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Study on minimum sanctions in the EU Member States: Denmark

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Study on minimum sanctions in the EU Member States: DENMARK

Client: European Commission, DG Justice

National rapporteur:

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Purpose of the study

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

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

The study seeks to:

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

Scoping and definitions

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

Organisation

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

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What we ask from you as country rapporteur

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

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

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

Confidentiality

Please inform each interviewee that:

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

Country	DENMARK
Date	Sep 2014
Rapporteur	Jørn Vestergaard, Professor of Criminal Law, Faculty of Law, University of Copenhagen
List of interviewees	<ul style="list-style-type: none"> ▪ Retspræsident Bent Carlsen, Østre Landsret (President of Eastern Highcourt, chairman of the Permanent Penal Committee, <i>Straffelovrådet</i>) ▪ Landsdommer Peter Thønnings, Østre Landsret (High Court judge, Eastern High Court) ▪ Landsdommer Finn Morten Andersen, Østre Landsret (High Court judge, Eastern High Court) ▪ Landsdommer Susanne Skotte Wied, Østre Landsret (High Court judge, Eastern High Court) ▪ Landsdommer Dorte Jensen, Vestre Landsret , Østre Landsret (High Court judge, Western High Court) ▪ Statsadvokat Jens Røn (District Attorney at the National Prosecutor's office) ▪ Statsadvokat Jesper Hjortenbergt (Danish representative at Eurojust) ▪ Vicedirektør Annette Esdorff (Deputy Director, Department of Corrections) ▪ Vicefængselsinspektør Christian Høygaard (Deputy Prison Director)

Please answer the questions, if relevant, for **both natural and legal persons**.

Please note that all responses should cover **both imprisonment and fines**, if applicable.

Please attach relevant **literature** and other **source material** as much as possible

Please fill in the questionnaire which will make up your report.

1. Legal situation

1.1 Does your law provide for minimum sanctions? If yes, which ones (note that we are interested in both types of minimum sanctions: imprisonment and fines)? If not, please go to question 4.1. What are the minimum sanctions for imprisonment? What are the minimum sanctions for fines for natural and legal persons? *Please give a short overview of the system here, including information on legal persons, and more detailed information below.*

Abbreviations:

JV: Jørn Vestergaard

PC: Penal Code/Criminal Code (*Straffeloven*):

English (unofficial) version of the Penal Code/Criminal Code:

<http://jura.karnovgroup.dk/document/7000644895/1?versid=753-1-2013>.

JV:

a) In principle, Danish criminal Law allows for minimum sanctions in the sense that no legal impediments hinder the legislature from establishing statutory minimum levels of sanctions. However, only very few provisions carry enhanced minimum imprisonment terms, see further below.

b) For every category of offence, a statute specifies *the types of punishment* (fine and/or imprisonment) that are warranted in relation to that particular category of criminality. The particular sentencing provision may contain fine or imprisonment or both sanctions.

c) *Imprisonment* shall, ordinarily, be imposed as a flat, determinate sentence for a fixed period of time. An indeterminate term of life imprisonment is only authorised for intentional homicide, terrorist offences, serious crimes

against the state, genocide and some military offences.

d) If *imprisonment* is authorised for a specific offence, a sentence range is stipulated. In other words, a specific penal provision authorising imprisonment always lays down a *statutory sentencing frame* in between specified minimum and maximum prison term for that particular type of offence. As a point of departure for sentencing decisions, the punishment in the individual case shall be meted out within the stipulated statutory range, according to the courts' discretion. Modifications to the mentioned starting point are established by various other provisions regarding suspended sentences, community service, sentence reduction and punishment remission. The term sentence reduction covers instances where the punishment may be meted out below the minimum stipulated in the ordinary sentencing frame, even as a fine though only imprisonment is ordinarily authorised. The term remission of punishment is used here to cover instances where no punishment is handed out despite finding the defendant guilty.

e) If a *fine* is included in a particular provision as a sentencing option, no specifications as to the size of the penalty are provided. No statutes carry a minimum fine, neither stipulated as a certain amount of money nor as a specific number of day fines. The number of day fines for violating a Penal Code provision is set between 1 and 60 (PC § 51).

