2005 in Germany, the "Bossi-Fini" Law 2002 in Italy and the

1. It is of interest to note that contrary to perceptions and representations of migrants costing the economy, the European Commission (2008, as cited in Sarikakis, 2010: 806) states that non-EU migrants, overall, make a significant contribution to labour input in the EU (6.7% of the labour force on average).

2005 legislation in France (Vollmer, 2009; Courau, 2009). Although EU policy guidelines focused on the concept of "security of rights" (Baratta 2001), the policies adopted by Member States have primarily focused on the model of the "right to security", as it is amply demonstrated by the precarious legal status of foreigners in European countries. In practice, there was a substantial deviation from the EU policy guidelines by the Member States on the regulation of migration. However, in the past recent years EU political programmes such as the Stockholm Programme (2010- 2014) also seem to increasingly support the "right to security" and focus on law enforcement programme and internal security strategies to secure borders. We can cite also the EU border agency Frontex, which focuses on security for Europeans by strengthening border controls, and which arguably pays considerably less attention to securing rights of migrants or asylum seekers. There have been concerns indeed regarding Frontex's non-respect of non-refoulement for actions at sea for example and its involvement in human rights violations within EU territory (Perkowski, 2013; Human Rights Watch, 2011; UNHCR, 2010).

One of the consequences of this situation is that, nowadays, there seems to be common misperceptions among European citizens regarding the relationship between immigrants and crimes. Indeed, European citizens tend to believe that crime levels increase due to the major inflow of foreigners in their country. Thus, despite integration being the stated objective of immigration policies across European countries, citizens view these foreigners as a serious social problem. This seriously complicates the inclusion of the non-nationals within the national community.

The purpose of this paper is to provide an evidence-based analysis of common misperceptions in relation to migrants and crime. Four categories of misperceptions, which all correlate with each other, have particularly been identified as detailed in the next section.

2. HOW DATA WERE COLLECTED & ANALYSED

This study was conducted through the analysis of a) official statistics, b) literature and c) qualitative research work pursued in focus groups. This selection of data collection was chosen in order to allow a more comprehensive and critical analysis.

As to statistics, those presented in this paper all relate to the "crime-immigration" relationship. There will be an attempt to deconstruct the nodes of the debates surrounding the belief that crime levels are on the increase because of the large inflow of immigrants. Although some pan-European data are occasionally cited, this paper particularly focuses on four countries: France, Germany, Italy and the UK. Data were drawn from a number of national databases such as the Ministry of Justice (France and Italy) and the Home Office (UK) at national levels, and databases and surveys such as the Council of Europe, Eurostat, the Eurobarometer and the Clandestino Project at EU level. Before going further, however, it should be noted that comparing data across countries presents many limitations that should be explained, which is also very relevant here in the field under consideration - immigration. First of all, there are notable differences in crime definitions, laws and criminal proceedings as there is currently no common European criminal law or criminal procedure. Concretely this means that a crime in one country is not automatically considered as a criminal offence in another country. Building on this issue, each country can have varying concepts and definitions for what constitutes an "immigrant" or a "foreigner" for example, which makes the situation even more complex as it will be shown further in the next chapter. Furthermore, issues also arise from the different ways data have been collected, whether these are recorded or survey-based data (see Work Package 7) and from the various types of databases that exist at national level. Indeed, as it has already been shown in Work Package 2, countries do not always report a criminal offence at the same stage; some countries might have undergone a change in their statistical gathering procedure; some countries might not consider a certain act as criminal in relation to their criminal justice system when this act is a criminal offence in other countries or there might be varying degrees of accuracy in registering offences across European borders (Von Hofer, 2000, p. 78). For example in terms of accuracy, there seems to be a lack of transparency in Italy in relation to governmental data about practices of immigration control (Vollmer, 2011) and the National Institute of Statistics only started to pay attention to the immigrants during the 1990s (Fasani, 2009). In the UK, the 2005 Woodbridge estimate[2] was revised by a study commissioned by the Greater London Authority in 2009 providing a figure of migrants which was 1.68 times higher (Vollmer, 2011) than the figure provided in 2005; this big difference in the figures gave rise to questions about the reliability of the study undertaken. Similarly, Cyrus (2009) details the problem of data quality in relation to irregular migrants in Germany and explains that it is impossible to provide reliable figures in this country. Another consideration is that the United Kingdom, as a country, is divided into England, Wales, Scotland and Northern Ireland and does not always appear as a result as the "UK" in statistics; it could be listed for example as "England & Wales" only, therefore not comprising the whole of the UK. Given these examples and due to missing data and differences in criminal justice systems and definitions one is left with data that can be highly unreliable, particularly for comparison purposes. One needs to be aware of the situation, as data on immigration are so far not fully comparable. The data presented in this paper need to be used as an indicator; they cannot reflect the real size of the problem. Another significant issue in the analysis of statistical data on migrants and crimes concerns the lack of information on indicators that could give a better understanding of the complexity of the criminal phenomenon surrounding migrants such as socio-economic factors including social marginality, economic poverty and the integration of immigrants in particular areas of work (Ambrosini 2005, Melossi 2008); and legal factors, especially the effects of regulatory policies of restrictive entry (Melossi 2008, Ferraris 2008). Last but not least, an essential problem relating to law enforcement statistics is the unknown extent of the "dark figure of crime". Statistics in general only include detected and reported cases – the same is valid for immigration - which are not the true rate. This issue of the "dark figure" has been explored at length in the academic literature (Coleman and Moynihan, 1996).

As to literature, academic literature, European reports and other literature of relevance were reviewed to address the methodological gaps related to the analysis of statistical data. This allowed strengthening and refining the interpretation of the statistics offered.

As to qualitative research work pursued in focus groups, the D.8 research team made the assumption that the analysis of official statistical data is not sufficient to provide a comprehensive picture of the topic. Therefore, empirical research data was integrated using the qualitative method of focus group. The reason that triggered the use of focus groups was the need to bring together a variety of experts in the field of immigration and crime, in order to stimulate interaction and exchange points of view. This method shed light on several aspects that could not emerge from the mere interpretation of statistical figures. In particular, a total of four meetings were held, each lasting around an hour and a half. On average, eight to ten people attended each meeting, representing a variety of stakeholders. One of the meetings was mainly composed of law professors and researchers from the University of Parma as well as lawyers. The other meetings included social workers, NGOs experts and researchers in the social field so to involve participants with first-hand contact with immigrants. The

2. A UK-based anti-immigration lobby group.

meetings were led with a few questions only by two members of the D.8 research team, as the objective was to promote free flow of ideas and brainstorming to have the best interaction possible among all participants. What emerged from the focus groups is that recent "anti-immigration" policies and legislation have increased the initial discrepancy between the social condition of the majority of the population and that of the immigrant population. Indeed, these policies have encouraged the "ethnicization" of social relations in Europe. Moreover, discussions have shown that underneath the strong debate regarding the processes of criminalization there is the fundamental question of citizenship and policy of trust in the era of post-modern democracies. European states are realizing that immigration is not a temporary phenomenon. There is a need therefore to open a constructive debate on inclusion and on the new frontiers of citizenship, focusing on trust-based policies. These policies could avert the processes of reactive identification that have emerged over time among 'politically disqualified' migrants or ethnic groups.

In the work pursued through focus groups, four categories of misperceptions were identified as fundamental for our analysis in D.8. As a result, statistics were selected with the specific objective of evaluating these misperceptions. The main misperceptions, which were identified and will be examined in the coming sections of this paper, relate to the following areas:

- Migrants and Crimes
- Migrants and Detention
- Migrants and the Police
- Migrants and Public Opinion.

3. "MIGRANTS" V. "FOREIGNERS"

This paper aims at analysing the "assumed" processes of the criminalization of migrants in Europe. However, first of all, key concepts must be explained and definitions provided in order to ensure full understanding of the paper. Indeed, the majority of the concepts used here could take a broad array of meanings according to each European country. This section, therefore, will lay the foundations to avoid any misunderstanding since official statistics on crimes depend largely on the way these concepts are defined. Generally, there is no shared definition of the various terms used across Europe. To start with, by criminalization of migrants we mean, as suggested by Palidda, "all the discourses, facts and practises made by the police, judicial authorities, but also local governments, media, and a part of the population that hold immigrants/aliens responsible for a large share of criminal offences" (Palidda, 2011, p. 23). "Migrants" and "foreigners" are often used interchangeably in the literature, the mass media and by the public but they encompass different meanings. It goes without saying that at national level definitions of both terms vary largely from country to country.

As to the concept of "migrant", both national and international entities provide different definitions. One of the most useful definitions of "migrant" is the one adopted in 1999 by the UN Special Rapporteur of the Commission on Human Rights. According to this definition, "migrants" are "persons who are outside the territory of the State of which they are nationals or citizens, are not subject to its legal protection and are in the territory of another State; persons who do not enjoy the general legal recognition of rights which is inherent in the granting by the host State of the status of refugee, permanent resident or naturalized person or of similar status; and persons who do not enjoy either general legal protection of their fundamental rights by virtue of diplomatic agreements, visas or other agreements" (Doc. E/CN.4/RES/1999/4, 22 April 1999). Other important definitions are those contained in the 1998 UN Recommendation on Statistics of International Migration. According to these definitions, an "international migrant" is "any person who changes his or her country of usual residence". A "long-term migrant" is a person who moves to a country other than that of his or her usual residence for a period of at least a year (12 months), so that the country of destination effectively becomes his or her new country of usual residence; as opposed to a "short-term migrant" who is a person who moves to a country other than that of his or her usual residence for a period of at least 3 months but less than a year (12 months) except in cases where the movement to that country is for purposes of recreation, holiday, visits to friends and relatives, business, medical treatment or religious pilgrimage. Eurostat for example defines a migrant as a 'long term migrant' as per the UN Recommendation for the purpose of its statistics.

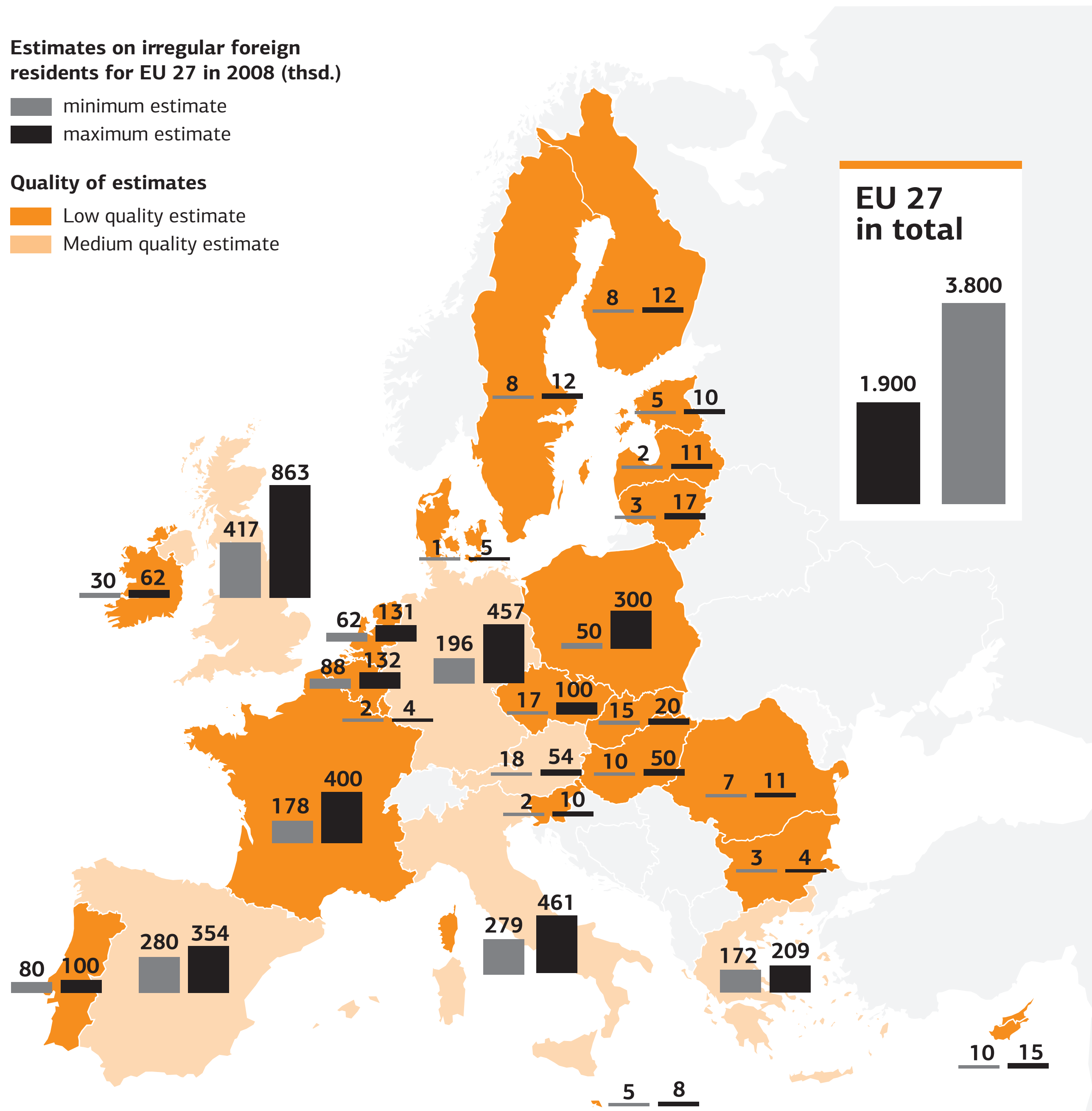
As to the concept of "foreigner", this is generally defined as "a person who does not hold citizenship of a certain country" (Aebi, 2009, p.21) and/or refers to someone who is considered as an outsider in his/her host society (Semyonov, Raijman and Gorodzeisky, 2008). Typically, migrants are included in the broader category of foreigners. This latter category, however, also includes those who move to a different country for purposes of holiday, visits to friends/relatives or business.

The vast majority of the statistics that were found and analysed in this study, and that are relevant to understand the relationship between migrants and crimes, refer to "foreigners" rather than to "migrants". They do not make a distinction among the different categories of foreigners, based on the purpose of the movement of an individual to a different country. For example, statistics on the foreign prison population and on the crimes committed by foreigners make no distinction among regular migrants, irregular migrants, stateless individuals, those who have moved to a different country for employment reasons, refugees or asylum seekers. Also, the "foreigner" and "migrants" concepts do not distinguish most of the time between EU citizens and third country nationals (non-EU). Indeed, a French citizen for example moving to the United Kingdom for employment reasons would be considered strictly speaking as a "foreigner" (or "migrant") but would not be an "irregular immigrant". This point needs to be emphasized as it highly complicates the analysis of the figures of interest as explained in the 'Data Collection' section and remains an obstacle to suitable comparison. This, in turn, also means that it is impossible to determine the exact volume of irregular immigrants. Thus, any conclusion made in this paper also needs to take these points into account and therefore has to be interpreted with caution.

This paper is mostly interested in irregular immigrants, who are commonly also referred to as "illegal", "undocumented", "unwanted", "undesirable", or "sans-papiers".[3] It is worth remembering that the migration phenomenon may include different categories of individuals such as refugees, asylum seekers, etc. Another factor of importance for the analysis of statistics related to migrants and crimes is the process of citizenship acquisition. Typically, citizenship can be acquired by being born in a certain country (so-called "jus soli") or by being given birth by a national of a certain country (so-called "jus sanguinis"). Also, some countries provide additional measures in order to grant citizenship. Considering the above, Herm's (2008, p.11) definition of citizenship seem to be comprehensive: "Citizenship means the particular legal bond between an individual and his or her state, acquired by birth or naturalization, whether by declaration, choice, marriage or other means under national legislation". Also, one point to be noted is that within data on the national population one might find a large proportion of people with a "migration background". The term "migration background" refers to the phenomenon by which some people, who are originally from one country, acquire citizenship in a different country. The result is that they are not formally categorized as "migrants" in that country anymore, but rather as nationals. This might happen, for

3. This is by no means an exclusive list.

Figure 1. Irregular foreign residents in Europe in 2008 (thousands)

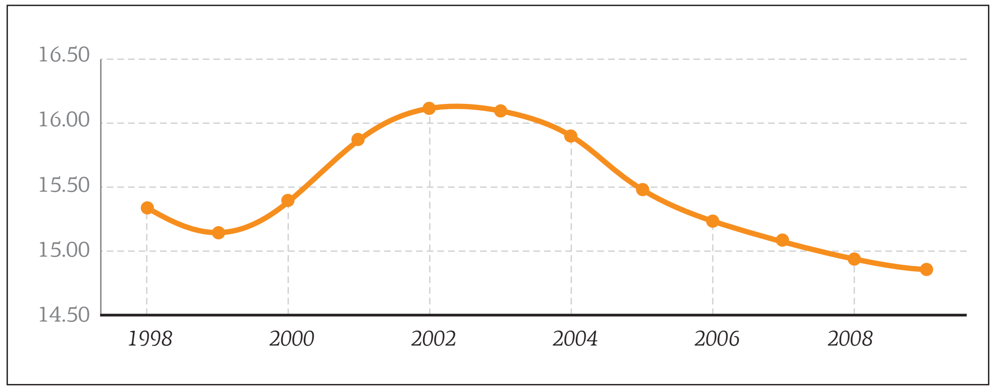


(SOURCE: Clandestino Research Project, 2009)

example, when people are naturalized in the new country due to marriage or their presence in that country for a long enough period. The "migration background" category has been added in the micro census survey 2005 in Germany (Cyrus, 2009). And this showed that 19,5% of the resident population had a migration background in 2011.

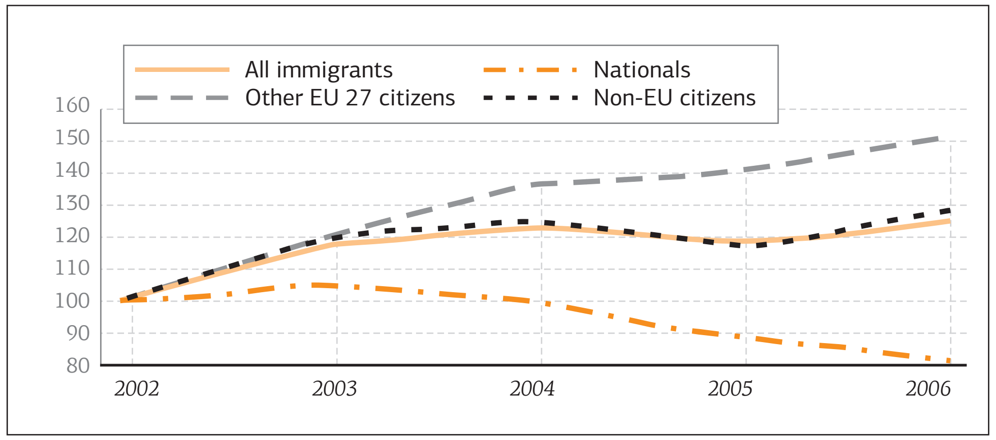
Before moving ahead, Figure 1 provides the reader with an idea of the situation. As stressed above, accurate figures for irregular migrants are impossible to find. The best estimates of irregular foreign residents in the EU have been found in the EU-funded research project "Clandestino". According to national estimates, and adding them all up, it is estimated that there are between 1.9 and 3.8 million undocumented foreigners in Europe. This corresponds to about 0.4-0.8% of the total population and 7-13% of the immigrant population in Europe. The four European Member States with the highest number of irregular immigrants are the UK, Germany, France and Italy, which are also the countries that have been selected as the focus in this paper.

Table 1. Crimes in Europe



SOURCE Eurostat, Statistics in Focus, 2012

Table 2. Change in immigration by citizenship group, EU-27



SOURCE Herm, 2008

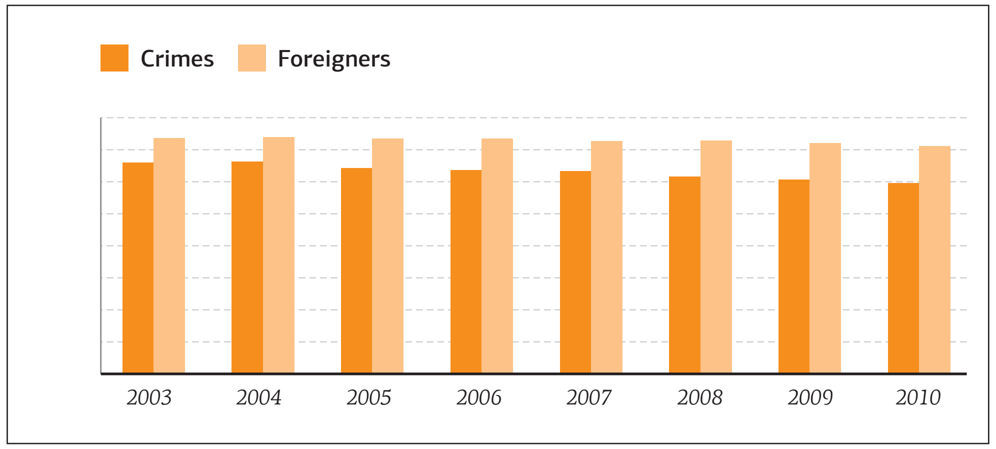
4. MISPERCEPTIONS: ANALYSIS & KEY FINDINGS

This chapter will discuss, in turn, the four identified misperceptions in relation to the 'assumed' criminalization of migrants. Where possible, figures will be presented in graphs so that the data can be accessed more easily.

4.1 Migrants and Crimes

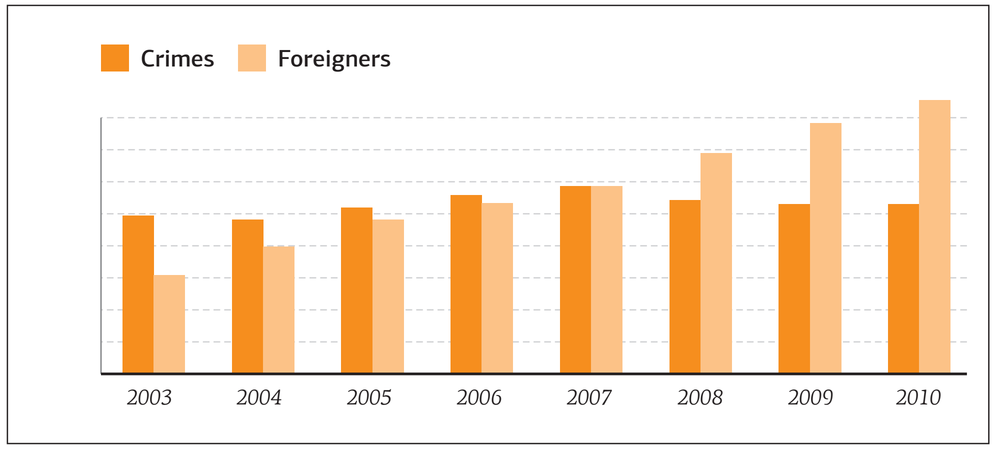
There is a common misperception that crime trends largely depend on the presence of migrants in a given territory. Indeed, European citizens are inclined to believe that immigrants commit more crimes than nationals and that increases in crime rates go hand in hand with migration inflows. However, when one compares the total number of crimes recorded by the police in Europe (Table 1) with the immigration rate trends (Table 2) what emerges is that linking migration to criminality is a socially constructed phenomenon. Indeed, as shown in Table 1, in the period 2002-2008 the number of crimes recorded by the police in Europe has steadily decreased although the number of migrants (and foreigners) has significantly increased (Table 2). Comparing both tables the data show therefore that after the 2002 peak in the number of crimes in Table 1, the subsequent decrease in the following years occurs at the same time as the

Table 3. Crimes in relation to foreigners in Germany



SOURCE Eurostat

Table 4. Crimes in relation to foreigners in Italy



SOURCE Eurostat

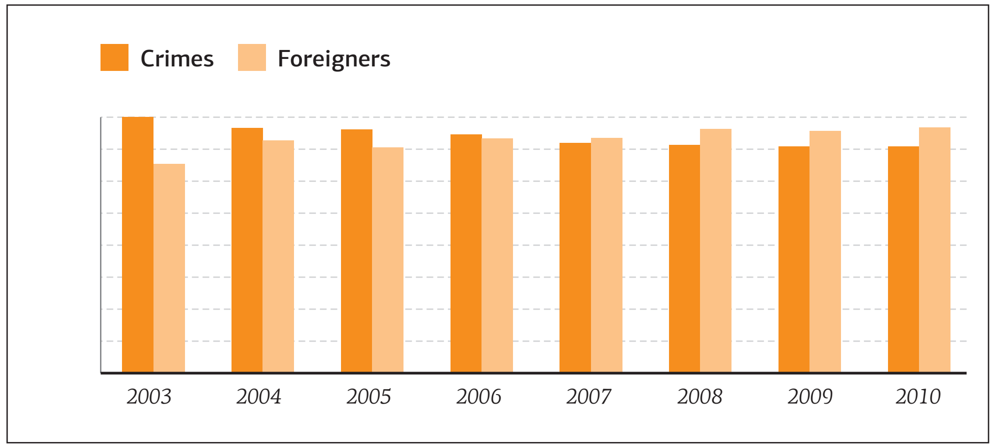
increase of foreigners (Table 2). This evidently leans towards illustrating that no clear correlation exists between the number of crime and the number of migrants.

With a view to strengthening our possible conclusion that there is no correlation between crime levels and immigrant numbers, similar sets of data as above are presented below. These graphs are presented by country (Tables 3, 4, 5 and 6), i.e. the four selected European countries: Germany, France, Italy and the UK, in order to provide more details. Also, as Europe is very diverse, this presentation by country allows comparing whether the cultural and criminal justice differences lead to similar or different conclusions than the above.

In the period 2003-2010, the number of foreigners appears as steady whilst the amount of recorded crime shows a slight decrease in Germany (Table 3). Figures for Italy show stability in the number of crimes recorded with a substantial increase in the number of foreigners (Table 4); the inflow of foreigners there does not seem to have affected the crime levels. As for France (Table 5) and the UK (Table 6) the same trend can be observed. The number of foreigners over the period has increased (only slightly in the French case) while the number of crimes is on the decrease. Similarly to our previous results for the global European trend above, one could even claim that a negative correlation between the number of crimes and the number of foreigners can be found in Germany, Italy, France and the UK.

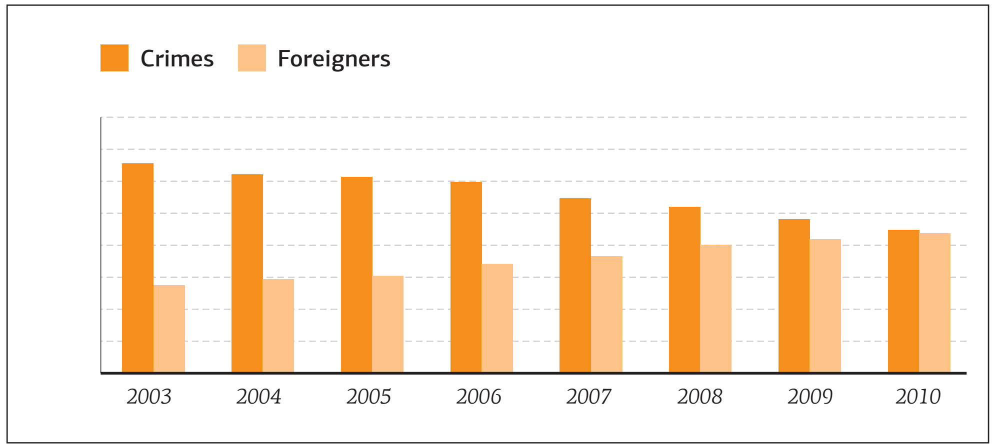
Finally, we thought it would be of interest to offer data on the proportion of nation-

Table 5. Crimes in relation to foreigners in France



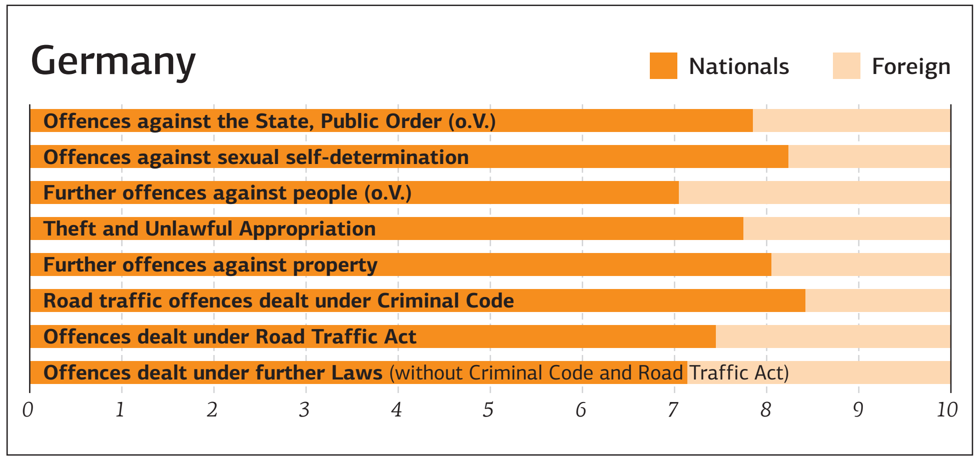
SOURCE Eurostat

Table 6. Crimes in relation to foreigners in the UK



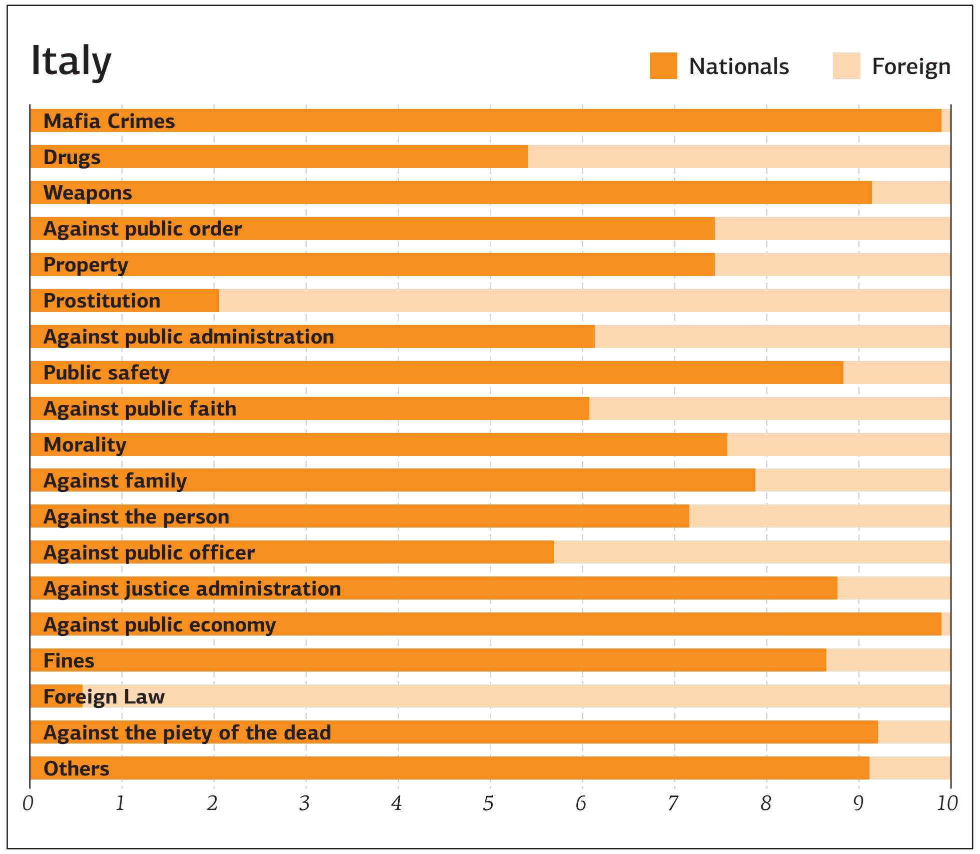
SOURCE Eurostat

Table 7. Number of crimes committed by nationals vs. non-nationals, Germany



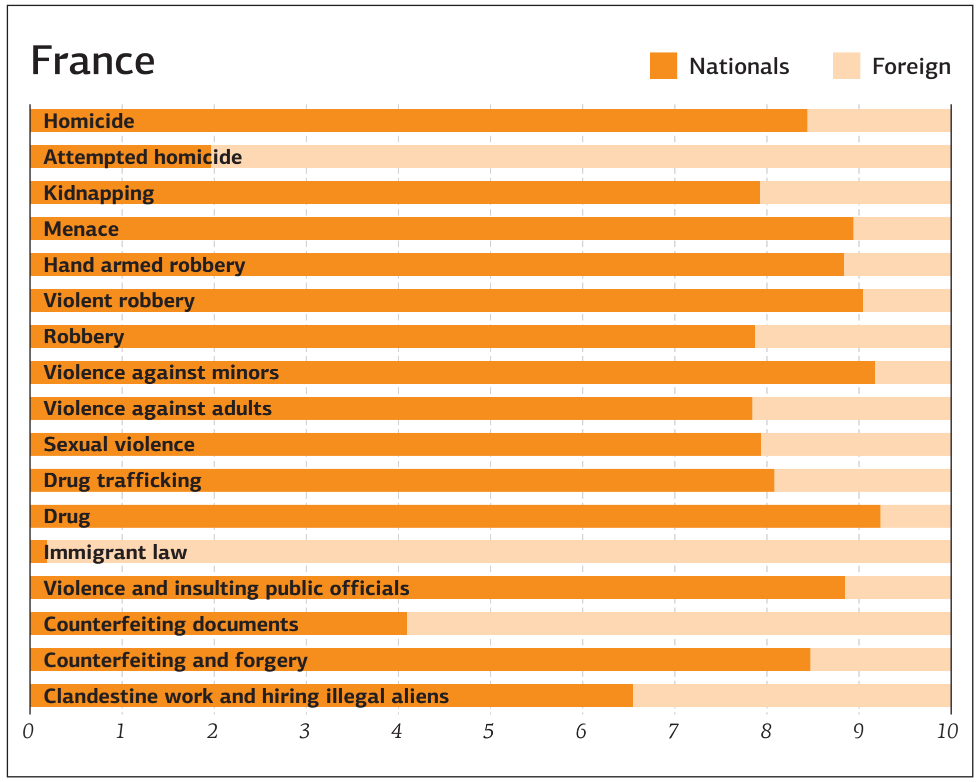
SOURCE Germany, Statistisches Bundesamt (2011)

Table 8. Number of crimes committed by nationals vs. non-nationals, Italy



SOURCE Ministry of Justice, DAP (2009)

Table 9. Number of defendants, nationals and foreigners, France.



SOURCE Ministère de Justice (2009)

als and non-nationals (i.e.: foreigners) who commit crimes in each of the four countries, in order to assess whether foreigners are more prone to committing crimes than nationals. The data obtained from the UK (from the Offender Management Statistics) cannot be compared with the other countries as instead of being divided between national and non-national categories they use the concept of "self-identified ethnicity" using such categories as "White", "Asian", "Mixed", "Black", etc. Also the categories of crime do not entirely correspond. These data are therefore not suitable for comparison in this context and not offered here. The German figures (Table 7) show that non-nationals are accountable for around 20% of the offences committed, across all categories of crimes. The general perception also that foreigners are more violent than others is not proven to be correct according to Tables 7, 8 and 9, as offences against persons (Germany and Italy) and violence against adults amount to 20% and 30% (depending on the country) for foreigners, remaining therefore largely lower than the percentage for nationals. The same figures apply for offences against property. Most importantly in the analysis of the tables here is that both the graphs for Italy (Table 8) and France (Table 9) coincide in that there is an over-representation of non-nationals in areas of immigration law and petty offences (micro-criminality). This point is developed further below as it has been discussed in the academic literature (Melossi, 2003; De Giorgi, 2010). Aliverti (2012) also points out in that respect that "the vast majority of immigration crimes are victimless and minor offences" (p.418). Overall, the three tables seem to indicate that the majority of reported crimes are committed by nationals as opposed to non-nationals as is often perceived. It is important to remember that the group of "non-nationals" can be very heterogeneous (as mentioned above in Chapter 3) since it includes not only immigrants but also tourists as well as people who are residents in a country but do not hold its nationality (for example French people who have lived for 20 years in Germany would be considered as "non-nationals" or "foreigners" here). This point underlines even more the (potential) small proportion of irregular immigrants committing crimes in comparison to nationals.

These results tend to converge with the above suggestion that with the more restrictive immigration measures introduced by governments at EU level (seeking to "control" and reduce migration flows), the effect has been to expand immigration "criminality" and illegality (Aliverti, 2012). Most of the crimes foreigners are involved in are types of deviance either generated by their (immigrant) status or prompted by the social conditions in which they live. Indeed, generally irregular immigrants are more inclined to be found in the lower part and therefore more risky part of the society with greater risk to get into the illegal economy because of the marginalised status as they are not offered the same opportunities as nationals (Ruggiero, 2000 as cited in Lee, 2005).

Concretely, "immigration crimes" can range from illegal entry into a territory to illegal residence, overstaying or not being in possession of a passport or valid visa. As the Home Office (2010, p.26) explains, nowadays almost any breach of immigration rules is a crime (as cited in Aliverti, 2012, p.418). All the more important, these are crimes that only foreigners can become involved in. It is therefore the "bureaucracy and the state that .... make them illegal" (Quassoli and Chiodi, 2000 as cited in Melossi, 2003). For example, in Germany illegal residence is considered a criminal offence whereas it is not in the Netherlands (Focus Migration, 2008, p. 2). Also, in Italy, the anti-crime legislation approved by the Parliament in July 2009 (Law 733/2009) turns illegal immigration into a crime (De Giorgi, 2010) instead of an administrative irregularity as it would be the case in other countries. Furthermore, in some countries, the situation is even more discriminatory, as different rules apply to irregular immigrants than to European citizens such as in Spain (Silveira Gorski, Fernández and Manavella, 2008, p.9) or in Italy where the punishment is increased by one third if the individual

is an immigrant (De Giorgi, 2010). Furthermore, Aliverti (2012) also argues that given the objective of law enforcement authorities to deport immigration offenders, criminal sanctions against immigrants fail to have any type of rule and consistency, and are unjustified.

Based on these data, overall, EU Member States are criminalising migrants by introducing more repressive immigration policies which "make them become criminal". Of importance also, the vast majority of immigration offences are victimless and include minor offences as shown by the tables. Although by no means final, these data suggest an intriguing line of research that will be explored further in the remaining months of the project.

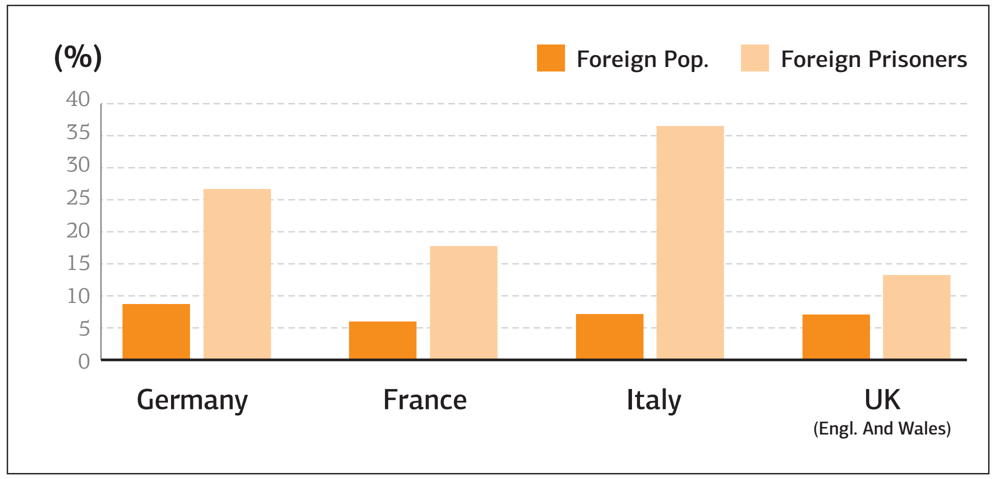
4.2 Migrants and Detention

After having analysed the criminalization of migrants in relation to crimes, we will turn now to the representation of foreigners in prisons and detention centres. Indeed, the wider strategy to control cross-border movement has taken the route of systematic use of incarceration, which is closely linked to the above analysis, and which is reflected in the over-representation of foreigners in the prison population. According to De Giorgi (2010) this situation constitutes a "dynamic of hyper-criminalization of immigrants".

As illustrated below in Table 10, the comparison between the percentage of foreigners in the overall population and the percentage of foreigners behind bars in the four selected countries show that foreigners are over-represented.[4] The rates of over-representation[5] are rather high, being 3.06 for Germany and France, 5.22 for Italy and 1.8 for the UK. It has to be kept in mind that several factors may lead to such over-representation of foreigners in prisons. Indeed, as mentioned in the previous section, for example, non-nationals are generally in a legally and socially weaker position than nationals (i.e. in respect of access to defence lawyers, financial means to reach settlements, kind of criminal offence, reason for imprisonment, etc).

Furthermore, Table 11 below gives us more data to analyse the issue of over-representation of foreigners in the prison population. It appears that in the period 2002-2010, the recent trends have been for the percentage of foreigners in the prison population to increase in Italy and Germany but to decrease in France and in England & Wales (Table 11). The highest percentage of detainees is observed in Italy, which over time has experienced a strong increase in foreign prisoners. With a population of 60,72 million – the

Table 10. Over-representation of foreigners in the prison population

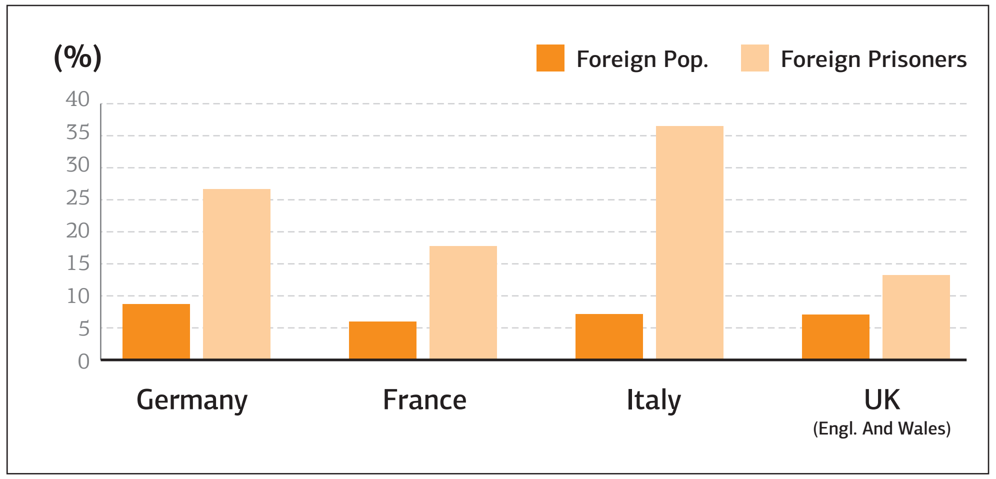


SOURCE: Council of Europe

4. It should be recalled that it is difficult to compare the foreign population with the foreign prison population, as tourists and residents of another nationality than that of the country under consideration are also considered as "foreigners".

5. The ratio between the percentage of foreign prisoners and the percentage of the overall foreign population.

Table 11. Trends in the percentage of foreigners in the prison population



SOURCE Space 1, 2010

smallest of the four countries selected - it is surprising that Italy has the highest rate of imprisonment of immigrants among the four countries. De Giorgi (2010) states that the average immigrant incarceration rate is 443/100,000 across Europe[6] meaning that foreigners are imprisoned around 6.2 times more often than EU citizens. He goes on to explain that some countries such as The Netherlands, Portugal and Italy incarcerate immigrants up to 10 times more often than nationals. This argument goes in line with the data offered in Table 11, showing Italy with the highest rate of foreigners in prisons. It is suggested in Angel-Ajani (2003a) that this high rate in Italy is largely due to the "cultural representation" of immigrants (dal Lago, 1996) which has created social panic among the public (Palidda, 1996), which in turn is also associated with discriminatory judicial and policing practices (Quassoli and Chiodi, 2000 quoted in Melossi, 2003, p.383) targeting (particularly "visible") immigrants. Furthermore, this statement is supported by Melossi (2003, p.381) who declares: "there has been traditionally, in Italian society, a widespread illegality, which is deeply embedded within the system of de facto informal social control of this society".

The next data to be compared are the number of foreigners and non-foreigners in pre-trial detention. Once more, Table 12 shows that the number of foreigners in pre-trial detention is higher than that of nationals. However, it has to be noted that this is not the case for the UK and that no data are available for France.

De Giorgi (2010) validates this trend as he argues in his paper that immigrants awaiting trial are incarcerated more often than nationals in similar positions.[7] He stresses on the basis of his data that countries such as Italy keep almost three out of four immigrant prisoners in preventive custody. Amongst other reasons for such situation, he mentions the economic and social vulnerability of immigrants (insecure working, housing, etc.), and poor access to legal defence, which impede them being offered alternatives to imprisonment; to this must be added the type of criminal activity they tend to be involved in, which again does not allow them to be offered pre-trial release for example (drug dealing, prostitution, property crime, etc.).

Table 13 offers data distinguishing between intra-EU and extra-EU detainees. This point is all the more important in that intra-EU detainees total from 18% (Italy) to 30% (UK) of the overall foreign detainees, which is a considerable amount. It is without doubt that this should be taken into account when analysing the issue of over-representation of migrants in the prison population. This data also reinforces our argument that the proportion of non-EU nationals in prisons is far higher than that of EU nationals.