f) For some offence categories, a differentiation of sentencing ranges is established by distinguishing between modes or degrees of seriousness and setting up separate sentencing frames. The point of departure in sentencing is the ordinary sentencing frame. One or more additional sentencing side-frames may be provided to allow for increasing or reducing the punishment, either defining a qualified category of offence with particular features or, rather, opening up for and relying on more unrestricted considerations regarding aggravating or mitigating circumstances. In other words, two or more sentencing ranges might be defined in the law, so that the court gets an indication from the legislature as to the range within which sentences for a particular type of offences are typically presumed to be meted out.

g) The *general minimum imprisonment term* is 7 days (PC § 33 (1)). However, if a fine is transformed into a prison term, the minimum number of days may be as low as two (PC § 54 (1)). Also, an additional prison term added to a previous sentence for an offence committed earlier but adjudicated subsequently may go under the ordinary 7 days statutory minimum (PC § 89). A sentence category labelled »lenient imprisonment« (*hæfte*) which was a short jail-sentence, typically of 7, 10, 20 or 30 days, was abolished in 2001. As a consequence, the minimum term authorised for the sanction imprisonment (*fængsel*) was lowered from 30 days to 7 days. As the rules regarding the general minimum imprisonment term are presumably not of further interest for the present study, no further observations regarding this subject will be offered here.

h) Many criminal provisions regarding relatively serious offences carry an imprisonment sentence with a specified maximum as the ordinary sentencing range, e.g. imprisonment of up to 8 years as the ordinary sentencing range for rape supplemented by an enhanced sentencing range of imprisonment of up to 12 years in case of particularly aggravating circumstances. As this type of stipulated minimum sanction is presumed not to be of further interest for the present study, only sporadic observations regarding this subject will be offered here.

i) A statutory catalogue of basic guidelines regarding *mitigating* and *aggravating* circumstances to be taken into consideration by the court when meting out punishment in an individual case is set up in PC §§ 82-83.

j) Only a few provisions regarding **enhanced minimum imprisonment terms** prevail under Danish criminal law (homicide PC § 237: from 5 years to life imprisonment; high treason/regicide attempt PC § 112: 6 years imprisonment, aggravated perpetration of the Act on weapons and explosives PC § 192 a: 1 years imprisonment). Former provisions to such an effect have gradually been abolished, as they were seen to restrict the courts' sentencing discretion too much. Even with the stipulation of a mandatory minimum, the court may impose a more lenient sanction due to a specific assessment of the individual case according to particular provisions on sentence reduction, see above.

k) Danish sentencing law leaves a good deal of *scope for the exercise of judicial discretion*. The criteria for eligibility regarding the variety of non-custodial measures available as alternatives to imprisonment are generally very vague, so courts deal rather freely with the choice between sanctions as with principles affecting the length of sentences.

l) Ordinarily, *the legislature* does not seek to influence the details of sentencing practice. On occasion, however, politicians do specify more or less clear expectations regarding sentencing levels in the *travaux préparatoires* of a

statute, and such pronouncements have been increasingly prevalent in various connections where harsher sentences have been called for, e.g. with reference to cases regarding street violence, sexual abuse, robbery in a private home, gang related offences, etc. In general, courts mostly rely on tradition and precedent in terms of finding the general sentencing levels for particular offences and types of cases as well as in attributing weight to particular degrees of seriousness. Political statements are, however, taken into consideration and influence court practice. Thus, courts are amenable to explicit signals send by the legislature to adjust previous sentencing practice for specific types of cases.

m) Courts have no part in parole decision making. Inmates with imprisonment sentences of two months or more are, normally, eligible for conditional parole, typically after having served two thirds of the sentence (PC § 38 ff).

1.2 Does your law provide for a general minimum sanction that is applicable to all offences (imprisonment, fines)? What is the level of these general minimum sanctions? Please provide details.

JV: See answers to question 1.1 above under e) fines, and g) imprisonment.

1.3 Does your law apply a categorization of offences with defined levels of minimum sanctions (for example a maximum coupled with a mandatory minimum, or a mandatory minimum where the offence was committed in a specified way or in particular circumstances)? Or is the level of a minimum sanction regulated in each specific offence in a different way? Please provide details.

JV: Danish criminal law does not apply a categorization of offences with defined levels of minimum sanctions, neither a maximum coupled with a mandatory minimum, nor a mandatory minimum where the offence was committed in a specified way or in particular circumstances. Regarding a few provisions authorizing *enhanced minimum imprisonment terms*, see answer to question 1.1 above under j).

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

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

JV: See table 1 and answers to question 1.1 above under j).