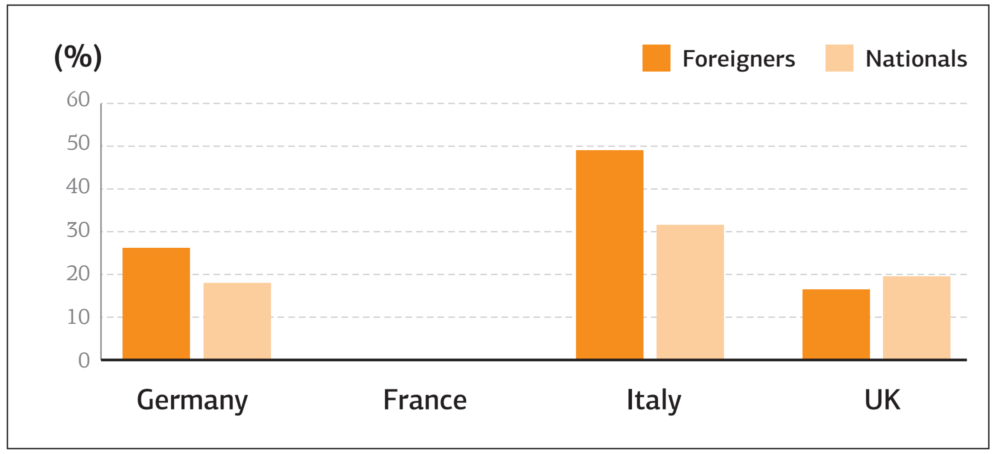
6. Excluding countries of recent admissions.

7. As mentioned in various sections of this paper, EU nationals can also be considered as "foreigners". The reader needs to keep this point in mind.

The last part of this section deals with figures related to administrative detention. First of all, a distinction must be made between incarceration, administrative detention and deportation or expulsion. Up to now we have referred to detention in prisons. However detention centres (an administrative measure) are commonly used by law enforcement authorities in order to immobilize migrants in internal camps or "waiting areas" until they are repatriated or expelled to their countries of origin. As stated by Silveira Gorski, Fernández and Manavella (2008) Migreurop counted about 235 closed detention centres in Europe by the end of 2008, which in reality could amount to many more if waiting zones at airports are also taken into account. The United Nations High Commissioner for Refugees declared in 2002 that there is "a more general trend towards increased used of detention, often on a discriminatory basis" (Jesuit Refugee Service, 2004, p.2). Moreover, the EU Parliament's Committee in Citizen's Freedoms and Rights, Justice and Home Affairs has expressed concerns regarding the "plight of persons being deprived of their freedom in holding centres despite the fact that they have been charged with no crime or offences" (Jesuit Refugee Service, 2004, p.2). France for example illustrates these situations very well as the number of foreigners in administrative centres has more than doubled in the period 1999-2010 (Table 14).

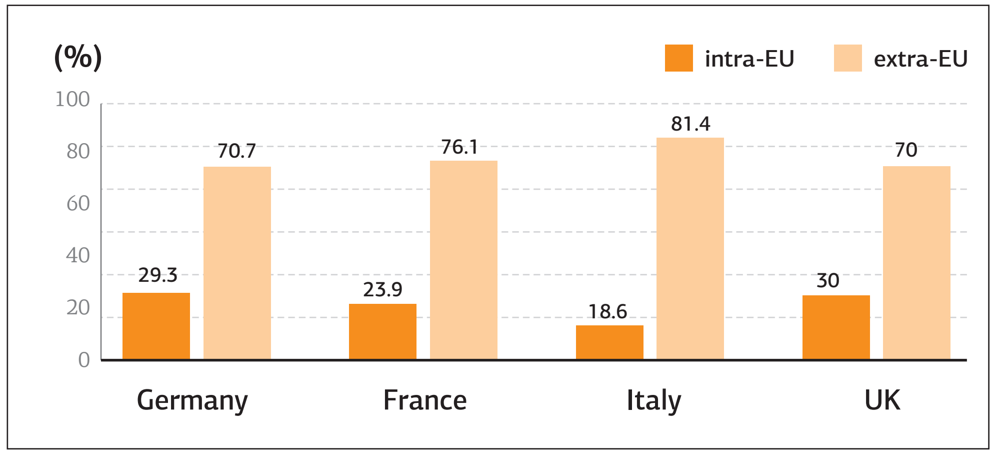
These detention centres have very diverse administration depending on the country. Guild (2005) explains that the police force manages most of them and thus has cus-

Table 12. Foreigners and nationals in pre-trial detention



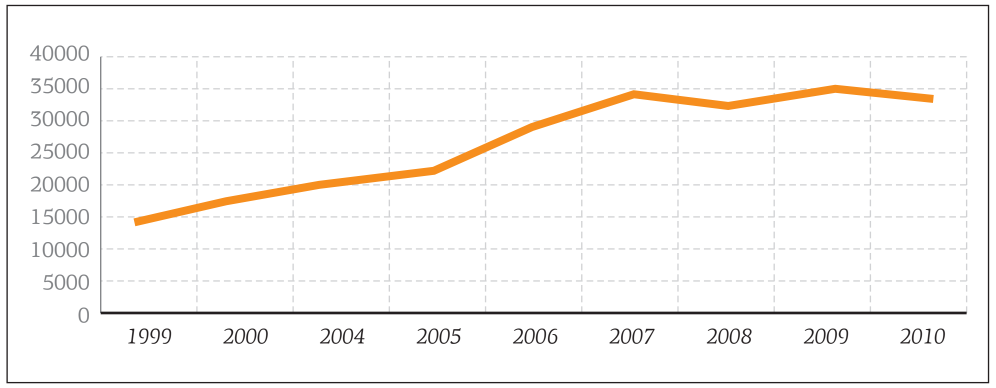
SOURCE Space 1, 2010; European sourcebook of Crime and Criminal Justice, 2010

Table 13. Intra-EU and extra-EU detainees



SOURCE Space 1, 2010

Table 14. Foreign individuals in administrative detention, France



SOURCE Centres et locaux de rétention administrative - report 2010

tody of the detainees. In some countries however this is done by the military (Malta), by NGOs such as in Italy or France or by participation of private companies as is the case in the UK. Custody periods can also vary according to the country. Details of such periods in the various European countries can be found in Silveira Gorski, Fernández and Manavella, 2008 (p. 4); they can range from 32 days (France) to 20 months (Latvia) or unlimited duration (eg: UK). This is another striking example of migrants suffering from criminalization due to deprivation of liberty amongst other issues.

4.3 Migrants and the Police

Restrictive policies, proneness of migrants being labelled criminals, prisons and detention centres; they all work symbiotically with police stops and arrests. This section will therefore present data on police stops and ethnic profiling in order to complete the picture of criminalisation, building up on what has been examined so far.

The data will be mainly based on the EU-MIDIS, which is the most important survey on this matter at European level. It was published in 2010 by the Agency for Fundamental Rights (FRA). The research in the EU-MIDIS was conducted through interviews with a sample of 23,500 immigrants and people from ethnic minorities. For comparative purposes, 5,000 people belonging to the majority of the population were also interviewed. It is worth noting that data on police stops and ethnic profiling are few and are generally collected by European agencies (i.e. FRA) and NGOs who play key roles in that context.

Profiling can be used as an exclusion technique in order to target discriminatorily certain people. In the context of this paper it refers to targeting certain individuals because they possess specific characteristics for which they are attributed heightened crime-proneness, for example "black", "young man", "male", etc. As a consequence of such a socially constructed "criminal behaviour risk" within a segment of the population, certain minority and migrant groups have become increasingly policed, leading to discriminatory treatment and practices.

The EU-MIDIS findings have shown that respondents from ethnic minorities are stopped more frequently (more than three times) than those belonging to the majority population. Some minorities, especially Roma people, Africans and North Africans, are particularly subject to control by the police as illustrated by the three tables below (Tables 15, 16, 17). These graphs show the ethnicity of the respondents who claim to have been stopped by the police in the previous twelve months in Germany, France and Italy.

These "ethnicity" results generally correspond with (or are very close to) the num-

Table 15. Police Stops – Germany (F.R.A)

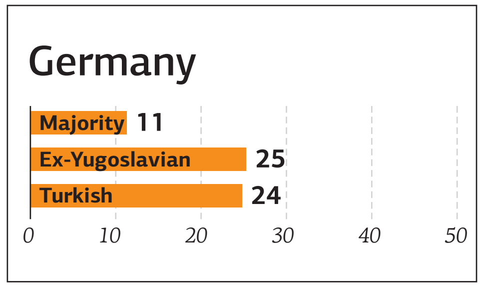


Table 16.Police Stops – France (F.R.A.)

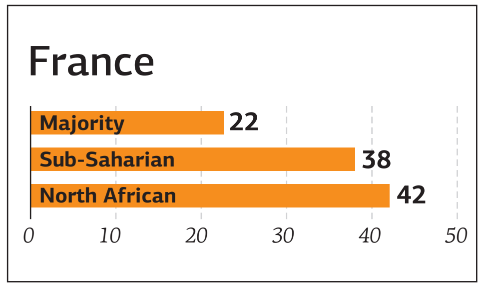
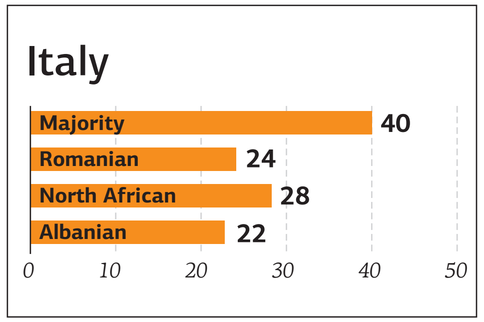


Table 17. Police Stops – Italy (F.R.A.)



ber of largest citizenship groups of immigrants in the country under consideration. Indeed, according to Eurostat (2008, p.3) the three highest shares of immigrants in Germany came from Poland (26%), Turkey (5%) and Romania (4%); in France these came from Algeria (16%), Morocco (13%) and China (6%), closely followed by Tunisia (Herm, 2008), and in Italy from Romania (19%), Albania (12%) and Ukraine (11%), followed by Morocco (Herm, 2008).

Further key findings from the EU-MIDIS study have shown that the perception of ethnic minority groups is that they have been stopped by the police because of their ethnic origin. They also feel that the police are more disrespectful toward them during the stops. It was also found that one migrant out of two does not report being a victim of a crime to the police because he/she believes that the police will not intervene. In the same vein, 13% of these respondents who belong to ethnic minorities assert that they do not report aggressions because they are afraid of the police or because they previously had negative experiences with the police. This statement is supported by Amnesty International (as cited in Angel-Ajani, 2003b) which notes that a great majority of the victims of police violence are immigrants and Roma.

Furthermore, Hollo and Neild (2013) expose the discriminatory practices in "stops and searches" undertaken by the police in Spain, France, the UK and Sweden. They also denounce that the governments responses to this biased policing in these countries oscillates between "acceptance and denial", which is worrying given the legislative framework that exist in relation to discrimination, racism, ethnic profiling and protection of minorities.[8] The extent of the ethnic profiling issue in Spain is clearly denounced in Open Society Justice Initiative (2013), a report that also details the violations of international human rights standards in that respect. The French government has also been criticised in Birchall and Neild (2012) for not seriously addressing the issue of police forces targeting particularly minorities in their identity checks among other matters. Furthermore, Open Society Justice Initiative (2005) adds to this by explaining that in the UK Black people are six times more likely, and Asians two times more likely, to be stopped and searched than whites. In the same line of argument, Melossi (2003) reports on the basis of data collected in the very first Italian national

8. For example the EU Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

victimization survey and in a survey he was involved in among male adult foreigners who were legal residents in the region of Emilia-Romagna (Italy) that the likelihood of being stopped on foot by the police was 1.4% for Italians but rose to 14% for foreigners, therefore 10 times more likely for the foreigners (Melossi 1999, p.112; 2000, p.39). As he stresses, the non-European more 'visible' immigrants scored a rate even higher than this and if taking into account that these were only legal and documented immigrants, then it is fair to conclude that the figure for undocumented immigrants would be much higher than that of Italian males (p. 386). These figures change considerably (the rate of Italian males increases in this case) if the stops include traffic stops; a point to take into consideration, which could explain, to a certain extent, the high rate for 'the majority' in Table 17.

Lastly, it is important to mention that many EU countries, such as Spain and France, have introduced entry quotas and expulsion quotas in line with their repressive policies. In practice, for this later point, it means that the police have been given the task to detain a certain number of irregular immigrants who then will be expulsed of the country. In Spain for example, Europa Press (2009) states that each police station has been given a weekly quota and that priority should be given to detain Moroccan nationals as their repatriation can be done within the 40 days time limit during which they can be held in detention centres and as costs are accessible, as opposed to Bolivian nationals for example. These quotas increase the criminalization process towards certain people.

It appears on the basis of the data analysed in this section that discriminatory practices from the police exist towards minorities and specific immigrant groups. This argument will be reinforced, particularly in relation to the Roma group, with the analysis provided in the next section in which public perceptions in relation to migrants will be examined. It will also be of importance for the future to follow the results of the Max Planck Institute POLIS project[9] which focuses on interactions and mutual perceptions between police forces and (minority) adolescents in France and Germany.

4.4 Migrants and Public Opinion

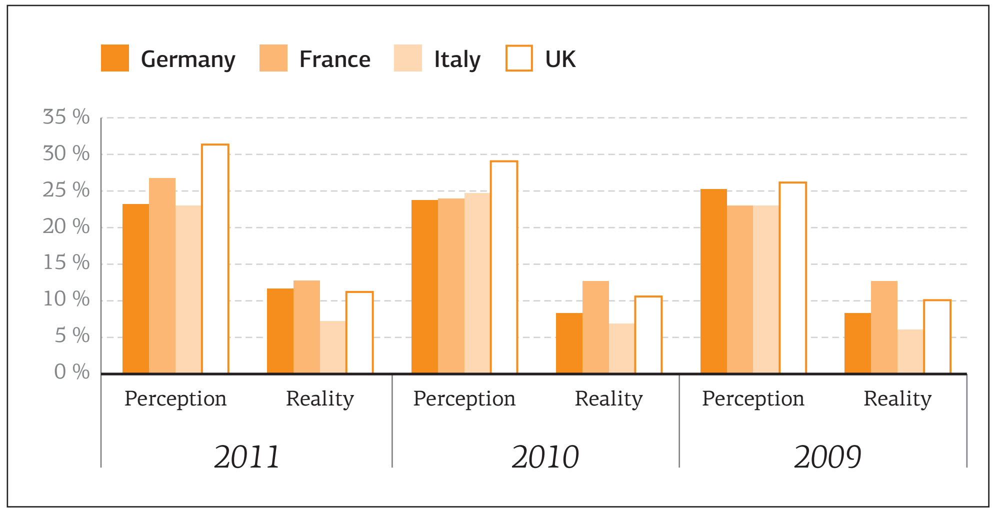
Public discourses can play a central role in the criminalization of migrants and minorities and have a strong impact on societies. As demonstrated in Semyonov, Raijman and Gorodzeisky (2008) inflated perceptions are likely to increase negative attitudes, which is therefore of relevance when assessing actual and perceived sizes of foreign population in order to see if they vary greatly or not. Public perceptions more generally speaking will also be discussed in this section as well as causes that might lead to such perceptions. The data mostly come from the "Transatlantic Trends (2011)" immigration survey and the Eurobarometer on discrimination surveys.

Table 18 below gives data on the four selected countries and compares for three years in a row the perception of citizens with the reality. It clearly shows that European citizens (at least in the four selected countries) overestimate the number of foreigners in their country. Over the three years the perception of citizens has always been considerably higher than the real figures. This misperception is at its highest in the UK.

Another category that offers figures considerably higher than the real figures is regarding Europeans' perception of the number of illegal immigrants as opposed to legal immigrants, with great variations across countries. As in previous years, the Italians show the highest concern with 64% thinking that most immigrants are illegal; Germany in that respect presents the lowest concerns with only 13% of the population interviewed feeling this way (Transatlantic Trends, 2011). Overall, taking into account all the above data, we can conclude without doubt that the immigration phenomenon is distorted.

9. www.mpicc.de/ww/en/pub/forschung/forschungsarbeit/kriminologie/polis.htm

Table 18. Public perception on the number of migrants.



SOURCE Reworking of Transatlantic Trends, 2012

Still, according to the 'Transatlantic Trends 2011" immigration survey,[10] half of the European citizens interviewed (52%) consider immigration as a problem, rather than an opportunity. We can see that the percentages in Germany, France and Italy are quite similar with between 42% and 48% of the citizens seeing immigration as a problem; however, this figure rises to 68% in the UK (Table 19). This result is in line with the data of Table 18 in which the UK is the country whose citizens have the greatest tendency to exaggerate the number of immigrants. These results also go hand in hand with the analysis of the European Social Survey of 21 countries that reveals that foreigners are generally viewed in negative terms (Semyonov, Raijman and Gorodzeisky, 2008).

However, despite the negative perceptions presented above, it is of interest to emphasize that Europeans are generally very supportive as regards refugees and other migrants fleeing from dangerous conditions. Indeed, following the Arab Spring events of 2011, the Transatlantic Trends Survey (2011) included questions on "forced migration" which showed for example that in situations of armed conflict between 71% and 85% of citizens from the four selected countries (Germany, Italy, France and the UK) agreed that immigrants should be admitted into their country and between 70% and 79% in cases of natural disasters. In the case of the Arab Spring, however, while Europeans were supportive of allowing immigrants into their territory, the majority supported the granting of a temporary stay only rather than a permanent stay. Courau (2009) also mentions a certain trend towards society changing and being in favour of irregular immigrants (p.31). In the same vein, very recently the German media reported positively about an initiative in Hamburg, where inhabitants of St Pauli supported and protected African asylum seekers (Abendblatt, 2013).

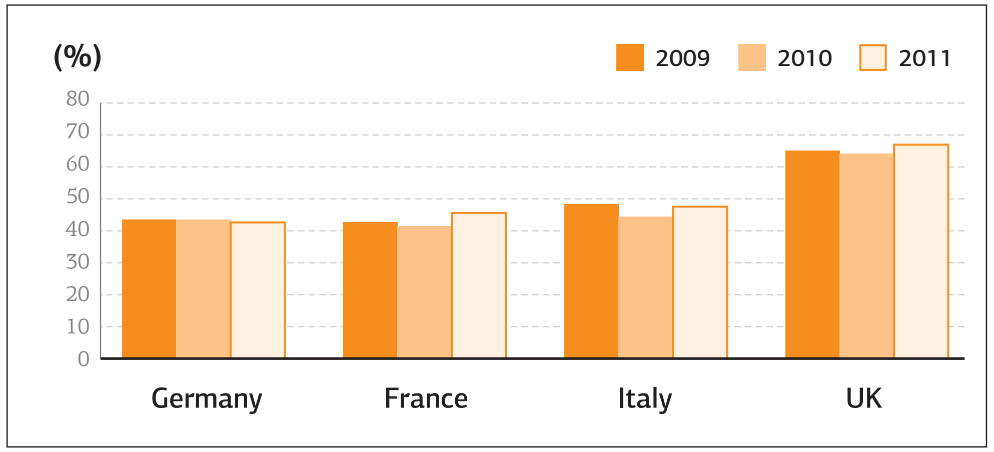
Coming back to negative public perceptions, a high percentage of European citizens have a cultural prejudice against ethnic minorities, and particularly Roma people[11] - Europe's biggest ethnic minority (Eurobarometer, 2012, p.107). The 2012 Eurobarometer survey on discrimination showed that discrimination based on ethnic origin is the type of discrimination that appears to be the most widespread in the EU (compared with discrimination on the grounds of gender, age, sexual orientation, etc.), with overall 56% of European citizens feeling this way (down from 64% in July 2006). Furthermore, in the 2007 Eurobarometer[12] an impressive 77% of EU citizens believed that belonging to the Roma minority was a disadvantage; this figure cannot be compared unfortunately to the 2012 figures, since the categories offered in the Eurobarometers over the years are not always the same. The 2012 Eurobarometer also showed that an average of 34% of European citizens was "uncomfortable" with the idea of their children having a Roma

10. It analyses opinions of respondents in the United States, the UK, France, Germany, Italy and Spain.

11. As highlighted in the Eurobarometer 2012, "Roma" is the common name used also for other groups, such as Gypsies, Travellers, Manouches, Ashkali, Sinti, etc. (p. 107).

12. The fieldwork was undertaken in June-July 2006.

Table 19. Public perception on immigration as a problem.



SOURCE Reworking of Transatlantic Trends, 2012

schoolmate, with a variation between countries that needs to be taken into account; in Italy and France the percentages of citizens amounted respectively to 48% and 41% while in Germany and the UK these were lower with respectively 31% and 28%.

Although the figures from Table 19 (i.e.: immigration is a problem) can be seen as relatively high, the Transatlantic survey reports that generally European citizens have a positive attitude towards the integration of immigrants in the community, particularly "second generation" immigrants. However, most European citizens feel pessimistic in relation to the possible integration of Muslim immigrants. As for the Roma community in particular, there is no reliable data on the degree of integration, housing, access to services, level of education and unemployment (2011 Transatlantic Trends). However, the 2012 Eurobarometer gives a majority of Europeans (53%) in favour of integrating Roma better. In this case again figures vary considerably between countries. The biggest differences are found between France and Italy. Whereas in France 59% of the citizens agree that society would benefit from a better integration of the Roma and 30% disagree, in Italy an absolute majority of respondents (51%) disagree that society could benefit from better integrating Romas and only 33% agree.

In relation to the strategies to take in order to reduce the problem of irregular immigration, the 2011 Transatlantic Trend survey reports that 32% of European citizens highly value providing support to the development of the countries the irregular immigrants come from; this is considered as the best strategy particularly among Mediterranean countries such as Italy (44% of citizens) and France (42% of citizens). To the contrary, in the UK, where the public debate revolves around the issue of how to reduce the number of immigrants, citizens favour the adoption of more severe border control policies and punitive measures. The common feeling across the four countries is that the government does too little in order to address the immigration problem; the proportion of citizens feeling that way reaches 83% in Italy, being unhappy with how the government manages immigration.

In terms of deportation versus legalization policies, the figures show that on average European citizens prefer that the immigrants be deported to their countries of origin (52%) rather than legalising them (35%). In that respect, the two countries that showed extreme figures were the UK with 70% preferring deportation (returning illegal immigrants to their country) and Germany with a preference for regularization (50% of citizens).

One reason for the public misperception of numbers of immigrants and seeing immigration as a problem comes from the media representation of immigrants and

13. It is worth noting that recently, in Germany, there has been a surge in immigration by Southern European workers (particularly from Spain, Italy and Greece) (BBC, 2013). This information is not included in the main text as it does not refer to irregular immigration. However, the authors felt the readers should be informed about this.

ethnic minorities. If foreigners are seen as a social problem and a threat, it is in part due to the media fuelling these debates. Indeed, Ferraris (2012) refers to empirical studies on the over-exposition of immigration in the media content, connecting this phenomenon of misperception to the misuse of media information. Also, the media generally portray asylum seekers and irregular immigrants as flooding the West; however as reported in Sarikakis (2012), the migration phenomenon is in absolute terms low with 1.4 migrants per 1,000 in Europe (in 2005). In the same vein, Herm (2008) reveals that increase in immigration has slowed in Europe and some countries such as Germany and the Netherlands have even seen a reduction in migration.[13] Reports that governments are intensifying their immigration policies is another factor that reinforces the stigmatization of immigrants as 'undesirable ones'. Furthermore immigrants are used as targets and get easily blamed, which is an aspect often used by politicians in their political campaigns (Semyonov, Raijman and Gorodzeisky, 2008). The media have also made immigrants responsible for crimes using a single criminal episode to blame a whole nation (Fasani, 2009; Vollmer, 2011). For example, there has been a few years ago the case of a Romanian immigrant who raped an Italian woman (she died in 2007), which the media have exploited in order to create a moral panic about Romanians. Following this case a Law Decree was approved in Italy to facilitate the deportation of European citizens; this Decree was referred to as the "Romanian Decree" by the media (Fasani, 2009).

Identical criminalization 'strategies' as the ones just mentioned for immigrants have also been used with the Roma community. The recent 2010 Rom case in France (explored in detail in Carrera and Faure Atger, 2010), illustrates this situation very well. At the time, Sarkozy made public declarations linking the Roma with insecurity and criminality, referring to "illegal settlements", "illegal trafficking" and "exploitation of children" (Carrera and Faure Atger, 2010, p.13). As a consequence, levels of stigmatization and negative attitudes towards the Roma community increased even further. In turn, this negative perception played in favour of the government justifying the dismantling of irregular settlements and the collective expulsions of Roma and travellers (mostly citizens from Bulgaria and Romania). The Italian President Berlusconi and the Spanish President Zapatero supported these measures; however, Germany publicly denied the assertions of support made by Sarkozy (Carrera and Faure Atger, 2010). The scope of the Roma criminalization goes even further as Carrera and Atger (2010) explain that some EU Member States have even created anti-Roma policies, with some affecting their possibility to access social benefits. Moreover, recently a French right-wing Deputy has been criticised for labelling Romania as a "rogue state", blaming therefore the whole nation (Bran, 2013). This comes after the on-going French-Romanian "disputes" over the deportation of Romas as "undesirable ones" among other matters. Bran (2013) reports that since 2007, the year that Romania joined the EU, France has deported 10,000 Romas to Romania every year.

5. CONCLUSIONS

In order to set the tone of our analysis, we started this paper by addressing the methodological limitations that can be encountered with statistical analysis. Also, we provided definitions for key concepts such as ''criminalization", "migrants" and "foreigners", which are concepts that can often lead to misunderstanding. Then, the various chapters have presented data in relation to the process of criminalization of migrants and ethnic groups in Europe. First of all, data was offered on the assumed link between migrants and crime. The statistics so far do not appear to bear out such a link . Also, figures have demonstrated that immigrants are particularly over-represented in petty offences and immigration law offences. The latter offence is a type of crime that only immigrants can become involved with, which perfectly illustrates the criminalization process. Secondly, the over-representation of foreigners in prisons and the use of detention centres have been examined. All the graphs we analysed showed over-representations of foreigners. It was particularly interesting to find out that Italy had the highest percentage of foreigners in the prison population compared with the other three countries, which all have a bigger population. This might be explained by the fact that Italy is tough on "foreigner detention" as it incarcerates immigrants up to 10 times more often than nationals. Detention centres was also an important point to touch upon, since these are increasingly used and deprive immigrants of their basic rights. Following this, a section on discriminatory practices used by the police towards immigrants was the next point for discussion. Results revealed that profiling is a usual practice and that Roma people, Africans and North Africans are the most likely to be controlled. Finally, statistics on public perceptions were presented. The figures clearly showed a misperception in relation to the number of immigrants present in a given territory, greatly amplifying the phenomenon. As a consequence, this misperception leads citizens to see immigration as a huge problem, particularly in the UK. Linked to this, it was argued that the media are part of the issue as they usually portray immigrants and ethnic minorities (e.g.: the Roma community) in negative terms. In the same vein, government also use the media to stigmatize such groups, in order to justify their repressive measures.

To understand the scope of the problem it is important to emphasize that the four areas linked to immigrants and ethnic groups that have been explored here (i.e.: migrants and crime; migrants and detention; migrants and the police; and migrants and public perception) are inter-related and can influence and affect one another. So far, it can be confirmed that the criminalization process exists and that little appears to be done to address the situation.

On a final note, the research team would like to emphasize that the conclusions of this paper need to be handled with caution at this stage: they cannot be read as entirely conclusive, since they need to be further explored in the remaining months of the project.

REFERENCES

Abendblatt (2013) Die St.-Pauli-Kirche wird zum Nachtasyl, www.abendblatt.de/hamburg/article116823407/Die-St-Pauli-Kirche-wird-zum-Nachtasyl.html

Aebi M. F., Delgrande. N. (2009) *Le statistiche sui detenuti stranieri in Europa (1989-2006), in Razzismo Democratico. La persecuzione degli stranieri in Europa*, XBook, Milano.

Angel-Ajani, A. (2003a) A question of Dangerous Races? *Punishment & Society* 5(4): 433-448.

Angel-Ajani, A. (2003b) The Racial Economies of Criminalization, Immigration, and Policing in Italy. *Social Justice* 30(3): 48-62.

Aliverti, A. (2012) Making People Criminal : The Role of the Criminal Law in Immigration Enforcement. *Theoretical Criminology*, 16 (4), 417-434.

Ambrosini M. (2005) *Sociologia delle migrazioni*, Il Mulino, Bologna.

Baratta A., Diritto alla sicurezza o sicurezza dei diritti?, in Anastasia S., Palma M. (Edited by), *La bilancia e la misura*, Franco Angeli, Milano, 2001.

BBC (2013) Southern European workers fuel German immigration surge. http://www.bbc.co.uk/news/world-europe-22446774 .

Birchall, J. And Neild, R. (2012) French Prime Minister Makes U-Turn on Reforming Police Stops. http://www.opensocietyfoundations.org/voices/french-prime-minister-makes-u-turn-reforming-police-stops

Bran, M. (2013) Mots doux autour des Roms. *Le Monde* 28 June 2013. http://www.lemonde.fr/culture/article/2013/06/28/mots-doux-autour-des-roms_3437991_3246.html

Carrera, S. And Faure Atger, A. (2010) L'Affaire des Roms. A challenge to the EU's Area of Freedom, Security and Justice. *CEPS Paper in Liberty and Security in Europe*, September 2010.

Carrera, S. (2012) An assessment of the Commission's 2011 Schengen Governance Package. Preventing abuse by EU member states of freedom of movement? No.47/March 2012. CEPS.

Clandestino Research Project (2009) *Size and Development of irregular Migration to the EU. Comparative Policy Brief*. Otober 2009.

Coleman, C., & Moynihan, J. (1996). *Understanding crime data: haunted by the dark figure.* Open University Press.

Courau, H. (2009) Clandestino, country report : France. Undocumented Migration. Counting the Uncountable. Data and Trends across Europe.

Cyrus, N. (2009) Clandestino, country report: Germany. Undocumented Migration. Counting the Uncountable. Data and Trends across Europe.

Dal Lago, A. (1996) The Impact of migration on receiving societies: Some ethnographic remarks, in European Commission (ed.) *Immigrant Deminquency: Social Sciences*, pp. 43-50. Luxembourg: European Commission.

De Giorgi, A. (2010) Immigration control, post-Fordism, and less eligibility: A materialist critique of the criminalization of immigration across Europe. Punishment & Society 12 (2): 147-167.

Eurobarometer (2007) Discrimination in the European Union. Special Eurobarometer. January 2007.

Eurobarometer (2012) Discrimination in the EU in 2012. *Special Eurobarometer 393. Report* November 2012.

Europa Press (2009) La policía recibe orden de detener a marroquíes porque es más barato deportarlos. http://www.elmundo.es/elmundo/2009/02/15/madrid/1234703425.html .

European Commission (2008) *Employment in Europe 2008*, Luxembourg: European Commission.

Eurostat (2008) Immigration in the EU27 in 2006. 40% of immigrants who settled in the EU27 were citizens of EU27 Member States. Eurostat Newsrelease.

Fasani, F. (2009) Clandestino, country report : Italy. Undocumented Migration. Counting the Uncountable. Data and Trends across Europe.

Ferraris V. (2008) Recensione of Barbagli's articles in *Studi sulla Questione criminale*, III, 3, pp 109

Ferraris V. (2012) *Immigrazione e criminalità*, Carocci, Roma.

Focus Migration (2008) Irregular Migration in Europe – Doubts about Effectiveness of Control Strategies. Policy Brief, March 2008.

Guild, E. (2005) A tipology of different types of centres in Europe. Report for the European Parliament: Dircetorate general internal policies of the Union. (IP/C/LIBE/FWC/2005-22) in: www.libertysecurity.org/article1181.html .

Herm, A. (2008) Recent migration trends: citizens of EU-27 Member States become ever more mobile while EU remains attractive to non-EU citizens. Eurostat. Statistics in Focus, 98/2008.

Hollo, L. and Neild, R. (2013) Policing on Trial: Europe Grapples with Ethnic Profiling. Open Society Justice Initiatives, 5 July 2013, http://www.opensocietyfoundations.org/voices/policing-trial-europe-grapples-ethnic-profiling

Home Office (2010) *Protecting Our Border, Protecting the Public: the UK Border Agency's Five Year Strategy for Enforcing Our Immigration Rules and Addressing Immigration and Cross Border Crime.* London: Home Office.

Human Rights Watch (2011) The EU's Dirty Hands. Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece. http://www.hrw.org/sites/default/files/reports/greece0911webwcover_0.pdf

Jesuit Refugee Service (2004) *Detention in Europe.* JRS-EUROPE Observation and Position Paper.

Lee, M. (2005) Human Trade and the criminalization of irregular migration. *International Journal of the Sociology of Law* 33, 1-15.

Marshall, I.H. (1997) *Minorities, migrants, and crime.* London: Sage.

Melossi, D. (1999) Multiculturalismo e sicurezza in Emilia-Romagna: Prima parte. *Quaderni di Città Sicure* 15. Bologna : Regione Emilia-Romagna.

Melossi, D. (2000) Multiculturalismo e sicurezza in Emilia-Romagna: Seconda parte. *Quaderni di Città Sicure.* Bologna : Regione Emilia-Romagna.

Melossi, D. (2003) In a Peaceful Life : Migration and the Crime of Modernity in Europe/Italy. *Punishment and Society* 5 (4): 371-397.

Melossi D. (2008) Il giurista, il sociologo e la criminalizzazione dei migranti: che cosa significa etichetta mento oggi?, in *Studi sulla Questione criminale*, III, 3, pp. 9-23.

Open Society Justice Initiative (2005) Ethnic Profiling by Police in Europe. A Failure to Regulate: Data Protection and Ethnic Profiling in the Police Sector in Europe.

Open Society Justice initiative (2013) Submission on the visit to Spain of the Special Rapporteur on the Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance. January 2013. http://www.opensocietyfoundations.org/sites/default/files/submission-spain-ethnic-profiling-20130128_0.pdf

Palidda, S. (1996) 'La construction sociales de la déviance et de la criminalité parmi les immigrés: Le cas Italien', in European Commission (ed.) *Immigrant delinquency: Social Sciences*, pp. 231-66. Luxembourg: European Commission.

Palidda, S. (2011) *Racial Criminalisation of Migrants in the 21st Century*, Ashgate.

Perkowski, N. (2013) An Introduction to Frontex: Human Rights. Fahamu Refugee Legal Aid Newsletter. http://frlan.tumblr.com/post/39343638445/an-introduction-to-frontex-human-rights

Quassoli, Fabio and Milena Chiodi (2000) 'Immigrazione e in/sicurezza in Emilia-Romagna: Rappresentazioni sociali e pratiche organizzative di polizia e magistratura',in D. Melossi (ed.) Multiculturalismo e sicurezza in Emilia-Romagna: Seconda parte. *Quaderni di Città Sicure*, pp. 117–293. Bologna: Regione Emilia-Romagna.

Ruggiero, V. (2000) The Fight to Reappear. *Social Justice* 27, 45-60.

Sarikakis, K. (2012) Access denied: the anatomy of silence, immobilization and the gendered migrant. *Ethnic and Racial Studies* 35(5): 800-816.

Semyonov, M., Raijman, R. and Gorodzeisky, A. (2008) Foreigners' impact on European Societies: Public Views and Perceptions in a Cross-National Comparative Perspective. *International Journal of Comparative Sociology* 2008 49: 5, pp. 5-29.

Silveira Gorski, H.C., Fernández, C. and Manavella, A. (2008) A right-based approach to migration policies in a context of emergencies: "Expelling States" and semi-persons in the European Union. Challenge: Liberty and Security. Work Package 9: University of Barcelona.

Transatlantic Trend (2011) *Immigration 2011* http://trends.gmfus.org/immigration/key-findings/

UN High Commissioner for Refugees (UNHCR) (2010) UNHCR urges EU and FRONTEX to ensure access to asylum procedures, amid sharp drop in arrivals via the Mediterranean. 10 December 2010, available at: http://www.refworld.org/docid/4d05c98f2.html [accessed 26 June 2013]

Vollmer, B. (2009) Clandestino, country report : UK. Undocumented Migration. Counting the Uncountable. Data and Trends across Europe.

Vollmer, B. (2011) Policy Discourses on Irregular Migration in the EU – 'Number Games' and 'Political Games'. *European Journal of Migration and Law* 13, 317-339.

Von Hofer, H. (2000) Crime Statistics as Constructs : the case of Swedish Rape Statistics. In *European journal on Criminal Policy & Research* 8, 1, pp. 77-89.

Work Package 9
Cybercrimes

9.1

Report and factsheets on prevalence of cybercrimes and related enforcement activity

by: Maria Yordanova, Dimitar Markov, Miriana Ilcheva

EXECUTIVE SUMMARY

The research project FIDUCIA (New European Crimes and Trust-based Policy), funded primarily by the European Commission from the 7th Framework Programme for Research, will shed light on a number of distinctively 'new European' criminal behaviours that have emerged in the last decade as a consequence of technological developments and in the increased mobility of populations across Europe. The central idea behind the project is that public trust in justice is important for social regulation, and proposes a 'trust-based' policy model in relation to emerging forms of criminality.

Work Package 9 explores the legal, criminological and sociological aspects of cybercrime as a new European-scale emergency through analysis of drivers of this type of crimes and related data collection, review of the legislation, policies and practical measures for the prevention of and fight against cyber crime at the national and European level, and study of the public perceptions in selected member states as regards to the scope of the problem and the effectiveness of the measures against certain types of cybercrimes.

Research under Work Package 9 addresses the following research questions: a) what are the drivers of cybercrime (facilitating and impeding factors) in today's Europe; b) which are the most widespread types of cybercrimes and what is their real impact at the national and supra-national level; c) how national and EU legislation respond to cybercrimes and what are the best practices in the area; and d) what are the drivers of public attitudes towards cybercrimes (in particular, perceptions that espouse or approve with implicit consent certain types of cybercrimes are contrasted with strong public condemnation of other types of cybercrimes).

Deliverable 9.1 consists of this report and the factsheet annexed to it. The report summarises the available administrative statistics (and survey indicators of prevalence, where available). The study maps the availability of statistical data and data collection procedures at the national and international level focusing on the collection of two main types of data: (a) available official and unofficial statistical data on cybercrimes collected by national and international institutions and (b) findings from nationally representative surveys covering cybercrimes. The data collected during the research are summarised in the factsheet annexed to the report.

1. COLLECTION OF POLICE STATISTICS IN SELECTED EU MEMBER STATES

This section of the report presents an overview of the collection and presentation of police statistics in selected European countries. For the purpose of the study police statistics are defined as any data referring to the work of the various police services, including but not limited to the reporting and registration of crimes, investigation of offences, identification of suspects, etc.

For each country the analysis describes the responsible institutions and the procedures applied for collecting police statistics in general, the accessibility of the data, the methodologies used, and the collection, if any, of data on cybercrime.

1.1 BULGARIA

Institutions and procedures

In Bulgaria, the institution responsible for the collection of police statistics is the **Ministry of Interior**. Within the Ministry of the Interior, there are two directorates involved in the collection of data: the Information and Archive Directorate (responsible for the compilation of the so-called 'operational report' and the analytical and statistical documents related to it) and the Coordination, Information and Analysis Directorate (responsible for the processing, systematisation and analysis of the information collected in relation to the activities of the ministry).

Police statistics are **not confidential**, but are **neither published nor available online**. Data are provided **upon a written request** in compliance with the rules on access to public information. Statistics are summarised in an **annual statistical bulletin** entitled Police Statistics.

Methodology

Police statistics are collected through **statistical cards** on crimes and accused individuals. The list of crimes corresponds to the latest amendments to the Penal Code. Data are presented as **absolute figures**, as **relative shares** or as **crime rates** (number of crimes per 100,000 of the population as of 1 February of the reporting year).

Police statistics are broken down into three basic categories: **registered crimes, uncovered (solved) crimes and established offenders**. Due to a change in definitions, these categories have a different scope before and after 2011.

The data cover all crimes with the exception of crimes against the republic, crimes against the country's defence capacity, military crimes, crimes against peace and humanity and crimes committed by Bulgarians abroad. Registration of crimes is done based on the **place of their commission** and t**he moment of their reporting**. The time when the crime was committed is irrelevant as is the fact whether the offender was found.

Individuals who have committed more than one type of crime and those who have committed crimes in more than one region appear separately for each type of crime and for each region respectively. On the national level such individuals appear only once so the total number of offenders is usually smaller than the sum of the number of offenders by crime and by region.

Police statistics include data on the **total number of crimes** registered during the reporting year and on some **individual types of crimes or groups of crimes**. The data are disaggregated into **four categories**: (1) registered crimes during the reporting year (including total number of crimes, number of attempts, and number of crimes per 100,000 of the population); (2) uncovered crimes out of the total number of registered crimes (total number of uncovered crimes as an absolute figure and as a percentage of the total number of registered crimes); (3) established offenders of uncovered crimes (total number of offenders and number of women, juveniles between 14 and 18 years of age, and foreigners); and (4) crimes registered in previous years but uncovered during the reporting year (number of uncovered crimes and number of established offenders).

Apart from the general police statistics, the annual statistical bulletin offers **more detailed data on crimes against the person and against the property of citizens** as well as on economic crimes. These figures are broken down into different categories depending on the place the offence was committed, the offender's age, gender, nationality, ethnicity, criminal record, employment status, psychological condition and education, the number of offenders, etc.

The statistical bulletin also presents some of the figures as **charts s**howing trends back to the year 2000 and as relative shares and rates for the reporting year. A part of the bulletin is also the so-called **Atlas of Criminality**, which shows the level of crime in each of the 28 administrative regions of the country, presenting the data in the form of the country's map with each administrative region appearing in a different colour depending on the crime level.

Cybercrime statistics

The annual statistical bulletin of the Ministry of Interior includes separate data on cybercrime. Statistics are broken down by **type of crime** into seven categories corresponding to the respective articles of the Bulgarian Penal Code: (1) unauthorised access to a computer or computer data; (2) illegal alteration of computer data, software electronic communication; (3) distribution of computer viruses and passwords; (4) provision of information services in violation of the Law on Electronic Document and Electronic Signature; (5) violation of inviolability of correspondence through the use of special technical means or communicated through a computer network; (6) fraud by altering computer data; and (7) demolition of property through unauthorised access to a computer.

The data for each type of cybercrime are further disaggregated into the following **subcategories**: registered crimes during the reporting year (total number, attempts and rate per 100,000 population); uncovered crimes out of all registered crimes during the reporting year (total number and uncovering rate); established offenders of the uncovered crimes registered during the reporting year (total number, females, juveniles between 14 and 17 years of age, and foreigners); and crimes committed in previous years as well as uncovered crimes during the reporting year (number of crimes and established offenders).

More detailed statistics are available for cybercrimes against the person, the property of citizens, and for economic cybercrimes. These data are broken down by place of commission of the offence, personal characteristics of the offender (age, gender, nationality, ethnicity, employment, education, etc.) and the number of offenders. However, these statistics are less reliable since it is not clear which cybercrimes are actually counted.

1.2 FINLAND

Institutions and procedures

The primary need for police statistics in Finland is tied up with the development in criminal behaviour and police performance management. The focus is thus on monitoring the crime situation and directing the functioning of the police.

Statistics Finland is responsible for collecting and publishing statistics based on offences reported to the police. Statistics are **published quarterly and annually**. Statistics Finland also publishes **data online**, for example in the Statistics Finland's online database StatFin. StatFin database is meant for public use and contains statistics beginning from 1980. Due to the high demand, Statistics Finland has added extracts on, as an example, domestic violence statistics, statistics on the suspect's nationality and country of birth, and age statistics.

The collection and storage of the statistics is done through the **POTTI-network** where the data are classified according to the respective sections of the Criminal Code. In general, the police are responsible for filling in and updating the so-called 'RIKI-form' for all offences reported to the police. The offences are recorded on the basis of the RIKI-form at the time of the incident after which the form is stored into the POTTI-network. The police provide outputs of the RIKI-forms from the POTTI-network to Statistics Finland, which in turn constructs the police statistics on their basis.

Methodology

The **statistical unit** is the **offence**, not the offender, and police statistics only contain information on so-called 'reported crime'. Statistical data on hidden crime is not available.

Published police statistics include a rough breakdown of **age**, **gender** and **nationality of suspects** in solved offences where the suspect is known. Statistics on the age and nationality of the victim are not included, but rough statistics on the gender of the victim can be obtained in cases involving intimate partner violence.[1]

Each **offence is recorded separately**. This means that police statistics are affected by the manner in which offences are unitised in situations where several individual incidents are considered as continuums of one and the same offence, as in the case of a continued offence. Previously, the different incidents comprising continued offences had been reported separately. This has now been changed so that, for example, continued means-of-payment offences have been unitised into one. This change has generally been visible within police statistics in the form of declines in crime rates.

Cybercrime statistics

Statistics on cybercrimes are **not collated separately, but according to the respective provision of the Criminal Code**. For some offences, the Criminal Code definition itself contains elements that point to cybercrime. This is the case, for example, with interference in a computer system; computer break-in (the statistics provide separate figures for attempts and aggravated cases); offences involving an illicit device for accessing protected services; endangerment of data processing; and possession of a data system offence device.

For other offences, the cyberspace element is usually – but not always – present: message interception (with separate figures for attempts and aggravated cases); interference with communications (with separate figures for attempts, aggravated cases, petty cases, and attempts for petty cases); data protection offences; and preparation of means of payment fraud.