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

JV: The enhanced minimum imprisonment terms provided for in the (few) mentioned statutes apply in all cases concerning the relevant offences (homicide PC § 237: from 5 years to life; high treason/regicide PC § 112: 6 years, aggravated weapons offences PC § 192 a: 1 year).

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

JV: For a number of offences, the Director of Prosecutions (Rigsadvokaten) has issued guidelines on sentencing positions, see a list here: <http://www.anklagemyndigheden.dk/Sider/Viden.aspx?VidensbaseSearchId=a9e93ac7-d856-4468-9472-c82f67904020&VidensbaseSearchString=strafp%c3%a5stand>. Neither the guidelines nor prosecutors' pleas in specific cases are binding for the courts. With regard to two of the three offences carrying enhanced minimum imprisonment sentences, the following guidelines exist:

Regarding *homicide* (PC § 237), the Director of Prosecutions (Rigsadvokaten) has issued guidelines on sentencing positions (RM 9-2005 – Strafpåstanden i sager om overtrædelse af straffeloven). Intentional killing a spouse: plea of 12 years imprisonment, reference to Supreme Court practice. Intentional killing a child: plea of 14 years imprisonment, reference to Supreme Court practice. Sexually molesting and killing a child: plea of life imprisonment.

Regarding *aggravated weapons offences* (PC § 192 a), the Director of Prosecutions (Rigsadvokaten) has issued guidelines on sentencing positions (RM 6-2005 - Sanktionspåstande i våbenlovssager, annotated July 2014).

1.7 (a) Are there **provisions in your legislation** according to which **in specific circumstances minimum sanctions do not exist** (for example if the offender is a juvenile)? (b) Are there legal provisions according to which the level of minimum sanctions **is lower according to the law** (for example if the offender is a young adult)? If so, please explain the provisions in detail.

JV:

Under Danish criminal law, there are no provisions according to which in specific circumstances minimum sanctions do not exist.

Courts are vested a wide discretionary power to reduce the punishment below the statutory minimum or completely remit the punishment if facts regarding the offence, the individual offender or other circumstances indicate such a decision (PC § 83). Under these rules, the ordinary statutory minimum sentence stipulated for the individual offence may be lowered/eliminated. Hence, the punishment in a homicide case may, notwithstanding that the statutory minimum limit is 5 years imprisonment, be a shorter prison term. The punishment may even be a number of day fines, which is naturally not a relevant option in practice. The sentence in a case where the ordinary minimum is imprisonment for 7 days may be a fine, if particular reasons for such a reduced sentence are found to be relevant. In case of further mitigating circumstances, the court may abstain completely from applying any punishment. The court may even remit punishment in a case regarding an offence carrying a mandatory minimum sentence and life imprisonment in the sentencing frame, e.g. homicide, but naturally, this happens only in very rare instances.

The Penal Code contains a non-exhaustive list of mitigating sentencing factors (PC § 82): (1) youth of the offender, (2) old age of the offender, (3) exculpatory circumstances, (4) ignorance or mistake of criminal law, (5) provocation of the offender, (6) distress, deceit or exploitation of the offender, (7) fervour or strong emotions on the part of the offender, (8) voluntary attempt to rectify the danger caused, (9) voluntary surrender and confession, (10) provision of crucial information regarding other perpetrators, (11) restoration of damage caused, (12) serious consequences of the criminal act suffered by the offender, (13) excessive delay of criminal process, (14) obsolescence due to time lapse.

Furthermore, there are general rules regarding reduction of punishment below the ordinary sentencing latitude if an offender is convicted of an unsuccessful criminal attempt (PC § 21) or criminal participation of a lesser kind (PC § 23).

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

JV: Yes, courts are allowed to go below the statutory minimum imprisonment sentence, as stated above in the answer to question 1.7 (a). As already mentioned, the relevant provisions are placed in the Penal Code (PC § 83).

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

JV: See answer stated above under question 1.7 (a).

Table 1. Minimum sanctions

Offence	Yes / No	Provisions, Legal act nr and date	Type of sanction, minimum sanction level*	Offenders**
Murder (wilful homicide, but without premeditation)	Yes	PC § 237 Enacted by Act 126, 1930	minimum 5 years imprisonment, maximum life imprisonment	All
– Aggravating				
– Mitigating				
Rape	No			
– Aggravating				
– Mitigating				
Grievous bodily injury	No			
– Aggravating				
– Mitigating				
Theft	No			
– Aggravating				
– Mitigating				
Fraud (including against financial interests of the EU)	No			
– Aggravating				
– Mitigating				
Participation in a terrorist organisation in the sense of Art 2 (2) (b) FD 2002/475/JHA	No			
– Aggravating				
– Mitigating				
Sexual abuse of children in the sense of Art 3 (4) Directive 2011/92/EU	No			
– Aggravating				

Offence	Yes / No	Provisions, Legal act nr and date	Type of sanction, minimum sanction level*	Offenders**
– Mitigating				
Trafficking in human beings	No			
– Aggravating				
– Mitigating				
Illicit drug trafficking	No			
– Aggravating				
– Mitigating				
Money laundering	No			
– Aggravating				
– Mitigating				
Active Corruption in the sense of Art 3 (1) EU Corruption Convention 1997	No			
– Aggravating				
– Mitigating				
Passive Corruption in the sense of Art 2 (1) EU Corruption Convention 1997	No			
– Aggravating				
– Mitigating				
Counterfeiting currency	No			
– Aggravating				
– Mitigating				
Forgery/counterfeiting of means of payment	No			
– Aggravating				
– Mitigating				
Participation in a criminal organisation in the	No			

Offence	Yes / No	Provisions, Legal act nr and date	Type of sanction, minimum sanction level*	Offenders**
sense of Art 2 (a) FD 2008/841/JHA				
– Aggravating				
– Mitigating				
Trafficking in stolen vehicles	No			
– Aggravating				
– Mitigating				
Robbery	No			
– Aggravating				
– Mitigating				
Armed robbery	No			
– Aggravating				
– Mitigating				
Arms trafficking	Yes	PC § 192 a Enacted by Act 501, 2009	aggravated transgressions of the Act on weapons and explosives: minimum 1 years imprisonment	All
– Aggravating				
– Mitigating				
Treason	(Yes)	PC § 112 Enacted by Act 225, 1952	high treason/regicide: minimum 6 years imprisonment	All
– Aggravating				
– Mitigating				
Collection, transport or disposal of dangerous waste	No			
– Aggravating				
– Mitigating				
Perjury	No			

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

2. Imposition

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

JV:

Courts very seldom use their discretion to go below the minimum stipulated for the few offences carrying minimum imprisonment sentences. In the last ten years only one offender convicted of homicide was sentenced below the minimum; according to available statistics the imposed punishment was a 4 year imprisonment sentence. Not much can be said in general regarding conditions characterising such extremely rare cases, but the interviewed practitioners point to the obvious mitigating factors like the offenders youth and the minor importance of the particular offence committed.

One of the interviewed judges stated that if particular mitigation circumstances were relevant the court would go below the level of minimum sanctions if it were vested the discretion to do so.

An extraordinary case: Two sisters, aged 20 years and 26 years, killed their common cohabitee, father of their two children born with eight weeks interval. The man was president of a local biker group, the Gypsies. He had tyrannized the women for some time and had threatened to kill one of the babies. With a shotgun, the younger sister shot the man in his face while he was lying in bed. As he didn't die from the first shot, she fired at him twice more. Thereafter, he managed to crawl over the floor, and then the older sister killed him with a last shot. The jurors remitted the punishment completely. (Reported in *Ugeskrift for Retsvæsen*: U 1986.251 H).

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

JV: Practitioners agree unanimously with the below mentioned conclusion of the Permanent Penal Commission that legislation stipulating statutory minimum sentences is unnecessary and inadequate. See also more detailed information concerning the interviews below.

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

JV:

Under Danish law, the rules regarding parole apply to all prison sentences, whether or not the offender has been convicted under a statute stipulating a minimum imprisonment sentence. The law does not require that a minimum sanction be executed in full.

After serving *two-thirds* of a prison sentence, an inmate may be considered eligible for release on parole, if at least two months have been served (PC § 38 (1)). The correctional authorities must, on their own initiative, make a decision concerning such release prior to expiration of the period mentioned so that a possible release may be put into effect when the relevant date occurs. Thus, the convicted offender will not have to personally apply for release on parole after two-thirds time.