For still other offences, cybercrime would be subsumed in a much wider category. For example, the statistics on fraud (with separate figures for attempts) do not distinguish between offences that had occurred in cyberspace and those that had occurred in real time.[2] The same is true of such other broad categories as criminal damage and criminal mischief.

Since 2006 the Finnish Communications Regulatory Authority (CERT-FI) operates a service called **Autoreporter**. CERT-FI is the national computer security incident response team responsible for promoting security in the information security sector by preventing, observing, and solving information security incidents and disseminating information on threats to information security. Autoreporter covers all Finnish network areas, automatically compiles malware and information security incidents related to Finnish networks, and reports them to network maintainers. The statistics produced by Autoreporter help in assessing trends in, for example, the density of malware in Finnish networks.

1.3 GERMANY

Institutions and procedures

The detailed statistical data collection is designed to help observe delinquency in general, and certain offences in particular, research the development of delinquency rates and the scope of alleged criminals, gain knowledge for the fight against crime, and gain knowledge for criminological and sociological research as well as for criminal-political measures.

Statistical data on committed crimes is collected and published by the **Federal Bureau of Criminal Investigations (Bundeskriminalamt – BKA)** for the whole of Germany[3]. For each federal state statistical data are collected separately by the State

1. Seppänen, Susanna (1991): Rikoksen pelko. [Fear of crime]. Tilastokeskus SVT Oikeus 1991:2. Helsinki Tilastokeskus.

2. In order to distinguish between reported fraud offences that occurred in real time and in cyberspace, empirical research is required. Researchers would have to go through each reported fraud case manually, in order to differentiate these statistically. Such a comprehensive study has not been conducted. However, according to information provided by the Police Administration, an internal analysis made in one Finnish police precinct suggested that approximately 55% of fraud cases in 2011 took place in cyberspace. Based on the existing statistics, it is possible to determine the amount of fraud cases, inferring that a part of these have taken place in cyberspace.

3. Each year the Federal Bureau of Criminal Investigations publishes a Police Crime Statistics Yearbook. Each yearbook presents an overview of crime trends and statistics on cases dealt with by the police, clearing up of offences, crimes recorded in big cities, victims, recorded losses, and suspects. The full versions of the yearbooks are published in German while abridged versions are also available in English.

Offices of Criminal Investigation. This is why there are seventeen different, annually updated sets of police crime statistics – sixteen datasets on the state level (one set for each of the sixteen federal states) and one dataset for the whole of Germany, containing the information provided to the BKA by the states.

Methodology

Police crime statistics provide information about **all crimes reported and submitted for public prosecution** within the current year. The presence of a huge number of unreported cases is due to the type of crime involved and the victims' willingness, or lack thereof, to report their losses.

To ensure consistency in the information provided by the different states, there are **nationwide guidelines for collecting data**. Following these guidelines, all types of known crimes are attributed with nationwide key-numbers, according to which the lists of crimes have to be arranged. Thus, the information can be displayed consistently by each federal state.

For each registered crime, the police crime statistics provide information in **basic table**s (Grundtabellen). The information includes: (1) nature and number of recorded crimes, time and place of crime commission; (2) age, gender and nationality of the alleged criminals and victims; (3) pecuniary damages; and (4) clarification of cases/ state of proceedings. Additionally, each federal state has the possibility to add specific data to its statistics.

Data collected by the state criminal investigation agencies (that belong to the state police and are subordinated to the specific state Ministry of Interior) are published on the Internet (usually on the homepages of the state police) and are publicly accessible.

Cybercrime statistics

Statistics are collected on the **total number of cybercrimes** as well as on **specific types of offences**. Specific offences include: (1) fraud by means of illegally obtained debit cards and the according PIN; (2) computer fraud; (3) fraud involving authorisation to access communication services; (4) forgery of data intended to provide proof; (5) data tampering, computer sabotage; (6) computer espionage; phishing, acts preparatory to data espionage and phishing; (7) software piracy (private use, e.g., computer games); and (8) software piracy in the form of repetitive and gainful activity.

Data on cybercrime are collected as part of the broader crime statistics and therefore each type of cybercrime is attributed a **specific key-number** like all the other criminal offences included in the dataset[4].

Since 2008 the Federal Bureau of Criminal Investigations publishes annually a *Report on the State of the Art Cybercrime.* The reports contain the police statistics for all of Germany, in conjunction with knowledge gained in criminal policy discussions concerning information and communication technology crime[5].

1.4 GREECE

Institutions and procedures

The institution responsible for the collection of police statistics in Greece is the **Hellenic Police**, which is a government agency subordinate to the Ministry of Public Order and Citizen Protection. The responsible department for data collection is the internal bureau of statistics, which is a department of the Hellenic Statistical Authority established within the Hellenic Police.

The Prefectures of the Hellenic Police follow their own system for the registration of offences and offenders. The classification of offences is based on the Greek Penal

4. Computer crimes are identified by the following key-numbers: 516300 – fraud by means of illegally obtained debit cards and the according PIN; 517500 – computer fraud; 517900 – fraud involving authorisation to access communication services; 543000 - forgery of data intended to provide proof; 674210/674220 – data tampering, computer sabotage; 678000 – computer espionage; phishing, acts preparatory to data espionage and phishing; 715100 – software piracy (private use like for example computer games); 715200 – software piracy in the form of repetitive and gainful activity; 897000 – total number of computer crimes (the sum of the number of computer crimes listed above).

5. Collectively, the reports assess important developments in the area of cybercrime. Each report presents and analyses the crime situation according to the following topics: (1) information included in the police crime statistics (the data on computer crimes without the cases of software piracy); (2) theft of digital identities, such as phishing, digital blackmailing, carding, etc.; (3) infection of mobile devices, and (4) remote control of computer via botnets. Each report also summarises the significant effects that the increasingly dynamic cybercrime activities can have, as well as the risk potential they exhibit.

Code. Each Prefecture of the Hellenic Police collects data on a monthly basis. In the first quarter of each year the Hellenic Police send the aggregated annual statistics to the Justice and Public Order Section of the **Hellenic Statistical Authority**. On the basis of these statistics the annual figures on committed offences and persons considered as offenders are compiled.

Since the beginning of 2010 statistics are collected through the **electronic system Police On-Line**, which allows data on all criminal offences to be recorded and updated in real time. Statistics are published on the websites of the Hellenic Police and the Hellenic Statistical Authority and are included in the chapter on justice of the Statistical Yearbook of Greece[6].

Methodology

Police statistics include data on the **criminal offences** (crimes and indictable offences) irrespective of the further development of the case. The primary data are based on administrative data sources.

The data are summarised in **four datasets**: (1) offences committed, by categories, and persons considered as perpetrators, by gender; (2) persons having committed offences, by categories of offences and geographic region where the offence was committed; (3) persons having committed offences, by geographic region and age groups; (4) persons having committed offences, by general categories of offences and age groups.

Statistics are broken down by subcategories based on the following **criteria**: (1) type of offence (general categories of offences); (2) place where the offence was committed (geographic region); (3) population of the settlement where the offence was committed (urban: more than 10,000, semi-urban: between 2,000 and 10,000, or rural: up to 2,000); (4) persons who committed offences, by sex and age groups.

The **statistical and calculation units** are the **persons who committed an offence** and **the offences committed** (by general categories). The **reference period** is **one calendar year**.

There is no release calendar for the publication of the data, but the final annual figures are usually announced about one year after the end of the reference year.

Police statistics published by the Hellenic Police include also data on the **police response**. They contain figures on arrests, solved cases and seized objects (e.g. drugs and illegal weapons).

Cybercrime statistics

In August 2011, a new **Financial Police and Electronic Crime Prosecution Service** has been created as a specialised central service of the Hellenic Police. It has a separate Studies Department, which is responsible, inter alia, for the **collection of statistics on cybercrime**.

Once a year, the Financial Police and Electronic Crime Prosecution Service publishes a report on the specific crimes under its jurisdiction together with proposals for countermeasures. The service also issues monthly announcements on specific cases.

So far the Financial Police and Electronic Crime Prosecution Service has published **one annual report** covering the period between its establishment in August 2011 and the publication of the report in November 2011. The report offers data on the number of **files handled by the service**, the number of **performed police investigations**, the number of **cases of international cooperation**, etc. Some of the statistics are disaggregated by offence categories with data on specific offences given in percentage. In addition, the report presents more detailed information on the **five most significant cybercrime cases** dealt with by the Financial Police and Electronic Crime Prosecution Service.

6. The data published in the Statistical Yearbook of Greece include: (1) offences committed and persons sentenced; (2) persons sentenced for an indictable offence or crime (by type of penalty imposed and reformative or corrective measures taken for juveniles, by general categories of offence, by marital status and education level, by age and gender, and according to the place where the offence was committed; (3) recidivists (by age groups and penalty imposed, by general categories of offence, and by marital status and education level; and (4) convicts (by age groups and gender, by marital status, by education level, by type of sentence served, by main offence committed, by main countries of citizenship).

1.5 SPAIN

Institutions and procedures

The responsible institution for processing police statistics in **Spain is the State Security Secretariat**, which is a department within the **Spanish Ministry of Interior**. Each month, the different police forces send the data on recorded offences using encrypted files in xml format. Once the data are validated, they become part of the database of the **Crime Statistics System**.

Based on data provided by the Crime Statistics System, the State Security Secretariat publishes the annual Statistical Yearbook of the Ministry of Interior, which is released within the first three months of the following year (police statistics are included in Section 2.1: Citizens' Safety), and the quarterly Report on Crime, which summarises the data from the statistical yearbook using charts and other visual representations. Both documents are available on the website of the Ministry of Interior.

Methodology

The **statistical unit** is the **offence**. The statistical yearbooks contain information only on the **offences recorded by the police** and, since 2010, on the offences cleared up by the police. Information on hidden crime is not included in the yearbooks.

Since 2010, the data show the **offences recorded by the national police forces** (the National Police and the Civil Guard) and **by the police forces of the three autonomous communities of Spain** (Ertzaintza in the Basque Country, Mossos d'Esquadra in Catalonia and Policía Foral in Navarra). For previous years, the information includes only data provided by the national police forces.

The statistical yearbooks and the reports on crime use **very broad offence categories** and provide information on only five groups of offences: felonies against life, integrity and freedom; felonies against property; misdemeanours on bodily harm; misdemeanours on larceny; and other felonies and misdemeanours.

Cybercrime statistics

Neither the statistical yearbooks nor the reports on crime provide data on computer-related crimes.

The Technological Investigation Brigade, an agency within the Spanish police, collects data on cybercrime. The data, collected since 2008, show the **number of cases investigated** and of **people arrested by this agency**. The information is grouped into very broad categories, each including different types of offences under the Spanish Penal Code. The data are public, but are not generally accessible.

1.6 TURKEY

Institutions and procedures

The **Turkish National Police (TNP)** through its **Department of Main Command and Control Centre** collects, stores, and analyses crime data in Turkey. Each of the 81 provincial police departments sends the data to this department on a monthly basis.[7] All data are transmitted through a **secure police computer network POLNET**, which has been operational since the mid-1990s and is compatible with the judicial computer network UYAP (National Judiciary Informatics System).

Since 2009, police statistics, with the only exception of the data on cybercrime, are **no longer publicly available**. Before that, the Turkish National Police published detailed police statistics on an annual basis.

7. Polat Ahmet and Gul Serdar Kenan (2011): Suçun Ölçümü [Measurement of Crime]. Adalet Yayınevi, Ankara.

Methodology

The statistics published until 2008 included data broken **down into broad crime categories** (public order, terror, smuggling, organised crime, and cybercrime) as well as **data on specific crime**s (domestic burglary, drug trafficking, homicide, robbery, theft of motor vehicles, and violent crime). The statistics included also the number of incidents (solved/unsolved), suspects (captured/not captured), victims (number of dead/number of injured/others), and criminal means (firearms, knives, others).

Cybercrime statistics

Statistics on cybercrime, unlike the data on other types of crime, are **publicly available** both before and after 2008. They are published, as a separate chapter, in the *Turkish Report of Anti-Smuggling and Organised Crime*, issued each year by the Department of Anti-Smuggling and Organized Crime (the main department for cybercrime matters before the establishment of the Department of Cybercrime in 2011)[8].

The **types of offences**, for which data are collected, changed in 2009. Between 2004 and 2008 data were collected for three categories of cybercrimes: credit card counterfeiting and fraud; bank fraud; and cyber fraud and cybercrimes. Since 2009, cybercrime categories include five categories: bank and credit card fraud; interactive bank fraud; offences against information systems; qualified fraud via the Internet; and other cybercrimes.

The **statistical units** are the **operation** and the **suspect**. Data are available on the **national level** as well as on the **provincial level**. The reports also provide **statistics on the type and amount of items seized** by the police.

1.7 ENGLAND AND WALES (UK)

Institutions and procedures

The institution responsible for maintaining official statistics relating to crime and policing in England and Wales is the **Home Office**. The Home Office collates and publishes data on recorded crime. The statistics are provided on a monthly basis by the 43 territorial police forces in England and Wales and by the British Transport Police. Statistics on crime are available on the Home Office crime mapper (www.police.uk)[9].

Territorial police forces in England and Wales are free to choose how to collect statistics on recorded crimes. However, they are required by law to send information to the Home Secretary (Minister of Interior) regarding the so-called **'notifiable offences'**.

The list of notifiable offences is specified in secondary legislation, and comprises over 100 detailed sub-categories of offences. Notifiable offences are all offences, which could possibly be tried by jury (these include some less serious offences, such as minor theft that would not usually be dealt with this way) plus a few extra closely related offences, such as assault without injury.

The Office of National Statistics **publishes on a quarterly basis** the data collated by the Home Office.

The Home Office also publishes **statistics on crime detection**, including figures on the levels and trends in detection and detection rates. Statistics are broken down by police force and local authority area.

Methodology

Crime data are collected for **each crime** within the **notifiable offence list**. Recording is performed pursuant to two basic sets of rules:

- The **National Crime Recording Standard (NCRS)**, introduced in all police forces in April 2002, ensures better consistency of crime recording. It is based on applying

8. The Turkish Report on Anti-Smuggling and Organised Crime includes information on the operational activities of the Department of Anti-Smuggling and Organised Crime as regards to each of the crimes within its competence (financial crime, smuggling, drug-related crime, organised crime and cybercrime). For each crime the report offers a brief overview, analysis of trends and description of the counter-measures.

9. The crime mapper provides in user-friendly map format details of crimes within a mile of any specified point. The data include figures on all crime and on some specific types of crime: anti-social behaviour, burglary, criminal damage and arson, drugs, other theft, public disorder and weapons, robbery, shoplifting, vehicle crime, violent crime, and other crime.

legal definitions of crime to the reports submitted by victims.

- The **Home Office Counting Rules for Recorded Crime (HOCR)** stipulate what type and how many offences in any particular incident should be recorded by the police and notified to the Home Office.

When a crime is reported to, observed, or discovered by the police it is registered as a **crime-related incident**. In compliance with the NCRS the police decides whether to record an incident as a **crime**[10]. When the police decide to record an incident as a crime they apply the HOCR to determine **how many crime**s to record and what their **offence types** are. The Home Office issues rules to police forces on the counting and classification of crime. According to the HOCR most crimes are counted as 'one crime per victim', but there are also exceptions where more than one offence has taken place or there is more than one offender or victim.

Finally, after investigating the crime the police have collected evidence to link it to a suspect and this suspect has been charged, cautioned, had an offence taken into consideration, received a penalty notice for disorder or a warning for cannabis possession, the crime is recorded as **detected crime**.[11]

Cybercrime statistics

Statistics on cybercrimes are collated and published, but not in **separate 'cyber' categories**. Thus, for example, e-theft or e-fraud would be recorded in theft and fraud categories as appropriate. This reflects the fact that legal categories of crime in England and Wales are not defined by the modus operandi, while the concept of cybercrime is organised precisely around the means of commission.

2. COLLECTION OF PROSECUTION STATISTICS IN SELECTED EU MEMBER STATES

This section of the report presents an overview of the collection and presentation of prosecution statistics in selected European countries. For the purpose of the study prosecution statistics are defined as any data referring to the work of the public prosecution service, including but not limited to the opening of pre-trial proceedings, bringing charges against suspects, bringing cases to the court for trial, etc.

For each country the analysis describes the responsible institutions and the procedures applied for collecting prosecution statistics in general, the accessibility of the data, the methodologies used, and the collection, if any, of data on cybercrime.

2.1 BULGARIA

Institutions and procedures

In Bulgaria, the **Public Prosecution Office** collects statistics on the pre-trial proceedings and their outcome. The data are **public** but are available only **upon request**.

Some aggregated figures on all types of offences are included in the **semi-annual overview**s of the progress of criminal cases as well as in the **annual reports** on the activities of the public prosecution office. Both the overviews and the reports are available online on the website of the Public Prosecution Office.

Methodology

The collection of prosecution statistics is done in compliance with an *Instruction on the Informational Activities in the Public Prosecution of the Republic of Bulgaria*, which is an internal regulation issued by the Prosecutor General.

10. According to the NCRS, an incident is recorded as a crime for offences against an identified victim, if, on the balance of probability the circumstances as reported amount to a crime defined by law (the police have to determine this based on their knowledge of the law and the counting rules) and there is no credible evidence to the contrary. State-based crimes (crimes where the victim is effectively the state, e.g. possession of drugs or weapons) are recorded where the points to prove as evidence of the offence have been made out (e.g. where a suspect is caught in possession of an unlawful article).

11. There are also exceptions where a crime can be recorded as detected when no further action has been taken against the offender (e.g. where the offender has died or where the prosecutor has decided not to prosecute).

Statistics are collected on **all criminal offences** as well as on **specific types of crimes**, which are considered particularly dangerous or are of significant public interest.

The aggregated statistics on all crimes include data on the number of pre-trial proceedings (newly instituted, pending and completed cases) and their outcome (cases brought to court, terminated or temporarily suspended) as well as the number of defendants brought to court and persons detained in custody.

The statistics on specific crimes include only data on the number of newly instituted pre-trial proceedings, the number of cases, and the number of defendants brought to court.

Statistics on cybercrime

The data on specific types of crime include **data on all computer crimes** described in the Penal Code except for the cases of demolition of property by accessing a computer without authorisation, which are aggregated within the total number of cases of demolition of property.

The statistics collected by the public prosecution office include separate figures for the following **types of cybercrime**: (1) production and distribution of pornographic material through CDs and computer networks; (2) violation of inviolability of correspondence done by using special technical means or communicated through a computer network; (3) fraud by altering computer data; (4) unauthorised access to a computer or computer data; (5) illegal alteration of computer data or software (with separate figures for aggravated cases); (6) distribution of computer viruses; (7) distribution of computer passwords; and (8) provision of information services in violation of the Law on Electronic Document and Electronic Signature.

2.2 FINLAND

Institutions and procedures

The public prosecution statistics in Finland are generated by an **automated data processing database**. It is based on the criminal case management system for prosecutors and courts of first instance, called SAKARI, maintained by the **judicial administration.**

The public prosecution statistics are based on **census data**. The census data are extracted during the month of January following the reporting statistical year, and the results are published in May.

Public prosecution statistics are included in the *Statistical Yearbook of Finland* published by **Statistics Finland**[12].

Methodology

Public prosecution statistics are divided into two sections:

- The statistics on **cases processed by the prosecutor** include basic information on cases closed by the prosecutor and cases submitted to the court by the prosecutor.
- The statistics on **the waiving of charges** make a distinction between the waiving of charges as a sanction and the waiving of charges on other bases. These statistics also include information on the time taken to reach a resolution.

The **statistical unit** is primarily **the case**. The entire case is considered prosecuted if any of the offences within it have been prosecuted.

Since 2001, regarding statistics on the waiving of charges, the **unit** is the **individual in respect of whom charges have been waived.** Specifically, the statistics include those individuals whose case involves only offences where a decision has been

12. The Statistical Yearbook of Finland is a comprehensive volume of statistics and an exhaustive source of information on Finnish society and its development. In the area of criminal justice it contains statistics on: development of selected offences; offences known to the police; offences committed by persons under 21 years of age; selected offences, intoxicated persons taken into custody and parking offences; victims of certain property offences; victims of violence; accidental injuries and victims of violence aged between 15–74 years according to type of accident and incident; waived prosecutions, petty fines, summary penal fines and convictions as well as rejected charges and dismissed cases in courts of first instance; persons consenting to summary penal judgment or sentenced in courts of first instance by category of offence; court of first instance sentences of imprisonment according to length of combined punishment; and prisoners and prisons.

made to waive the charges. The primary offence of the individual is considered as the offence within the public prosecution statistics.

In terms of **outcome**, the prosecution statistics are broken down into cases closed by the prosecutor, non-prosecuted cases, cases closed for other reasons, and solved cases.

Cybercrime statistics

There are **no prosecution statistics** available on cybercrimes within the online database of Statistics Finland. Within the existing database, offences are grouped into large categories with no access to statistical information on different forms of cybercrimes.

2.3 GERMANY

Institutions and procedures

In Germany, the **Public Prosecutor's Office** of each state collects data on the number of received and completed cases. The **Federal Statistical Office** publishes the statistics on both the federal and the state level.

Methodology

The **statistical unit** is the **case**. The data include figures on the **cases received** by the public prosecutor's offices as well as the **completed cases**.

Cybercrime statistics

Prosecution statistics on cybercrime are not collected separately.

2.4 GREECE

In Greece, there are no specific procedures for collecting prosecution statistics. There are no specialised units within the public prosecutor's offices responsible for collecting statistics as well. Prosecution statistics on crime in general and on cybercrime in particular are not available.

2.5 SPAIN

Institutions and procedures

In Spain, the **Public Prosecutor General's Office** elaborates annually a **report** on the proceedings initiated by the different public prosecutor's offices[13]. The report is published every September and refers to the previous calendar year. It is publicly accessible.

Methodology

Public prosecution statistics cover the number of **criminal proceedings initiated** by the different Public Prosecutors' Offices.

The annual reports of the Public Prosecutor General's Office include data broken down by **types of crime**. However, the reports do not provide data on every type of crime criminalised by the Spanish Penal Code, but only on the most often committed crimes and the crimes considered by Public Prosecutor General's Office to be the most dangerous or significant.

Cybercrime statistics

13. The annual reports of the Public Prosecutor General's Office include information on the activities of all public prosecutors' offices in Spain. It offers statistical data on the following types of crime: unlawful killing and its forms, bodily harm, felonies against freedom, felonies against sexual freedom and indemnity, felonies against relatives, felonies against property and against social-economic order (within this category, separate figures are provided for some specific types of crime such as larceny, robbery by using forcible means, robbery by using violence or intimidation of persons, swindling, misappropriation, damages and felonies against intellectual and industrial property), forgery, felonies against the public administration, felonies against the judicial power, and felonies against public order. In addition, the reports contain two special sections, which provide data on terrorism and illicit drug trafficking.

In 2007, the Public Prosecutor General appointed a special public prosecutor for directing and coordinating the functions of the Public Prosecutor's Office in the field of cybercrime. One of the main functions of this new public prosecutor is to collect data on the number of proceedings and the types of crime they refer to.

The 2012 annual report of the Public Prosecutor General's Office provides, for the first time, **data on the proceedings concerning computer-related offences**. The data refer to 2011 and are broken down by type of crime into the following categories: (1) damages; (2) illegal access; (3) discovery and revelation of secrets; (4) felonies against the radio broadcasting services; (5) swindling; (6) assault on children under the age of thirteen; (7) pornography and corruption of minors and incapacitated people; (8) felonies against intellectual property; (9) documentary forgery; (10) slander and defamation; (11) intimidation and coercion; (12) felonies against moral integrity; (13) incitement to commit discrimination or genocide; and (14) other felonies.

The report notes that the **figures suffer from certain flaws** mainly because (a) not all public prosecutors' offices have submitted data on all types of crimes and (b) for certain types of offences (e.g. offences against the property, intimidation and coercion) it is often impossible to separate offences that occurred in cyberspace from those that in real time.

2.6 2.6. TURKEY

Institutions and procedures

The **General Directorate of Criminal Records and Statistics with the Ministry of Justice** is the primary institution collecting and analysing prosecution statistics in Turkey. Since 2009 statistics are collected from the public prosecutors' offices in real time through the **National Judiciary Informatics System (UYAP)**.

The **Turkish Statistical Institute publishes the data annually**. Until 2010 the data were published as a comprehensive report on judicial and prosecution statistics available in both Turkish and English. The data for 2011 were published only as separate tables in Turkish.

Methodology

Until 2010, public prosecution statistics included data broken down into the following **categories**: (1) number of cases dealt by the public prosecutors during the reporting year (including newly instituted cases and cases pending from previous years); (2) number of cases completed by the public prosecutors; (3) number of cases postponed to the next year; (4) number of indictments returned to the public prosecutors by the courts; (5) number of pending cases (including cases with unknown offenders); (6) number of cases closed due to expiration of the statute of limitation; (7) number of suspects (including figures disaggregated by nationality and gender); (8) number of victims or complainants (also including data on nationality and gender).

In addition to the total number of cases, there were also detailed statistics on many **specific crimes** (including data on the outcome of cases), listed with their corresponding articles from the Penal Code. Apart from the data on the **national level**, there were also statistics disaggregated by two levels of **statistical regions**.

The data for 2011 is more limited in scope and cover only the number of cases and their outcome. Data are only available for 31 categories of crimes.[14]

Cybercrime statistics

The public prosecution statistics include as a separate category the **offences related to data processing systems (cybercrimes)**. Until 2010, the data were bro-

14. The categories of crimes include: offences against property, offences against physical integrity, offences against liberty, offences against dignity, offences against public security, offences against the reliability and functioning of the public administration, offences against public health, offences creating general danger, offences against sexual integrity, offences against judicial bodies or courts, offences against life, offences against family order, offences against public peace, offences against the environment, offences related to data processing systems (cybercrimes), offences relating to the economy, industry and trade, offences against public morals, offences against privacy and confidentiality, offences against the constitutional order, migrant smuggling and human trafficking, torture and torment, offences against state confidentiality and espionage, offences against state sovereignty and the reputation of its organs, breach of the duties of protection, observation, assistance and notification, offences against transport vehicles or stationary platforms, miscarriage, offences against state security, offences against national defence, offences against relations with foreign countries, genocide and offences against humanity, and confiscation.

ken down into subcategories of specific crimes: (1) accessing a data processing system; (2) preventing the functioning of a system and deletion, alteration or corruption of data; and (3) misuse of bank or credit cards. Separate figures on **security measures on legal persons** were also collected. The data for 2011 cover only the total number of proceedings for all types of cybercrime.

The data show the **total number of incidents** and **the decisions made by the public prosecutor**. The number of decisions is broken down into subcategories depending on the outcome of the case such as decisions not to prosecute (further broken down depending on the reason not to prosecute), decisions to file a public case, decisions to close the case due to lack of jurisdiction or transfer of proceedings, etc.

The number of cybercrimes according to the prosecution statistics is higher than the one in the police statistics because not all complaints are made to the police, especially in smaller provinces with no cybercrime unit within the police, and sometimes citizens go directly to the prosecutor to report a cybercrime to save time.

2.7 ENGLAND AND WALES

Institutions and procedures

The **Crown Prosecution Service (CPS)** is responsible for collecting, analysing and publishing prosecution statistics for England and Wales. The data are collected in the framework of the performance management information compiled on a regular basis by the CPS.

The CPS publishes **monthly reports** (one national report and 42 area reports) on the outcome of CPS proceedings in magistrates' courts and in the Crown Court. The data are available through the CPS's Case Management System (CMS) and associated Management Information System (MIS).

Statistics are collected to assist the effective management of the prosecution functions of the CPS and **do not constitute official statistics** as defined in the Statistics and Registration Service Act 2007. The figures are provisional and subject to change as more data are recorded.

Methodology

The monthly reports include data on the outcome of CPS proceedings in magistrates' courts and in the Crown Court. Outcomes are broken down into two categories: **convictions** (guilty pleas, convictions after trial and cases proved in the absence of the defendant) and **unsuccessful outcomes** (all outcomes other than a conviction, comprising discontinuances and withdrawals, discharged committals, dismissals and acquittals, and administrative finalisations[15]). The reports show the number and the proportion of defendants falling into each category.

Outcomes are shown separately according to the **principal offence category**, i.e. the data indicate the most serious offence the defendant is charged with at the time of finalisation of the case (regardless of whether it is more serious, or less serious, than would have applied earlier in the proceedings).[16]

The case outcomes reports include data on a **limited number of offences**: homicide, offences against the person, sexual offences, burglary, robbery, theft and handling, fraud and forgery, criminal damage, drugs offences, public order, motoring, and all other offences excluding motoring.

Case outcomes are recorded on a **defendant basis**. Because cases often involve several defendants who are tried together, defendant-based data can be distorted as a result.

Apart from the monthly case outcome reports, the CPS publishes **annual data** on: (1) total caseload dealt with; (2) number of cases that were committed for trial in the Crown Court; (3) outcomes of the cases dealt with in the Crown Court; (4) number of defendants whose cases were completed in the Crown Court and whether those cases were prosecutions, appeals or committals for sentence; (5) number of cases dealt with in the Magistrates' courts and whether these were summary-only offences or indictable only/either way offences; (6) outcomes of the cases dealt with in the Magistrates' courts; and (7) number of cases that were committed for trial in the Crown Court and whether these were committed on the Magistrates' direction, because the defendant elected for trial or because the offence was indictable-only.

15. Administrative finalisations are recorded where a case cannot proceed because a warrant for the arrest of the defendant remains unexecuted, or where the defendant cannot be traced by the police for a summons to be served, or the defendant has died or been found unfit to plead.

16. The principal offence is not identified for cases resulting in an administrative finalisation, which are shown usually as a separate category.

Cybercrime statistics

The statistics collected by the CPS do not employ separate categories to identify cybercrime.

3. COLLECTION OF JUDICIAL STATISTICS IN SELECTED EU MEMBER STATES

This section of the report presents an overview of the collection and presentation of judicial statistics in selected European countries. For the purpose of the study judicial statistics are defined as any data referring to the work of the criminal courts, including but not limited to the opening and completion of trial proceedings, conviction and sentencing of defendants, imposed penalties, etc.

For each country the analysis describes the responsible institutions and the procedures applied for collecting prosecution statistics in general, the accessibility of the data, the methodologies used, and the collection, if any, of data on cybercrime.

3.1 BULGARIA

Institutions and procedures

The **Supreme Judicial Council (SJC)** is responsible for the collection of court statistics in Bulgaria. Data are collected through specific statistical forms, which are filled in by all courts and submitted to the SJC. According to the Law on the Judiciary, statistics are collected **twice a year**: the first round covers the first six months, while the second round covers the entire year.

Within the SJC, a permanent seven-member **Committee on Professional Qualification, Information Technologies and Statistics** is responsible for the collection and processing of statistical data. The same committee, in cooperation with the Committee on Analysis and Reporting of the Degree of Workload of the Bodies of the Judiciary, develops the statistical forms and submits them for approval to the SJC.

The SJC's **Directorate Judicial Personnel, Competitions for Magistrates and Statistics** sends the forms and guidelines to each court, collects back and processes the information, and carries out analysis of the collected data.

Court statistics collected by the SJC are **public**. However, only the statistics on the total number of criminal cases are available online at the website of the SJC.

National Statistical Institute (NSI) also publishes court statistics. The data are obtained through the processing of information on criminal court cases at the regional, district and military courts. Figures are published each year in the section on justice of the annual Statistical Reference Book (available in English and Bulgarian in printed and electronic versions). Statistics are also available online in English and Bulgarian at the website of the NSI. Online access is free of charge, while both the printed and the electronic versions of the Statistical Reference Book are available for purchase. The NSI also publishes an annual electronic bilingual report Crimes and Persons Convicted, which contains data on crimes concluded with a sentence.[17]

Methodology

The data on criminal court cases collected by the **Supreme Judicial Council** are disaggregated into two major categories: data on cases and data on persons.

The **data on cases** include information on: (1) pending cases at the beginning of the reporting period; (2) newly arrived cases during the reporting period; (3) cases to be heard (sum of the pending and newly arrived cases and separate figures for reopened cases); (4) completed cases (with separate figures for cases concluded by a sentence, cases concluded by plea bargaining, cases terminated through plea bargaining and cases completed within three months); (5) pending cases at the end of the reporting period; (6) cases appealed against during the reporting period; and (7) verdicts (with separate figures for convictions and acquittals).

The **data on persons** include information on: (1) tried persons (with separate figures for acquitted persons); (2) convicted persons (with separate figures for juveniles between 14 and 18 years of age and for persons whose penalty is imposed through plea bargaining); and (3) imposed penalty.

The SJC collects aggregated data on **all criminal cases** as well as data on **specific types or groups of crimes**.

The data collected by the **National Statistical Institute** are broken down into the following basic categories:

- **Crimes for which the penal proceedings have been completed during the reporting year.** Each crime represents a single entry irrespective of the number of offenders. Data are broken down by outcome of proceedings (sentence, conditional sentence, acquittal, suspension or release from penalty). In cases of complicity, a crime is considered as concluded with a penalty, if at least one of the defendants has been convicted or conditionally sentenced, or as concluded with acquittal when all persons have been acquitted. Similarly, a crime is considered as concluded with termination of proceedings when the proceedings have been terminated as regards to all the persons involved. For those crimes, for which there are separate figures for attempts (e.g. homicide), these figures include also the preparation of the crime. The data are further broken down by: gender of offender, number of offenders (one, two or more than two), year of commission (same year, last year, or previous years), and age of offender (14-17, 18-24, 25-29, 30-39, 40-49, 50-59, or 60 and over with separate figures for males and females).
- **Convicted persons, whose sentence has entered into force during the reporting year.** The data include also the persons on whom a conditional (suspended) sentence has been imposed. All data on convicted persons, unless otherwise stated, include both adults and juveniles. A person convicted for more than one crime during the year appears as a single entry in the aggregated statistics (data is entered for the most serious punishable offence), while each crime is included in the data for the respective type of crime. If the penal proceedings for the individual crimes have concluded with a different outcome, each outcome is included as a separate entry. When several persons have committed a crime, data on the crime itself are entered only once, while data on each of the persons are entered separately depending on the outcome. The number of convicted persons does not coincide with the actual number of convicted persons during the respective year since one person might have been convicted more than once during the same year. The data on convicted persons are further broken down by: number of crimes (one, two or more than two), gender, citizenship (Bulgarian, Bulgarian and other, EU Member State excluding Bulgaria, or other, with separate figures for males and females), imposed penalty (imprisonment up to 6 months, imprisonment from 6 months to 1 year, from 1 to 3 years, from 3 to 4 years, from 4 to 5 years, from 5 to 10 years, from 10 to 15 years, from 15 to 20 years, from 20 to 30 years, life imprisonment, life imprisonment without parole, fine, probation, or other), age (14-17, 18-24, 25-29, 30-39, 40-49, 50-59, or 60 and over, with separate figures for males and females), number of convictions and recidivism (not previously convicted, with one, two or more than two previous convictions, with separate figures for recidivists), educational attainment (tertiary – doctor, master or bachelor, tertiary – specialist, upper secondary, primary, not completed primary, or illiterate with separate figures for males and females), and labour status (permanently employed, temporarily employed, in education and unemployed, in education and employed, unemployed, in retirement, housewives, permanently disabled, or other).
- **Persons against whom penal proceedings have been concluded during the respective year.** The number of accused persons does not coincide with the actual number of accused persons during the respective year since one person might have been accused more than once during the same year. Data are disaggregated by outcome of proceedings (conviction, conditional sentence, acquittal, release from punishment, or termination of proceedings).
- **Data disaggregated by statistical regions, districts, and courts.** The territorial distribution of convicted persons is done based on the place of commission of the most serious punishable offence or the area of the last committed crime. As regards to the so-called 'continuing crime' the territorial distribution is made on the basis of where the last actions took place. Crimes committed abroad and subject to the jurisdiction of Bulgarian courts are included in the total number of crimes. Disaggregation of data by districts, municipalities, cities, and villages is done in accordance with the administrative-territorial division of the country and the place of commission of the crime. The data on the territorial distribution of crimes and convicted persons are not disaggregated by type of crime and there are no separate figures for any type of cybercrime.

All **socio-economic indicators** characterising the persons refer to the **moment of committing the crime**. The age of convicted persons is given in completed years. Persons who have completed 14, but not 18 years are considered as juveniles.

Cybercrime statistics

Court statistics collected by the **Supreme Judicial Counci**l include separate data on cybercrime. The statistics only cover the **crimes included in the chapter on cybercrime** of the Penal Code. The data are aggregated for all the crimes included in this chapter: unauthorised access, illegal alteration of computer data or software, distribution of computer viruses and passwords, and provision of information services in violation of the Law on Electronic Document and Electronic Signature. Data on computer crimes, envisaged in other articles of the Penal Code, are not collected separately.

The data collected by the National Statistical Institute include figures on cybercrime but only cover the offences listed in the chapter on computer crime of the Penal Code. Data on cybercrimes described elsewhere in the Penal Code are aggregated with the data on the other crimes listed in the same chapter or section (e.g. data on computer fraud are aggregated with data on all other forms of fraud). For some categories (number of convictions and recidivism, education, and labour status) data are available only for 2010 and 2011.

17. The annual electronic bilingual report Crimes and Persons Convicted includes data about the activity of regional, district and military courts on criminal cases. There are also comparable data on crimes and convicted persons for the period 1989 - 2010. The issue also contains basic methodological notes and analysis of the data. The publication is divided into two sections: a general review containing information about convicted persons by type of crime, gender, age, penalty and citizenship, and a regional review containing data about crimes and convicted persons by place of crimes.

3.2 FINLAND

Institutions and procedures

Criminal court statistics in Finland are based on the decision notices, summary penal judgments, and on fixed penalty notices made by the **courts of first instance**. The data is received through the Ministry of Justice's **electronic judicial decision database**.

Judicial statistics are produced annually, usually in September or October. The data are included in the publicly accessible electronic database **StatFin** and in the *Statistical Yearbook of Finland*, both provided by **Statistics Finland**.

Methodology

In Finland, court statistics refer to **sentences** rather than individual offences. The offence categorisation is more accurate in judicial statistics than it is, for example, in police statistics. The statistics include information on the **accused and sentenced individuals** within the actual trial.

General **sanctions** that have been included in the judicial statistics are petty fines, conditional imprisonment, community service, and unconditional imprisonment. Offences committed by juveniles (persons under the age of 18) result in a penalty for young offenders. Information is also available on the measurement of sanctions or penalties and on absolute discharges. Other sanctions that have been included are driving bans, business bans, hunting bans, bans on keeping animals, and loss of military rank.

Judicial statistics include the **age**, **gender**, and **citizenship** of the defendant, but exclude information on victims of crime and civil compensation data.

As a general rule, the criminal court statistics include information on individuals based on the number of verdicts, i.e. the statistics include the gross number of individuals.

The concept of the **principal offence** is used as the statistical unit within the court statistics. The principal offence is the offence that has led to the most severe criminal sanction, which range from life imprisonment to a fine. If an individual has committed only one offence then this offence serves as the principal offence.

Cybercrime statistics

The available judicial statistics on persons tried for cybercrime include a number of **specific offences**: (1) criminal mischief; (2) endangerment of data processing; (3) possession of data system offence device; (4) criminal damage including attempts; (5) fraud including attempts; (6) preparation of means of payment fraud; (7) message interception including aggravated cases and attempts; (8) interference with communications including aggravated cases, petty cases and attempts; (9) interference in a computer system including aggravated cases and attempts; (10) computer break-in including aggravated cases and attempts; (11) offences involving an illicit device for accessing protected services; and (12) data protection offences.

However, some of these offences, like fraud, are very broadly defined and it is not possible to identify which of them are cybercrimes and which are conventional offences.

The data are broken down by **outcome of proceedings** into four categories: defendants sentenced in court, youth sentences, cases in which charges have been dropped, and expired cases.

3.3 GERMANY

Institutions and procedures

Judicial statistics in Germany are collected and published by **each federal state separately**. The Federal Statistical Office publishes the statistics collected on both the federal and the state level.

Judicial statistics are also included in the statistical yearbooks published each year on the federal level by the Federal Statistical Office and on the state level by the state statistical offices.

Methodology

The statistics provide detailed information about persons who have been convicted and sentenced within the reported year. People are counted only if their cases have passed all legal instances and a final judgment has been pronounced.

People convicted of **several concurrent crimes** are counted only **once**. Only if separate proceedings have been conducted for each crime and thus the offender has been convicted more than once, then the same offender will be counted once for each crime.

The collected data include information about the **convicted and sentenced individuals** (age, gender, nationality and previous convictions) as well as information about the **sentence** (type and duration and/or amount of the imposed penalty).

Statistics are also collected about the **number of cases** the different courts have to deal with and the number of **actually completed cases**.

Cybercrime statistics

Statistics on the number of convicted and sentenced persons for cybercrime are not available.

3.4 GREECE

Institutions and procedures

In Greece, the institution collecting and publishing court statistics is the **Hellenic Statistical Authority**. Data have been summarised on an annual basis since 1958.

Statistics are collected **quarterly** based on data provided by the criminal courts.[18] For every person finally sentenced and, in the case of a juvenile, submitted to reformative and corrective measures or penal correction (in first instance or after appeal) for a criminal offence, the secretaries of all criminal courts are obliged within 15 days after the end of the reference quarter to directly submit to the Justice and Public Order Statistics Section of the National Statistical Authority the relevant **personal statistical returns**.

The Justice and Public Order Statistics Section provides the courts with the respective report templates. The courts are obliged to send reports even if nobody has been sentenced during the respective quarter. However, some courts do not fill all statistical returns so the statistics on the national level may differ from the data on the court level.

Methodology

The judicial statistics refer to the **persons finally sentenced** during the year, by all criminal courts, for criminal offences. The offences are classified according to the chapters of the Criminal Code, with a special breakdown for offences of particular interest. The violations of certain special criminal laws and the offences under the Military Criminal Code are also surveyed on a detailed level.

The **statistical unit** is the **person finally sentenced** or, in the case of a juvenile, the person submitted to reformative and corrective measures.

18. In Greece, there are three types of crimes: infringements, misdemeanours and felonies. For each type of crimes the competent criminal court is different. In general, infringement cases are adjudicated by magistrate's courts at first instance and by misdemeanour courts at second instance, misdemeanour cases are adjudicated by misdemeanour courts at first instance and by courts of appeal at second instance. Felony cases are adjudicated at first instance by mixed courts of first instance and at second instance by mixed courts of appeal. Besides the regular criminal courts, there are also special criminal courts such as the military courts (courts-martial, naval courts, air courts), which try all cases for crimes committed by members of the armed forces, and juvenile courts, which hear cases for crimes committed by juveniles.

The **calculation unit** is the **personal sentence**, according to which eventual consecutive final sentences of the same person are all calculated separately, with the exception of the cases where a consolidated or total penalty was imposed. In case of concurrence of offences, the sentence with the greatest penalty is counted.

The data are broken down into **subcategories** by: (1) place of residence; (2) gender; (3) age; (4) occupation; (5) occupational status; (6) education (illiterate, primary education, secondary education, higher education, or education level not known); (7) marital status (single, married with children, married without children, widowers or divorced with children, widowers or divorced without children, or marital status not known); (8) type of court in which the case was heard; (9) laws applied to the offence; (10) place where the offence was committed; (11) population of the settlement where the offence was committed; (12) main penalty imposed; (13) incidental penalty; (14) characterisation of the main penalty; and (15) recidivism of persons sentenced.

The place of residence of the sentenced person and the place where the offence was committed are determined according to the NUTS classification (NUTS 2 level). The occupation is determined according to the national occupations classification STEP-92 (one-digit codes of the major groups). The judicial district is determined by using a special classification. The offence is determined according to the classification of the offences provided by the Criminal Code and the provisions of special criminal laws.

The **reference period** is one **calendar year**. There is no release calendar for the publication of the data. The definite annual figures are announced one or two years after the end of the reference year. The data on the micro level, the primary data and customised data are available for purchase from the Statistical Information and Publications Division of the Hellenic Statistical Authority.

Cybercrime statistics

Statistics on the number of convicted and sentenced persons for cybercrime are not available.

3.5 SPAIN

Institutions and procedures

In Spain, the institution responsible for the elaboration of judicial statistics is the **Section of Judicial Statistics**, which is an agency of the General Council of the Judiciary. The **court clerks** are responsible for the collection of the data by filling in a form designed by the Section of Judicial Statistics, and submitting it quarterly.

Since 2003, based on the information provided, the General Council of the Judiciary publishes an **annual report**. The report entitled Justice: Data by Data is publicly accessible through the website of the General Council of the Judiciary. It is released in June or July and refers to the previous calendar year.

Methodology

The annual report Justice: Data by Data provides information about different aspects of the Spanish judicial system. With respect to the criminal justice system, the report offers data, inter alia, on the **number of initiated cases**, of **solved cases** and of **judgments passed** by the different Spanish courts.[19]

Data are not disaggregated into types of offences to which the cases or the judgments refer except for some very specific offences such as violence against women.

Cybercrime statistics

Judicial statistics do not include separate data on cybercrime. Available statistics refer only to all criminal cases and there is no breakdown into offence categories.

19. The General Council of the Judiciary has published the report Justice: Data by Data since 2003 as part of its policy for transparency. It includes data on the structure and resources of the judiciary and on the workload of the courts. The report also offers a set of indicators assessing the performance of the judiciary.

3.6 TURKEY

Institutions and procedures

The **General Directorate of Criminal Records and Statistics with the Ministry of Justice** is responsible for collecting judicial statistics. All types of courts, including criminal courts, are obliged to send statistical data to this directorate.

Court statistics are gathered in real time through the **National Judiciary Informatics System (UYAP)**. Judicial statistics are publicly available since 2006.