Under special circumstances, release on parole may take effect before two-thirds of the prison term, but only if *half of the imprisonment sentence* has been served. (PC § 38 (2)). Early release under this rule typically takes place at some point when between half and two-thirds of the sentence. The provisions regarding such extraordinary parole release may, e.g., be applied if it is clearly indicated that early parole would benefit a rehabilitative purpose or a specific treatment initiative. This may, in particular, be relevant in instances where close to two-thirds of the term of imprisonment has already been served and where the inmate has employment, education or accommodation opportunities within reach and if such opportunities would be wasted if the inmate had to wait for release until some later date. Furthermore, serious humanitarian considerations may provide a reason for early parole, particularly in instances where considerations regarding pardoning for the entire term of imprisonment might be a relevant option, e.g. due to an inmate's seriously bad health condition. The possibility of early release on parole is more likely for juvenile offenders than in other instances. In addition, release on parole prior to having served two-thirds of the sentence will be a possibility in certain cases depending on an overall assessment of the individual inmate's condition, taking into regard such factors as the following: young age at the time of the crime, old age, no history of prior imprisonment, minimal risk of recidivism, a long period of incarceration, pre-trial detention of a particularly long duration, continued enforcement of the sentence considered harmful. A multitude of such circumstances might be decisive, even though, they, separately, would not be of sufficient importance to justify that early parole is extraordinarily granted.

Early parole before two thirds of the prison term may also take effect in instances where the inmate has participated in some kind of rehabilitative programme (PC § 40 a).

In 2014, the parole provisions were amended by certain statutory restrictions regarding instances where the convict is affiliated with a group involved in violent gang conflicts (Act 733, 2014).

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

JV: Under Danish criminal law there are no particular legal provisions on the execution of minimum sanctions.

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

JV:

Under Danish law, the general provisions regarding judiciary discretion to impose a sentence conditionally apply equally to cases regarding offenders sentenced under a statute stipulating a minimum imprisonment term. However, as only the crimes of homicide and serious weapons offences carry minimum sentences, courts rarely uses such discretionary powers. See further details in the practitioners' interviews below.

Regarding conditional release, see answers above to question 2.4.

3. Implications for criminal law

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

JV:

There are no other implications on substantive criminal law than the above mentioned.

Under Danish criminal law, there is no distinction between misdemeanours and felonies.

As mentioned above under answers to question 1.7 (a), there are general rules regarding reduction of punishment below the statutory minimum if an offender is convicted of an unsuccessful criminal attempt (PC § 21) or criminal participation of a lesser kind (PC § 23).

Regarding conditional release, please see answers above to question 2.4.

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

JV:

Under Danish law, there are no general implications of minimum sanctions on procedural criminal law.

Homicide cases shall be processed as jury trials, due to the sanctions plea.

4. Legal history and debate

4.1 Please provide a brief overview of the legal history of minimum sanctions in your MS.

(a) When were minimum sanctions introduced (if so), or abolished (if they have been)? (b) How has the concept and legal application of minimum sanctions evolved and why has it changed?

JV:

- Christian VI's *Danske Lov* of 1683 explicitly stipulated specific punishments for all included offences, e.g. blasphemy: the tongue should be cut from the mouth of the alive offender who should subsequently be beheading whereafter the cut off head together with the tongue be put on a pole; homicide: death penalty; aggravated assault: life imprisonment; involuntary manslaughter: fine; etc.

- Royal decree of 1789 on theft introduced sentencing frames.

- Penal Code of 1866 stipulated the death penalty for murder.

- Penal Code of 1930 introduced sentencing frames/latitudes as the general legislative mode, including a variety of minimum and maximum sentencing options to be applied according to the court's discretion by fixing flat sentences in individual cases, the ordinary punishments being fine, lenient imprisonment and imprisonment. A number of statutes carried minimum imprisonment sentences, e.g. for robbery. Most of these provisions have been altered so that such minimums now only remain for homicide, high treason/regicide and aggravated weapons offences. Please see answers above to question 1.4 under litra j).

- In 1967 the statutory sentencing minimum of 1 year for rape (PC § 216) was abolished (Act 248, 1967). The stipulation of the minimum sentence had in some cases led juries to either acquit defendants guilty of offences as being of lesser seriousness or to choose a statute regarding less serious sexual offences.

- Until 1981 a number of statutory sentencing minima still existed for a few offences. Some of these minima were then abolished (Act 256, 1981): arson murder (PC § 180, minimum 4 years); arson (PC § 181, minimum 6 months), endangering of public peril (PC § 183, minimum 6 months); robbery (PC § 288, 6 months, under aggravated circumstances 4 years). The stipulated minima were judged to be unnecessary and unreasonably blocking judiciary discretion in less serious cases.

- As mentioned above under the answer to question 1.4 litra j), statutory minimum sentences only existed for homicide and high treason/regicide attempt until recently when a 1 year minimum was introduced in 2009 for aggravated weapons offences under a new PC § 192 a.

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

JV:

As mentioned above, most minimum sanctions under Danish criminal Law have been abolished little by little.

The only minimum sanction that has been introduced for many years is the one in the provision regarding aggravated weapons offences (PC § 192 a, originally inserted by Act 411, 1997, amended by Act 378, 2002, Act 503, 2006, Act 500, 2008, Act 501, 2009 (by which the 1 year minimum sentence was introduced), and most

recently by Act 733, 2014. The aim of introducing a minimum sanction was to contribute to the strengthening of sentencing practice in biker gang related cases. The backdrop of this initiative was an ongoing gang war between rivaling gangs involving several serious shooting incidents, and a number of other legislative initiatives were taken in the fight against this menace. The 1 year minimum sentence was intended to serve as an efficient deterrent.

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

JV: There are no known concrete plans to introduce or alter minimum sanctions in the near future.

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

JV:

Statutory sentencing minima can be established by the legislature to indicate the gravity of a certain type of offence and can also be utilized as a method to instruct the judiciary to enhance the sanctions level for a specific type of offence, as seen by the introduction in 2009 of the above mentioned provision PC § 192 a regarding the 1 year minimum sentence for aggravated weapons offences.

Following the advice of the Permanent Penal Law Committee (*Straffelovrådet*) in several reports, the Danish Parliament (Folketinget) has restricted the use of sentencing minima to the above mentioned offences. Thus, the legislature has accepted the argument that such provisions can compel the judiciary to hand out sentences that appear unreasonable and unfair in concrete cases. Further, there is an overall trust that courts by and large apply their discretionary sentencing power in reasonable compliance with the legislator's expectations, which has also been substantiated by several studies.

In 2009, the Government requested the Permanent Penal Law Committee to issue a report on sentencing principles, including the question regarding the 'division of labor' between the legislature and the judiciary. The Committee was specifically asked to consider the question regarding statutory minimum sentences. The report on 'sentencing – the interaction between the legislature and the judiciary' was published in 2012 (*Straffelovrådets betænkning 1531, 2013 om strafudmåling – samspillet mellem lovgiver og domstole*). The Committee concluded that the 'division of labor' by and large operates satisfactory. The Committee has advocated that the legislature refrain from establishing statutory minimum sentences since this kind of legislation is judged as unnecessary and inadequate. In the Committee's opinion particular initiatives regarding intended sentencing levels for specific types of offences stated in legislative *travaux préparatoires* have worked positively, and this modality of legislation is recommendable as it vests a reasonable degree of discretion to the courts in concrete cases.

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

JV:

Under Danish law, there are constitutional restrictions on the legislature's competence regarding stipulation of general instructions on sentence levels in particular types of cases. The Permanent Penal Committee dealt with this issue in the above under question 4.4 mentioned report (*Straffelovrådets betænkning 1531, 2013 om strafudmåling – samspillet mellem lovgiver og domstole*). In the practice of the legislature, such instructions can

be more or less elaborate, e.g. by indicating in *travaux préparatoires* that the punishment in certain kinds of cases shall be a sentence of a particular type and gravity, or by instructing the courts to increase the level of sentences by a specified fraction. The legislature is even allowed to decide that such instructions must not be derogated from by application of the courts' ordinary sentencing discretion. The constitutional debate on minimum sanctions has been of rather limited reach, and there are no principled decisions of the Supreme Court or any of the two high courts on the matter. Denmark does not have a particular constitutional court.

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

JV: There is no such research available.

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

JV:

Denmark does not take part in the adoption by the Council of proposed measures pursuant to Title V of Part Three of the TFEU, cf. Protocol 22 on the Position of Denmark to the EU treaties. If Denmark were to become a party to such legislative initiatives, there would in principle be no legal obstacles to fulfilling obligations regarding legislation obliging Member States to introduce certain minimum sanctions. However, applying such legislation would deviate significantly from legislative traditions and tendencies in Danish criminal law as described in the answers to the above posed questions, as almost all statutory imprisonment minima have gradually been abolished and only one such provision has been introduced recently (PC § 192 a regarding aggravated weapons offences).

5. Statistical analysis

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

JV:

Information on sanctions is systematically collected and reported by the national statistics office (*Danmarks Statistik*).