Methodology

Judicial statistics include the following **categories**: (1) cases brought to court, including data broken down by type of court, legal grounds for proceedings (cases from the preceding year, new cases, or cases reversed by the Supreme Court) and outcome (completed cases or cases postponed to the next year); (2) completed cases, broken down by type of court and by type of decision; (3) defendants (including figures disaggregated by nationality, age and gender); (4) victims or complainants (also including data on nationality and gender); (5) offences committed by defendants under the filed cases (including data broken down by nationality, gender and age); and (6) decisions rendered for defendants (including data disaggregated by type of judgment and nationality, gender and age of defendants).

Until 2010 detailed statistics (including data on the outcome of cases and data on the regional level) were available on a number of **specific crimes** listed with their corresponding articles from the Penal Code. For 2011, statistics are available only for 31 groups of crimes.[20]

Cybercrime statistics

Judicial statistics include a separate category of **offences related to data processing systems (cybercrimes)**. Until 2010 the data were broken down by type of offence into three categories: (1) accessing a data processing system; (2) preventing the functioning of a system and deletion, alteration or corruption of data; and (3) misuse of bank or credit cards. Separate figures were also available on the imposition of security measures on juridical persons. The data for 2011 refer to all cases for cybercrime and are not broken down by type of crime.

The data show the **number of offences** committed by defendants under the cases filed at the criminal courts and the **number of court decisions**. The data on court decisions are broken down by **type of decision** into sentences, imprisonment sentences, decisions on judicial and administrative fines, suspension of imprisonment decisions, decisions to apply a security measure, other imprisonment sentence decisions, acquittal decisions, and other decisions except imprisonment and acquittal. The data on defendants are broken down by **nationality** (Turkish or foreign), **gender** (male or female) and **age** (12-14, 15-17 or above 18 years).

3.7 ENGLAND AND WALES (UK)

Institutions and procedures

The **Ministry of Justice** is responsible for maintaining official judicial statistics in England and Wales.

The Ministry of Justice maintains **two different datasets**: criminal justice statistics, and judicial and court statistics. Both datasets derive figures from the same main

20. The groups of crimes include: offences against property, offences against physical integrity, offences against liberty, offences against dignity, offences against public security, offences against the reliability and functioning of the public administration, offences against public health, offences creating general danger, offences against sexual integrity, offences against judicial bodies or courts, offences against life, offences against family order, offences against public peace, offences against the environment, offences related to data processing systems (cybercrimes), offences relating to the economy, industry and trade, offences against public morals, offences against privacy and confidentiality, offences against the constitutional order, migrant smuggling and human trafficking, torture and torment, offences against state confidentiality and espionage, offences against state sovereignty and the reputation of its organs, breach of the duties of protection, observation, assistance and notification, offences against transport vehicles or stationary platforms, miscarriage, offences against state security, offences against national defence, offences against relations with foreign countries, and genocide and offences against humanity.

source, but the **criminal justice statistics** count the number of defendants focusing on the final outcomes of proceedings, whilst **judicial and court statistics** count the number of cases, focusing on flows through the court system.[21] Other key differences are: (1) definition of final outcome (judicial and court statistics include cases ending as a result of all charges being quashed, discontinued by the prosecution, or where a bench warrant was issued or executed and other outcomes; these outcomes are not counted in criminal justice statistics as they focus on the final outcome of cases and the sentences passed; (2) different validation rules; and (3) timing of data extraction.

The **criminal justice statistics** are published on a q**uarterly basis** covering a rolling twelve-month reference period.[22] The first three datasets (for the year ending March, June and September) are provisional, while the last dataset (for the year ending December) is the final release and contains a more detailed breakdown of statistics.

The judicial and court statistics are published as **quarterly bulletins** and **an annual report**. The data in the annual report constitute final figures for the respective year. They are more detailed and include revisions compared to the figures published in the bulletins.

Methodology

The **criminal justice statistics** include the following information:

- **Out of court disposals.** The data include statistics on penalty notices for disorder, cautions and cannabis warnings issued and recorded by police forces. The statistics are received via the individual police forces or are extracted from administrative database systems.
- **Prosecutions, convictions and sentencing.** The data are derived from the LIBRA case management system, which holds the magistrates' courts records, or the Crown Court's CREST system, which holds the trial and sentencing data. The statistics go through validation and consistency checks. The published data cover proceedings completed in the reporting year. A defendant may appear more than once if proceedings were completed against him/her on more than one occasion during the year. Where proceedings involve more than one offence, the principal offence is reported.[23]
- **Remands.** The data refer to persons remanded in each year in each completed court case rather than to the number of remand decisions (a person may be remanded several times during a case). Cases are recorded in the year in which the final court decisions were made (not necessarily the same year in which the person was originally remanded).
- **Failure to appear warrants.** The data are reported to the Ministry of Justice by each of the 43 police forces in England and Wales. Returns are submitted electronically on a monthly basis and are checked for completeness. The statistics show the number of each category of warrants outstanding and the percentage of each category of warrants executed within their deadlines, by police force area.
- **First time entrants and criminal histories.** The data are taken from the Ministry of Justice's extract from the Police National Computer (PNC), the operational database used by all police forces in England and Wales. Statistics refer to first time entrants into the criminal justice system, first and further offences, and criminal histories.

The **judicial and court statistics** provide data on the activity in the different courts of England and Wales and some associated offices and agencies. Statistics on criminal cases are included in the chapter on magistrates' courts and the chapter on the Crown Court.

21. Work is currently under way to investigate and review the differences between the two sets of statistics and their compilation processes with a view to aligning the two datasets in the future.

22. The twelve-month period has been chosen over shorter timeframes to minimise the volatility caused by seasonality.

23. The principal offence is the offence for which the defendant is found guilty (where a defendant is found guilty of one offence and acquitted of another), the offence for which the heaviest sentence is imposed (where a defendant is found guilty of two or more offences) or the offence for which the statutory maximum penalty is the most severe (where the same disposal is imposed for two or more offences). The offence shown is the one for which the court took its final decision and is not necessarily the same as the one for which the defendant was initially prosecuted. The sentence shown is the most severe sentence or order given for the principal offence (i.e. the principal sentence). Secondary sentences given for the principal offence and sentences for non-principal offences are not counted. The exceptions to this rule are the statistics on compensation, confiscation and forfeiture where any one of the first four disposals may be counted.

The statistics on criminal proceedings in magistrates' courts include data on:

- **Defendants proceeded against.** These statistics consider cases completed in magistrates' courts. The data are case-based, i.e. where a case has more than one offence, only the most serious offence is counted.
- **Trials.** Magistrates' courts record the number and outcome of trials. Trial outcomes are listed as effective (a trial that commences on the day it is scheduled, and has an outcome in that a verdict is reached or the case is concluded), ineffective (on the trial date no further trial time is required and the case is closed) or cracked (on the trial date, the trial does not go ahead due to action or inaction by one or more of the prosecution, the defence or the court and a further listing for trial is required). If a trial was recorded as ineffective or cracked, the main reason is also recorded.[24]
- **Enforcement.** These statistics consider primarily the amounts paid as fines.
- **Timeliness of criminal proceedings in magistrates' courts.** This section contains statistics on the timeliness of criminal proceedings, providing also information on hearings and pleas.
- **Overall timeliness of criminal proceedings in the criminal courts.** These statistics refer to the overall timeliness of criminal proceedings across both magistrates' and Crown tiers of the criminal courts.

The statistics on criminal proceedings in the **Crown Courts** include data on:

- **Receipts, disposals and outstanding cases.** Statistics are broken down by case type (committed for trial, sent for trial, committed for sentence, or appeals against decisions of magistrates' courts) and by judicial region;
- **Cases disposed of and proportion heard by High Court judges.** Statistics are broken down by class and by judicial region;
- **Cases disposed of.** Statistics are broken down by type of judge (High Court judge, circuit judge, or recorder), judicial region, case type, and number of defendants;
- **Defendants dealt with in cases committed or sent for trial.** Statistics are broken down by plea (plea entered: guilty/not guilty, or plea not entered: bench warrant/other). The data also show the result according to plea: guilty on all counts, not guilty and acquitted (including by manner of acquittal: discharged by judge, acquittal directed by judge, jury verdict, or other acquittal), or not guilty and convicted (including by number of jurors dissenting to the verdict: unanimous verdict, one dissenting juror, or two dissenting jurors);
- **Appeals against decisions of magistrates' courts dealt with.** Statistics are broken down by appeal type (against verdicts or against sentences) and result (allowed, dismissed, or abandoned or otherwise disposed);
- **Cracked trials and ineffective trials.** Statistics are broken down by reason and by judicial region;
- **Average waiting times for defendants dealt with.** Statistics are broken down by case type, plea (defendants pleading not guilty on at least one count or pleading guilty to all counts) and remand type (defendants remanded in custody or on bail);
- **Average hearing times for cases disposed of.** Statistics are broken down by case type and plea;
- **Jury Central Summoning Bureau figures.** Statistics include: summons issued, jurors supplied to the court, deferred to serve at a later date and refused deferral, excused and refused excusal, disqualified, failed to reply to summons, summons undelivered, etc.;
- **Juror sitting days and juror utilisation.** Statistics include sitting days, non-sitting days, non-attendance, and utilisation rate.

24. The reasons for a case to be listed as cracked are: defendant enters a late guilty plea, defendant pleads guilty to alternative charge, accepted by prosecution, defendant bound over, prosecution ends case, or other reason. The reasons for a case to be listed as ineffective are: prosecution not ready, prosecution witness absent, defence not ready, defence witness absent, defendant absent / unfit to stand, interpreter availability, court administrative problems, or other reason.

Cybercrime statistics
Statistics on cybercrime are not recorded separately.

4. SURVEY DATA ON CYBERCRIME IN SELECTED EU MEMBER STATES

This section of the report presents an overview of the collection and presentation of survey data on cybercrime. Among the countries reviewed, survey data on cybercrime are available only in Finland, Germany and to some extent Greece and England and Wales. In the other countries, surveys covering cybercrime have never been done.

For the purpose of the study, survey data are defined as any data obtained through surveys (victimisation, public perceptions or any other type of survey) and referring to cybercrime in general or to a specific type of computer offence.

For each country the analysis describes the implemented cybercrime surveys, pointing out the institution or organisation carrying out the survey, the scope of the survey, the methodology used and the outputs with presentation of results.

4.1 FINLAND

National Victimisation Survey

The National Victimisation Survey (NVS) launched in 1980 is the only publicly available survey conducted in Finland, which covers cybercrime. It is not published in English, and the Finnish publications only cover the sections on victimisation to violence and accidents.

The NVS has been conducted and published by the **National Research Institute of Legal Policy** based on a framework of safety indicators developed by the OECD. Victimisation to injuries, violence, and property crimes is measured among the population aged 15 and over. Through this, the survey is able to measure the physical level of security of the population.

The NVS was conducted in the years 1980, 1988, 1993, 1997, 2003, 2006, and the latest sweep was in 2009. The NVS uses a **large random sample** that is drawn from the Finnish Population Register. The results from the 2009 sweep were based on telephone interviews with a total of 7193 people (6723 aged between 15 and 74 years, and 470 aged 75 and over).

In the NVS, cybercrime is not treated as the main topic and is only mentioned among other types of crime. The category of cybercrime covered is misuse of bank cards and it is mentioned in two questions:

- What type of personal property crime [you have been victim of]: personal property stolen by entering without permission; personal property stolen by other means; attempt to steal personal property by entering without permission; attempt to steal personal property by other means; personal property damaged; credit or debit cards wrongfully used; or other personal property crimes.
- Was the personal property involved: your personal property; your household property; the personal property of your under 15-year old child; credit card; loaned / borrowed; other family members' personal property.

As a lighter and more cost-effective alternative to the NVS, a shorter **mail victimisation survey interview model (URT)** has been developed at the National Research Institute of Legal Policy. The first sweep of the URT was carried out during 2012. Similar to the NVS, the URT includes a question on **misuse of credit cards**, which is asked in respect of the preceding 12 months, but it also inquires about money being stolen from the respondent's bank account, and personal identity theft. The misuse of credit cards and personal identity information is covered by two questions: (1) 'your credit or debit card has been used without your permission or money has been stolen from your bank account in some other way'; and (2) 'your personal identity information has been pried or misused for conducting theft, fraud, or other crime (phishing)'. For both questions there are two available response options: 'no' or 'yes, __ times'.

European Crime Victim Survey

The **European Crime Victim Survey** is a victimisation survey, which Eurostat is expected to implement in the future in all EU member states. In 2009, it was piloted in Finland with the involvement of the **European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI)**, **Statistics Finland**, and the **Unit of Statistics at the University of Helsinki**.

The sample population of the pilot survey consisted of the 15 to 74 year old resident population in Finland. A **stratified two-stage cluster sampling** was used. The survey was conducted as a face-to-face, telephone and Internet survey. The results of the survey are not publicly accessible.

The pilot survey covered several types of **cybercrime**: phishing, identity fraud, computer security, and harassment via email. These crimes were included in the following questions:

- Over the last three years have you been asked by Internet or by e-mail to give the security codes of your credit card, debit card, bank card or electronic bank account for probably illegal purposes: yes or no.
- Over the last three years have your credit card, debit card, bank card or electronic bank account been used for illegal purposes by using their security codes: yes or no.
- Over the last three years has anyone pretended to be you or used your personal details without your permission: yes or no.
- Over the last three years has your home computer: been damaged by a virus; been infected by a virus but not actually damaged; or not been infected by a virus as far as you know.
- And in the last three years, has anyone accessed or hacked into the files on your home computer without your permission: yes or no.
- And in the last three years have you or any members of your household accessed a site by mistake or received any unsolicited material via the internet that you have found offensive or that has upset you in any way: yes or no.
- What did you find offensive or upsetting about the material: it featured pornographic images of adults; it featured pornographic images of children; it was offensive due to its strong language; it referred to pornographic images of children; it featured violent images; it was racist; it was homophobic; it was overtly sexist; it featured some other sort of sexually explicit images or references; or other (with an option for the respondent to specify what was upsetting about the material).
- Over the three years have you received any messages by email, which you considered to be harassment or personally offensive: yes or no.

Survey of crime against retail and manufacturing business premises

The survey of crime against retail and manufacturing business premises is a **nationally representative survey** carried out by the National Research Institute of Legal Policy. It was conducted between March and June 2010 by using a **computer-assisted telephone interview mode**.

The respondents were asked about the following **types of crime**: theft, fraud, embezzlement, vandalism, burglary, robbery, violence against employees, industrial or commercial espionage, extortion, bribery, and electronic crime. Electronic crime was covered by the following questions:

- Has the office observed harm or damage from attacks, intrusions or malware to information systems (during the preceding 12 months): yes, no or cannot say.
- How many times has this occurred during the preceding 12 months: __ times or cannot say.
- Was the incident intentionally directed against the office or company: yes, no or cannot say.
- Was the purpose of the incident to: steal data or files; destroy data or files; damage the website; interfere with the network; other purpose (with an option for the respondent to identify the purpose); or cannot say.
- What was the economic cost of the incident for the office: __ Euros, no economic costs, or cannot say.
- How many man-hours did it take to clear this incident, taking into consideration the entire personnel: __ man-hours or cannot say.

Finnish Self-Report Delinquency Study

The **Finnish Self-Report Delinquency Study (FSRD)** is implemented by the **National Research Institute of Legal Policy** and includes a series of nationally representative self-report surveys of juvenile delinquency.

The study has been conducted at **regular intervals**, the first sweep in 1995 and the following five during 1996, 1998, 2001, 2004, and 2008. The sample consists of ninth-grade Finnish-speaking secondary school students from the whole of Finland.

The sixth sweep (N=5826) of this study, in 2008, dealt with the topic of Finnish adolescents in peer-to-peer networks in regards to illegal downloading. The survey examined the share of students who have downloaded illegal files, the frequency of illegal downloads, the types of downloaded files, and the attitudes of students as regards illegal downloading.

4.2 GERMANY

Infas survey

The survey was carried out in the summer of 2011 by **infas Institute for Applied Social Sciences**, an independent market and social research institution. It is based on interviews with 17,000 respondents about their experiences with cybercrime, which makes it the largest survey carried out so far in Germany on telecommunication behaviour and cybercrime.

The survey studied the share of people who have suffered from **cybercrimes** such as Internet fraud, subscription scams, merchandise fraud (purchasing and paying for something online, in an online shop or at auction, but not receiving their goods, or receiving the wrong ones), and phishing scams.

Bitkom survey

In 2011, the **Federal Association for Information Technology, Telecommunications and New Media Bitkom** conducted a survey among Internet users concerning the development of cybercrime in Germany. The survey examined the share of Internet users in Germany who have suffered from or are afraid of various negative experiences in the Internet (such as virus attacks, threats by online business partners and data espionage).

KPMG survey on e-crime in German industry

In 2010, **KPMG** undertook a survey on cybercrime attacks in German industry, relying on interviews with representatives of 500 companies. The survey examined the share of companies affected by cybercrime, the amount of inflicted damages, the main sources of danger and the other negative consequences to businesses caused by cybercrime.

4.3 GREECE

Paedophilia and the Internet: the Greek Study

A leading Greek study concerning cybercrime is **Paedophilia and the Internet: the Greek Study**, implemented by researchers from the Department of Sociology of the **Aegean University**. It started in 2008 but does not indicate clearly the time period for the collection of the data.

The methodology used is an **online qualitative survey** among target groups of adults from Greece. The researchers have created two **fake profiles**, of a boy and a girl aged 10 years old, and used them to enter as members in a specific online chat community. The adults who have invited the two 'children' to chat have been used as the sample of the study. Since the chat community was open only for adults (aged 18+), the researchers initially presented themselves as adults but afterwards revealed their 'real' age in personal conversations. The survey then focused on the people who contacted the two 'children' looking for friendship and/or sex partners, trying to identify paedophilic behaviour. Despite its innovative nature, the survey has been criticised for a number of methodological and ethical problems, especially after researchers presented to the target group the false information about their age.

4.4 ENGLAND AND WALES

Crime Survey for England and Wales

The **Crime Survey for England and Wales (CSEW)**, previously called the British Crime Survey, is one of the largest and oldest national crime surveys in Europe. It started in 1982 and since 2000 has been a continuous survey. The Office of National Statistics publishes the reports quarterly. The annual reports cover the respective financial year (i.e. April to March).

Cybercrimes are not counted separately. However, the **current questionnaire** includes questions on internet use, worries about e-crimes, reasons for not using the internet, and experience of e-crimes, including: virus infection; loss of money; unauthorised access to personal data; exposure to upsetting or illegal images; and abusive or threatening behaviour. There are also items on preventive/protective behaviour. A further set of questions covers debit and credit card fraud, some of which may have been carried out over the Internet.

Yet another set of questions covers mass-market fraud. The main categories of cyber-crime that are explored include: fraudulent lottery communication ('You have won $10m in our lottery'); offers of friendship ('I would like to be your friend'); high-yield investment opportunities; helping in moving money/releasing inheritance; requests for help to get someone out of financial trouble; ticket fraud. Questions ask whether respondents have been contacted, and whether they have responded, and what happened. Findings will be available late in 2013.

5. STATISTICS AND SURVEY DATA ON CYBERCRIME AT THE EUROPEAN LEVEL

This section of the report presents the most important initiatives at the European level for collecting official statistics and survey data on cybercrime. For the purpose of the study an initiative at the European level is defined as any initiative (past, ongoing or future) for the collection of data on cybercrime (official statistics and/or survey data) that cover at least ten European countries.

For each initiative the analysis describes the implementing institution or organisation, the methodology used, the outputs with presentation of results and the extent to which the collected data are comparable.

5.1 OFFICIAL STATISTICS

European Sourcebook of Crime and Criminal Justice Statistics

The European Sourcebook of Crime and Criminal Justice Statistics is the only major initiative aimed at collecting comparable official statistics and survey data on crime and criminal justice at the European level.

So far, **four editions** of the sourcebook have been published, each covering a different time period: first edition (published: 1999; coverage: 1990-1996); second edition (published: 2003; coverage: 1995-2000); third edition (published: 2006; coverage: 2000-2003); and fourth edition (published: 2010; coverage: 2003-2007).[25] The work on the fifth edition is in progress and is currently at an advanced stage of data collection.

The sourcebook includes data only about **European countries**, with separate data for England and Wales, Scotland, and Northern Ireland. Each edition has a different geographical coverage. The first edition offers data for 36 countries, the second for 40 countries, the third for 37 countries, and the fourth for 42 countries.

The European Sourcebook of Crime and Criminal Justice Statistics is not based on a specifically designed survey but is rather an **instrument for collecting official statistics and data from sociological surveys** carried out in the area of crime and criminal justice.

Information is collected through a **network of national correspondents**. Correspondents are either public officials (representatives of judicial authorities, national statistical offices etc.) or researchers (working for universities or other research institutes). Each national correspondent collects the data on his/her own country and fills it in a questionnaire. The collected data are validated and recalculated into ratios per 100,000 of the population.

The European Sourcebook is divided into **five chapters**:

- Police data: offences and suspected offenders known to the police and police staff;
- Prosecution statistics: steps of decision-making at the prosecution level, such as initiating and abandoning prosecutions, bringing cases to court and sanctioning offenders by summary decisions, compulsory measures during criminal proceedings, etc.;
- Conviction statistics: persons who have been convicted, i.e. found guilty according to law, of having committed one of the selected offences;
- Correctional statistics: number and capacity of penal institutions and data on the 'stock' and 'flow' of non-custodial sentences;
- Survey data: data from the national and international crime victimisation surveys.

The fourth edition of the European Sourcebook of Crime and Criminal Justice Statistics covers the broadest scope of **offence categories**: total criminal offences, traffic offences, intentional homicide, bodily injury (assault), aggravated bodily injury (assault), rape, sexual assault, sexual abuse of minors, robbery, armed robbery, theft, theft of a motor vehicle, bicycle theft, burglary, domestic burglary, fraud, offences against the confidentiality, integrity and availability of computer data and systems, money laundering, corruption in the public sector, drug offences, drug trafficking, and aggravated drug trafficking.

25. The first edition was developed and published upon the initiative of the Council of Europe. The second edition was developed with the financial support of government agencies from the United Kingdom (Home Office), Switzerland (Ministry of Foreign Affairs through the University of Lausanne School of Criminal Sciences) and the Netherlands (Ministry of Justice) and was published by the Dutch Ministry of Justice. The third edition was published by the Dutch Ministry of Justice and was compiled thanks to the support of several institutions and organisations (the Swiss Federal Office of Statistics and the Dutch Ministry of Justice provided financial and logistic support, the French Centre for Sociological Research on Law and Criminal Justice Institutions – CESDIP assisted in the data validation, the European Commission, the German Federal Ministry of Justice and the British Home Office organised one meeting each, etc.). The fourth edition, published by the Dutch Ministry of Justice, was developed with the support of the European Commission through a project financed under the AGIS Programme.

For each offence the sourcebook provides a **standard definition** and a list of the countries, which were not able to meet entirely the definition, with an indication of which elements of the definition they were unable to meet.

Each chapter of the sourcebook includes **technical notes** explaining the **data recording methods** applied by each country (time of data collection, counting units, principle offences rules, counting of multiple offenders, etc.).

In addition to the figures for individual countries, each dataset includes four **specific measures** providing information on the **data dispersion**: (1) the mean: the (unweighted) arithmetic average; the sum of scores divided by the number of countries that provided data;[26] (2) the median: the (unweighted) median is the score that divides the distribution of scores into two exact halves; (3) the minimum: the lowest score in the table; and (4) the maximum: the highest score in the table. If the total number of countries responding was less than five, the mean, median, minimum and maximum are not computed.

The fourth edition of the sourcebook includes data on **offences against the confidentiality**, **integrity** and **availability of computer data and systems**. This category of offences was not among the ones covered by the first three editions and was also excluded from the upcoming fifth edition.

According to the **standard definition,** offences against the confidentiality, integrity and availability of computer data and systems comprise unauthorised entry into electronic systems (computers) or unauthorised use or manipulation of electronic systems, data or software. Where possible, the figures include: 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); computer fraud (i.e. deception of a computer instead of a human being); and attempts. The standard definition excludes the illegal downloading of data or programs.

Not all countries were able to follow the standard definition. All countries were able to include illegal access (e.g. hacking), illegal interception and data interference. System interference was included everywhere with the exception of Switzerland. Most countries (except for Iceland, Slovakia, Sweden, Switzerland and Ukraine) were also able to include misuse of devices. Computer fraud was excluded only in Czech Republic, Italy, Lithuania, Slovakia, Sweden and Ukraine. Attempts were included everywhere. The majority of countries excluded illegal downloading of data or programs except for Armenia, Bulgaria, Finland, Ireland, Portugal (conviction level only), Slovakia, Slovenia, Turkey (police level only) and Ukraine.

The fourth edition of the sourcebook includes the following **statistics on cybercrime**:

- **Police statistics:** offences and offenders per 100,000 population (2003-2007) and percentage of females, minors, aliens, and aliens from EU countries among suspected offenders (2006);

26. The value of the mean is sensitive to the presence of very high or very low scores, and for this reason the median is also included as an indicator of the central tendency of the data.

- **Conviction statistics:** persons convicted per 100,000 population (2003-2007); percentage of females, minors, aliens, and aliens from EU countries among convicted persons (2006); types of sanctions and measures imposed on adults and on minors (2006); length of unsuspended custodial sanctions and measures imposed upon adults (2006); and persons held in pre-trial detention among persons convicted (2006);
- **Correctional statistics:** percentage of females, minors, aliens, and aliens from EU countries among convicted prison population by offence (2006).

Prosecution statistics included in the sourcebook are not broken down by offence type and separate figures for cybercrime are not available.

Many countries were not able to provide any statistics on cybercrime. Out of the 42 participating countries police statistics on cybercrime are available for 26, conviction statistics for 19, and correctional statistics for only six countries.

The sourcebook includes an explicit disclaimer that both the **chronological comparison** of data for one country and the **international comparison** between countries **should not be over-interpreted**. Within one country, changes from one year to another might be due not only to the change in the number of offences, but also to changes in the legislation or modifications in the rules for collecting and presenting statistics. International comparison is even more difficult because countries differ widely in the way they organise their police and court systems, the way they define their legal concepts, and the way they collect and present their statistics. According to the European Sourcebook: '[i]n fact, the lack of uniform definitions of offences, of common measuring instruments and of common methodology makes comparisons between countries extremely hazardous'.

United Nations Office on Drugs and Crime (UNODC)

Cybercrime, as one of the so-called 'emerging crimes', is a relatively new priority for UNODC. So far, UNODC has focused its efforts on promoting long-term and sustainable capacity building through supporting national structures and action.

To respond to the increasing need for reliable and comparable data on cybercrime, in January 2012 UNODC initiated the development of a **comprehensive study** on the problem of cybercrime and the responses to it by Member States, the international community and the private sector. The survey is based on information and data collected through **questionnaires to Member States** on cybercrime prevention, policy, legislation, law enforcement and criminal justice response, international cooperation and technical assistance.

The development of the study was assigned to an open-ended intergovernmental expert group, convened by the United Nations Commission on Crime Prevention and Criminal Justice. At its first meeting, the expert group discussed a working paper *Draft collection of topics for consideration within a comprehensive study on impact and response to cybercrime*. The document includes a draft structure of the study, according to which statistical information is one of the three topics of a subcategory provisionally entitled 'Problems of cybercrime'.[27]

The working paper acknowledges the role of crime statistics for discussion and decision-making processes by policymakers and academics, underlining that 'access to precise information about the true extent of cybercrime can enable law enforcement agencies to improve anti-cybercrime strategies, deter potential attacks and ensure that more appropriate and effective legislation is enacted'. At the same time, the two major sources of information about the extent of crime, namely crime statistics and surveys, are described as presenting challenges when used for developing policy recommendations. The problems related to the use of available statistics, according to the working paper, are: the collection of data on the national level without reflecting the international extent of the matter; the unreliability of the (theoretically possible) combination of data from different countries because of the differences in legislation and recording practice; the lack of the necessary degree of compatibility allowing for the combination and comparison of national cybercrime statistics; and the lack of separate figures on cybercrime even if cybercrime offences are recorded. The working paper also mentions the problem of unreported crime, which do not appear in official statistics but the number of which, particularly in the case of cybercrime, is estimated to be significant. According to the working paper this is due the fear of businesses that negative publicity could damage their reputation (if a company announces that hackers have accessed its server, customers may lose faith, resulting in costs that could be greater than the losses caused by the hacking attack); the doubt of victims that law enforcement agencies will be able to identify offenders, or the unwillingness of victims to go through with time-consuming reporting procedures to law enforcement when they have sustained little damage (although the automation of cybercrime attacks often enables cybercriminals to develop a strategy of reaping large profits from many attacks targeting small amounts.

27. Expert group on cybercrime (2010): *Working paper: Draft collection of topics for consideration within a comprehensive study on impact and response to cybercrime.* UNODC.

The working paper also outlines the scope of the **upcoming study in terms of statistical information**. The study is expected to cover the following issues: (a) collection of the most recent statistics, surveys and analyses addressing the prevalence and extent of cybercrime; (b) evaluation of the value of statistics for policy recommendations; (c) determination of possible obstacles in the collection of accurate statistics; (d) identification of countries that specifically gather statistics on cybercrime offences; (e) evaluation of need for and advantages of collecting statistical information on cybercrime; (f) examination of possible techniques that could be used to collect such information; and (g) discussion of a possible model of a central authority hosting statistical information.

5.2 SURVEY DATA

Eurobarometer

In July 2012, the European Commission published *Special Eurobarometer 390 on Cyber Security*. The report is based on a public opinion survey of the perceptions of cyber security issues as the frequency and type of Internet use; confidence in Internet transactions; awareness and experience of cybercrimes; and the level of concern about this type of crime.

The survey was carried out by TNS Opinion & Social, a consortium between TNS plc and TNS opinion, upon request by the European Commission, Directorate-General Home Affairs under the co-ordination of Directorate-General for Communication. It was implemented among citizens of the 27 EU member states residing in the respective state and being at the age of at least 15 years. Between 10 and 25 March 2012, TNS Opinion & Social interviewed **26,593 respondents** from various demographic and social groups.

The survey **questionnaire is comprised** of 14 questions divided into four sections:

- **Frequency, places and devices of use of Internet** (four questions). Respondents can indicate on a list how often they use Internet and whether they access it from their home, work or other place. Another question aims at identifying the type of respondents' activity – what type of online services they use.
- **Confidence about Internet transactions** (three questions). Citizens can assess their ability to use online banking and Internet shopping, whether they have any

concerns about such transactions, e.g. data security concerns or concerns related to falling victim to the dishonesty of goods/service providers. The survey examines the way such concerns can influence the behaviour of users by either using such services less often or using only trustworthy companies, or by electronic security measures such as antivirus software, strict settings, less accessible passwords or using one's own device only.

- **Awareness and experience on cybercrime** (three questions). The survey examines how respondents get informed about cybercrime and whether they feel well informed about this type of crime. This part also measures the respondents' sense of being victims of several types of cybercrime such as identity theft, malicious spam attacks, online fraud by goods/services providers, and hate speech/incitement to extremism.
- **Level of concern about cybercrime** (four questions). Respondents can also specify the institutions, organisations or service providers that they would contact in case some of the above-mentioned types of crime occurred.

The respondents were picked randomly using the **multi-stage sample principle**. In each country's administrative units, sample points were drawn in accordance to the distribution of the population in metropolitan, urban or rural areas. In every sample point, random addresses were picked and in every household a random respondent was selected in accordance with the 'closest birthday rule'. Interviews are held in respondents' homes in their national language.

The samples in each country of about 1.000 respondents were compared to the universe, the description of which was derived from Eurostat and national demographic statistics data. For all countries a **national weighting procedure** was carried out – the survey allows iteration by gender, age, region and size of locality. For international averages, TNS Opinion & Social used Eurostat or national demographic data. The confidence limits for the accuracy of the estimations vary between 1,9 and 3,1 points for samples of about 1.000 interviews.

KPMG studies

Prior to the 7th annual e-Crime Congress, KPMG invited security professionals from the e-Crime community and a selected group of KPMG's clients to participate in the e-Crime Survey 2009. The survey, conducted between 3 February and 13 March 2009, was completed by **307 respondents from global businesses, law enforcement agencies, and government** (including experts in the fields of IT security, fraud investigations, corporate security, audit, and risk). The respondents came from different geographic locations (78% from Europe, 8% from the Americas, 6% from Asia-Pacific, 4% from the Middle East and 4% from Africa) and represented different types of organisations (80% businesses, 6% government departments, 4% law enforcement agencies, 4% not-for-profit organisations and 4% other types of organisations). The survey questions refer to the impact of recession on e-crime, the trends in attacks on customers, the online consumer security, the impact of e-crime on enterprises, the e-crime attacks against critical infrastructure, and the business of security.

In 2011, KPMG in association with the e-Crime Congress conducted another survey on e-crime. The results were included in The e-Crime Report 2011, edited and published by AKJ Associates and sponsored by KPMG. The survey explored three key areas: the views of respondents of the threat landscape today, the impact of new emerging technologies and business models on the level of e-crime risk, and how organisations can structure a response to the threat of e-crime. The survey was conducted online and at the e-Crime Congress 2011 and was completed by over **200 professionals**. The results

reflect the views of a cross-section of information security stakeholders working for departments that include IT, risk, audit, security, fraud, investigations and compliance. Their responsibilities include the design and coordination of strategy, ensuring data is protected from internal and external threats, meeting regulatory compliance requirements and running investigations. Survey data is presented in the aggregate. In addition to the survey, a series of interviews were conducted with senior security professionals working for global businesses in order to provide insights, views and opinions on the findings of survey and the issues raised by respondents.

The questions included in the survey refer to the risks of **e-crime** associated with the use of the same IT hardware for business and personal use, cloud computing, the availability of multi-functional internet-hosted software (e.g. social networking, webex, webmail, etc.) in the workplace with more advanced or user-friendly capabilities than in-house IT products, the use of consumer-oriented IT hardware with internet connectivity (e.g. smart phones and tablet computers) for business-related purposes, the opportunity to transfer data or layers of IT infrastructure to outsourcing or 'cloud' providers whose services are accessed by the internet, etc.

In July 2011, KPMG published the report *Cyber Crime – A Growing Challenge for Governments* (*Issues Monitor* Volume 8 / July 2011). It uses data from previous KPMG surveys and from the 2010 Annual Security Report of Symantec's MessageLabs Intelligence. The report examines the spread of several types of cybercrimes (e-mail spam, e-mail malware and phishing) and analyses the implication of and governments' response to the rising cybercrime.

CONCLUSION

The collection of data on crime and criminal justice is supposed to facilitate the development of criminal policies, the undertaking of more effective measures for crime prevention and control, and the assessment of the criminal justice system.[28] Most European countries collect and publish such data on a regular basis, but national figures are usually not comparable at the international level due to differences in methodology.

In general, each country has developed its own **mechanisms for data collection** corresponding to the specificities of its domestic criminal justice system. These mechanisms reveal certain **similarities and common patterns** as well as significant **differences**.

In most countries, the collection of **police statistics** is the responsibility of the respective interior ministry, which in turn receives information from local units (police offices or other local services). Data are usually collected through the filling in of special templates (returns), but there are also advanced examples of data being generated and transmitted automatically through the police information system.

In general, police statistics cover only incidents that have been reported to or have otherwise come to the knowledge of the police. Hidden crime, as a rule, is missing from police statistics.

The police usually record the number of incidents and suspected offenders. In individual countries, there are more detailed police statistics covering, inter alia, the number of victims, the amount of the inflicted damages, the number of arrested persons, etc. Some countries also maintain statistics on the profile of offenders (age, gender, nationality, etc.) and, less often, on the profile of victims. The majority of countries are also keeping track of the effectiveness of the police by recording the share of cleared-up cases.

The separate collection of **prosecution statistics** seems to be less common. In

Jörg-Martin Jehle, How to improve the international comparability of crime statistics, in: New types of crime. Proceedings of the International Seminar held in connection with HEUNI's thirtieth anniversary, Helsinki 20 October 2011, edited by Matti Joutsen, 2012, p. 134.

many countries prosecution statistics are collected as part of either the police statistics (e.g. in terms of suspects) or the judicial statistics (e.g. in terms of cases brought to court). The countries that collect separate prosecution statistics usually count the number and outcome of investigations (pre-trial proceedings) and the cases and defendants brought to court.

Judicial statistics are collected in most countries, usually by a central statistical authority and/or the management body of the judiciary. Data cover the number of cases and their outcome as well as the number of convicted persons. In some countries there are also figures that are broken down by the type and amount of the imposed penalty and by certain characteristics of the convicted individuals (age, gender, nationality and, less often, previous convictions, employment, education, etc.).

As a rule, the collection of crime and criminal justice statistics is based on the provisions of the countries' **penal legislation**. With a few exceptions, all police, prosecution and judicial statistics use as crime categories the types of offences as they are listed and defined by the national penal laws. Thus, all the specificities of the national penal laws are directly translated into the collected criminal justice statistics, making them very difficult to compare on the international level.

Generally, statistics are summarised on the **national level** and, in countries with a federal form of government, on the level of federal entities (states, provinces, etc.). Many countries are also collecting data on the local level based on their territorial (administrative or judicial) division.

In most countries the collection of police, prosecution and judicial statistics is done separately and through different methodologies, which makes the data collected by the different institutions (the police, the public prosecution and the courts) difficult to compare. Countries generally lack **uniform data collection mechanisms covering the entire criminal justice system** and providing comparable figures for all criminal justice institutions.

With very few exceptions crime and criminal justice statistics are **public**. However, accessibility of data differs from country to country ranging from online accessibility or publication in periodic (usually annual or semi-annual) reports to availability only upon request. Furthermore, some countries still maintain statistics only in their national language, although there is a general trend towards publishing the data (or at least part of them) in English.

Although most countries maintain statistics on crime and criminal justice in general, **separate data on cybercrime** are not always collected.

Most often, countries collect data on the **typical forms of cybercrime** (i.e. crimes such as hacking, virus attacks, etc., that can be committed only by using a computer or other similar information technology). In terms of crimes that can be committed either with or without using such technology (e.g. fraud), separate figures are not available. This situation significantly hampers the assessment of the spread of cybercrime since it remains unclear what share of crimes, otherwise recorded as conventional crimes, are actually committed in cyberspace.

A positive development in some countries is the publication (periodically or occasionally) of **special reports on cybercrime**. Such reports offer detailed statistics on cybercrime accompanied by analysis and recommendations.

The **official statistics collected on the national level** are in most cases **not comparable**, which prevents comparative analysis on the international level. The lack of comparability is the result of the differences in the methodology used by different countries, which in turn is due to the differences between the national criminal justice systems (e.g. in terms of crime definitions, court systems, criminal proceedings, etc.).

This is particularly valid for cybercrime data, because the differences in terms of crime definitions from country to country are much bigger concerning cybercrime than those concerning some traditional crimes such as violent offences or property offences.

There have been some initiatives, such as the European Sourcebook of Crime and Criminal Justice Statistics, which have focused on **collecting official statistics** at the European level on crime in general and cybercrime in particular. Such efforts, although based on sound scientific grounds, have not been able to produce comparable data on cybercrime but have rather confirmed the existing gap in data collection. There are also ongoing efforts, such as the comprehensive study on cybercrime by the UNODC, which are still in progress and the results of which are yet to be officially presented.

In addition, and often as an alternative, to official statistics, data on crime and criminal justice can also be obtained from **victimisation surveys**. Victimisation surveys have been conducted in many countries covering a limited number of offences, primarily violent and property crimes. For such crimes there are also comparable figures from internationally recognised surveys such as the International Crime Victimisation Survey (ICVS), the European Crime and Safety Survey (EU ICS), etc.

Most **victimisation surveys**, both on the national and international level, do not include cybercrime in their scope of offences. Among the few exceptions is the European Commission's Eurobarometer, the 2012 special edition of which was on cyber security and which studies the experiences and concerns of European citizens with several forms of cybercrime. There are plans for including cybercrime in the upcoming European crime victim survey, already piloted in several countries, which, once completed, will produce for the first time internationally comparable survey data on this type of offence.

Work Package 10
Criteria for
criminalization

10.1

Report on the conceptualization of alternatives to criminalization

by: Elena Vaccari and Stefano Maffei

EXECUTIVE SUMMARY

The FIDUCIA research project (New European Crimes and Trust-based Policy) is funded primarily by the European Commission through the Seventh Framework Programme for Research and Development. FIDUCIA will shed light on a number of distinctively "new European" criminal behaviours that have emerged in the last decade as a consequence of developments in technology and the increased mobility of populations across Europe. The central idea behind the project is that public trust in justice is important for social regulation: FIDUCIA will build on this idea and proposes a 'trust-based' policy model in relation to emerging forms of criminality.

D.10 re-opens the difficult question of determining when to use - and not to use - the criminal law in the regulation of deviance and social problems, with specific regard to the adverse impact of ineffective over-criminalization on public perceptions of justice. It investigates a number of research questions: a) what are the criteria for criminalization and the alternatives to criminalization in theory and practice; b) what are best and worst examples of de-criminalization and over-criminalization across Europe; c) what is known about the adverse effects of ineffective over-criminalization on public perceptions; and d) what are specific areas of current criminal policy that are suitable for de-criminalization.

More specifically, D.10.1 first aims at developing a set of practical criteria to be followed by legislators and policy makers in the enactment of new criminal offences. The practical guide that will result is an effort to bridge the gap between the theory and the practice of the criminal law. Then, D.10.1 conceptualizes the available alternatives to criminalization in the regulation of social problems, in an effort to lay down the theoretical foundations for the case studies and policy proposals that will follow in D.10.2 and D.10.3.

The first draft of the present deliverable was drafted by Elena Vaccari (UNIPR) during a 3-month research stay (January 2013 –March 2013) at the Faculty of Law of the University of Oxford, under the supervision of Prof. Andrew Ashworth (OXFORD). Stefano Maffei (UNIPR) offered some comments on an early version of this deliverable.

KEY FINDINGS

These are the key findings of the present deliverable:

- "Criminalization", i.e. the resort to criminal law as a means to regulate social problems, is an increasingly significant feature of European states and modern democracies in general. Both the number of criminal offences and the areas touched by the criminal law have expanded significantly since the beginning of the twenty-first century, primarily as a result of the new "preventive" (as opposed to "post-crime") orientation of the criminal justice systems.
- The increased use of the criminal law to regulate social conduct is part of a broader phenomenon that criminal law scholars define as "overcriminalization". This term indicates the use of the criminal justice system without adequate justifications and relates to both the enactment of new criminal offences and the use of excessive punishment.
- It was only in the recent period that criminalization principles started being developed by commentators, to limit the expansion of the criminal law. Initially, they settled for very general guidelines, which effectively provide no real help in the practical realm. To bridge the gap between the philosophical and the concrete, a set of workable principles is now required. The most successful efforts carried out in this regard are the ones by Douglas Husak (who developed a normative theory of criminalization) and Andrew Ashworth and Lucia Zedner (who developed criteria for criminalization with regard to crimes of risk prevention).
- There is a recurring trend among European states, both in the present and in the past, to resort to the criminal law to address longstanding social problems such as vagrancy, public drunkenness, drugs, gambling, prostitution, immigration etc. As far as the law is concerned, there are two alternatives to the criminalization of a certain conduct: "decriminalization" and "legalization". Decriminalization refers to measures that retain the offence in question as an offence, but avoid criminal prosecution and punishment. Legalization refers to the removal of an offence from both the administrative and the criminal law.
- In line with the Council of Europe Recommendations, several scholars have recently argued for the adoption by European states of a system of administrative sanctions similar to the one developed by Germany. They have argued that both the German administrative system itself, which is clearly distinct from the criminal justice system and establishes penalties through a lean and cost-effective procedure, and the wide range of social problems to which it applies could be seen as a useful guide for decriminalization reforms.
- There are two major areas of the law where the use of criminal sanctions seems generally highly contestable: these are victimless crimes and crimes of risk prevention.

INTRODUCTION

The question of the proper scope of the criminal law - what to punish, and why - remains a continuing and difficult one for European states and the EU, especially in light of growing concerns of judicial economy and effectiveness. This question is given urgency by two contemporary phenomena: on the one hand, it is often argued that criminal law should be extended to provide an adequate response to new forms of threat, such as the ones that have emerged in the last decade as a consequence of technology developments and the increased mobility of populations across Europe. On the other hand, it is also argued that criminal law far exceeds its proper boundaries, criminalizing conduct that ought not be criminal.

This paper will address both these issues. Part 1 will develop a set of workable criteria that should be used by legislators and policy makers in their criminalization decisions. First, it will be confirmed that, although European states and the EU often quote the principle that criminal law should only be used as a "means of last resort", the areas touched by criminal law have expanded significantly in the recent years. In particular, it will be shown that most systems of criminal justice today add to their traditional "post-crime" focus, which aims at providing an authoritative response to public wrongs, an "anticipatory" perspective, whose goal is to prevent those wrongs for which people are censured. Thus, with a view of avoiding overly extensive and intrusive criminal law, it will be argued that any criminalization decision, and in particular those justified by a preventive rationale, must be taken in conjunction with appropriate restraining principles, which will be specifically identified.

Part 2, then, will provide a theoretical assessment of the alternatives to criminalization in the regulation of social problems. First, we will define "decriminalization" and "legalization", which are terms that often lead to misunderstanding in the debate on reforms. Then, we will analyse the role of decriminalization within the framework of the Council of Europe. Finally, we will delineate the direction in which decriminalization reforms should go, identifying both which European legal system could be used as a guide for further developments and which major areas of the law should be particularly considered for decriminalization measures.

1. CRITERIA FOR CRIMINALIZATION

1.1 CRIMINALIZATION AND OVERCRIMINALIZATION

"Criminalization", i.e. the resort to criminal law as a means to regulate social problems, is an increasingly significant feature of European states. The numbers speak for themselves. In Great Britain, where the Ministry of Justice committed to scrutinize all legislation containing criminal offences and publish annual figures, it was shown that more than 3,000 new criminal offences were enacted during Tony Blair's nine-year government – one for almost every day the government was in power.[1] This trend was then recently confirmed by the creation of 712 new criminal offences in the period May 2009–May 2010, 172 in the period May 2010–May 2011 and 292 in the period May 2011–May 2012.[2] In Hungary, new anti-vagrancy statutes that came into force in April 2012 – the toughest in Europe – now mean that homeless people sleeping on the street can face police fines or even the possibility of imprisonment.[3] Although statistics on the enactment of new criminal offences are unavailable in some European countries, there is a consensus among legal scholars that the areas touched by criminal law have increased substantially in Europe over the last years. This, moreover, appears to be a shared feature of most modern democracies. The state and the federal justice system of the United States, in fact, also dramatically expanded their authority and reach over the last years. Texas lawmakers, for example, recently created over 1,700 criminal offences.[4] And there are today an estimated 4,500 criminal offences in federal statutes, spread out through some 27,000 pages of the U.S. Code.[5] Certainly, part of this expansion of the substantive criminal law is due to the need to provide an effective response to new forms of threat. However, a substantial part of this is also due to the readiness of the legislators to reach for the criminal law whenever social problems emerge, as an instinctive, seemingly costless response.[6]

The increased use of the criminal law to regulate social conduct is part of a broader phenomenon that criminal law scholars define as "overcriminalization".[7] This term indicates the use of the criminal justice system without adequate justifications. It relates to both 1) the enactment of new criminal offences and 2) the use of excessive punishment. As to the first aspect, overcriminalization occurs with the creation of far-fetched offences, some of them so deficient in harmful wrongdoing and beyond any legitimate rationale for state action as to flunk what Erik Luna calls the "laugh test":[8] examples are, under UK law, the crimes of selling grey squirrels, impersonating a traffic warden or failing to nominate a neighbour to turn off a noisy burglar alarm,[9] or, under US law, Maine's prohibition of catching lobsters with something other than "a conventional trap".[10] As to the second aspect, overcriminalization occurs with the use of punishment irrespective of theoretical justification or proportionality, as is often the case with risk-based possession offences (such as UK mandatory minimum of 5 years imprisonment for mere possession of a prohibited gun)[11] or anti-recidivist statutes (California's three strikes scheme being the most infamous example, with one defendant receiving a sentence of twenty-five years to life for stealing a slice of pizza).[12]

Overcriminalization, and in particular the creation of criminal offences without adequate justification, is problematic because it authorizes the most privatory and condemnatory forms of state power against its citizens. It makes possible the arrest, interrogation, prosecution and punishment of an individual by the state, which may result in the deprivation of the offender's liberty for a prolonged time.[13] As it is well known, the widespread use of the criminal justice system has led to a massive increase in the number of inmates throughout the world. In this regard, the United States stands out among peer nations. Although the English imprisonment rate has itself almost doubled, the United States' rate is almost 5 times higher than that of England and Wales.[14] With roughly 5% of the world's population, the US currently confines about 25% of the world's prison inmates.[15] As a result, prison overcrowding has become so severe that in 2011 a landmark decision of the Supreme Court[16] ordered a reduction of California's prison population by more than 30,000 inmates. Despite the difference in magnitude, prison overcrowding is a growing concern also for most European states, as it is documented by the abundant case law of the European Court of Human Rights on the violations of the right to be free from "torture, inhuman or degrading treatment".[17] To use Professor Kadish's words, until these problems of overcriminalization are systematically examined and effectively dealt with, some of the most besetting problems of criminal law administration are bound to continue.[18]

1.2 CRITERIA FOR CRIMINALIZATION: IN GENERAL

At a time when governments seem to be creating more and more criminal offences, criminalization has become the subject of vibrant debate among legal scholars. In particular, criminalization has been considered in its descriptive and normative aspects. The descriptive aspect addresses either the existing offences in a given legal system or the way in which they were formed politically, historically or otherwise.[19] The normative aspect, in turn, involves a value judgment. It relates to the questions: what types of behaviour should be criminalized and what types should not? What are the principles to which criminalization decisions should conform?[20] This section will focus on the normative aspect of criminalization. It will not address specific types of conduct, but will rather analyse general criteria for criminalization as they have been developed in the recent academic debate.

1. *The Daily Mail*, "3,000 new criminal offences created since Tony Blair came to power", 16 August 2006, available at http://www.dailymail.co.uk/news/article-400939/3-000-new-criminal-offences-created-Tony-Blair-came-power.html#axzz2KgjNSeJp.

2. Official Statistic produced by the UK Ministry of Justice, available at http://www.justice.gov.uk/statistics/criminal-justice/new-criminal-offences.

3. BBC, "Hungary outlaws homeless in move condemned by charities", 1 December 2011, available at http://www.bbc.co.uk/news/world-europe-15982882

4. Including 11 felonies alone relating to harvesting and handling oysters. M. LEVIN, Time to Rethink What's a Crime: So-Called Crimes Are Here, There, and Everywhere (Texas Public Policy Institute, 2010).

5. J. BAKER, Revisiting the Explosive Growth of Federal Crimes, in *Legal Memorandum*, n 26 (The Heritage Foundation, 2008).

6. See P. ROSENZWEIG, Overcriminalization: An Agenda for Change, in *Am. U. Law. Review*, 2005, vol. 54, 809, 809-80; N. PERSAK, *Criminalizing Harmful Conduct: The Harm Principle, its Limits and Continental Counterpart* 5, 27 (2007); D. J. BAKER, *The Right Not to be Criminalized: Demarcating Criminal Law's Authority* 6-7 (2011).

7. E. LUNA, The Overcriminalization Phenomenon, in *Am. U. Law Review*, 2005, vol. 54, 703, 712.

8. E. LUNA, Overextending the Criminal Law, 25 CATO POL'Y RPT. 1 (2003), available at http://www.cato.org/pubs/policy_report/v25n6/luna.pdf (Feb. 14, 2005), p.1.

9. Supra note 1.

10. E LUNA, supra note 7 at 715.

11. A. ASHWORTH, The Unfairness of Risk-Based Possession Offences, in Crim Law and Philos, 2011, 5:237–257.

12. *L.A. Times*, "Pizza Thief" Walks the Line, 10 February 2010, available at http://articles.latimes.com/2010/feb/10/local/la-me-pizza-thief10-2010feb10. See CAL. PENAL CODE § 667(e)(2)(A) (requiring an indeterminate life sentence, with a mandatory minimum of at least twenty-five years, where the defendant has been convicted of any felony and has two or more prior serious or violent felony convictions).

13. A.ASHWORTH -L. ZEDNER, Preventive Orders: A Problem of Undercriminalization, in R.A DUFF *et al.*, *The Boundaries of the Criminal Law*, 59, 81 2010.

14. N. LACEY, American Imprisonment in Comparative Perspective, in *Daedalus*, vol. 139 (Issue 3-Summer 2010), 108.

15. B. PETTIT -B. WESTERN, The Challenge of Mass Incarceration in America, in *Daedalus*, vol. 139 (Issue 3-Summer 2010), 6.

16. *Brown v. Plata*, in which the United States Supreme Court held that California's prison system, that operated at 200% of capacity, was unconstitutional for violation of the 8th Amendment of the U.S. Constitution ("cruel and unusual punishment").

17. Art. 3, Eur. Convention on Human Rights. See, e.g. *Sulejmanovic v. Italy*, Eur. Court of Human Rights, (16 June 2009) and *Mandic and Jovic v. Slovenia*, Eur. Court. of Human Rights (20 October 2011). See also Coucil of Europe Recommendation No. (99) 22 concerning Prison Overcrowding and Prison Population Inflation (Adopted by the Committee of Ministers on 30 September 1999) at http://www.legislationline.org/documents/id/8040.

18. S. A. KADISH, The Crisis of Overcriminalization, in *Am Crim Law Q*, 1968, vol. 7, 17 18.

19. See e.g. N. LACEY-L. ZEDNER, Legal Constructions of Crime, in M. MAGUIRE-R. MORGAN-R. REINER (eds), Oxford Handbook of Criminology, 5th ed., OUP, 2012, 159 164-73 (explaining criminalization in historical perspective).

20. See e.g. A. ASHWORTH, Criminalization, in Principles of Criminal Law, Oxford, OUP, 2009, VIth ed, 22-43 (identifying general principles that ought to be considered when deciding whether or not to make conduct criminal).

The starting point for any debate on criteria for criminalization is the "harm principle". This principle, which was first articulated by John Stuart Mill,[21] rejects the use of society's power for any purpose other than that of preventing "harm to others". This principle was supported by prominent legal scholars, including Hart[22] and Dworkin,[23] and was thoroughly analysed by the American legal philosopher Joel Feinberg. Feinberg assessed the harm principle with specific regard to the criminal law, in a book series on four possible criminalization principles: 1) the harm principle, 2) the offence principle, 3) legal paternalism and 4) legal moralism.[24] Among them, the harm principle was identified by Feinberg as the most acceptable criminalization principle in modern society[25] and, ever since, Feinberg's writings are considered to be the best defence of this fundamental principle.[26] Despite some commentators having pointed out that criminal offences may be justified even in the absence of harm to a specific person, when the harm is done to society at large (so-called victimless crimes or crimes against the public order), the punishment of individuals who harm other individuals is the most obviously legitimate task of the criminal justice system. Therefore, the harm principle remains pivotal for any liberal model of criminalization. Simester and von Hirsch,[27] adapting Feinberg, set out the harm principle in the following schematic form, which is a valuable tool for policy makers and legislators:

HARM PRINCIPLE

Step 1: Consider the gravity of the eventual harm, and its likelihood. The greater the gravity and likelihood, the stronger is the case for criminalization.
Step 2: Weigh against the foregoing, the social value of the conduct, and the degree of intrusion upon actors' choices that criminalization would involve. The more valuable the conduct is, or the more the prohibition would restrict liberty, the stronger the countervailing case would be.
Step 3: Observe certain side-constraints that would preclude criminalization. The prohibition should not, for example, infringe rights of privacy and free expression.

Despite being essential for any criminalization decision, the harm principle only sets a necessary condition for criminalization, not a sufficient one.[28] Legal scholars agree that another fundamental principle in relation to criminalization is the "culpability principle", which describes the degree of one's blameworthiness in the commission of a crime. Standard criminal law doctrine states that a person should not be liable to conviction without proof of fault, in the form of intention, recklessness or negligence. Criminal liability without fault, indeed, would be to impose state censure undeservedly, failing to respect persons as thinking, planning individuals.[29] In reality, however, many European states have seen, in recent years, an increase in the use of strict liability offences, i.e. offences that do not require the prosecution to prove any fault on the part of the defendant in relation to some elements of the conduct. In the UK, for example, around

21. John Stuart Mill, *On Liberty* (first published in 1859, reprinted in 1863 Boston: Ticknor and Fields), pp. 22-23. According to Mill, "the only purpose for which power can be rightfully exercised over any member of a civilised community against his will is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forebear (…) because in the opinion of others to do so would be wise or even right". Id at 22-23. or *On Liberty* (1859) ch. 1, par. 9

22. H.L.A. HART, *Law, Liberty and Morality* 4-5 (1963)

23. R. DWORKIN, Lord Devlin and the Enforcement of Morals, in *Yale Law Journal*, 1966, vol. 75, 986, 992.

24. J. FEINBERG, T*he Moral Limits of the Criminal Law: Harm to Others* 63 (1984) (explaining the various meanings of the expression "harm to others"); J. FEINBERG, *The Moral Limits of the Criminal Law: Offence to Others* (1985); J. Feinberg, *The Moral Limits of the Criminal Law: Harm to Self* (1986) J. FEINBERG, *The Moral Limits of the Criminal Law: Harmless Wrongdoing* (1990).

25. See H. PACKER, *The Limits of the Criminal Sanction* 17 266 (1969) (saying that ever since Mill's essay, the dispute between law and morality has been forged upon the formula of "Harm to Others"). Also see S. WALLERSTEIN, Criminalising Remote Harm and the Case of Antidemocratic Activity 28 *Cardozo Law Rev.* 2697, 2699 (2007); Darryl Brown, History's Challenge to Criminal Law Theory, 3 *Crim Law and PHILOS* 271, 278-82 (2009); L. FARMER, Criminal Wrongs in Historical Perspective, in R. A. DUFF *ET AL.* (eds.), *The Boundaries of the Criminal Law*, 2010, p. 214.

26. D. HUSAK, Limitations on Criminalization and the General Part of Criminal Law, in S. Shute- A. Simester (eds), *Criminal Law: Doctrines of the General Part*, Cambridge, Cambridge Univ Press, 2002, pp.13-46.

27. A. P. SIMESTER-A. VON HIRSCH (2011) *Crimes, Harms and Wrongs: On the Principles of Criminalization*, Oxford, Hart, p. 55

28. See J. FEINBERG, *The Moral Limits of the Criminal Law: Harm to Others* 63 (1984) at 9-10 (explaining that even when the harm principle is satisfied, other reasons may prevent criminalization). Also See B. E. HARCOURT, Criminal Law: the Collapse of the Harm Principle, 90 *Journal. Crim. Law. & Criminology*, 1999, vol. 90, 109, 114 (author claims that the harm principle is a necessary yet insufficient condition for criminalization).

29. A. ASHWORTH, *The Unfairness of Risk-Based Possession Offences…*, supra note 11 at 243.

one-third of all new criminal offences in 2005 contained at least one strict liability element.[30] These were not merely so-called regulatory offences, penalizing failures to comply with financial or industrial regulations, but also offences carrying a maximum of life imprisonment. Thus, sections 5 and 6 of the Sexual Offences Act 2003 punish with a maximum of life imprisonment the offences of rape and sexual penetration of a child under 13, imposing strict liability as age.[31] These provisions are typical of many other European states. Even those jurisdictions that formally reject the constitutionality of strict liability offences, as inconsistent with the *nulla poena sine culpa* principle, impose strict liability as to age for some sexual offences where a minor is the victim. This has long been the case, for example, of Italy, which only recently introduced an excusing condition for the so-called "inevitable ignorance" as to age.[32] Whether strict liability is exceptionally justified in such cases is controversial and will be left for debate elsewhere. The point here is that there should be a strong presumption against strict criminal liability, because it is contrary to the principle *nulla poena sine culpa.*[33] It should be regarded as exceptional and in need of strong justification, particularly when the proposed criminalization carries a heavy penalty. Therefore, policy makers and legislators should be guided in their criminalization decision by the following principle:

CULPABILITY PRINCIPLE

Fault (i.e. *mens rea*) - in the form of intention, recklessness or negligence - is to be required in relation to all the elements of the conduct (i.e. *actus reus*). Only exceptional circumstances, which require strong justification, may allow departure from this principle.

Harm plus culpability, therefore, is the paradigm of criminal liability and criminalization.[34] Nowadays however, alive to the inevitable vagueness of concepts such as "harm" and "culpability", criminal law scholars are making important strides in specifying these two principles and developing additional criteria for and against the use of the criminal law.[35] Among them, the American legal philosopher Douglas Husak and the English criminal law professor Andrew Ashworth deserve the most credit for having defended general limitations on the use of the penal sanction, to narrow the reach of the criminal law. In light of the importance of their contribution, we will hereby undertake an analysis of their valuable work.

In his recent monograph, Husak argues that the interest in developing criteria for criminalization is a fairly recent phenomenon, and considers the absence of a viable account of criminalization as the most glaring failure of penal theory as it has developed on both sides of the Atlantic.[36] Thus, he assumes the difficult task of defending a

30. A. Ashworth, Ignorance of the Criminal Law, and Duties to Avoid it, in Modern Law Review, 2011, Vol. 74, Issue 1, pp. 1-26 at 7..

31. In a 2005 case, (R v G [2008] UKHL 37 (18 June 2008), a 15-year-old boy was convicted of statutory rape under Section 5 of the Sexual Offences Act 2003. The prosecution accepted the boy's claim that he had believed the 12-year-old girl to be 15, but he was nevertheless sentenced to 12 months detention. This was reduced on appeal to a conditional discharge, but, in a 3-2 decision, the House of Lords declined to reverse the conviction. A complaint was filed then in front of the European Court of Human Rights (G. v The United Kingdom, App. No. 37334/08, Introduction Date20/07/2008 Decision Date 30/08/2011) for violation of art. 8 of the European Convention on Human Rights, i.e. the right to private life. The complaint was found inadmissible because the Court did not hold that the national authorities had exceeded the margin of appreciation available to them by creating a criminal offence which is called "rape" and which does not allow for any defence based either on apparent consent by the child or on the accused's mistaken belief about the child's age. Nor did the Court hold that the authorities exceeded their margin of appreciation by deciding to prosecute the applicant for this offence, rather then the lesser offence of sexual activity with a child.

32. § 602-quater and §609-sexies of the Italian Criminal Code.

33. A. ASHWORTH-L. ZEDNER, Defending the Criminal Law: Reflections on the Changing Character of Crime, Procedure and Sanctions, in *Crim. Law and Philos* 2008, 21 33; D. HUSAK, *Overcriminalization: The Limits of the Criminal Law* Oxford: Oxford University Press (2008) p. 73 (nearly all theorists regard strict liability offences as problematic and recognize limits on the state's authority to enact them).

34. A. ASHWORTH-L ZEDNER, Prevention and Criminalization: Justification and Limits, in *New Crim. Law Review*, 2012, vol. 15, p. 542 544.

35. E.g., D. HUSAK, *Overcriminalization…, supra* note 33; R. A. DUFF *ET AL.* (eds.), *The Boundaries of the Criminal Law*, 2010; A. SIMESTER AND A. VON HIRSCH, *Crimes, Harms and Wrongs: On the Principles of Criminalisation*, 2010.

36 D. HUSAK, *Overcriminalization…, supra* note 33, p. 58. This point is shared by several other commentators: see N LACEY, *Contingency and Criminalization*, in Frontiers of Criminal Law 1, 2 (1987) (the author argues that the phenomenon of criminalization is under-analysed); C. FINKELSTEIN, *Positivism and the Notion of an Offence*, Calif. Law. Rev. 2000, vol. 88, 335, 358 … at 336 (pointing out that the question "what is crime?" should have been first in line among the questions to be analysed by theoreticians, but only little effort had been invested therein); A. DONOSO M., Book Review: Douglas Husak, Overcriminalization. The Limits of the Criminal Law, 3 *CRIM LAW AND PHILOS* 99 (2010) (the author suggests that also philosophers have not said much about the issue of criminalization).

normative theory of criminalization, i.e. a set of principles that limit the authority of the state to enact and enforce penal offences. According to his theory, which has gained extensive support,[37] seven principles should guide the legislator in criminalization decisions. Four of them are "internal" principles, since they can be derived from within the criminal law itself, and three of them are "external" principles, since they emerge from a political view about the conditions under which the rights implicated by punishment may be infringed. The internal principles are: 1) the nontrivial harm or evil constraint,[38] according to which criminal liability may not be imposed unless statutes are designed to prohibit a nontrivial harm or evil, or the risk of it; 2) the wrongfulness constraint,[39] which states that criminal liability may not be imposed unless the defendant's conduct is wrongful, thus calling into question those offences that do not provide for a culpability requirement; 3) the desert constraint,[40] which holds that punishment is justified only when, and to the extent that, it is deserved, with the result that excusing conditions should place the conduct beyond the reach of the criminal law and excessive punishment should not be tolerated; and 4) the burden of proof constraint,[41] according to which the state must provide reason to believe that its criminalization decisions satisfy this normative theory of criminalization, explicitly stating the ratio legis. The external principles of Husak's theory, instead, form the framework for a test of "intermediate scrutiny" for criminal legislation, which is derived from constitutional law theory. They are: 5) the substantial state interest constraint,[42] which states that criminal legislation may only be imposed if it fulfils a substantial state interest, i.e. a proper concern of the public; 6) the direct advancement constraint,[43] according to which criminal legislation must directly advance that interest, and may only be enacted if supported by empirical evidence; and 7) the minimum necessary extent constraint,[44] which states that criminal legislation must be no more extensive than necessary to achieve that interest. The law needs not be necessary to achieve it. All that is required is that no alternative that is equally effective be less extensive than the law in question. Interestingly, Husak notes that criminal theorists tend to be legal philosophers who are unskilled in empirical methodology. Quoting Prof Andrew Ashworth,[45] he stresses that as a result both in the UK and in the US there has never been a thoroughgoing examination of whether some form of non-criminal enforcement could be devised to deal effectively with given kinds of offences.[46] In sum:

HUSAK'S NORMATIVE THEORY OF CRIMINALIZATION

1. Criminal liability may not be imposed unless the offence is designed to prohibit a nontrivial harm or evil, or the risk of it;
2. Criminal liability may not be imposed unless the defendant's conduct is wrongful;
3. Punishment is justified only when, and to the extent that, it is deserved;
4. The state must provide reason to believe that the principles of this normative theory of criminalization are satisfied;
5. Criminal legislation may only be imposed if it fulfils a substantial state interest;
6. Criminal legislation must directly advance that interest;
7. Criminal legislation must be no more extensive than necessary to achieve that interest.

Husak's main interest is in raising the level and quality of debate about criminal legislation, especially among legislators themselves, rather than in forcing any particular conclusions about any particular criminal laws or legislative purposes. His normative theory of criminalization, based on principled reasoning, is a good antidote to the frenzied approach to law-making and the cynical pandering to public fear that afflict many politicians today.[47]

37. A. ASHWORTH-L. ZEDNER, *Defending the Criminal Law..., supra* note 33 at 49.

38. D. HUSAK, *Overcriminalization..., supra* note 33 at 66.

39. *Ibidem.*

40. *Id* at 82.

41. *Id* at 100.

42. *Id* at 132.

43. *Id* at 145.

44. *Id* at 153.

45. A. ASHWORTH, *Principles of Criminal Law*, Oxford: Clarendon Press, 2004, 4th ed., 2003, p. 50.

46. D. HUSAK, *Overcriminalization... supra note* 33 at 154 (claiming that the same observation made by Ashworth with regard to the UK applies to the US).

47. J. GARDNER, Book Review: Douglas Husak, Overcriminalization. The Limits of the Criminal Law, *Notre Dame Philosophical Review*, available at http://ndpr.nd.edu/news/23674-overcriminalization-the-limits-of-the-criminal-law/.

1.3 IN PARTICULAR: CRIMES OF RISK PREVENTION

An area of the law that requires particular attention and is said to be in need of specific criteria for criminalization is that of so-called crimes of risk prevention/preventive measures.[48] This is an area that has expanded significantly in recent years, due to increased emphasis on the state's duties to seek to protect its citizens from suffering harms or wrongs.[49] In essence, the state has come to have a responsibility not merely to punish, but also to reduce the incidence of the kinds of conduct that are criminalized. As a result, the historical orientation of the criminal justice system towards reactive policing and post-hoc punishment[50] is overlaid today by a proactive, preventive rationale that seeks to avert harms before they occur.[51] A prime example of this trend is the introduction, in England and Wales, of Control Orders under the Prevention of Terrorism Act 2005, whose heavy restrictions upon the liberty of those suspected of involvement in terrorist activity were said to be justified on the grounds of averting possible catastrophic harm.[52] As it is well known, these counter-terrorism preventive measures are common in several other jurisdictions, both in Europe and the United States.

Crimes of risk prevention are particularly worrisome because they diverge from the paradigm of "harm plus culpability" that characterizes the major criminal offences, such as murder.[53] They represent non-consummate[54] and non-constitutive[55] crimes, committed prior to and without anyone being wronged or harmed. Andrew Ashworth and Lucia Zedner, with the purpose of demonstrating the ways in which these crimes diverge from the paradigm, provide a useful taxonomy of crimes of risk prevention. The taxonomy is based on English offences, but similar offences can be found in many other jurisdictions. It includes:

A. *Inchoate offences.* Typically, they are crimes of attempt, conspiracy, and solicitation.
B. *Substantive offences* defined in the inchoate mode. Examples are: burglary, which penalizes entry with intent to steal and fraud, which penalizes making a false representation with intent to cause gain or loss. No loss need have been caused, no harm done.
C. *Preparatory and pre-inchoate offences.* They penalize conduct at an earlier stage than traditional inchoate offences. Examples are, under the Terrorism Act 2006: publishing a statement likely to be understood as an encouragement of terrorism (§1) and disseminating terrorist publications with intent to encourage terrorism directly or indirectly (§2).
D. *Crimes of possession.* There is growing list of articles whose possession is criminalized. Examples are: possession of explosives and automatic firearms, as well as other offensive weapons (to protect public safety); possession of information likely to be useful to a person preparing an act of terrorism, and possession of any article giving rise to a reasonable suspicion that the possession is for a purpose connected with terrorism (to suppress terrorism); possession of drugs (to suppress the drugs trade); and possession of indecent images of children (to protect children from exploitation).
E. *Crimes of membership.* They penalize membership in certain organizations, e.g. organizations that have among their objectives the promotion or encouragement of terrorism.
F. *Crimes of endangerment.* They include offences of concrete or explicit endangerment, such as endangering the safety of rail passengers and dangerous driving, and offences of abstract or implicit endangerment, such as drunk driving and speeding.

What criminal law scholars emphasize with regard to these offences is that unreservedly promoting prevention carries the risk of licensing unrestrained state intervention and may result in an overly extensive and intrusive criminal law[57]. Therefore, there is a

48. A. ASHWORTH-L. ZEDNER, *Defending the Criminal Law..., supra*, note 33 at 40-2

49. R. A. DUFF, *Answering for Crime: Responsibility and Liability in the Criminal Law*, Oxford: Hart Publishing, 2007, 87.

50. J. MCCULLOCH & S. PICKERING, Future Threat: Precrime, State Terror, and Dystopia in the 21st Century, 81 *Crim. Just. Matters* 32 (2010).

51. J. HORDER, Harmless Wrongdoing and the Anticipatory Perspective on Criminalisation, in *Seeking Security: Pre-Empting the Commission of Criminal Harms* 79-102 (G.R. Sullivan & Ian Dennis eds.2012).

52. ANDREW ASHWORTH AND LUCIA ZEDNER, *Defending the Criminal Law... supra*, note 33 at 40.

53. ANDREW ASHWORTH AND LUCIA ZEDNER, *Prevention and Criminalization..., supra* note 34 at 544.

54. HUSAK, The Nature and Justification of Non-Consummate Crimes, in *Arizona Law Review*, 37, 151 (1995).

55. A. SIMESTER AND A. VON HIRSCH, *Remote Harms and Non-Constitutive Crimes, in Criminal Justice Ethics*, 28, 89 (2009). Simester and von Hirsch use the term "non-constitutive" to refer to offences in which the ultimate harm that justifies such crimes is remote from the crime itself; "constitutive crimes" are those where the very harm that justifies criminalization is part of the definition of the crime (e.g. murder).

56. Terrorism Act 2006.

57. A. ASHWORTH-L. ZEDNER, *Prevention and Criminalization..., supra* note 34, at 553.

need to identify specific principles that must form the framework for the justification of, and the limitations on, criminal offences driven primarily by the preventive rationale.

Douglas Husak has devised a special version of his normative theory of criminalization to apply to crimes of risk prevention, arguing that overcriminalization arises in this area if the law does not abide by four basic requirements.[58] As Husak himself acknowledges, these are sophisticated requirements that need further elaboration if they are to provide a working guide to the legislator. However, they can be summarized in the following form, simplified by Andrew Ashworth:[59]

HUSAK'S CRITERIA - CRIMES OF RISK PREVENTION

1. *Substantial risk requirement:* an offence is justified only if it is required to reduce a substantial risk, in the sense that both the harm to be avoided and the degree of risk that it will occur should be not insubstantial;
2. *Prevention requirement:* an offence is justified only if it is likely to be effective in reducing the likelihood of harm occurring;
3. *Consummate harm requirement:* an offence of risk prevention is justified only if it would also be justified to criminalize the consummate offence that intentionally and directly cause that very state of affairs;
4. *Culpability requirement:* an offence is not justified if it criminalizes the mere belonging to a category or group deemed dangerous or risky.

Despite the uncontested significance of Husak's contribution, the most successful effort to develop workable criteria for criminalization in the area of preventive measures is probably the one by Andrew Ashworth and Lucia Zedner. The two authors, in "Prevention and criminalization: justifications and limits", identify 11 workable principles for policy makers and legislators.[60] These principles, which require no further explanation, are the following:

ASHWORTH & ZEDNER'S CRITERIA - CRIMES OF RISK PREVENTION

1. It is a necessary condition of criminalization that the *harm principle* is satisfied, and that causing or risking the harm amounts to a wrong.
2. In determining whether there are sufficient reasons for criminalizing particular conduct, the *costs and risks* of criminalization should be taken into account, as well as the harm that is sought to be prevented. In particular, any probable and unwarranted erosion of the security of the individual from state interference should be avoided.
3. Criminalization should only be resorted to if it is the *least restrictive appropriate* response.
4. In principle, preventive offences may be justifiable on retributive or consequentialist grounds. Where the justification is consequentialist, it must be subject to the satisfactory resolution of *empirical questions* about the calculation of risk and of *normative issues* arising from the remoteness of the harm.
5. The more remote the conduct criminalized is from the harm-to-be-prevented, and the less grave that harm, the more compelling the case for higher-level *fault requirements* such as dishonesty, intention, knowledge, or subjective recklessness.
6. In principle, a person may be held liable for acts he or she has done, simply on the basis of *what he or she may do at some time in the future*, only if the person has declared an intent to do those acts in a form that satisfies the requirements of an attempt, conspiracy, or solicitation.

58. D. HUSAK, *Overcriminalization..., supra* note 33, at 159 ss.

59. A. ASHWORTH-L. ZEDNER, Preventive Orders: A Problem of Undercriminalization, in R. A. DUFF *ET AL.* (eds.), *The Boundaries of the Criminal Law*, 2010, p. 80.

60. A. ASHWORTH-L. ZEDNER, *Prevention and Criminalization..., supra* note 34 at 547 ss.

7. In principle, a person may be held liable for the *future acts of others* only if that person has a sufficient normative involvement in those acts (e.g., that he or she has encouraged, assisted, or facilitated), or where the acts of the other were foreseeable, with respect to which the person has an obligation to prevent a harm that might be caused by the other.
8. All offences, including those enacted on a preventive rationale, ought to comply with *rule-of-law* values, such as *certainty of definition, fair warning, and fair labelling*, so as to identify the wrong that they penalize, for the purpose of guiding conduct and publicly evaluating the wrong done.
9. All offences, including those enacted on a preventive rationale, ought to be so drafted as to *require the court to adjudicate on the particular wrong targeted*, and not on some broader or prior conduct.
10. *Concrete or explicit endangerment* should only be considered for criminalization where a *significant risk of serious harm* is created by a person's actions, and where those actions *were unreasonable in the circumstances* in the sense that they failed to show appropriate concern for the interests of others.
11. *Abstract or implicit endangerment* may supply a good reason for an offence that specifies a precise limit for conduct of a potentially dangerous nature, but only if it focuses criminalization on those instances where there is a *significant risk of serious harm* and *minimizes the criminalization of people who actually present no danger.*

Ashworth, similarly to Husak, laments the tendency among writings on English criminal law to devote little attention to the rightfulness or wrongfulness of criminalizing certain conduct.[61] Although he considers the prevention of harms and wrongs as one of the state's central functions, he embraces a "minimalist approach" to criminal law.[62] Thus, the eleven principles that he advances through a process of analysis and critique are meant to provide limitations on the pursuit of the preventive rationale in the criminal law. They are necessary to protect citizens from considerable extensions of the criminal law that may occur through the penalization of conduct remote from and independent of the actual causation of harm.[63]

In conclusion, although the objective of effectively constraining the legislator in its criminalization decision is far from having been attained, there have been decisive steps in that direction in the recent period. This is because workable criteria for criminalization have started being developed by academics.[64] It is important that the momentum is not lost, but it is rather given visibility so that additional contributions may further improve the quality of the discourse.

2. ALTERNATIVES TO CRIMINALIZATION

There is a recurring trend among European statesto resort to the criminal law to address longstanding social problems such as vagrancy, public drunkenness, drugs, gambling, prostitution, immigration etc.[65] Certainly, criminalization of these forms of conduct is one way to achieve some form of compliance, through the threat of criminal punishment. As we have seen in Part 1 of this paper, however, in some cases the use of the criminal law may be unjustified, inappropriate or unnecessary. The focus of Part 2, then, is on the conceptualization of alternatives to criminalization in the regulation of social problems. First, we will define the concepts of "decriminalization" and "legalization". Then, we will analyse the role of decriminalization within the framework of the Council of Europe. Finally, we will delineate the direction in which decriminalization

61. A. ASHWORTH, *Principles of Criminal Law*, Oxford: Clarendon Press, 2003, 4 ed., p. 24.

62. A. ASHWORTH, *Principles of Criminal Law*, Oxford: Clarendon Press, 2009, 6 ed., p. 31.

63. A. ASHWORTH-L. ZEDNER, *supra* note 34 at 562.

64. The AHRC (Arts and Humanities Research Council) has recently awarded a grant for a four-year project on Criminalization to a consortium led by the University of Stirling. The lead researchers are Antony Duff (Philosophy, Stirling), Lindsay Farmer (Law, Glasgow), Sandra Marshall (Philosophy, Stirling), Massimo Renzo (Law, York) and Victor Tadros (Law, Warwick). See http://www.philosophy.stir.ac.uk/criminalization/crim-homepage.php. The AHRC has also awarded a grant for a three-year project on Preventive Justice to a consortium led by the Universit of Oxford. The project is directed by Prof Andrew Ashworth and Prof. Lucia Zedner. It aims to re-assess the foundations for the range of coercive measures that states now take in the name of crime prevention and public protection.

65. See e.g. Hungary, that in 2011 introduced new anti-vagrancy laws, which now mean that homeless people sleeping on the street can face police fines of around £384 or even the possibility of jail time.

reforms should go, identifying both which European legal system could be used as a guide for further developments and which major areas of the law should be particularly considered for decriminalization.

Task 1 of this work package is mainly devoted to a theoretical analysis of alternatives to criminalization. Task 2 and 3, instead, will provide specific case studies on successful decriminalization strategies and good/bad practises related to overcriminalization and decriminalization across European member states.

2.1 DECRIMINALIZATION AND LEGALIZATION

From a sociological point of view, there are three ways in which legal prohibitions may become obsolete, and thus lead to decriminalization or legalization of the underlying conduct: technologically, scientifically and morally.[66] Technological obsolescence occurs when the technology of a society changes so that particular kinds of activity become socially unimportant (e.g. laws relating to the use, control and conversion of horses become irrelevant in a urban auto-dominated society). Scientific obsolescence occurs when scientific change undermines criminal norms by invalidating causal connections implicitly assumed (e.g. laws against witchcraft). Finally, when a moral position appears outdated the criminal law designed to support that moral position also changes. Infusing a particular area of activity with increased moral meaning may lead to new laws, as in the case of the progress of anti-slavery legislation, demonstrating that this institution came to be viewed in a new moral light.

As far as the law is concerned, there are two alternatives to the criminalization of a certain conduct: “decriminalization” and “legalization”. Confusingly, some commentators use these terms as synonyms. And misunderstanding is often generated by conflicting interpretations of these terms in a discussion of reforms.[67] Some initial clarifications, therefore, are required.

We will use the term “decriminalization” as in Mike Hough’s definition,[68] to refer to measures that retain the offence in question as an offence, but avoid criminal prosecution and punishment. Decriminalization means that the criminal penalties attributed to the act are no longer in effect. Some European commentators tend to refer to decriminalization as “depenalization”. This reflects the fact that penal law and criminal law are synonyms in many European systems. In essence, decriminalization occurs in different European jurisdictions either by 1) downgrading the legal status of offences, so that they are administrative rather than criminal offences, subject to fixed penalty fines along the lines of parking tickets, or by 2) retaining the status of criminal offence on the books while avoiding the imposition of criminal penalties.[69] The latter approach operates by 2a) allowing for administrative sanctions to be imposed or 2b) issuing guidance to police or prosecutors to avoid enforcement in specified circumstances.[70] Decriminalization through the downgrading of criminal offences to administrative offences has the advantage of sending a clear message: certain forms of conduct are not so heinous as to require criminal punishment. However, it also requires a major effort from the legislator. As it is well known, indeed, criminal law offences are easy to enact but rather hard to repeal.

We will use the term “legalization”, instead, to refer to the removal of an offence from both the administrative and the criminal law. Legalization makes an act completely acceptable in the eyes of the law, and the act is, therefore, not subject to any penalties. In a certain way, it is a more profound change in the law than decriminalization. Typically, however, legalization is coupled with a system of governmental regulation and supervision (e.g. legalization of alcohol is generally subject to licensing laws and the prohibition to sell to minors, legalization of prostitution may be coupled with

66. R. LEMPERT, Towards a *Theory of Decriminalization*, in Public Law and Legal Theory Working Paper Series, Working Paper No. 209, August 2010. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1662653

67. E.g. Prostitutes’ Education Network, in the article “Prostitution Law Reform: Defining Terms” posted on its website, stated: "There is no official definition of legalized or decriminalized prostitution. Those who are not familiar with the contemporary discussion about prostitution law reform usually use the term ‘legalization’ to mean any alternative to absolute criminalization, ranging from licensing of brothels to the lack of any laws about prostitution. Most references to law reform in the media and in other contemporary contexts use the term ’legalization’ to refer to any system that allows some prostitution. These common definitions of legalization are extremely broad. Conflicting interpretations of this term often cause confusion in a discussion of reform”.

68. M. HOUGH, HAMISH WARBURTON, BRADLEY FEW, TIGGEY MAY, LAN-HO MAN, JOHN WITTON AND PAUL J. TURNBULL, *A Growing Market: The Domestic Cultivation of Cannabis*, 2003 (pdf available at www.jrf.org.uk) at 2.

69. *Ibidem.*

70. *Ibidem.*

licensing, taxing and zoning measures, and legalization of drug possession for personal use may be subject to a limit in the maximum amount).

2.2 THE FRAMEWORK OF THE COUNCIL OF EUROPE

The topic of decriminalization has long been central within the framework of the Council of Europe. The Council of Europe acknowledges that the criminal law is the most intrusive of all social control institutions and must be used minimally. Therefore, already in 1987, Recommendation No. R (87) 18 on “The Simplification of Criminal Justice” emphasized the need for European states to increase the use (and one could imply also move toward the adoption) of a system of administrative sanctions to deal with minor offences:[71]

1. Legal systems which make a distinction between administrative offences and criminal offences *should take steps to decriminalise offences, particularly mass offences in the field of road traffic, tax and customs laws under the condition that they are inherently minor.*
2. In dealing with such offences, (...) all states should make use of summary procedures or written procedures not calling, in the first place, for the services of a judge.
3. No physical coercive measure - especially detention on remand - should be ordered.
4. The sanctions so imposed should be principally of a pecuniary nature and their rate, determined by law, should normally be a fixed or a lump sum (...).
5. Such pecuniary sanctions could be collected on the spot by the officer recording the offence, or subsequently notified to the suspect by the competent administrative or judicial authority (...)
6. This procedure (...) should be subject to express or tacit acceptance, the payment of the fine or otherwise complying with the sanction being equivalent to agreement.
7. The acceptance of or compliance with such a proposal should preclude any prosecution in respect of the same facts (*ne bis in idem*).
8. Such procedure should not infringe the right of the suspect to have his/her case brought before a judicial authority.

Then, Recommendation No. R (95) 12 on “The Management of Criminal Justice” also recalled that crime policies such as decriminalization, depenalization or diversion, mediation and the simplification of criminal procedure can contribute to addressing the difficulties of increase in the number and the complexity of cases, unwarranted delays, budgetary constraints and increased expectations from public and staff.[72] More recently, Recommendation No. R (99) 22 concerning “Prison Overcrowding and Prison Population Inflation” also generally urged the states to consider decriminalization measures:[73]

1. Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only, where the seriousness of the offence would make any other sanction or measure clearly inadequate (...).
4. *Member states should consider the possibility of decriminalising certain types of offence or reclassifying them so that they do not attract penalties entailing the deprivation of liberty.*

As it emerges from these Recommendations, decriminalization and the use of an administrative system to deal with minor offences are highly favoured at the European level. This is because of the benefits that decriminalization brings to both the functioning of the criminal justice system, which can focus on more serious crimes, and combating prison overcrowding, through the diversion of low-level offenders to less stigmatising sanctions.

71. Recommendation No. R (87) 18 on “The Simplification of Criminal Justice”, Paragraph II a) “Decriminalisation of and summary procedures for offences, which are inherently minor”, p. 3.

72. Recommendation No. R (95) 12 on “The Management of Criminal Justice”, p. 1.

73. Appendix to Recommendation No. R (99), Paragraph I. Basic principles, p. 22.

2.3 THE GERMAN MODEL: ORDNUNGSWIDRIGKEITEN

In line with the Council of Europe Recommendations, several scholars have recently argued for the adoption by European states of a system of administrative sanctions similar to the one developed by Germany.[74] They have argued that both the German administrative system itself, which is clearly distinct from the criminal justice system and establishes penalties through a lean and cost-effective procedure, and the wide range of offences to which it applies could be seen as a useful guide for decriminalization reforms.

German law provides for three degrees of infractions: 1) felonies (Verbrechen), i.e. criminal offences punishable with at least one year of imprisonment; 2) misdemeanours (Vergehen),[75] i.e. all other criminal offences, punishable with either a fine or with imprisonment; and 3) petty infractions (Ordnungswidrigkeiten), i.e. administrative offences. Ordnungswidrigkeiten are not deemed to be criminal – in the sense of carrying moral blame or stigma – and are punished only with a fine and the temporary loss of certain privileges.[76] They are determined, often on a strict liability basis, by an administrative agency after an informal hearing. The agency determines the amount of the penalty, primarily based on the seriousness of the violation. The defendant may appeal the decision, after which there is an expedited trial where an ordinary court undertakes an independent review of the facts.[77] The first comprehensive statute providing for Ordnungswidrigkeiten was passed in 1952. Then, in the early sixties, German criminal policy focused on the decriminalization of a wide range of minor criminal offences, e.g. traffic offences. In 1975, the category of minor criminal offences (Ubertretungen) was abolished altogether, mainly through the downgrading of these offences to mere Ordnungswidrigkeiten – as in the case of dangerous animals, noise control and environmental regulation – and partly through the complete abandonment of punishment – as in the cases of begging and vagrancy.[78] Today, prostitution is legal and regulated in Germany. In 2002, the German Prostitution Act[79] made prostitution a legal profession, expressively stating that prostitution should not be considered immoral anymore. This allowed prostitutes to obtain regular work contracts and access the welfare system. As to drug policy, in 1994 the Federal Constitutional Court ruled that drug addiction was not a crime, nor was the possession of small amounts of drugs for personal use. In 2000 the German narcotic law[80] was changed to allow for supervised drug-injection rooms. The positive results of a study on the effects of heroin-assisted treatment on addicts led to the inclusion of heroin-assisted treatment withing the framework of the mandatory health insurance in 2009.

As it emerges from this brief summary, most of the social problems around which the continuing decriminalization debate revolves are regulated in Germany through either a streamlined administrative procedure or by complete legalization. It is for this reason that legal scholars who support a liberal model of the criminal law often mention the German model as a successful example of decriminalization. In an effort to conceptualize the areas where other states might want to "borrow" from Germany the narrower scope of the criminal law, we will now turn to a brief analysis of victimless crimes and preventive measures. Although these are very broad categories, which overlap to a certain extent (e.g. possession offences belong to both categories), they are

74. See in particular A. ASHWORTH-L. ZEDNER, *Prevention and Criminalization..., supra* note 34 at 567-570. See also R. S. FRASE-T. WEIGEND, German Criminal Justice as a Guide to American Law Reform: Similar Problems, Better Solutions?, 18 B.C. *Int'l & Comp. Law Review*, 1995, vol 18, 317; and R. S. FRASE, Comparative Criminal justice as a Guide to American Law Reform: How Do the French Do It, How Can We Find Out, and Why Should We Care?, in 78 *Cal. Law Review*. 539, 567-73 (1990).

75. 12 See StGB § 12.

76. E.g. driving privileges, 13 Gesetz liber Ordnungswidrigkeiten (Petty Infractions Act), I BUNDESGESETZBLATT 602, § 1(1) (1987).

77. French criminal law, similarly, differentiates among three types of criminal offence: crimes, which correspond to felonies; délits, which come close to the German concept of Verbrechen; and contraventions, which correspond to the German concept of administrative offences (Ordnungswidrigkeiten). For certain types of traffic offence a system of tariffs applies with fixed amounts of administrative fines imposed by the police. In such cases, the defendant may either consent by paying the fine, which in turn finalizes the procedure, or appeal to the public prosecutor, which then decides whether to dismiss the case unconditionally or take the case to court, with the consequence of ordinary trial procedures.

78. A. ESER, A Century of German Penal Legislation. Developments and Trends, in A. ESER AND J. THORMUNDSSON, *Old Ways and New Needs in Criminal Legislation*, Freiburg, 1989, p. 17 ss. See also A. ESER, § 12 annot. 19, in A. SCHOENKE-H. SCHROEDER, StGB, 1988, 23rd ed.

79. Gesetz zur Regelung der Rechtsverhältnisse der Prostituierten (Prostittionsgesetz – ProstG) 20 Dec 2001, Bundesgesetzblatt (BGBl.) I, 2001, p. 3983.