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

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

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

N/A

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

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

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

N/A

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

*If there is no minimum sanction for the specified offences, please ask for guesses in regard to the lowest and highest imposed sanctions. If there are neither statistics available nor a sampling of judgements feasible, please conduct **interviews with at least two other judges**. Please indicate the minimum / maximum scope of the guesses by the practitioners in the table. For example interviewee 1 says 5%, interviewee 2 says 30%, interviewee 3 says 15%: scope of 5 – 30%.*

N/A

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

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

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

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

In general, Danish judges disagree rather strongly to the view that minimum sanctions should be necessary in order to ensure that an effective deterrence can be achieved. The Judges' Association as well as both High Courts have unanimously stated that minimum sanctions are not suited to indicate the level of punishment for particular types of crimes, since such legislation would compel courts to hand out unreasonably harsh sentences in instances where mitigating circumstances are found to be relevant, and where there are no available provisions allowing for sentence reduction. Thus, judges agree with the position of the Permanent Penal Committee referred to in the answer to question 4.4 above.

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

All interviewed practitioners agree that the added value of stipulating minimum imprisonment sentences is fairly insignificant. One of the interviewed judges refer to recent research among the populations in the Nordic countries that has thoroughly documented that the knowledge regarding the level of punishments is very scarce and, consequently, has very little impact on crime prevention, whereas perceptions regarding the detection risk might be of some important.

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

Some prosecutors believe that the minimum sanction of 1 years imprisonment for serious weapons offences might have some deterrent effect.

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

Please see answer to the former question.

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

The risk of delocalisation and forumshopping is perceived as only relevant in relation to a very limited number of transnational offences, if at all. Judges don't find that minimum sanctions would add value to the prevention of delocalisation of criminal activity, instead they favour adequate sentencing frames. Practitioners with extensive experience regarding cases involving transnational criminality point out that in particular cases very often neither practitioners nor offenders manage to anticipate the actual sentence, and that it is rather unlikely that offenders are motivated by such considerations.

Differences between jurisdictions as to the kind of prisons and corrections regimes have been mentioned as factors that might influence the location of criminal activities.

5.7 Please describe cases or examples where judges:

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

JV:

Obvious factors like young age, insignificant participation have been mentioned by the interviewed judges.

If the offence is very serious or the offender is a recidivist, it is unlikely that the sentence will be meted out below the minimum sanction.

One of the interviewed judges mentions that he never considered going below the minimum sanction in concrete cases but that he has experienced several incidents where the minimum sanction was handed out in compliance with the legislator's expectations as stated in the *travaux préparatoires*, even though such punishment was considered to be rather harsh under the circumstances.

The minimum sanction of 5 years imprisonment stipulated for homicide (PC § 237) very seldom raises a problem, but under particular mitigation circumstances it might be relevant to reduce the sentence under the minimum by applying the general provision allowing for such discretionary sentencing decisions (PC § 83 as mentioned above in the answer to question 1.7).

Judges find the minimum sanction of 1 years imprisonment stipulated for aggravated weapons offences (PC § 192 a) problematic because it restricts the courts' discretion in sentencing, even though it would only rarely be relevant in such cases to go below the statutory minimum. However, there is a possibility to adjudicate less serious cases under the ordinary weapons legislation carrying a less severe sentence frame with no minimum sanction.

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

JV:

As stated several times above, statutory minimum sanctions are only stipulated under Danish criminal law for a few offences: high treason/regicide PC § 112; homicide PC § 237; and aggravated weapons offences PC § 192 a.

This rapporteur completely agrees with above mentioned conclusion of the Permanent Penal Commission that legislation stipulating statutory minimum sentences is unnecessary and inadequate.

Table 2. Imposition of imprisonment sanctions

Offence	Penalty range	Total number of sanctions imposed 2008 - 2012	Lowest imposed sanction	Imposed below minimum		Imposed at minimum		Imposed above minimum		Highest imposed sanction
				Number	%	Number	%	Number	%	
Murder (wilful homicide, but without premeditation)	5-16 years or life imprisonment (PC § 237)	142	months/years 5 years (e.g. case reported in TfK 2008.319 Ø: 16 year old killed his stepfather)	0	0	0	0	142	100	months/years Life imprisonment
Sexual abuse of children in the sense of Art 3 (4) Directive 2011/92/EU	Imprisonment for up to 12 years (PC § 222 (2))	604	10 months (e.g. case reported in U 2010.3226 H: 49 years old male had intercourses with girl of 14 years and 9-10 months)	No statutory minimum	-	-	-	-	-	12 years (e.g. case reported in U 2013.91 V: abuse of 6 biological children and 2 of their friends)
Aggravated Fraud	Imprisonment for up to 8 years (PC § 286 (2), cf. PC § 279)	474	6 months (e.g. case reported in U 2007.1098 H: sentence reduced due to pretrial detention period of 1 year and 3 months)	No statutory minimum	-	-	-	-	-	8 years
Active Corruption in the sense of Art 3 (1) EU	Fine or imprisonment for up to 3 years (PC § 122)	very few	4 months (e.g. case reported	No statutory	-	-	-	-	-	4 months (e.g. case

Offence	Penalty range	Total number of sanctions imposed 2008 - 2012	Lowest imposed sanction	Imposed below minimum	Imposed at minimum	Imposed above minimum	Highest imposed sanction	
Corruption Convention 1997			in U 2009.2049 Ø)	y minimum			reported in U 2009.2049 Ø)	
Aggravated illicit drug trafficking	Imprisonment for up to 16 years (PC § 191)	2306	5 years (e.g. case reported in U 2012.1604 V (large quantity of ecstasy pills, prior prison record))	No statutory minimum	-	-	-	14 years (e.g. case reported in TfK 2013.436 V: 22 kg amphetamine)
Robbery	Imprisonment for up to 10 years (PC § 288 (2))	2146	6 months (e.g. case reported in U 2011.3192 H: street robbery; see also U 2011.3194 H: street robbery, 3 months conditionally)	No statutory minimum	-	-	-	8½ years (e.g. case 2009.1410 H: robbery in private home, assault, etc.)

Sources, remarks or explanation:

Please clearly mark if the indicated data relies on statistics, sampling of court judgements or on guesses from practitioners.

Quantitative data rely on statistics available at the annual reports from the national statistics office (Danmarks Statistik).

Cases referred to rely of court reporters (U = Ugeskrift for Retsvæsen; TfK = Tidsskrift for kriminalret; H = Højesteret (Supreme Court); V and Ø = Vestre Landsret (Western High Court) and Østre Landsret (Eastern High Court).

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

Table 3. Execution of minimum sanctions

Offence	Minimum sanction	(Estimated) % executed in full	Explanation
Murder (wilful homicide, but without premeditation)	5 years	The question does not make sense, see explanation below	See below1
Sexual abuse of children in the sense of Art 3 (4) Directive 2011/92/EU	None	n/a	n/a
Aggravated Fraud	None	n/a	n/a
Active Corruption in the sense of Art 3 (1) EU Corruption Convention 1997	None	n/a	n/a
Aggravated illicit drug trafficking	None	n/a	n/a
Robbery	None	n/a	n/a
<p>Sources, remarks or explanation: Please mark if the indicated data relies on statistics or on guesses from practitioners.</p> <p>JV:</p> <p>Under Danish law, the existence of a statutory imprisonment minimum is entirely irrelevant for the execution of a specific sentence and the time actually served by a particular convict. The questions posed in table 3 doesn't make sense to neither practitioners nor academics. Decisions on conditional parole are made administratively without any considerations regarding the sentencing latitude available to the judiciary.</p> <p>The parole authorities are solely concerned with the punishment actually meted out by the court, and considerations regarding parole have nothing to do with the existence of a statutory sentencing minimum or the sentencing maximum stipulated for a specific offence.</p> <p>Likewise, judges give no attention to actual time expected to be served, due to the fact that parole eligibility for a particular convict will be completely depending on the individual inmate's actual conditions and circumstances at the time when the issue concerning parole materialises.</p> <p>All practitioners agree with the statements above, whether they be judges, prosecutors, defence attorneys or corrections officers.</p>			

Selected sources:

Malene Frese Jensen et al.: *The Principal Danish Criminal Acts*, 3rd Edition, DJØF Publishing, 2006. ISBN 87-574-1334-7 (not completely updated).

Lars Bo Langsted, Peter Garde & Vagn Greve: *Criminal Law in Denmark*, 3rd Edition, DJØF Publishing & Wolters Kluwer, 2011. ISBN 978-87-574-1819-4 & 978-90-411-342-9.

Jørn Vestergaard: *Straffeloven & straffuldbyrdelsesloven m.v. – med henvisninger og sagregister*, 17. udgave, Karnov Group, 2012. ISBN 978-87-619-3289-1 (The Penal Code & the Corrections Act – with references and table of contents).

Jørn Vestergaard: *Strafferetlige sanktioner*, Gjellerup, 2012, ISBN 978-87-13-05032-1 (incl. references to other relevant literature pp. 213 f).