80. BtMG (Betäubungsmittelgesetz).

used here merely with the purpose of identifying two major areas of the law where the use of criminal sanctions seems highly contestable.

2.4 AN OLD CHALLENGE: VICTIMLESS CRIMES

Victimless crimes have long been at the core of the debate on decriminalization.[81] They criminalize controversial social problems, lacking a definite victim. Although all authors do not use the term in the same way, the following offences have been included in the victimless crime category: public drunkenness; vagrancy; various sexual acts involving consenting adults (fornication, adultery, bigamy, incest, sodomy, homosexuality, and prostitution), obscenity, pornography, drug offences, abortion, gambling and juvenile status offences. Crimes of border crossing are similarly considered victimless crimes: to the extent the harm is done at all, it is to the integrity of the state's border and immigration policy.[82]

The arguments for the repeal or substantial restriction of criminal laws against victimless crimes fall into two categories. Some argue that, as a matter of principle, society may not legitimately prohibit conduct that harms only the actor.[83] Others argue that, even if it might be legitimate to punish victimless crimes since they may be considered to harm society at large, there are certain practical reasons why it is unwise to do so.[84] These practical reasons derive from three attributes of victimless crimes: 1) most of them involve no complaining parties other than police officers. Thus, these offences are harder to detect and prosecute than crimes with victims, and the police are forced to engage in a number of practices (e.g. surveillance and entrapment) that are subject to serious abuse. Police misbehaviour in these practices further reduces public respect for, and cooperation with, the institutions of criminal justice, particularly among social groups already alienated from society, i.e. the poor, ethnic minorities, and the young. This is on of the adverse effects of ineffective over-criminalisation on public trust in justice; 2) many of them involve the exchange of prohibited goods or services that are strongly desired by the participants. Thus, criminal penalties tend to limit the supply more than the demand, driving up the black-market price and creating monopoly profits for those criminals who remain in business (the so-called crime tariff); and 3) all seek to prevent individual or social harms that are believed to be less serious and/or less likely to occur than the harms involved in crimes with victims. This aspect is said to further reduce respect for law on the part of citizens, who believe that these acts are essentially not wrong. Moreover, their prosecution leads to substantial waste in criminal justice resources.

Critics of the victimless crime criterion point out that the concept lacks a clear definition, fails to cover some of the offences to which it has been applied (e.g. the consensual nature of the transactions and the fact that they are strongly desired applies in only the broadest sense to incest), and applies equally well to other offences that have not been generally proposed for repeal or substantial restriction (e.g. receiving stolen property, possession of unregistered weapons, most traffic law violations, and health, safety, environmental, and regulatory offences). In addition, critics argue, the victimless crime concept says very little about the difficult choices between alternatives to current criminal laws: partial decriminalization through a reduction in penalties, downgrading to administrative offences, or complete legalization. Thus, critics argue, the term is only a cover for subjective value judgments about the wisdom of specific criminal statutes, and fails to provide an objective criminalization standard that could be easily applied and would be deserving of broad acceptance.

The point here, however, is that labelling a crime as victimless only begins what is, in most cases, a very difficult process of assessing complex empirical facts and fun-

81. See E. M. SCHUR, *Crimes without Victims: Deviant Behavior and Public Policy—Abortion, Homosexuality, Drug Addiction. Englewood Cliffs*, N.J.: Prentice-Hall, 1965; H. L. PACKER, *The Limits of the Criminal Sanction.* Stanford, Calif.: Stanford University Press, 1968; N. MORRIS-G. J. HAWKINS, *The Honest Politician's Guide to Crime Control*, Chicago: Univ Chicago Press, 1970.

82. M. HOUGH ET AL (eds.), *A Growing Market: The Domestic Cultivation of Cannabis..., supra* note 68, at 8.

83. N. MORRIS-G. J. HAWKINS, *The Honest Politician's... supra* note 81, applying Stuart Mill's principle of harm to others.

84. E. M. SCHUR-H. A. BEDAU, Victimless Crimes: Two Sides of a Controversy, Englewood Cliffs, N.J.: Prentice-Hall, 1974.

damental value choices.[85] Task 2 and 3 of this work package will go into the details of that assessment process, and make policy proposal in relation to some of the so-called victimless crimes. At this preliminary stage it is enough to note that several scholars, among whom the German professor Thomas Weigend and the American professor Richard Frase[86] claim that other states should borrow from Germany the complete decriminalization of most of these conducts.

2.5 A NEW CHALLENGE: CRIMES OF RISK PREVENTION

Preventive measures have become part of the debate on decriminalization only since the beginning of the twentieth century, as a result of the new preventive function that has come to characterize most systems of criminal justice. As we have seen in Part 1, according to Ashworth and Zedner's taxonomy preventive measures include inchoate offences, substantive offences defined in the inchoate mode, preparatory and pre-inchoate offences, crimes of possession, crimes of membership and crimes of endangerment.[87]

Ashworth is among those scholars who support the use of a system of administrative sanctions in the area of preventive measures, particularly when the risk of harm is remote from the conduct in question. He claims that if the limiting principles that he identifies were applied conscientiously,[88] many of the recent preventive extensions of the criminal law, and in particular membership and endangerment offences, might appear to lie at the very limits of justifiability, such as to call into question their criminalization. Therefore, he favours the introduction of a system of "prevention through regulation" for these offences. As he notes, the key element of the systems of administrative offences adopted in many continental European jurisdictions, such as Germany, is that the penalties are set at a low level.[89] The purpose of these systems is to subject minor infractions to a lower-level system of sanctions that is efficient enough to ensure no resulting loss of preventive efficacy. Thus, according to Ashworth, there should be, in principle, an initial decision about whether the conduct constitutes a serious wrong that merits criminalization, with public censure and punishment to follow, or whether the conduct is a minor wrong that can properly be dealt with in this non-stigmatic way by a relatively low penalty.[90] If the conduct falls into the former category, consideration should be given to defining and criminalizing the behaviour, in accordance with a proper normative theory of criminalization and with all the safeguards of a fair criminal procedure. If the conduct falls into the latter category, then a system such as Germany's Ordnungswidrigkeiten should be applied. This system should provide that: a) the decision to impose a sanction may be taken by administrators or regulators, i.e. personnel less highly trained; b) the financial penalty would not require formal court proceedings unless the citizen wishes to contest liability, in which case a relatively informal hearing, without the full range of criminal safeguards, would take place; and c) sanctions should be financial and set at a modest level. In cases of non-payment of administrative fines, coercive detention should be kept as the very last resort measure. And any such regulatory system would need to comply with the European Convention on Human Rights. One way of ensuring that would be to provide for an avenue of appeal to a criminal court with full Convention safeguards; in other words, a defendant should be offered a fixed penalty or administrative fine, but given the opportunity to opt for court proceedings if he or she contests the charge.[91]

To conclude, as Ashworth notes, the aim of prevention should chiefly be pursued through the use of administrative sanctions and educational, family, housing and town planning policies. In particular, this can be achieved through i) social crime prevention (e.g. by organising activities to take young people away from crime) and ii) situational

85. R S. Frase, *Encyclopedia of Crime and Justice* (2002) available at http://www.encyclopedia.com/topic/Victimless_Crime.aspx

86. R. S. FRASE AND T. WEIGEND, *German Criminal Justice as a Guide..., supra* note 74. See also R.S. FRASE, *Comparative Criminal Justice as a Guide, supra* note 74.

87. See *supra* Part 1 p. 15.

88. See *supra* Part 1 p. 17-18.

89. R. A. DUFF, Crimes, Regulatory Offences and Criminal Trials, in H. MULLLER-DIETZ *ET AL.* (eds.), *Festschrift fur Heike Jung*, 2007, p. 87.

90. R. A. DUFF, Perversions and Subversions of Criminal Law, in R. A. DUFF *ET AL.* (eds.), *The Boundaries of the Criminal Law*, 2010, p. 104.

91. A. ASHWORTH-L. ZEDNER, *Prevention and Criminalization..., supra* note 34 at 568.

crime prevention (by making the commission of crime more difficult – through target hardening, opportunity reduction – and observable – through design of buildings, urban planning, surveillance mechanisms and security cameras).[92]

CONCLUSIONS

This paper has shown that the areas touched by criminal law in different European states have expanded significantly since the beginning of the twenty-first century, primarily as a result of the new "preventive" orientation of the criminal justice system. It has demonstrated that it was only in the recent period that criminalization principles started being developed by academics, to limit the expansion of the criminal law. Thus, in an effort to provide workable criteria for the legislator, it has summarized the most refined versions of these criminalization principles, both in general and with specific regard to crimes of risk prevention.

Then, this paper has shown that there is a recurring trend among European states to resort to the criminal law to address longstanding social problems such as vagrancy, public drunkenness, drugs, gambling, prostitution, immigration etc. Yet, it has emphasized that in some cases the use of the criminal law to regulate social problems may be unjustified, inappropriate or unnecessary. Therefore, it has conceptualized two alternatives to criminalization, i.e. "decriminalization" and "legalization", and it has delineated the direction in which decriminalization reforms should go, identifying both which European legal system could be used as a guide for further developments, i.e. the German system of Ordnungswidrigkeiten, and which major areas of the law should be particularly considered for decriminalization, i.e. victimless crimes and crimes of risk prevention.

We believe that community's views about decriminalization/legalization in these areas should be solicited. In fact, no defect in the criminal law is likely to erode confidence among citizens more rapidly than the perception that the wrong acts are punished or unpunished.[93] Society will lose faith in the penal law if it is perceived as criminalizing conduct unjustly.[94]

What is to be noted, however, is that in order to develop effective strategies to regulate social problems an appropriate legal framework of criminalization, decriminalization and legalization measures will not suffice. Social measures are also required. In particular, interventions in the areas of 1) prevention, 2) treatment, 3) harm reduction and 4) social reintegration must be part of a comprehensive strategy to address social problems.

92. A. ASHWORTH-L. ZEDNER, *Preventive Orders..., supra* note 59 at 74.

93. D. HUSAK, *Overcriminalization..., supra* note 33 at 89.

94. See P. ROBINSON-J. DARLEY, Justice, Liability And Blame: Community Views And The Criminal Law, Boulder, Westview Press, 1995.

Work Package 11
Trust and attitudes
to justice "at home"

11.1

Trust and legitimacy across Europe: A FIDUCIA report on comparative public attitudes towards legal authority

by: Jonathan Jackson, Jouni Kuha, Mike Hough, Ben Bradford, Katrin Hohl, Monica Gerber, Stefano Maffei, Zsolt Boda

EXECUTIVE SUMMARY

FIDUCIA (New European Crimes and Trust-based Policy) seeks to shed light on a number of distinctively 'new European' criminal behaviours which have emerged in the last decade as a consequence of both technology developments and the increased mobility of populations across Europe. A key objective of FIDUCIA is to propose and proof a 'trust-based' policy model in relation to emerging forms of criminality – to explore the idea that public trust and institutional legitimacy are important for the social regulation of the trafficking of human beings, the trafficking of goods, the criminalisation of migration and ethnic minorities, and cybercrimes.

Work Package 11 draws on European Social Survey (ESS) Round 5 data to assess the importance of trust and legitimacy in the context of 'everyday crimes' such as buying stolen goods. This overarching goal breaks down into three tasks. The first is descriptive – to document levels of trust and legitimacy across 26 countries (most of which are in the European Union). The second task is analytical – to explain individual and national variation in trust and legitimacy. The third task, also analytical, tests models of instrumental and normative compliance (Tyler, 2006a, 2006b, 2011a 2011b; Hough *et al*., 2013a, 2013b; Bradford *et al*., 2013a, 2013b). These tasks are contained in WP11.1, 11.2 and 11.3 respectively.

Deliverable 11.1, which summarises the work produced under WP11.1, is organised into five sections:

1. The introduction sets out the policy context of the work;
2. A conceptual roadmap elaborates the meaning of trust and legitimacy in the context of comparative public attitudes towards legal authority;
3. The first empirical section details levels of trust and legitimacy in the 26 countries using a single indicator for each construct (i.e. answers to one survey question for each dimension of trust and legitimacy);
4. The second empirical section presents levels of trust and legitimacy in the 26 countries using scales for certain relevant constructs. This involves conducting a sensitivity analysis that investigates the effect of a lack of measurement equivalence on national estimates; and,
5. The final section summarises the deliverable and provides a roadmap for the other deliverables in Work Package 11.

1. INTRODUCTION

Concepts of trust and legitimacy speak to a number of important moral and practical connections between citizens and social systems. Individuals in a democratic society have the right and expectation to live under a system that operates within the rule of law, that acts effectively and fairly within commonly accepted norms, that demonstrates to itself and to citizens its rightful possession of power.

Trust and institutional legitimacy also help to sustain social and political institutions and arrangements. For institutions to flourish, they need to demonstrate to citizens that they are trustworthy and that they possess the authority to govern. In turn, legitimacy encourages public compliance with the law and cooperation with legal authorities, facilitating the function of justice institutions (Tyler, 2006a, 2006b, 2011a; Tyler & Jackson, 2013).

In this deliverable we outline the conceptual and methodological roadmap for a comparative analysis of trust in justice and the legitimacy of legal authorities. Do Europeans believe that their police and criminal courts are trustworthy? Do Europeans believe that the police and criminal courts hold legitimate power and influence? The indicators we present were developed by European Commission Seventh Framework Programme funded EURO-JUSTIS project (www.eurojustis.eu) and subsequently fielded in Round 5 of the European Social Survey (ESS). In this document we first present the theory and describe the methodological development process of the 45-item ESS module, which provides data on public perceptions of the police and courts in 26 countries.

We then document levels of trust and legitimacy across Europe (and beyond). Some of the concepts were measured using a single indicator (given pressure of space in the ESS module), while other concepts were measured using multiple indicators (see also European Social Survey, 2012; Hough *et al.*, 2013a, 2013b, 2013c). In the context of cross-national research, however, multiple indicators present an interesting challenge: namely, does the scale operate in comparable ways across different contexts?

In WP11.1 we present findings from single indicators, documenting country variation in trust and legitimacy. We also present an innovative new way of assessing and utilising the scales, involving sensitivity analysis of a particular sort. We estimate latent means/proportions under the assumption of measurement equivalence; we free up each individual indicator in the scale and estimate latent means/proportions; and we present these graphically to assess the extent to which estimates 'move around', i.e. whether national estimates shift when one allows the scales to operate differently in different contexts. The next step in this new and innovative methodological approach is to do some sort of model averaging, where a weighted mean/summary is taken from the various estimates, giving the measurement models with greater fit more weight (this analysis is underway and is not presented in this document).

WP11.1 presents social indicators of public trust and institutional legitimacy. Economic indicators are widely used to trace economic development and predict future economic performance, and while the social, cultural or educational provision in a nation depends critically on its economic condition, economic indicators do not tell us *everything* about a country's overall social condition. Combining national information with transnational objectives, *social* indicators provide measurements of human well-being and societal functioning, allowing us to monitor the broader system, identify change, and guide efforts to improve policy and conditions in areas such as health (e.g. life expectancy rates), crime (e.g. recorded crime figures) and education (e.g. school enrolment rates). When taking the measure of a nation it is particularly important to assess how citizens view the way in which their societies operate. As Jowell & Eva (2009: 318) ask: 'Do they, for instance see their societies as generally fair or unfair? Do their country's institutions inspire trust or suspicion? Is their system of criminal justice seen to be even-handed or biased? Do their neighbourhoods feel safe or dangerous?'

What constitutes human well-being is, of course, a normative and political question. But once some level of consensus is reached, social indicators can help policymakers understand the shifting circumstances of life in different countries. Social indicators of trust and legitimacy are based on the idea that European Member States need to pay closer attention to these issues if they are to achieve balanced and effective crime policies (Schulhofer *et al*., 2011; Hough, 2013).

Social indicators of trust in justice (and legitimacy) are vital for better formulation of the problems facing criminal justice agencies, as well as more effective monitoring of changes in public attitudes in response to policy innovation (Jackson *et al*., 2011). An emphasis on public trust and institutional legitimacy can be contrasted with more short-term and 'populist' policies, which exploit public feelings for political gain at the expense of ensuring that the justice system commands legitimacy and that citizens feel safe and secure (Tyler, 2006a, 2006b).

2. CONCEPTUAL ROADMAP

Section 2 outlines what we mean by trust in justice and the legitimacy of legal authorities. A useful distinction can be made between legitimacy and trust. Legitimacy is a belief in the moral right of legal authorities to possess and exercise power and influence, while trust is a belief in how individual actors working for the institution perform their roles (Jackson & Bradford, 2010; Tyler & Jackson, 2013). In the words of Hawdon (2008: 186): "The role is legitimate; the individual is trusted."

Measures of trust should focus on the intentions and capabilities of specific actors, e.g. whether the individuals or organizations can be trusted to fulfil specific institutional functions, like being effective, fair, dependable and have appropriate priorities. By contrast, measures of legitimacy should focus on judgements of the right to power, to prescribe behaviour, and enforce laws that emanate from the role and institution. They should address the authority that the institution and role confers onto individual police officers and, conversely, the specific moral validity that actions of individuals confer back to the institution and role.[1]

2.1 Trust in justice

To trust in the police and the criminal courts is to assume that criminal justice agencies and agents are *willing* and *able* to do what they are tasked to do (Jackson *et al.*, 2012a, 2012b). Spanning both intentions and abilities, trust is the belief that individuals working for criminal justice institutions have appropriate shared motivations and are able to fulfil their roles competently (cf. Hardin, 2002).

It is important to consider the roles that justice systems perform. On the one hand, criminal justice agencies are public services. Citizens look to them to respond to emergencies, to prevent crimes, to deal with criminals, to punish law-breakers, and so forth. Accordingly, trust in the effectiveness of an institution is focused on outcomes (rather than the efficiency of an institution, although an inefficient police force and inefficient court systems might be bad at providing services). To believe that the police are effective is to believe, for example, that one can rely upon police officers to be 'out there' performing their functions. It is also to believe that one can rely on police officers if one in the future were to need the police (to respond to an emergency, for instance).

On the other hand, criminal justice agencies are state-sponsored agents of violence and intrusion. To trust justice institutions thus implies that we believe that they use – and will use – their power wisely and fairly. We look to police officers not only to apprehend those who disobey the law, for example, but also to be impartial, fair and restrained in their use of authority. Trust in distributive justice refers to fairness of the 'goods' that the police and criminal courts distribute. Are the outcomes of justice distributed equally across society? Trust in the procedural fairness of an institution turns the focus onto the ways in which institutions wield their authority (Tyler, 2006a, 2006b). Do the police and criminal courts treat people with dignity and respect? Do they make fair, transparent and accountable decisions?

When we trust a police officer we make a set of assumptions about the way he or she will behave in the future and how he or se currently behaves (Stoutland, 2001). The same is true for our sense of trust in police organizations: how do we think they behave now, and how do we think they will behave in the future? These assumptions are typically based on assessments of competence, predictability and motives (Luh-

1. The distinction between the role and the individual occupying the role should not be drawn too sharply, for the simple reason that people can only have encounters with police officers inhabiting their role – they cannot encounter the role without an individual embodying that role (representing the police as an institution). Public assessments of individual officers will flow into perceptions of the institution and the role. People will infer the moral basis of police power by the actions and values that are expressed by individual officers; the legitimacy of the role will thus be weakened by the actions of individuals who inhabit the role. Conversely, the authority emanating from the institution gives an individual officer the authority to prescribe authority and enforce laws.

mann 1979; Hardin 2006). Trust refers to people's assumptions and beliefs about both intentions (e.g. do police officers want to be effective and fair?) and competence (e.g. are police officers *able to be* effective and fair?). Trust is about expectations about the future behaviour of actors (e.g. can I rely on the police to be effective and fair in the future) and expectations about current and ongoing behaviour of the same actors. Given that citizens have incomplete information (about whether the police are effectively tackling drug dealing and drug use, whether the police would treat them with respect if they came into contact with an officer, and whether people often receive fair outcomes from the police), judgements of trustworthiness are a leap of faith. Risk is inherent in these assessments of trustworthiness; people cannot be sure that police officers are always effective and fair – they need to trust that police officers are. Trust is partly a leap of faith (Mollering 2006) (that police officers, for example, are effective and fair) and partly an assessment of current performance (are police officers, for example, effective and fair).

2.2 Legitimacy of legal authorities

For Weber the legitimacy of institutions is indicated by approval or sincere recognition of a norm, law or social arrangement by citizens within a system. On this account the legal system is legitimate when people see the system and its representatives as having the right to exist, to set appropriate standards of conduct, and to enforce these standards (Tyler & Huo, 2002). Here, legitimacy is partly a psychological state of consent, with authorisation involving a belief that the law and justice officials are to be complied and cooperated with, not due to threats of sanction in the event of non-compliance, but because compliance and cooperation is the correct standard to maintain (Tyler, 2006a, 2006b).

But legitimacy is also a psychological state of normative justifiability of the possession of power (Jackson *et al.*, 2011, 2012a, 2012b). Legitimacy is constituted in part by public assessments of the moral validity of institutional authority, based on judgements of the moral values expressed by actors and institutional practice. In the ESS R5 module (Jackson *et al.*, 2011; European Social Survey 2011, 2012; Hough *et al.*, 2013a, 2013b, 2013c) we have conceptualised empirical legitimacy as having three sub-components – obligation to obey, legality and moral alignment – and we have constructed scales to measure each of these three components. This definition partly follows David Beetham (1991) in arguing that an authority has legitimacy when three preconditions are met:

1. The 'governed' offer their willing consent to defer to the authority; and that,
2. this consent is grounded
   a. on the authority's conformity to standards of legality (acting according to the law) and
   b. on a degree of 'moral alignment' between power-holder and the governed, reflected in shared moral values.

According to this definition, legitimacy is not simply signified by a positive duty to obey authority and a perception of that authority's entitlement to command. The second and third pre-conditions of empirical legitimacy – legality and moral alignment – ensure that the obligation to obey is built on a combination of perceived lawfulness and moral validity of institutions of justice (for discussion of the meaning of legitimacy see Jackson *et al.*, 2011; Bradford *et al.*, 2013a, 2013b; Bottoms & Tankebe, 2012; Tankebe, 2013; Tyler & Jackson, 2013).

Legitimacy is here defined as an additive function of all three components. To say that the police are legitimate, for example, is to show that people within a given population feel a positive duty to obey the instructions of police officers, feel aligned with the moral values of the police as an institution (believe that the police have an appropriate sense of right and wrong), and believe that police officers act according to the rule of law. While some variation in individual – and indeed aggregate – 'scores' on these variables is to be expected, significant shortfalls in any one set of opinions or propensities might lead us to infer that the institution involved suffers from some sort of legitimacy deficit.

3. PUBLIC TRUST AND INSTITUTIONAL LEGITIMACY: A FOCUS ON SINGLE INDICATORS

We next draw upon ESS R5 data to address national levels of public trust and perceived legitimacy of the police and criminal courts, using single measures of each core concept, i.e. we use answers to just one question fielded in the ESS to indicate national levels. The key constructs that we set out to measure in the module are set out in Box 1. In presenting selected results, we group countries into types, drawing on classifications used by Cavadino and Dignan (2006, 2013) and Lappi-Seppälä (2011): Neo-liberal; Conservative corporatist; Social democratic corporatist; Southern European; Post communist; and Others (Israel).

Box 1: Some of the key concepts measured in the Trust in Justice module of ESS Round 5

a. Trust in justice institutions
   i. Trust in police effectiveness
   ii. Trust in police procedural fairness
   iii. Trust in police distributive fairness
   iv. Trust in court effectiveness
   v. Trust in court procedural fairness
   vi. Trust in court distributive fairness
b. Perceived legitimacy
   i. Consent to police authority (a sense of obligation to obey the police)
   ii. Consent to court authority (a sense of obligation to defer to the authority of the courts
   iii. Moral alignment with the police (endorsement of the moral right to power)
   iv. Moral alignment with the courts (endorsement of the moral right to power)
   v. The perceived legality of the police (operating under the rule of law)
   vi. The perceived legality of court officials (operating under the rule of law)
c. Willingness to cooperate with the police and courts
   i. Preparedness to report crimes to the police
   ii. Preparedness to identify suspect to the police
   iii. Preparedness to act as a juror in court
d. Compliance with the law: self-report measures of law-breaking over the past 5 years

3.1 Variations in trust and legitimacy across country

Figure 1: Trust in police effectiveness, by country
Question: "If a violent crime or house burglary were to occur near to where you live and the police were called, how slowly or quickly do you think they would arrive at the scene?" (11-point scale running from 'slow' to 'quick'. Converted in Figure 1 to 0 'slow' to 1 'quick')

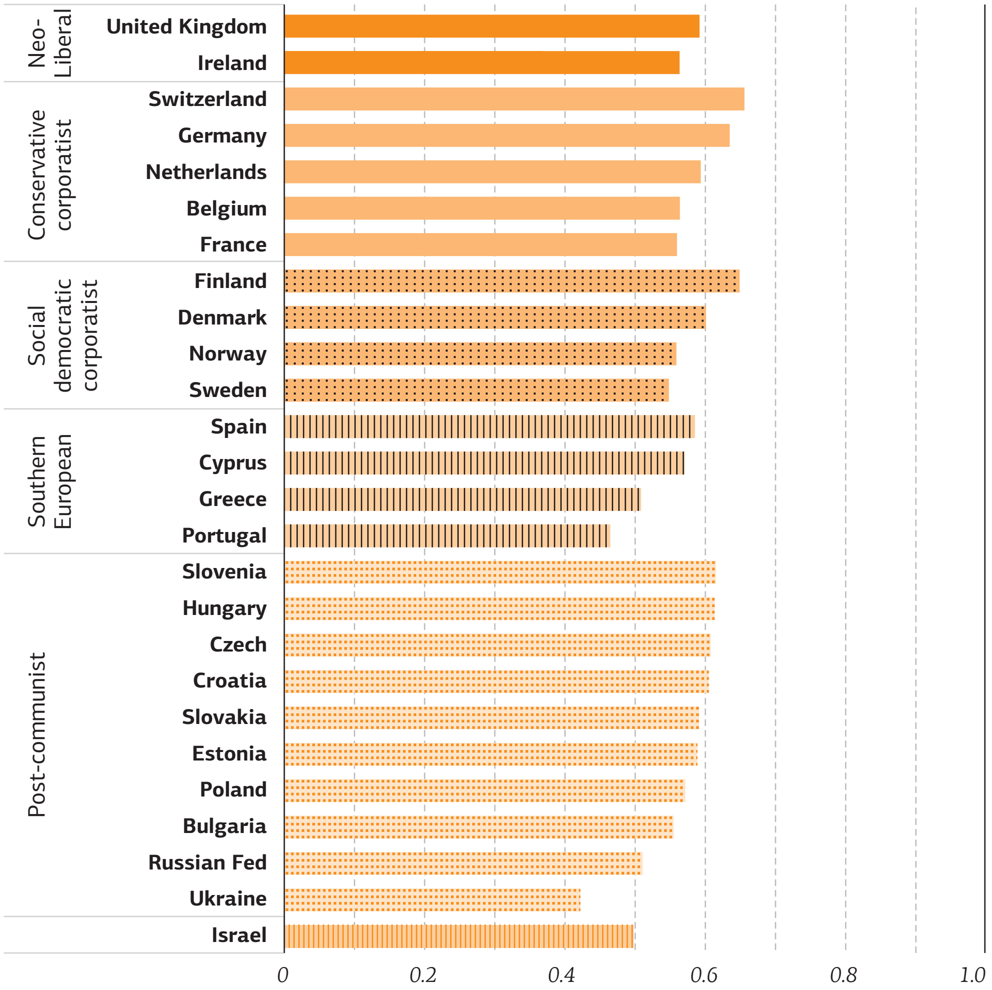
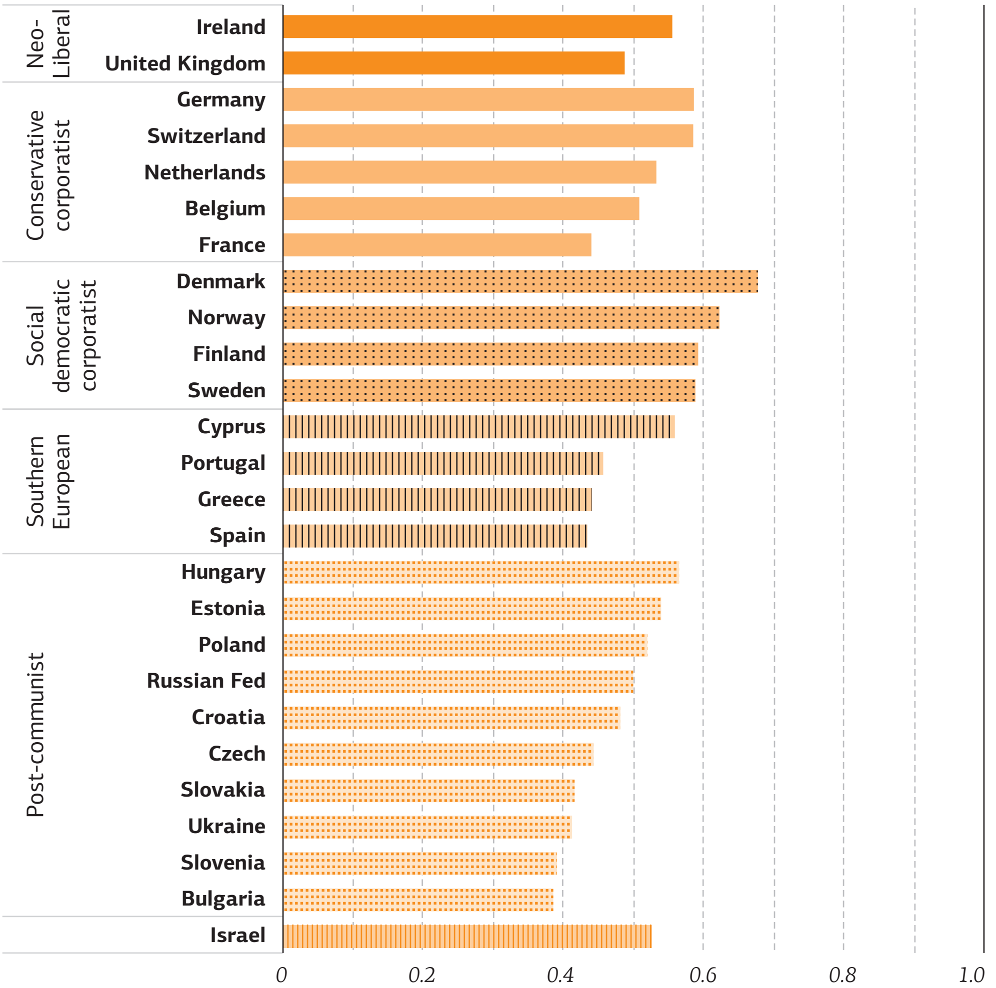


Figure 1 shows (weighted) data using one of three items used to measure trust in police effectiveness. The question asked respondents how quickly the police would arrive if a violent crime occurred near their home, using an 11-point scale (we convert it to 0-1 in Figure 1). We see limited variation across the 26 countries, with most ranging from 0.65 (Switzerland, with the highest mean) and 0.42 (Ukraine, with the lowest mean). Despite stereotypes of Scandinavian or northern European efficiency and southern or eastern European tardiness, it seems that Europeans have broadly equivalent beliefs and expectations about the ability of the police to turn up promptly when needed.

Figure 2: Trust in court effectiveness, by country

Question: "Please tell me how often you think the courts make mistakes that let guilty people go free?" (11-point scale running from 'never' to 'always'. Converted in Figure 2 to 0 'always' to 1 'never')



We see a little more country-level variation in levels of trust in court effectiveness (Figure 2). Respondents were asked how often they thought the courts in their country made mistakes that let guilty people go free. Lowest levels of trust are found in four post-communist countries (Bulgaria, Slovenia, Ukraine and Slovakia), two southern European countries (Spain and Greece) and one conservative corporatist country (France). Highest levels of trust are found in Denmark, Norway, Finland, Germany, Switzerland, Ireland and Hungary.

Figure 3: Trust in police procedural fairness, by country

Question: "Based on what you have heard or your own experience how often would you say the police generally treat people in [country] with respect? (4-point scale: 'not at all often', 'not very often', 'often' and 'very often'. Converted in Figure to the proportion of people who said 'often' or 'very often')

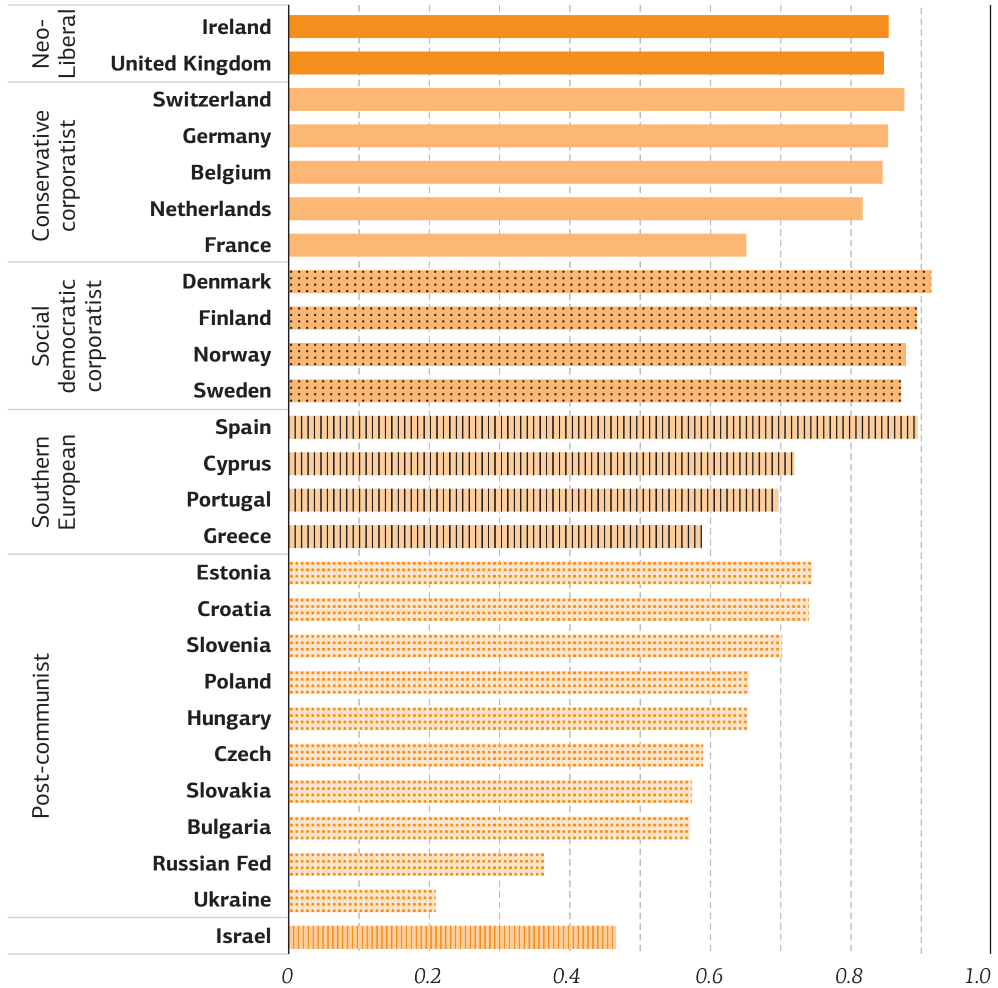


Figure 3 shows responses to an item about the procedural fairness of the police. The ESS R5 module asked respondents how often the police treat people fairly, with responses ranging from 'very often' to 'often' to 'not very often' and 'not at all often'. Figure 3 plots the (weighted) proportion of people who say 'often' or 'very often' (as opposed to 'not at all' or 'not very often'). Ukraine, the Russian Federation and Israel have the least positive views on how the police treat people, while Denmark, Finland, Norway and Spain have the most positive views.

In contrast to the picture in relation to trust in police effectiveness, we find here significant variation across the different *groups* of countries. Trust in the fairness of the police is highest in the social democratic Scandinavian countries, followed by the neo-liberal fringe of UK and Ireland and the conservative corporatist states. Trust in police fairness then declines as we move south and east, to what appears to be exceptionally low levels in the Russian Federation, the Ukraine, and Israel.

Figure 4: Trust in court procedural fairness, by country

Question: "How often do you think the courts make fair, impartial decisions based on the evidence[2] made available to them?" (11-point scale running from 'never' to 'always'. Converted to 0 to 1)

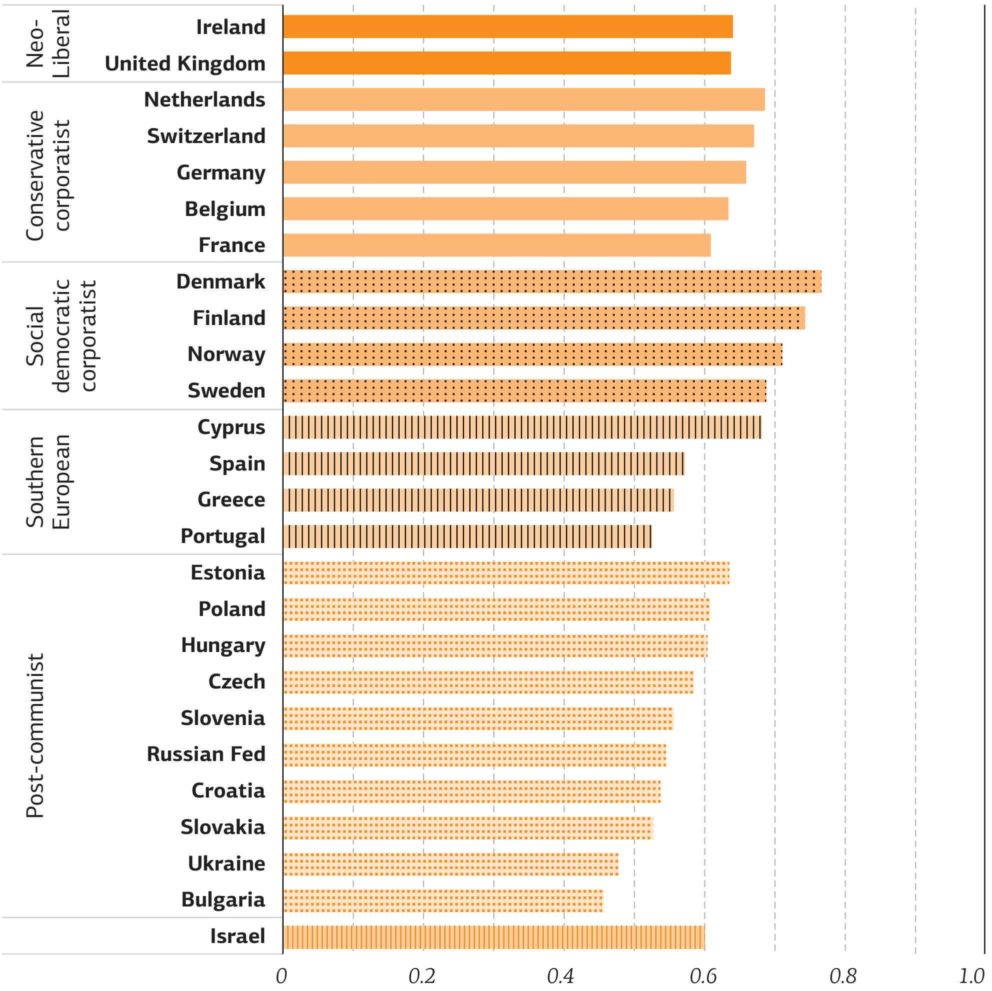
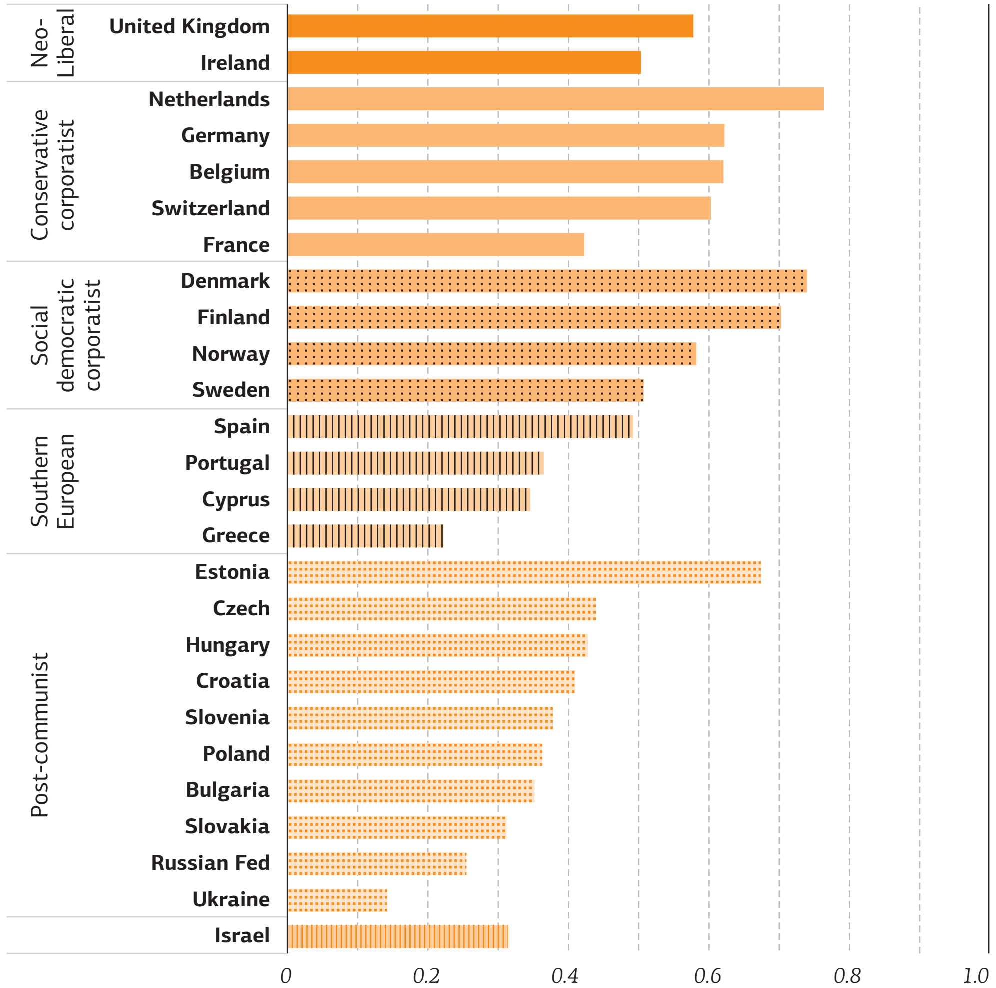


Figure 4 shows responses to an item about procedural fairness, but this time of the criminal courts. The focus here moves from interpersonal decision-making (of the police, see Figure 3) to neutral decision-making (in the criminal courts, see Figure 4). The question asked respondents how often the courts make fair, impartial decisions based on the evidence made available to them, using an 11-point scale (we convert it to 0-1). We find similar patterns to trust in court effectiveness (Figure 2), albeit with slightly less variation. Lowest levels of trust are found in six post-communist countries (Bulgaria, Ukraine, Slovakia, Croatia, the Russian Federation and Slovenia) and three southern European countries (Portugal, Spain and Greece). Highest levels of trust are found in Denmark, Germany, Switzerland, Ireland and Hungary.

2. Evidence' refers to the 'testimony' a witness gives verbally in court AND other materials presented to the court.

Figure 5 Trust in police distributive fairness, by country

Question: "When victims report crimes, do you think the police treat rich people worse, poor people worse, or are rich and poor treated equally? Choose your answer from this card. (3 options: 'Rich people treated worse', 'Poor people treated worse', 'Rich and poor treated equally'). Proportion of people saying 'rich and poor treated equally' shown.



As for trust in police distributive fairness, Figure 5 shows the (weighted) proportion of people who thought that when dealing with victims of crime, the police tend to treat rich and poor people equally. The countries least trusting of the police in this regard are Ukraine, Greece, Russian Federation, Slovakia and Israel. By contrast, Netherlands, Denmark, Finland and Estonia score relatively well. Variation here appears less closely correlated with country type, although, in general, perceptions of distributive fairness are worse in the southern European and post-communist states and more favourable in the social democratic, conservative corporatist and neo-liberal countries.

Figure 6 Trust in court distributive fairness, by country

Question: "Now suppose two people from different race or ethnic groups each appear in court, charged with an identical crime they did not commit. Choose an answer from this card to show who you think would be more likely to be found guilty." (3 options: 'The person from a different race or ethnic group than most people is more likely to be found guilty', 'The person from the same race or ethnic group as most people is more likely to be found guilty', and 'They both have the same chance of being found guilty'). Proportion of people saying 'they both have the same chance of being found guilty' is shown.

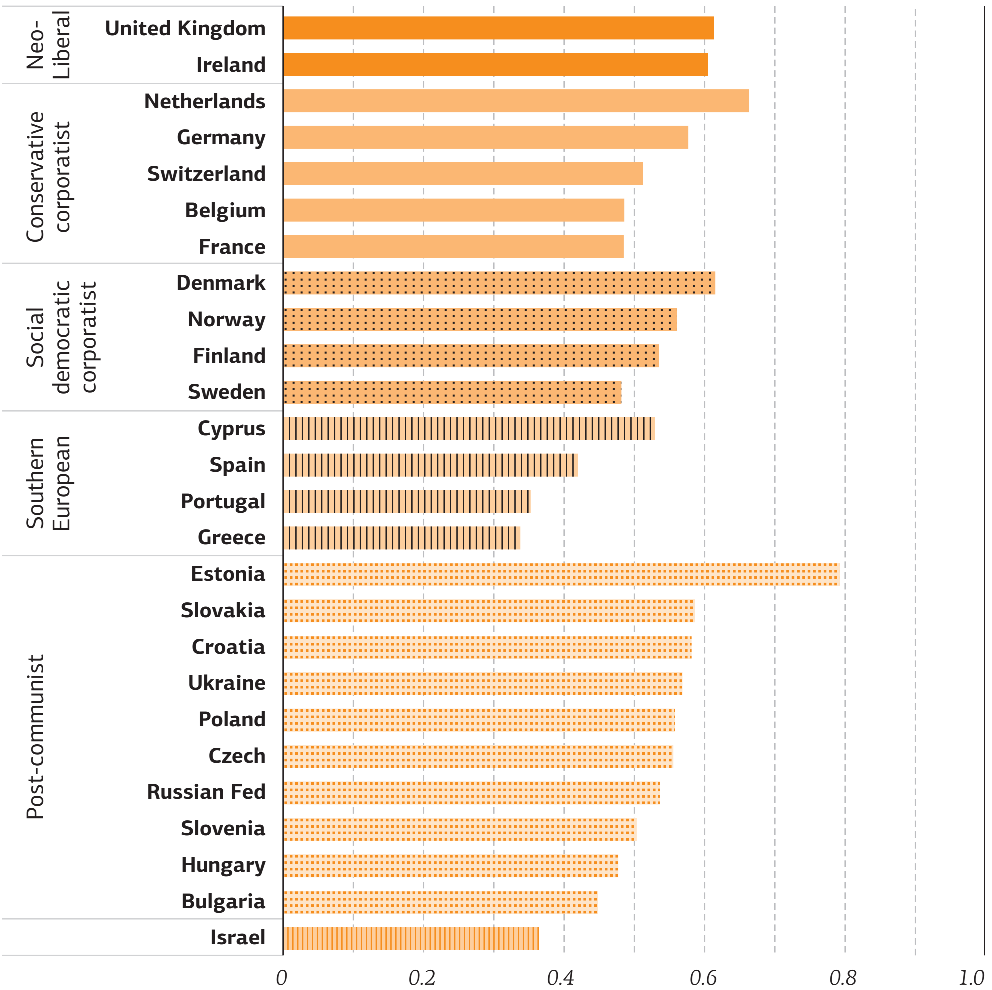
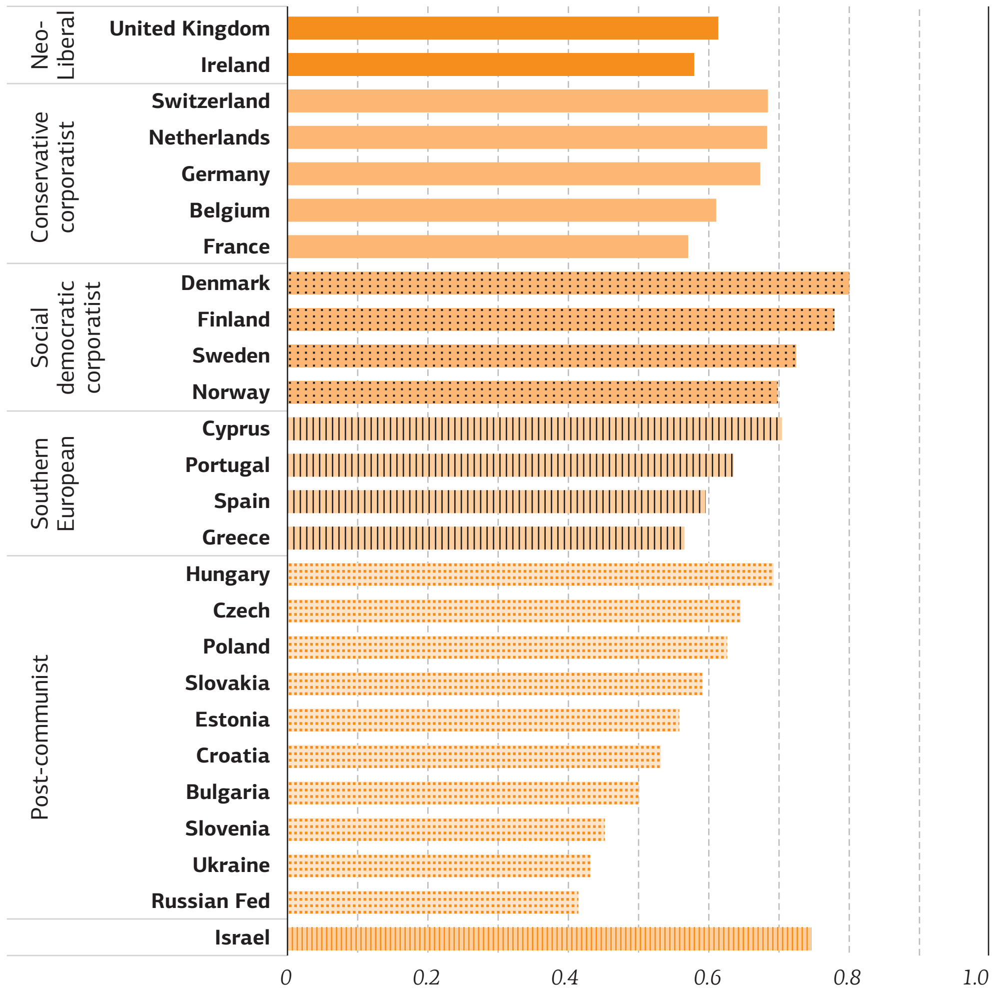


Figure 6 turns to trust in court distributive fairness. We see the (weighted) proportion of respondents who thought that people from different race or ethnic groups would have the same chance of being found guilty if they appeared in court, charged with an identical crime that they did not commit. Highest levels of trust are found in the neo-liberal countries (UK and Ireland), Netherlands, Germany Denmark, Estonia, Slovakia and Croatia. Lowest levels of trust are found in Greece, Portugal, Israel and Spain.

Figure 7 Legitimacy: felt obligation to obey the police, by country

Question: "To what extent is it your duty to do what the police tell you even if you don't understand or agree with the reasons? (11-point scale, running from 'not at all' to 'completely', converted to 0 to 1)



We now turn to legitimacy. As described above, the first dimension of legtimacy is consent and felt obligation. Consent refers to the agreement of the members of the public with decisions made by authorities. It "...precludes the use of external means of coercion; where force is used, authority itself has failed" (Bottoms and Tankebe, 2012, p.114). Obligation involves a social, legal, or moral tie – it is a constraining power of a promise, contract, law, or sense of duty. Asking people whether it is their 'duty' to obey the police seems to capture a positive sense of obligation (something that one is expected or required to do out of moral or legal obligation) rather than a negative sense of obedience out of fear of reprisal or a sense of powerlessness.

Figure 7 presents findings for a question measuring respondents' sense of felt obligation to obey the police. Scores are highest in Denmark, Finland, Israel, Sweden, Cyprus, Norway and Hungary, and lowest in the Russian Federation, Ukraine and Slovenia.

Figure 8 Legitimacy: felt obligation to obey the law, by country
Question: "All laws should be strictly obeyed" (Five point scale, running from 'agree strongly to 'disagree strongly'.) Proportion who 'agree strongly' or 'agree' is shown.

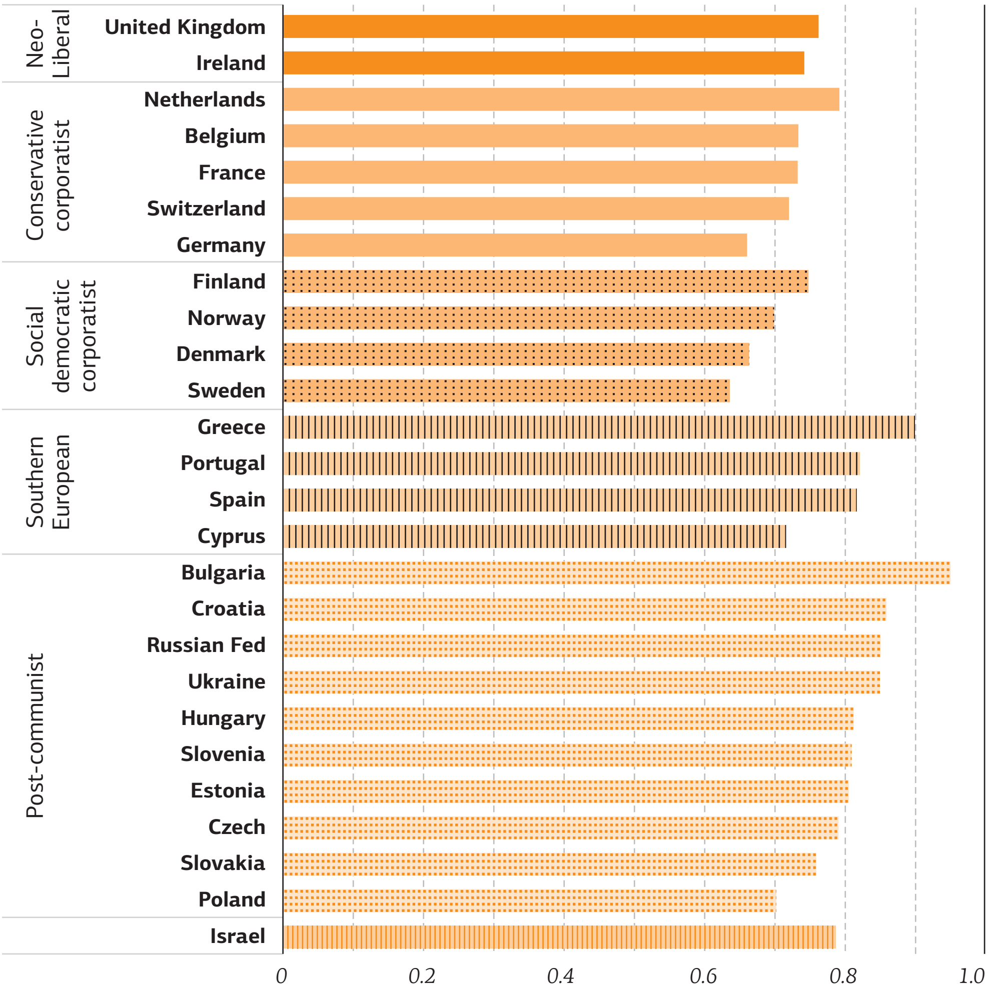


Figure 8 presents findings for a question measuring respondents' sense of felt obligation to obey the law, specifically the (weighted) proportion of people saying that they agree strongly or agree with the sentiment that '*all* laws should be *strictly* obeyed.' At first glance the results are puzzling. Compared to felt obligation to obey the police, a different picture emerges. Specifically, the countries with highest levels of felt obligation are Bulgaria, Greece, Croatia, the Russian Federation and Ukraine, while the countries with the lowest levels of felt obligation are Sweden, Germany, Denmark and Norway. Perhaps the answer lies in the wording of the sentiment: 'all laws should be strictly obeyed' (emphasis added). This may tap into a certain authoritarian worldview, as well as felt obligation of a more positive type.

The first dimension of legitimacy is consent and felt obligation. Consent refers to the agreement of the members of the public with decisions made by authorities. It "...precludes the use of external means of coercion; where force is used, authority itself has failed" (Bottoms and Tankebe, 2012, p.114). Obligation involves a social, legal or moral tie – it is a constraining power of a promise, contract, law, or sense of duty. Asking people whether it is their 'duty' to obey the police seems to capture a positive sense of obligation (something that one is expected or required to do out of moral or legal obligation) rather than a negative sense of obedience out of fear of reprisal or a sense of powerlessness.

The second dimension of police legitimacy is moral alignment. For the policed to regard power-holders as having legitimate authority, they must to a certain extent believe that its power is normatively justified. Moral alignment can be seen as a constitutive element of legitimacy because it embodies a sense of normative justifiability of power and authority in the eyes of the citizens, in that institutions (specifically, actors working for institutions) act in ways that accord with – or are aligned with – public views about what is right or wrong. 'Alignment' is generated when there is accordance between the ethics of institutions and the ethics of citizens.

When one believes that police officers act in accordance with an appropriate sense of right and wrong, this constitutes a conferred moral validity to their possession of power. Recent UK research (Jackson *et al.*, 2012a, 2012b) has linked procedural justice to the public sense that police officers have the appropriate moral values. When officers wield their power in fair and just ways, this seems to imbue them with a sense of appropriate moral purpose and values in the eyes of citizens, generating and sustaining the moral validity of their power and authority. Operating within an appropriate ethical and normative framework seems to validate possession of power in the eyes of citizens (Bradford *et al.*, 2013a, 2013b; Jackson et al, 2013).

We measured the moral basis of police authority using questions such as 'The police generally have the same sense of right and wrong as I do'. These items are assumed to indicate whether or not people believe the police are policing according to a shared vision of appropriate social order, and thus have a sense of moral validity to their possessed power.

Figure 9 Legitimacy: moral alignment with the police, by country

Question: "The police generally have the same sense of right and wrong as I do." (Five point scale, running from completely agree to 'completely disagree'.). Proportion who 'agree strongly' or 'agree' is shown.

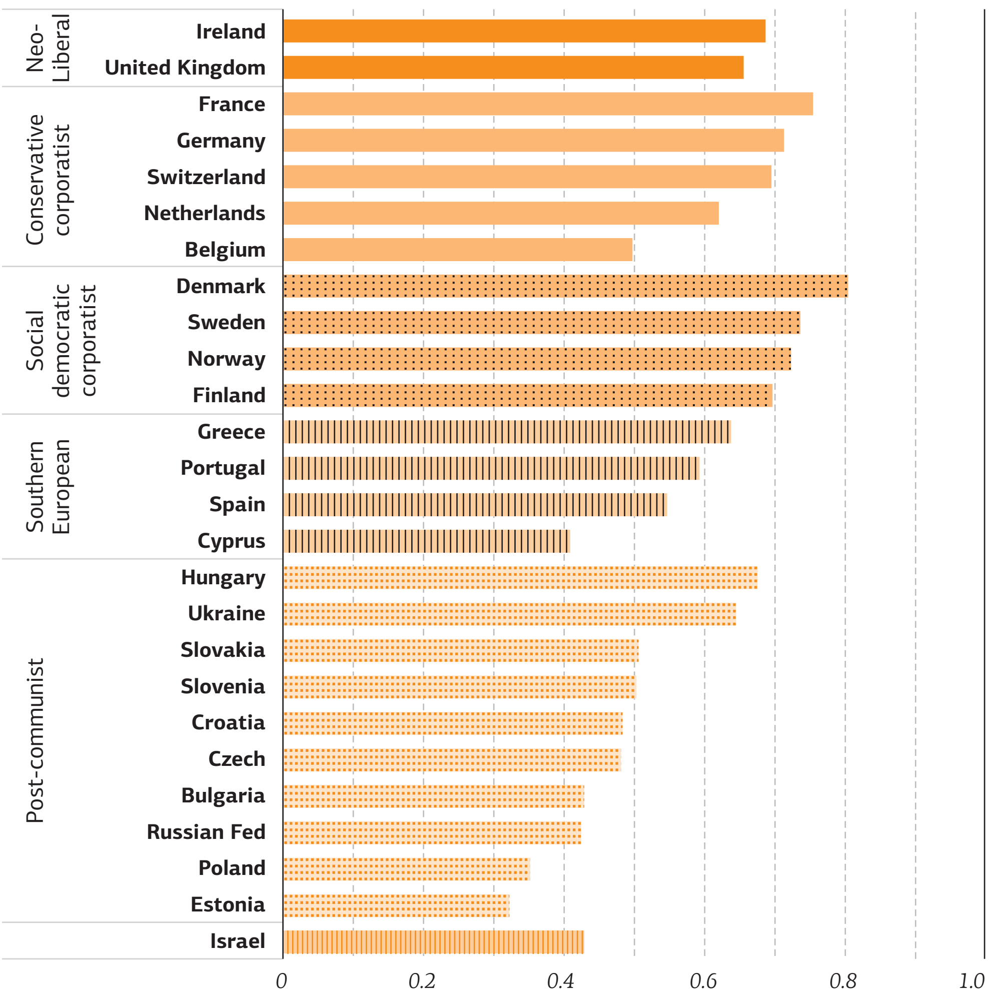


Figure 9 shows (weighted) levels of agreement with the statement 'The police have the same sense of right and wrong as I do'. We see that moral alignment is highest in Denmark, France, Sweden and Norway, and lowest in Estonia, Poland, Cyprus and the Russian Federation. The pattern here is broadly similar to that in relation to felt obligation, and citizens of northern and western European countries generally felt more morally aligned with their police, while scores on this measure were generally lower in the post-communist countries.

Figure 10 Legitimacy: moral alignment with the criminal courts, by country

Question: "Courts generally protect the interests of the rich and powerful above those of ordinary people." (Five point scale, running from completely agree to 'completely disagree'.). Proportion who 'disagree strongly' or 'disagree' is shown.

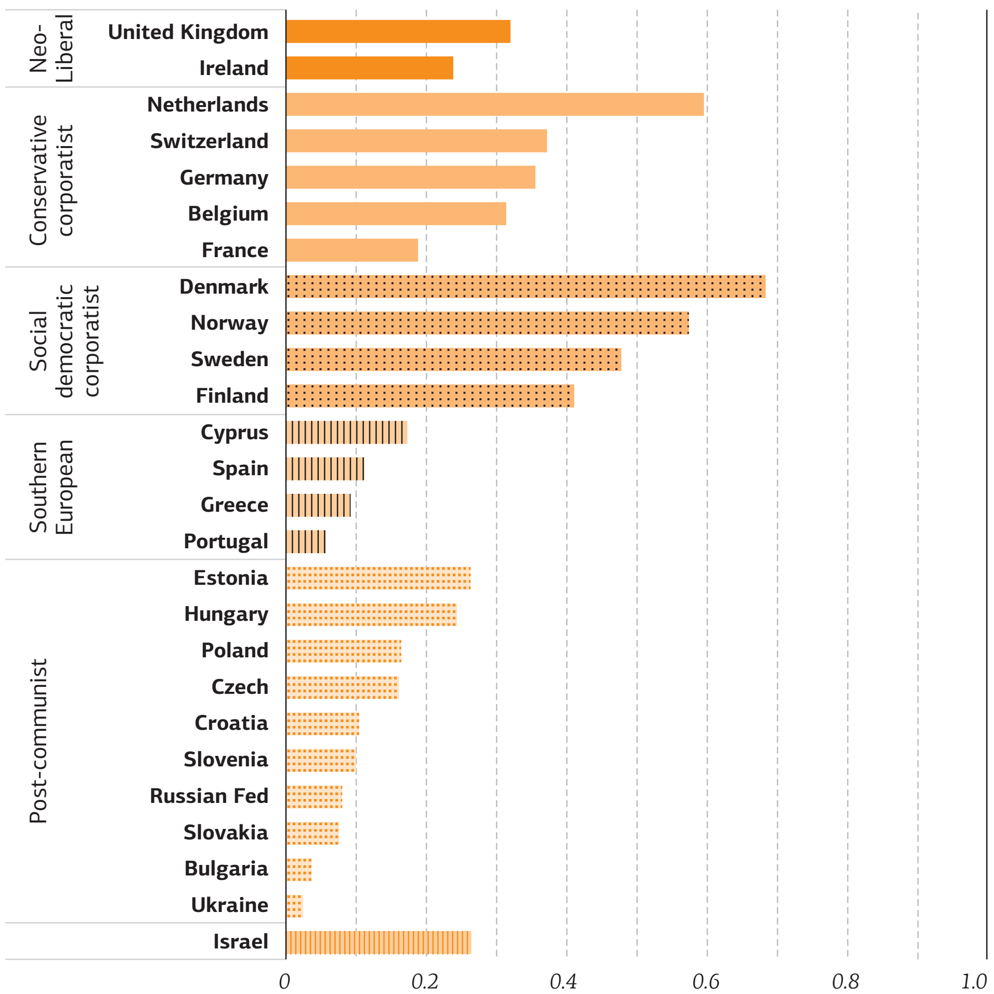
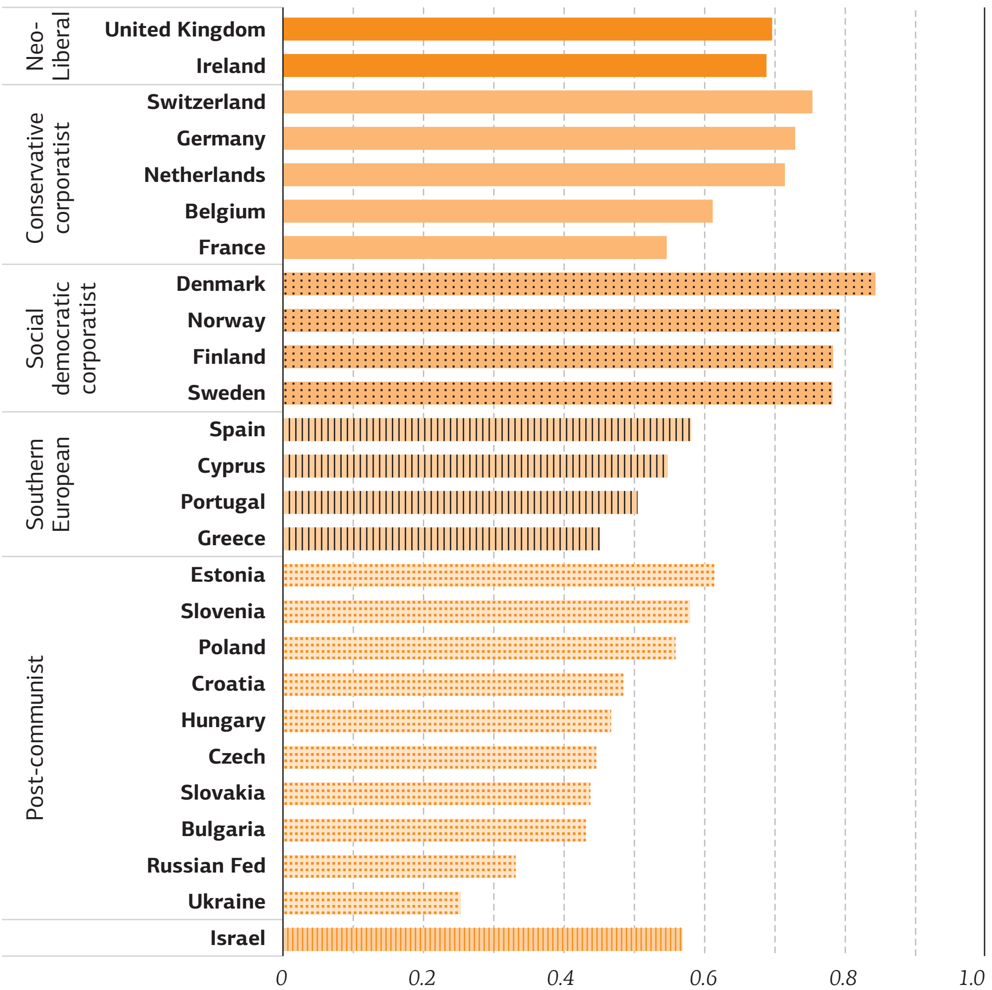


Figure 10 turns to the courts, showing levels of disagreement with the statement 'Courts generally protect the interests of the rich and powerful above those of ordinary people.' Note that there is some conceptual overlap with distributive justice. For the present purpose, however, we treat disagreement with this statement as a sense of shared moral values (assuming that the vast majority of ESS respondents are not the rich and powerful) and a belief that the courts operate according to an appropriate sense of right and wrong. We see quite a lot of variation. Moral alignment with the courts is highest in Denmark, Netherlands, Norway, Sweden and Finland. Moral alignment with the courts is lowest in Ukraine, Bulgaria, Portugal, Slovakia and the Russian Federation.

Figure 11 perceived legality of police action, by country

Question: "How often would you say that the police in [country] take bribes? (11-point scale where 0 is 'never' and 10 is 'always', converted to 0 to 1.)



The final sub-component of police legitimacy is the perceived legality of their actions. For the police to have the right to rule, they must not abuse their entrusted power; they must act according to the rule of law. Figure 11 shows how often people think the police take bribes. We see that police bribe-taking is seen to be lowest in Denmark, Norway, Finland and Sweden, and highest in the Ukraine, the Russian Federation, Bulgaria and Slovakia. There is again significant variation by country type. Perceptions of police corruption were most favourable in the social democratic Scandinavian states and least favourable in the Southern European and post-communist countries.

Figure 12 perceived legality of criminal court action, by country

Question: "How often would you say that the judges in [country] take bribes? (11-point scale where 0 is 'never' and 10 is 'always', converted to 0 to 1.)

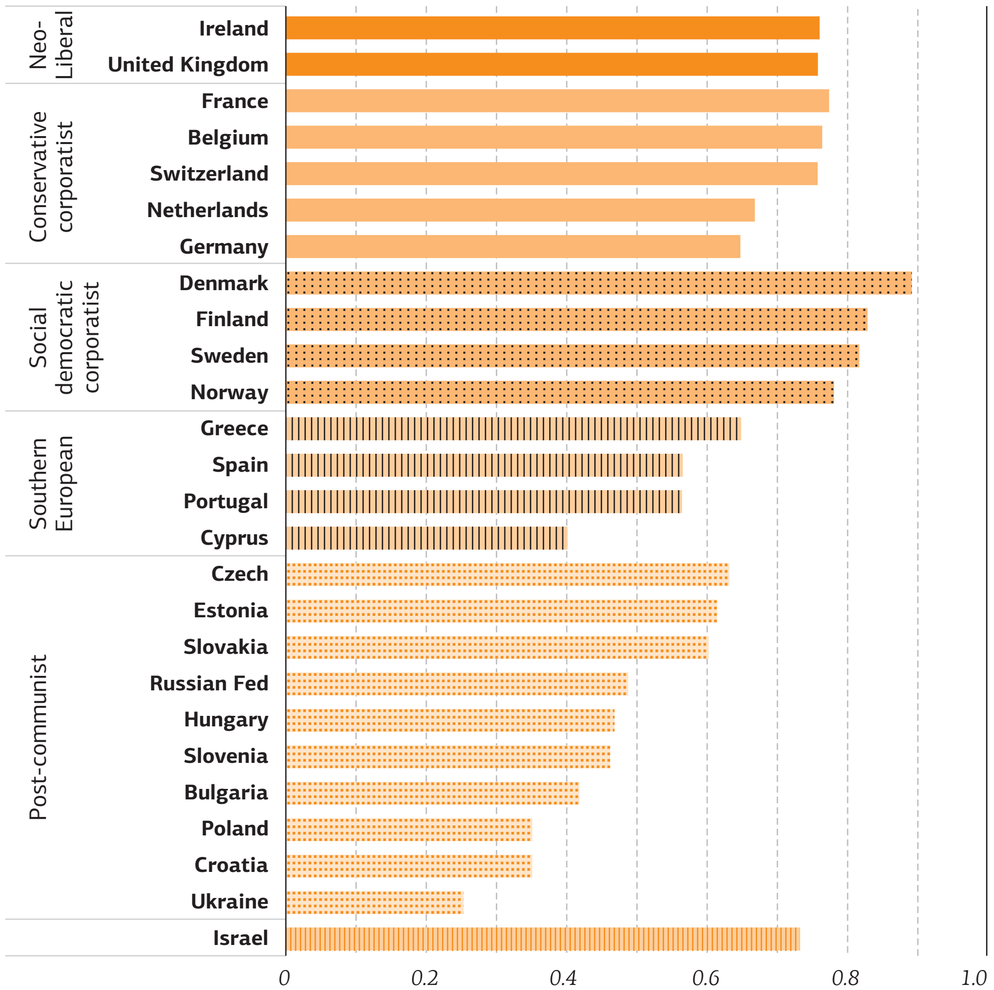


Figure 12 shows how often people think judges take bribes. As with the police, we see that judge bribe-taking is seen to be lowest in Denmark, Finland, Sweden and Norway, and highest in the Ukraine, Croatia, and Poland. As with the police, perceptions of court corruption were most favourable in the social democratic Scandinavian states and least favourable in the Southern European and post-communist countries

4. PUBLIC TRUST AND INSTITUTIONAL LEGITIMACY: A FOCUS ON MULTIPLE INDICATORS

In section 4 we move beyond single indicators. In the case of trust in the police and perceptions of police legitimacy, multiple indicators were fielded to measure most concepts, and we assess here whether the scales for the appropriate constructs operate comparably in the different countries. We also examine the effect of a lack of measurement equivalence on national estimates.

When multiple items are used to represent abstract and complex constructs such as attitudes and values, they are often analysed using the statistical method of latent variable modeling. This technique represents responses to the items as measurements of unobserved (latent) constructs. The most widely used latent variable models are linear factor analysis models and their extensions. One of the key methodological challenges in international surveys is the question of cross-national equivalence of measurement. Essentially the issue is, does a survey question measure the same concept and in the same way in all countries? If it does not, respondents from different countries can give different expected responses even if they have the same level of the concept of interest.

Critically, lack of equivalence can compromise any substantive cross-national comparisons. It is quite plausible in surveys which cover many countries, perhaps because of cultural differences in how a question is understood, or variations in questionnaire translation. It has even been argued that measurements should be assumed non-equivalent by default (see e.g. Kohn 1987), in which case equivalence should always be demonstrated first of all.

Consider the three items that constitute each scale for trust in police effectiveness, trust in police procedural fairness, felt obligation to obey the police, and moral alignment with the police.

Three items for police effectiveness (eff1, eff2, eff3)

- *D12:* Based on what you have heard or your own experience how successful do you think the police are at preventing crimes in [country] where violence is used or threatened? Choose your answer from this card, where 0 is extremely unsuccessful and 10 is extremely successful.
- *D13:* And how successful do you think the police are at catching people who commit house burglaries in [country]? Choose your answer from this card, where 0 is extremely unsuccessful and 10 is extremely successful.
- *D14:* If a violent crime were to occur near to where you live and the police were called, how slowly or quickly do you think they would arrive at the scene? Choose your answer from this card, where 0 is extremely slowly and 10 is extremely quickly. [separate code for 'violent crimes never occur near to where I live'

Three items for police procedural fairness (pj1, pj2, pj3)

Next, some questions about when the police deal with crimes like house burglary and physical assault.

- *D15:* Based on what you have heard or your own experience how often would you say the police generally treat people in [country] with respect ...'not at all often' 'not very often', 'often' or 'very often'?
- *D16:* About how often would you say that the police make fair, impartial decisions in the cases they deal with? Would you say...'not at all often' 'not very often', 'often' or 'very often'?
- *D17:* And when dealing with people in [country], how often would you say the police generally explain their decisions and actions when asked to do so? Would you say... 'not at all often' 'not very often', 'often', 'very often', or 'no one ever asks the police to explain their decisions and actions'?

Felt obligation to obey the police (obey1, obey2, obey3)

Next, some questions about your duty towards the police in [country]. Use this card where 0 is not at all your duty and 10 is completely your duty. To what extent is it your duty to...

- *D18* ...back the decisions made by the police even when you disagree with them?
- *D19* ...do what the police tell you even if you don't understand or agree with the reasons?
- *D20* ... do what the police tell you to do, even if you don't like how they treat you?

Moral alignment with the police (moralid1, moralid2 & moralid3)

Using this card, please say to what extent you agree or disagree with each of the following statements about the police in [country]. 'Agree strongly', 'agree', 'neither agree nor disagree', 'disagree', or 'disagree strongly'.

- *D21:* The police generally have the same sense of right and wrong as I do.
- *D22:* The police stand up for values that are important to people like me.
- *D23:* I generally support how the police usually act.

We conduct a series of sensitivity analyses, which involves comparing estimated factor means given different assumptions about measurement equivalence. Each scale is analysed using standard multi-group factor analysis. As part of this, special response options which do not fit into the ordering of the other options are treated as missing data (as are of course actual missing responses); such options occur for eff3 and pj3. For each scale, we fit 7 models: one full equivalence model, 3 models where one item is non-equivalent across the countries, and 3 models where two items are non-equivalent. Note that two non-equivalent items are here the maximum possible, because a model with all three items non-equivalent does not allow the distributions (means and variances) of the latent variables to be compared between countries. When an item is equivalent, all of its measurement parameters (loading, intercept and error variance) are fixed to be equal across countries; when it is non-equivalent, all of them are allowed to be different across the countries.

The analysis is done in R, using the lavaan package. The results (see appendix) show standard goodness of fit statistics for all of the models for each scale, and likelihood ratio tests between the models. In each case, models which free 2 out of 3 items are favoured in terms of goodness of fit. There is thus little evidence for measurement equivalence in each of the four scales.

A question to address is what effect a lack of measurement equivalence has on the task of this article, namely estimating levels of trust and legitimacy in the 26 countries. Below we present three plots for each scale: one with estimated factor means (with 95% confidence intervals) from the equivalence model; one with means from the equivalence model and the three models with one item non-equivalent; and one plot with the means from all of the 7 models. In the latter, the models with one item non-equivalent are shown with solid thin lines, and models with two non-equivalent items with dashed thin lines. In each plot, the countries are ordered in decreasing order of estimated mean from the equivalence model for that construct.

The reference line in each plot is the weighted average of the estimated country means from the equivalence model, weighted by ESS population size. It thus represents, roughly, the estimated average for the combined population of these 26 countries.

4.1 Police effectiveness

Figure 13 trust in police effectiveness, measurement equivalence assumed

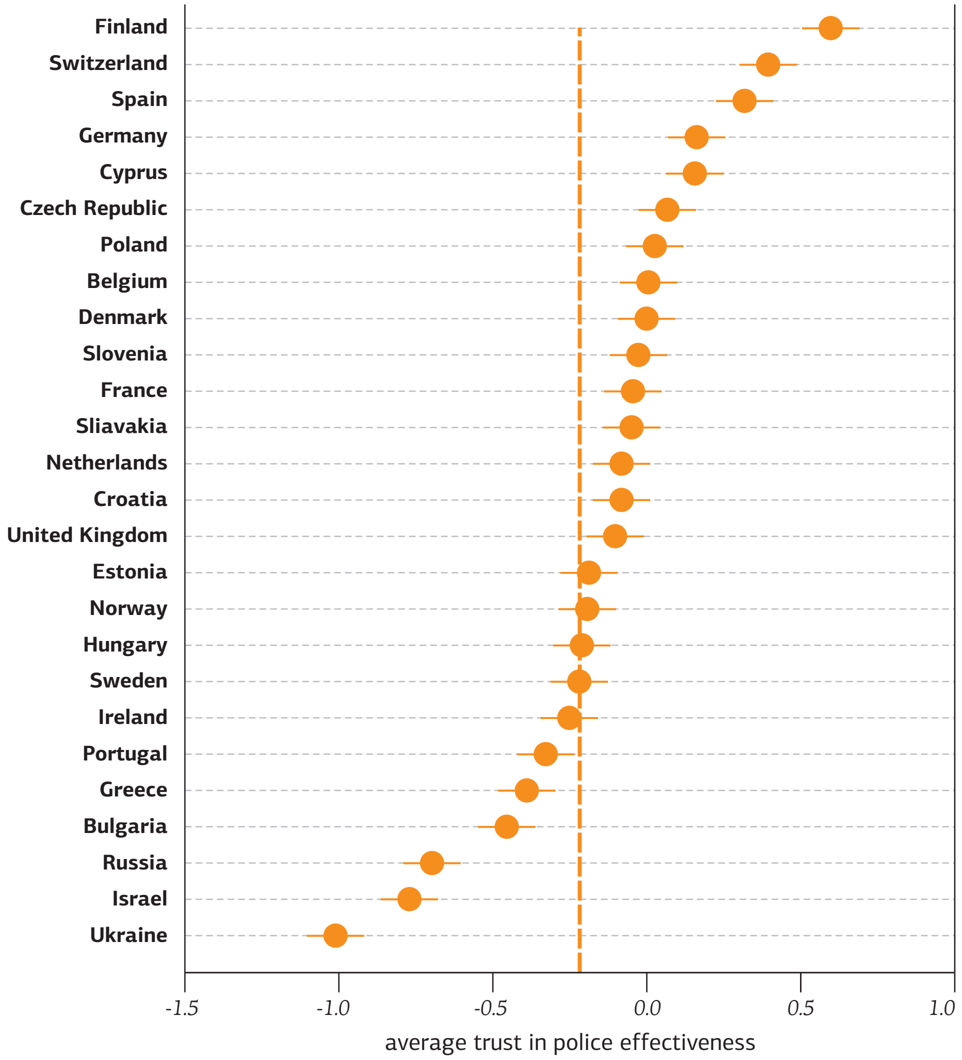


Figure 13 shows estimated levels of trust in police effectiveness in each of the 26 countries (with 95% confidence intervals) when one assumes that the scales work the same in each context. This means that the factor loadings and intercepts are constrained to be equal.

Figure 14 trust in police effectiveness, adding one item non-equivalence

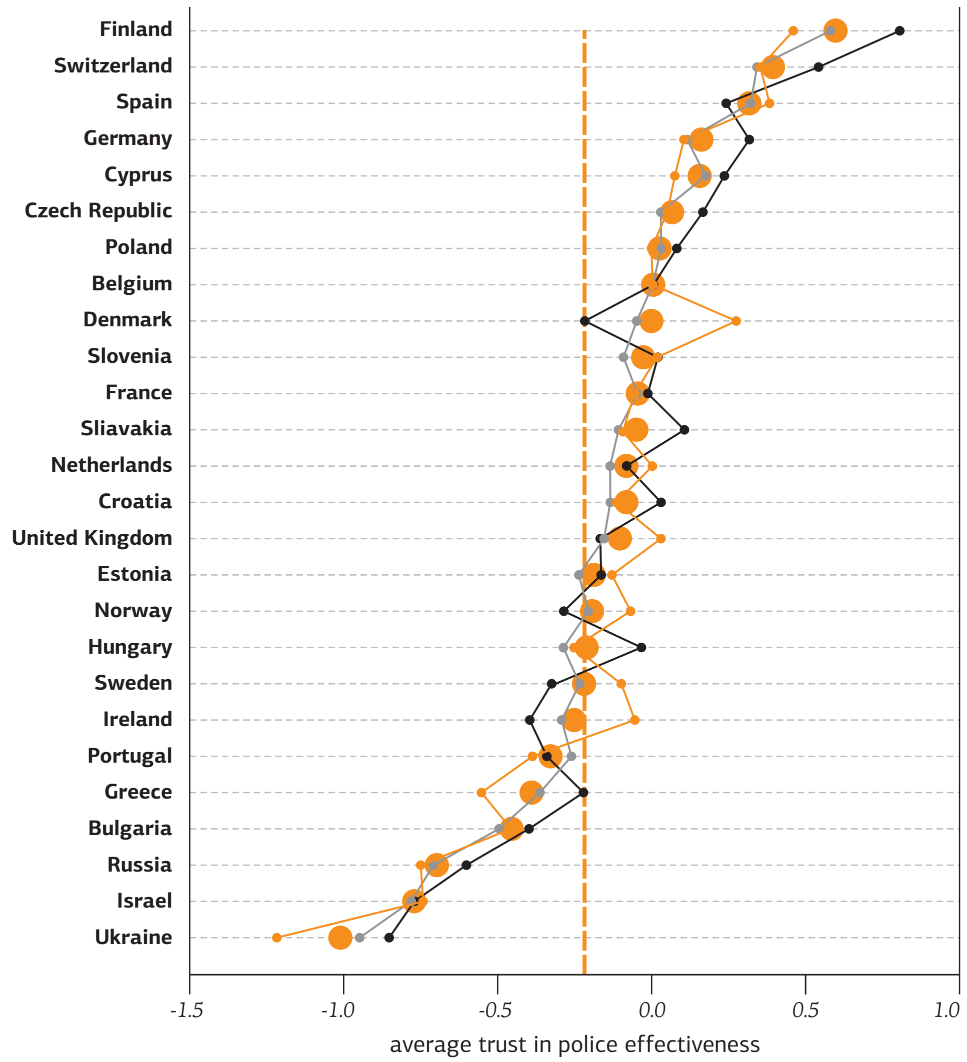


Figure 14 shows the means from the equivalence model but also plots means from the three models with one item non-equivalent. We can see that the estimates move around a small to moderate amount.

Figure 15 trust in police effectiveness, adding two item non-equivalence

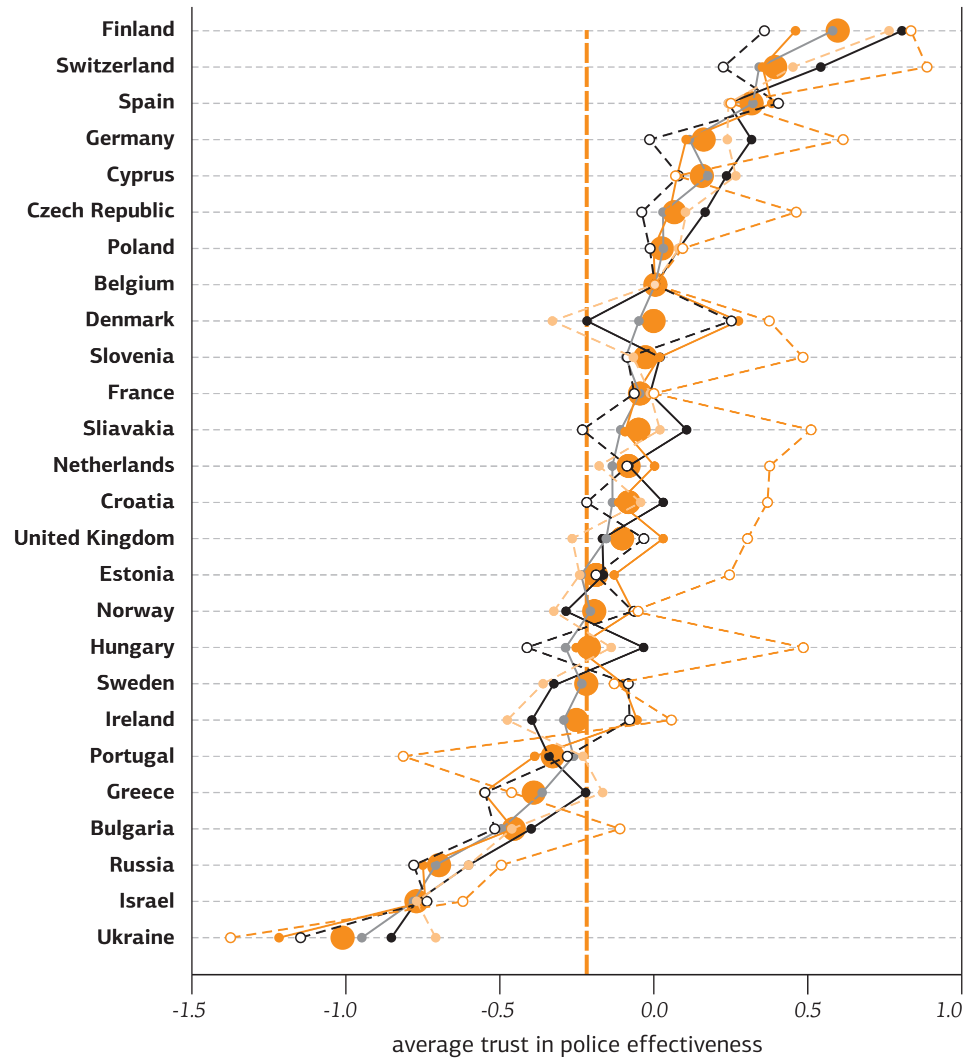


Figure 15 adds the estimated means from the last three models, where the models with two non-equivalent items are indicated with dashed thin lines. We see that the models with two non-equivalent items produce quite a lot of variation in the estimated means. Say, for example, one is interested in comparing Finland and Switzerland. Depending on the specific method one uses, Finland has higher levels of trust than Switzerland, or it has very similar levels, or Switzerland has higher levels of trust than Finland.

4.2 Police procedural justice

Figure 16 trust in police procedural justice, measurement equivalence assumed

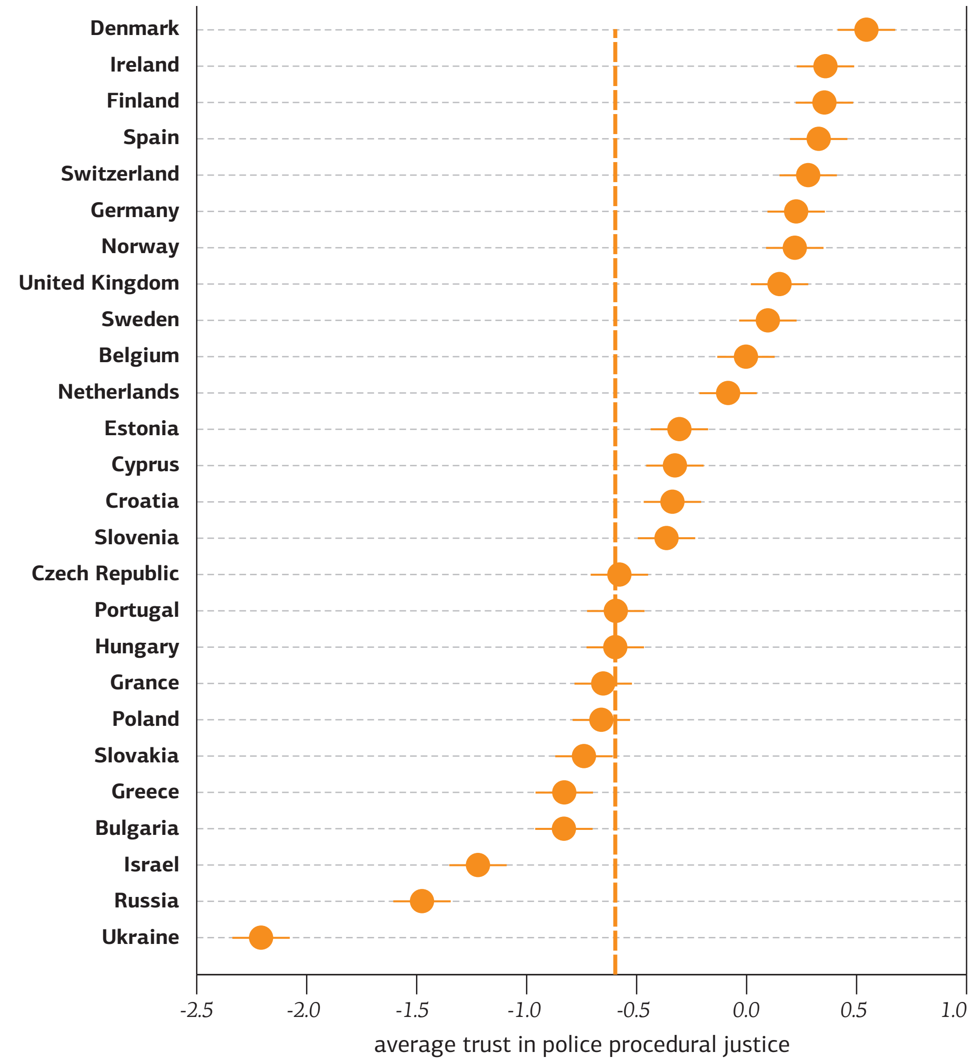


Figure 16 shows estimated levels of trust in police procedural fairness in each of the 26 countries (with 95% confidence intervals) when one assumes that the scales work the same in each context.

Figure 17 trust in police procedural justice, adding one item non-equivalence

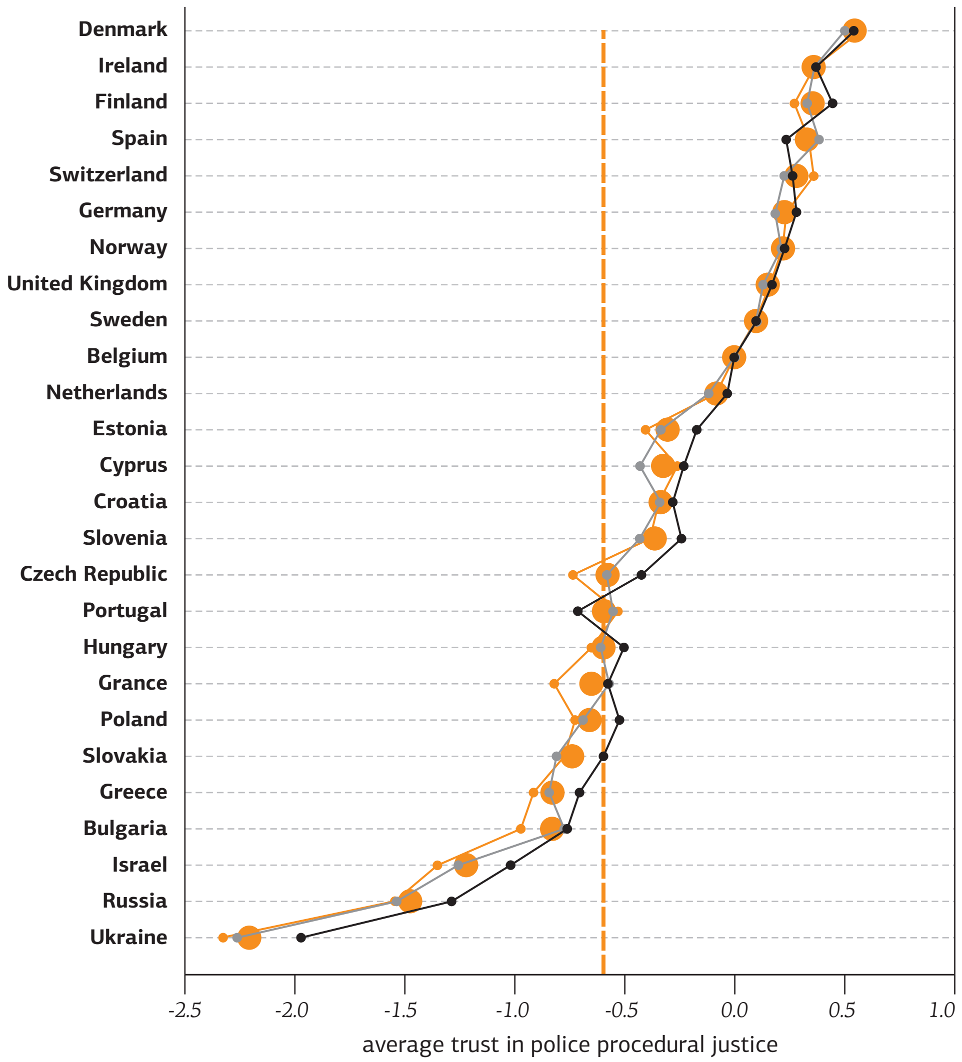


Figure 17 shows the means from the equivalence model but also plots means from the three models with one item non-equivalent. We can see that the estimates move around a small amount.

Figure 18 trust in police procedural justice, adding two item non-equivalence

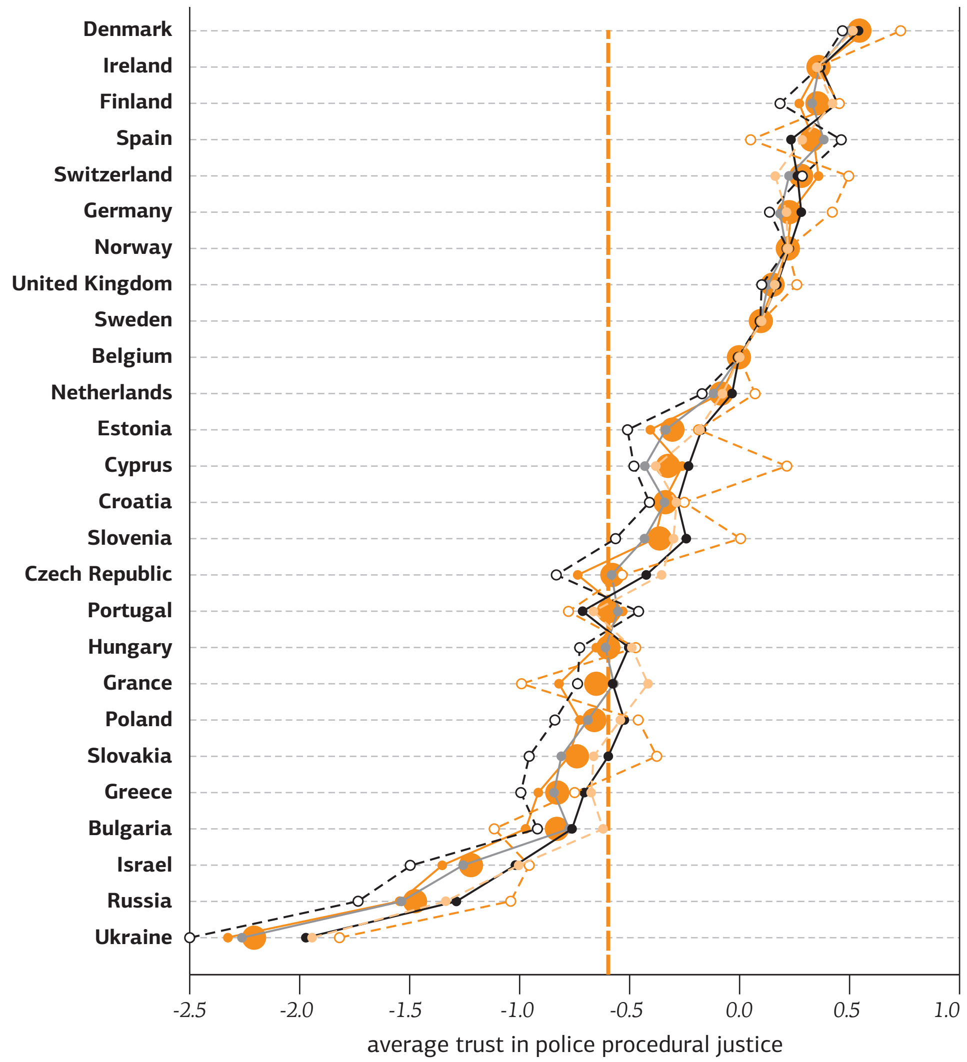


Figure 18 adds the estimated means from the last three models, where the models with two non-equivalent items are indicated with dashed thin lines. We see that the models with two non-equivalent items produce a fair amount of variation in the estimated means (although less than trust in police effectiveness).

4.3 Obligation to obey the police

Figure 19 obligation to obey the police, measurement equivalence assumed

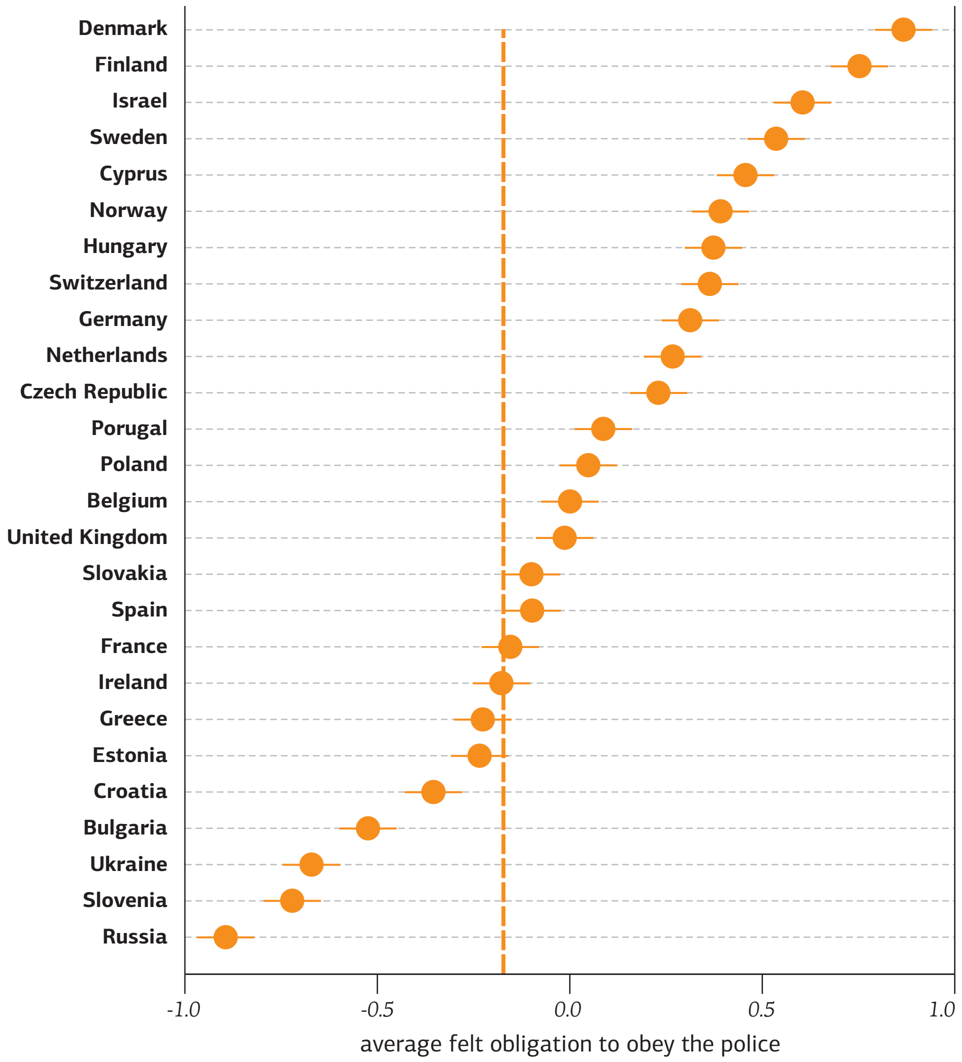


Figure 19 shows estimated levels of felt obligation to obey the police in each of the 26 countries (with 95% confidence intervals) when one assumes that the scales work the same in each context.

Figure 20 obligation to obey the police, adding one item non-equivalence

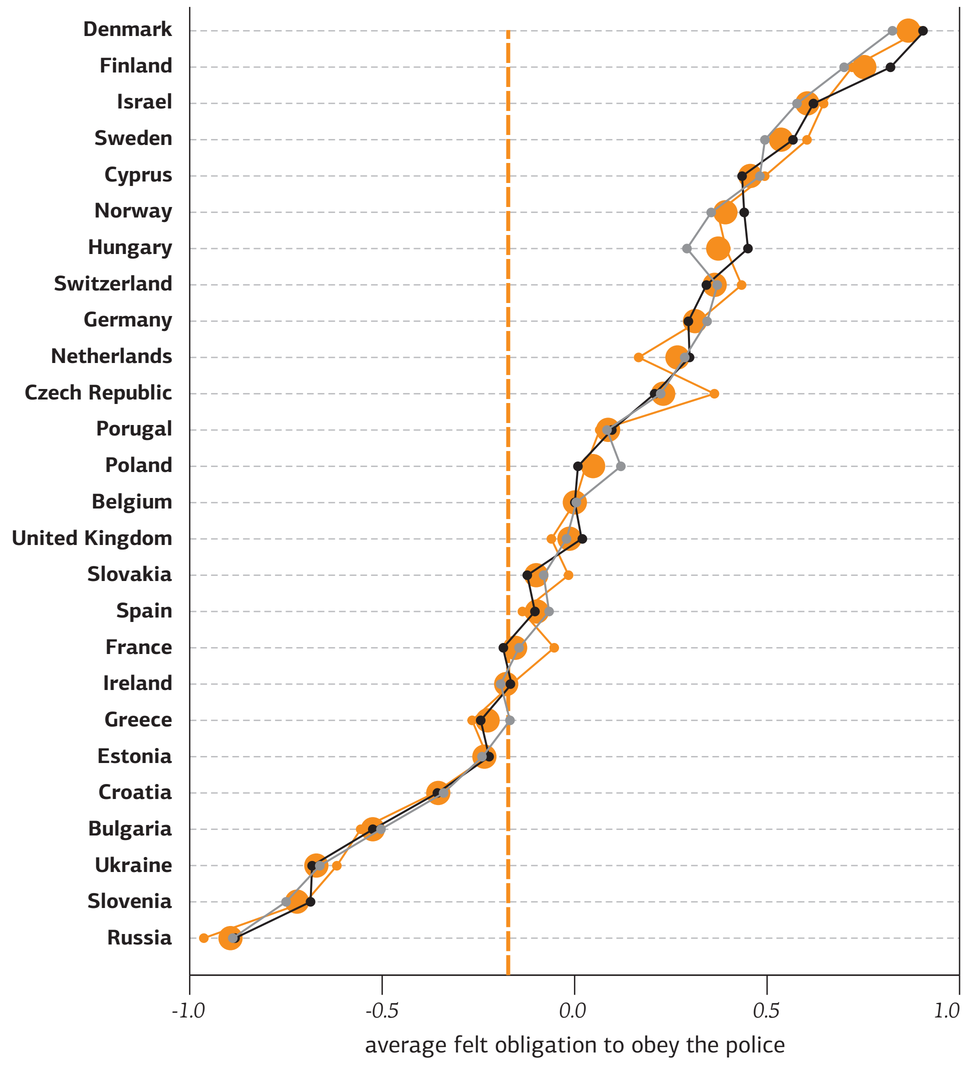


Figure 20 shows the means from the equivalence model but also plots means from the three models with one item non-equivalent. We can see that the estimates move around a small amount.

Figure 21 obligation to obey the police, adding two item non-equivalence

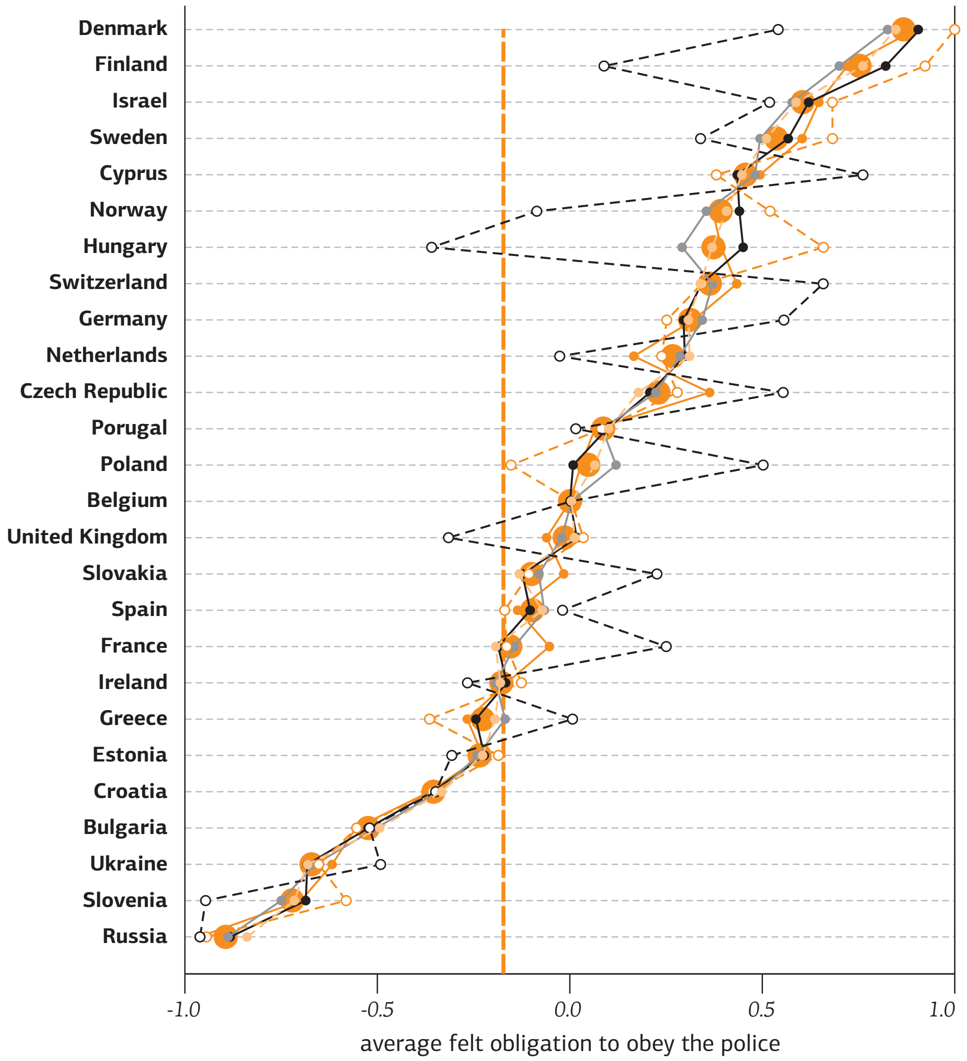


Figure 21 adds the estimated means from the last three models, where the models with two non-equivalent items are indicated with dashed thin lines. We see that the models with two non-equivalent items produce a fair amount of variation in the estimated means. Say, for example, one is interested in comparing Norway and Hungary. Depending on the specific method one uses, Norway has higher levels of trust than Hungary, or it has very similar levels, or Hungary has higher levels of trust than Norway

4.4 Moral alignment with the police

Figure 22 moral alignment with the police, measurement equivalence assumed

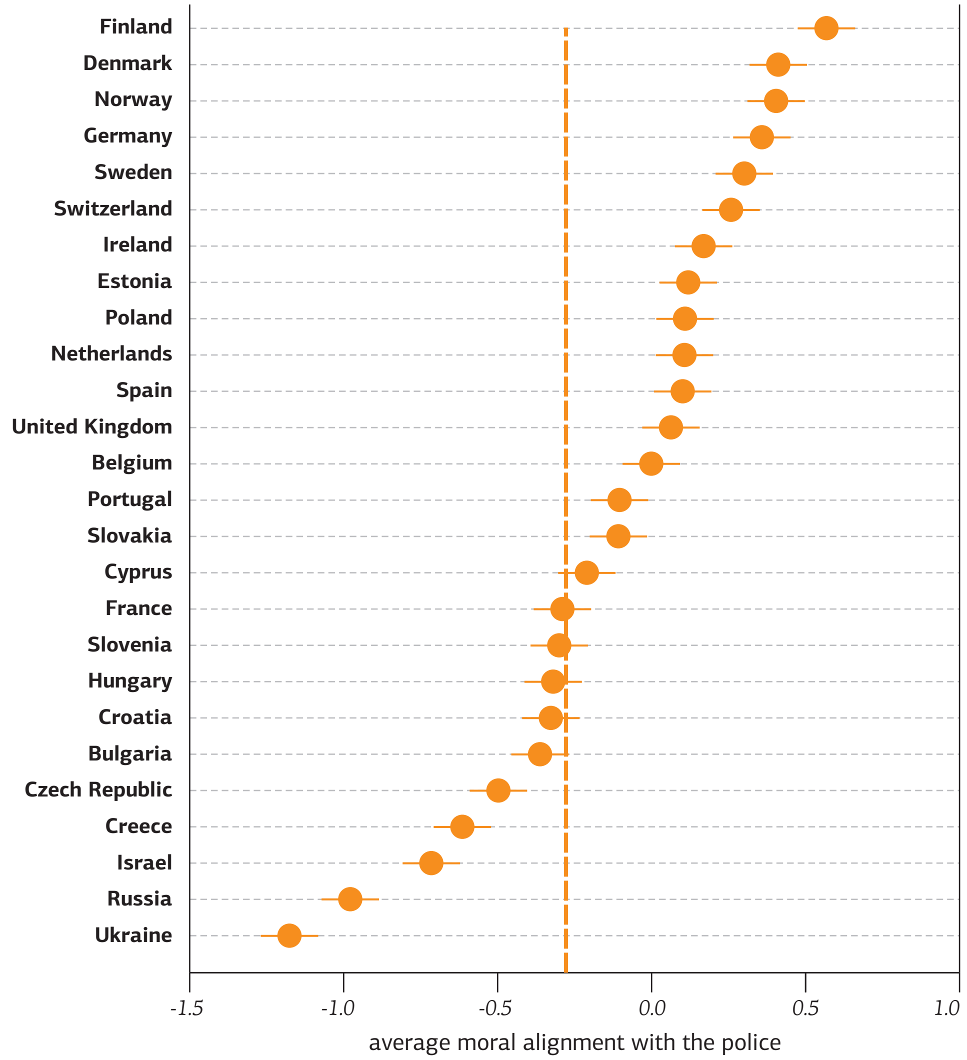


Figure 22 shows estimated levels of moral alignment with the police (the belief that police officers share their sense of right and wrong) in each of the 26 countries (with 95% confidence intervals) when one assumes that the scales work the same in each context.

Figure 23 moral alignment with the police, adding one item non-equivalence

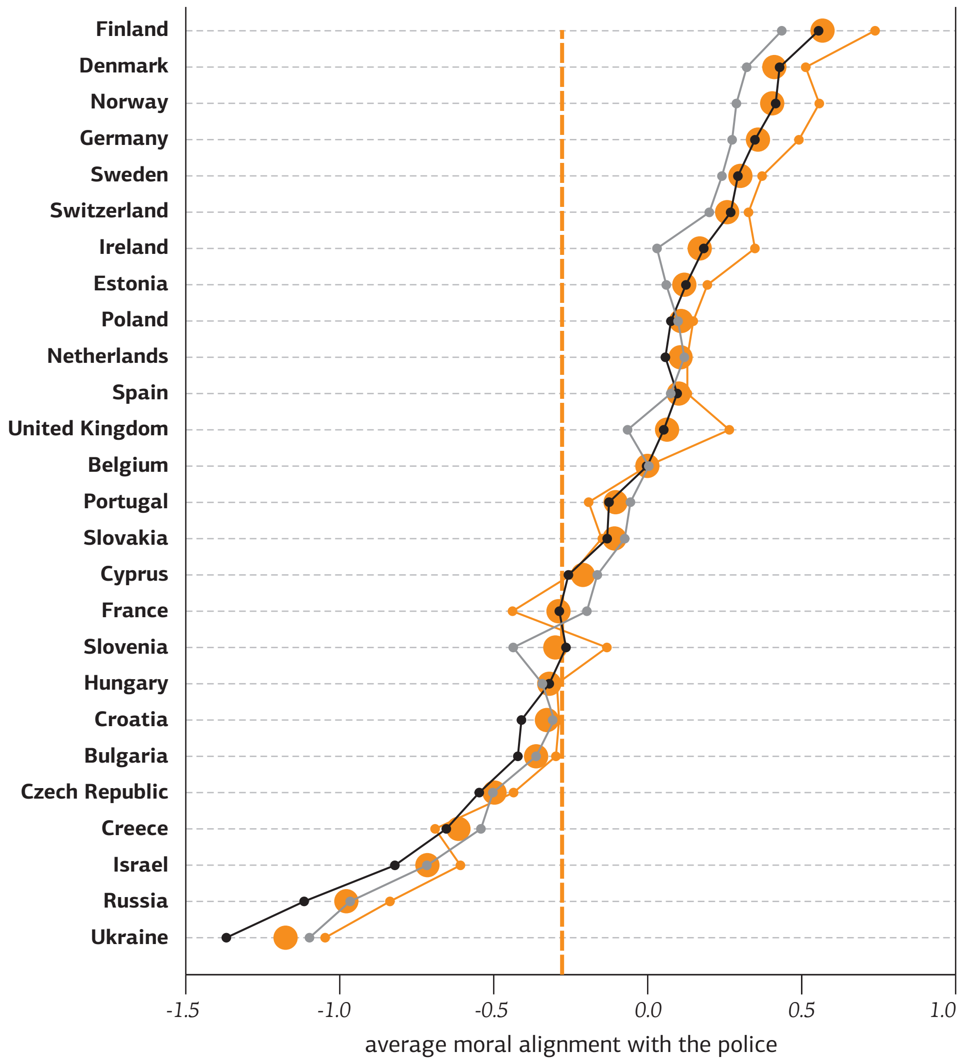


Figure 23 shows the means from the equivalence model but also plots means from the three models with one item non-equivalent. We can see that the estimates move around a small amount.

Figure 24 moral alignment with the police, adding two item non-equivalence

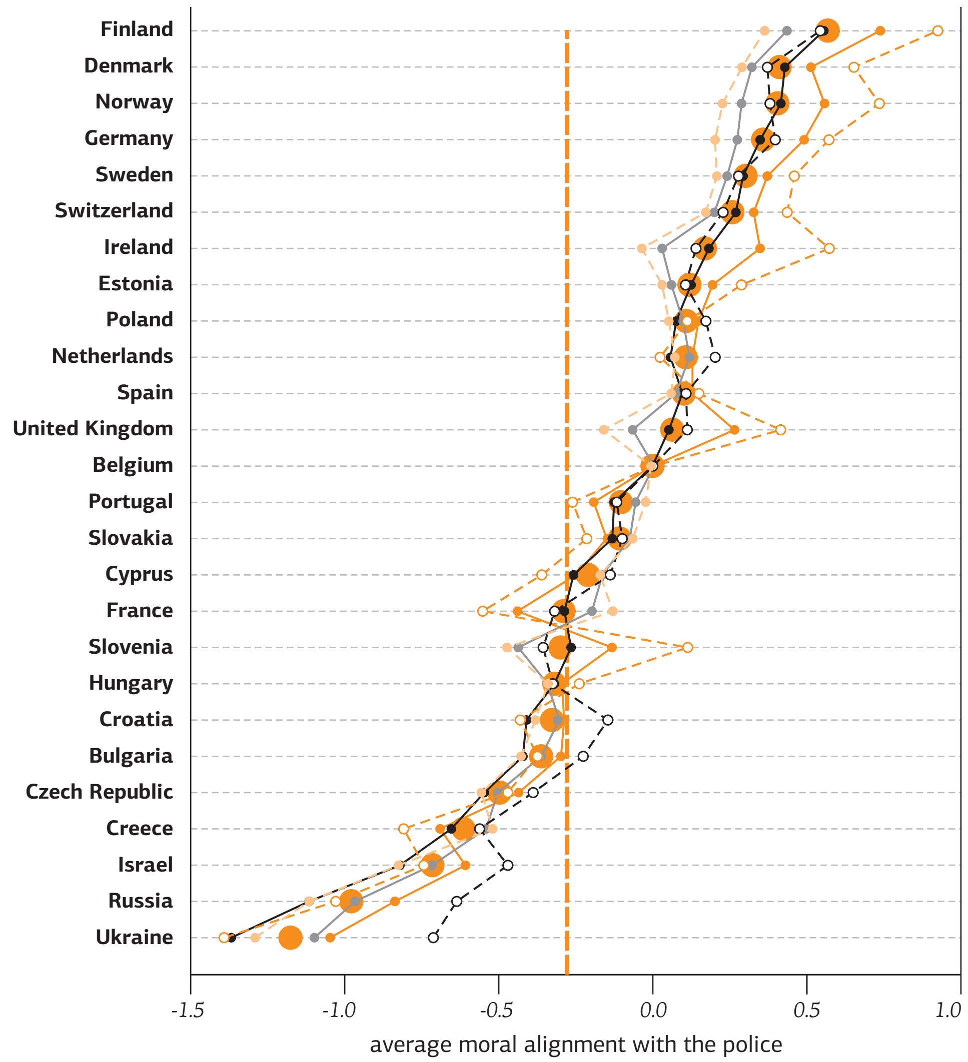


Figure 24 adds the estimated means from the last three models, where the models with two non-equivalent items are indicated with dashed thin lines. We see that the models with two non-equivalent items produce quite a lot of variation in the estimated means. Say, for example, one is interested in comparing the Ukraine and the Russian Federation. Depending on the specific method one uses, Ukraine has higher levels of trust than the Russian Federation, or it has very similar levels, or the Russian Federation has higher levels of trust than Ukraine.

5. SUMMARY AND NEXT STEPS

In this FIDUCIA deliverable to the European Commission we have outlined the importance of social indicators of trust and legitimacy in the domain of criminal justice. We have defined and measured trust and legitimacy, and we have provided levels of trust and legitimacy in 26 countries using two methods. The first method draws upon a single measure of each construct, weighted to form national estimates using Round 5 European Social Survey (ESS) data. The second uses multiple indicators of certain constructs. Because the data are cross-national, and because the scales can work differently in different contexts, we assessed the comparability of the scales and the effect of any lack of direct comparability on national estimates.

We have shown levels of trust and legitimacy in 26 countries. Reporting findings using a single measure of each construct we found that levels of trust tended to be lowest in Greece, Portugal, Ukraine, Bulgaria and the Russian Federation, and highest in Switzerland, Finland, Denmark and Netherlands. Levels of legitimacy tended to be lowest in Ukraine and the Russian Federation, and highest in Denmark, Finland, Sweden and Norway.

Second, some of the constructs are measured using scales in R5 ESS, and we found a lack of measurement equivalence. We also found that a lack of equivalence potentially compromises any substantive cross-national comparisons. The next step is to use some kind of model averaging to estimate national levels, weighting different estimates according to measurement equivalence model fit.

Work Package 11 has two other tasks. Task 11.2 turns to the explanation of levels of trust and legitimacy across Europe. This task will address a wealth of individual and national/contextual factors will may help explain why some individuals find the police (for example) trustworthy while other individuals do not, and why the police (for example) are seen by citizens to be legitimate in some countries and less so in other countries. Task 11.2 will also add measures of normative legitimacy, e.g. national level measures of corruption, accountability and transparency.

Furthermore, Task 11.3 examines whether public compliance with the law regarding everyday-crimes (such as buying stolen goods) and intentions to cooperate with the police and courts are linked to trust and legitimacy. We will explore two models of crime-crime policy. The first is based on an instrumental model of public behaviour. Here, people's reasons for law-breaking and cooperating with legal authorities are based on self-interested calculation – that is, driven by "what is in it for me?" If this model holds, then it follows that compliance and cooperation will be secured by the presence of formal or informal mechanisms of social control and the existence of severe sanctions for wrong-doers. The second model is based on normative motivations. It is based upon the belief that it is right to obey the law – simply because it is the law – and it is right to help justice systems in the fight against crime. Legal legitimacy is the belief that laws are personally binding, that one has a moral obligation to abide by the law. When people believe that rules are binding, they feel a duty to obey the rules put in place by authorities, regardless of the morality of a given act or the unfamiliar nature of the offence.

REFERENCES

Beetham, D. (1991). *The Legitimation of Power.* London: Macmillan.

Bottoms, A., and Tankebe, J. (2012), 'Beyond Procedural Justice: A Dialogic Approach to Legitimacy in Criminal Justice', *Journal of Criminal Law and Criminology.*

Bradford, B., Jackson, J. and Hough, M. (2013a). 'Police Legitimacy in Action: Lessons for Theory and Practice', in Reisig, M. & Kane, R. (eds.) *The Oxford Handbook of Police and Policing.* Oxford: Oxford University Press.

Bradford, B., Jackson, J. and Hough, M. (2013b). 'Police Futures and Legitimacy: Redefining "Good Policing"', in Brown, J. (ed.) *Future of Policing*, Oxon: Routledge.

Cavadino, M. & Dignan, J. (2006) *Penal Systems. A Comparative Approach.* London / Thousand Oaks / New Delhi: Sage Publications.

European Social Survey (2011). 'Trust in Justice: Topline Findings from the European Social Survey', *ESS Topline Results Series* Issue 1. By Jackson, J., Hough, M., Bradford, B., Pooler, T. M., Hohl, K. and Kuha, J.

European Social Survey (2012). 'Policing by Consent: Understanding the Dynamics of Police Power and Legitimacy', *ESS Country Specific Topline Results Series* Issue 1 (UK). By Jackson, J., Hough, M., Bradford, B., Hohl, K. and Kuha, J.

Hardin, R. (2002). T*rust and Trustworthiness.* New York: Russell Sage.

Hardin, R. (2006). *Trust.* Cambridge: Polity Press.

Hawdon, J. (2008) 'Legitimacy, Trust, Social Capital, and Policing Styles: A Theoretical Statement', *Police Quarterly* 11: 182—201.

Hough, M. (2013) 'Procedural justice and professional policing in times of austerity',*Criminology and Criminal Justice* 13(2): 181–197.

Hough, M., Bradford, B., Jackson, J. and Roberts, J. (2013c). *Attitudes to sentencing and trust in justice: Exploring trends from the Crime Survey of England and Wales.* London: Ministry of Justice.

Hough, M., Jackson, J. and Bradford, B. (2013a, in press). 'The Governance of Criminal Justice, Legitimacy and Trust', in Body-Gendrot, S., Lévy, R., Hough, M. Snacken, S. and Kerezsi, K. (eds.) T*he Routledge Handbook of European Criminology*. Oxon: Routledge.

Hough, M., Jackson, J. and Bradford, B. (2013b, in press). 'Legitimacy, Trust and Compliance: An Empirical Test of Procedural Justice Theory Using the European Social Survey', in Tankebe, J. and Liebling, A. (eds.) Legitimacy and Criminal Justice: An International Exploration. Oxford: Oxford University Press.

Jackson, J. and Bradford, B. (2010). 'What is Trust and Confidence in the Police?', Policing: A Journal of Policy and Practice, 4, 3, 241-248.

Jackson, J., Bradford, B., Hough, M., Kuha, J., Stares, S. R., Widdop, S., Fitzgerald, R., Yordanova, M. and Galev, T. (2011). 'Developing European Indicators of Trust in Justice', *European Journal of Criminology*, 8, 4, 267-285.

Jackson, J., Bradford, B., Hough, M., Myhill, A., Quinton, P., and Tyler, T. R. (2012a). 'Why Do People Comply with the Law? Legitimacy and the Influence of Legal Institutions', *British Journal of Criminology*, 52, 6, 1051-1071.

Jackson, J., Bradford, B., Stanko, E. A. and Hohl, K. (2012b). J*ust Authority? Trust in the Police in England and Wales.* Oxon: Routledge.

Jackson, J., Huq, A., Bradford, B. and Tyler, T. R. (2013, in press). 'Monopolizing Force? Police Legitimacy and Public Attitudes towards the Acceptability of Violence', Psychology, *Public Policy and Law.*

Jowell, R. and Eva, G. (2009). 'Happiness is Not Enough: Cognitive Judgements as Indicators of National Wellbeing', *Social Indicators Research*, 91, 3, 317-328.

Luhmann, N. (1979). *Trust and Power.* New York: Wiley.

Mollering, G. (2006). *Trust: Reason, Routine and Reflexivity.* Bingley: Emerald Group.

APPENDIX

Police effectiveness

LCAT output

Log-likelihood and information criteria:

	Model	Observations	Parameters	LL	AIC	BIC	AICmin	BICmin	
1	eff.eq	49972	59	-292441.1	585000.1	585520.5	0	0	1
2	eff.eff1	49972	134	-290960.3	582188.5	583370.3	0	0	2
3	eff.eff2	49972	134	-290707.6	581683.2	582865.0	0	0	3
4	eff.eff3	49972	134	-291302.2	582872.3	584054.1	0	0	4
5	eff.eff12	49972	209	-289946.9	580311.7	582154.9	0	0	5
6	eff.eff13	49972	209	-289746.7	579911.3	581754.5	0	0	6
7	eff.eff23	49972	209	-289634.4	579686.7	581529.9	1	1	7

Other fit statistics for linear factor analysis:

	Model	Chi2	df	P-value	CFI	TLI	RMSEA	RMSEA95l	RMSEA95u	
1	eff.eq	5750.212	175	0	0.866	0.940	0.129	0.126	0.132	1
2	eff.eff1	2788.603	100	0	0.935	0.950	0.118	0.115	0.122	2
3	eff.eff2	2283.275	100	0	0.948	0.959	0.107	0.103	0.110	3
4	eff.eff3	3472.385	100	0	0.919	0.937	0.132	0.129	0.136	4
5	eff.eff12	761.803	25	0	0.982	0.945	0.124	0.116	0.131	5
6	eff.eff13	361.409	25	0	0.992	0.975	0.084	0.076	0.091	6
7	eff.eff23	136.818	25	0	0.997	0.992	0.048	0.041	0.056	7

Likelihood ratio tests:

	H0	H1	LR.test	df	P.value
1	eff.eq	eff.eff1	2961.610	75.000	<0.0005
2	eff.eq	eff.eff2	3466.938	75.000	<0.0005
3	eff.eq	eff.eff3	2277.828	75.000	<0.0005
4	eff.eff2	eff.eff12	1521.472	75.000	<0.0005
5	eff.eff1	eff.eff13	2427.194	75.000	<0.0005
6	eff.eff2	eff.eff23	2146.456	75.000	<0.0005

Police procedural justice

LCAT output

Log-likelihood and information criteria:

	Model	Observations	Parameters	LL	AIC	BIC	AICmin	BICmin	
1	pj.eq	48953	59	-119522.0	239162.0	239681.1	0	0	1
2	pj.pj1	48953	134	-118955.8	238179.7	239358.7	0	0	2
3	pj.pj2	48953	134	-119038.2	238344.4	239523.4	0	0	3
4	pj.pj3	48953	134	-118859.4	237986.9	239165.9	0	0	4
5	pj.pj12	48953	209	-118428.2	237274.3	239113.2	0	0	5
6	pj.pj13	48953	209	-118377.4	237172.7	239011.7	1	1	6
7	pj.pj23	48953	209	-118396.8	237211.5	239050.5	0	0	7

Other fit statistics for linear factor analysis:

	Model	Chi2	df	P-value	CFI	TLI	RMSEA	RMSEA95l	RMSEA95u	
1	pj.eq	2449.624	175	0	0.936	0.972	0.083	0.080	0.086	1
2	pj.pj1	1317.282	100	0	0.966	0.973	0.080	0.077	0.084	2
3	pj.pj2	1481.984	100	0	0.961	0.970	0.086	0.082	0.090	3
4	pj.pj3	1124.470	100	0	0.971	0.978	0.074	0.070	0.078	4
5	pj.pj12	261.896	25	0	0.993	0.979	0.071	0.063	0.079	5
6	pj.pj13	160.338	25	0	0.996	0.988	0.054	0.046	0.062	6
7	pj.pj23	199.138	25	0	0.995	0.985	0.061	0.053	0.069	7

Likelihood ratio tests:

	H0	H1	LR.test	df	P.value
1	pj.eq	pj.pj1	1132.342	75.000	<0.0005
2	pj.eq	pj.pj2	967.640	75.000	<0.0005
3	pj.eq	pj.pj3	1325.154	75.000	<0.0005
4	pj.pj2	pj.pj12	1220.088	75.000	<0.0005
5	pj.pj1	pj.pj13	1156.946	75.000	<0.0005
6	pj.pj2	pj.pj23	1282.848	75.000	<0.0005

Obligation to obey the police

LCAT output

Log-likelihood and information criteria:

	Model	Observations	Parameters	LL	AIC	BIC	AICmin	BICmin	
1	obey.eq	49501	59	-313977.8	628073.7	628593.5	0	0	1
2	obey.obey1	49501	134	-310472.6	621213.2	622393.7	0	0	2
3	obey.obey2	49501	134	-313146.3	626560.6	627741.1	0	0	3
4	obey.obey3	49501	134	-312935.3	626138.7	627319.2	0	0	4
5	obey.obey12	49501	209	-309683.8	619785.5	621626.8	0	0	5
6	obey.obey13	49501	209	-309621.6	619661.1	621502.4	1	1	6
7	obey.obey23	49501	209	-310960.1	622338.1	624179.3	0	0	7

Other fit statistics for linear factor analysis:

	Model	Chi2	df	P-value	CFI	TLI	RMSEA	RMSEA95l	RMSEA95u	
1	obey.eq	8872.600	175	0	0.902	0.956	0.162	0.159	0.164	1
2	obey.obey1	1862.096	100	0	0.980	0.984	0.096	0.092	0.100	2
3	obey.obey2	7209.508	100	0	0.920	0.937	0.193	0.189	0.197	3
4	obey.obey3	6787.588	100	0	0.924	0.941	0.187	0.184	0.191	4
5	obey.obey12	284.450	25	0	0.997	0.991	0.074	0.066	0.082	5
6	obey.obey13	160.060	25	0	0.998	0.995	0.053	0.046	0.061	6
7	obey.obey23	2837.018	25	0	0.968	0.901	0.243	0.236	0.251	7

Likelihood ratio tests:

	H0	H1	LR.test	df	P.value
1	obey.eq	obey.obey1	7010.504	75.000	<0.0005
2	obey.eq	obey.obey2	1663.092	75.000	<0.0005
3	obey.eq	obey.obey3	2085.010	75.000	<0.0005
4	obey.obey2	obey.obey12	6925.058	75.000	<0.0005
5	obey.obey1	obey.obey13	1702.036	75.000	<0.0005
6	obey.obey2	obey.obey23	4372.490	75.000	<0.0005

Moral alignment with the police

LCAT output

Log-likelihood and information criteria:

	Model	Observations	Parameters	LL	AIC	BIC	AICmin	BICmin	
1	moralid.eq	49969	59	-164041.3	328200.5	328720.8	0	0	1
2	moralid.moralid1	49969	134	-163370.6	327009.1	328190.9	0	0	2
3	moralid.moralid2	49969	134	-162771.1	325810.2	326992.0	0	0	3
4	moralid.moralid3	49969	134	-162114.5	324497.1	325678.8	0	0	4
5	moralid.moralid12	49969	209	-161779.9	323977.8	325821.0	0	0	5
6	moralid.moralid13	49969	209	-161444.1	323306.2	325149.4	1	1	6
7	moralid.moralid23	49969	209	-161451.1	323320.1	325163.3	0	0	7

Other fit statistics for linear factor analysis:

	Model	Chi2	df	P-value	CFI	TLI	RMSEA	RMSEA95l	RMSEA95u	
1	moralid.eq	5420.236	175	0	0.896	0.954	0.125	0.122	0.128	1
2	moralid.moralid1	4078.826	100	0	0.921	0.939	0.144	0.140	0.148	2
3	moralid.moralid2	2879.937	100	0	0.945	0.957	0.120	0.117	0.124	3
4	moralid.moralid3	1566.790	100	0	0.971	0.977	0.087	0.084	0.091	4
5	moralid.moralid12	897.490	25	0	0.983	0.946	0.135	0.127	0.142	5
6	moralid.moralid13	225.912	25	0	0.996	0.988	0.065	0.057	0.073	6
7	moralid.moralid23	239.832	25	0	0.996	0.987	0.067	0.059	0.075	7

Likelihood ratio tests:

	H0	H1	LR.test	df	P.value
1	moralid.eq	moralid.moralid1	1341.410	75.000	<0.0005
2	moralid.eq	moralid.moralid2	2540.300	75.000	<0.0005
3	moralid.eq	moralid.moralid3	3853.446	75.000	<0.0005
4	moralid.moralid2	moralid.moralid12	1982.448	75.000	<0.0005
5	moralid.moralid1	moralid.moralid13	3852.914	75.000	<0.0005
6	moralid.moralid2	moralid.moralid23	2640.106	75.000	<0.0005

Edited by: Stefano Maffei and Lenga Markopoulou
Designed by: Babis Touglis and Achilleas Gerokostopoulos (www.thezyme.gr)

Published by the EPLO in September 2014

This publication has been produced with the assistance of the European Union.
The contents of this publication are the sole responsibility of partners of the Fiducia Project and can in no way be taken to reflect the views of the European Union.