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Offence Definitions and Imprisonment Rates in European Comparison

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Abstract
The legal definitions of criminal offences differ considerably across Europe. These differences should have an impact on the figures appearing in the criminal justice statistics of different countries for offences that upon translation bear the same name, but in fact are not legally defined in the same way. In that perspective, several efforts to improve the comparability of offences have been conducted since the 1990s, when the European Sourcebook (ESB) group of experts developed a methodology that consisted in proposing a standard definition followed by a series of categories of the offence that the national correspondents in charge of filling the questionnaire should include or exclude. This methodology was later adopted by the UNCTS and by Eurostat.

The Council of Europe Annual Penal Statistics (SPACE) do not follow that method because research has shown that, in most countries, little can be done to exclude or include categories of offences from prison data. Most prison administrations receive little information on the characteristics of the offences for which their inmates had been convicted. Hence the definitions used in SPACE are basically the legal definitions of offences foreseen in each country.

This means that a comparison of the definitions used in the ESB and in SPACE coupled with a comparison of the data collected in both collections can highlight differences in the definitions as well as their consequences on the data collected. In that perspective this study tries to answer two research questions: Do offence definitions affect imprisonment rates? And if yes, how?

The data collected for the SPACE questionnaire, which is based on the legal definitions of offences in each country, shows that the answer to the first question is affirmative, in the sense that broader definitions are often associated with higher imprisonment rates for the offences so defined. However, the correlation is not strong because there are several other legal, statistical, substantial, and criminal policy factors that affect imprisonment rates. On the contrary, the data collected for the ESB show that the use of standard definitions tend to cancel the correlation between them and imprisonment rates, probably as an effect of the higher level of standardization reached. This corroborates that such definitions are extremely useful when conducting comparative research. The implications of these results for research and for evidence-based European criminal policy are briefly discussed.

I. Introduction

Following a careful analysis of data from police statistics included in the first edition of the *European Sourcebook of Crime and Criminal Justice Statistics* (ESB), von Hofer (2000: 88) concluded that "crime statistics are a construct […] very sensitive to the rules applied in the process of construction". Analyses of the data included in the subsequent editions of the ESB —see different special issues of the *European Journal on Criminal Policy and Research* (1/2000, 2-3/2004, 1/2012 and 1/2018)— suggest that this hypothesis holds true for statistics on all areas of criminal justice, including prison statistics. This does not mean that they are useless, but that to make sense of them one must consider the legal, statistical, substantial, and criminal policy factors that have an influence on the data collected (von Hofer, 2000; Aebi, 2010). These factors refer, for example, to offence definitions and to case-ending possibilities available for the prosecution service (legal factors), to the rules applied to count offences, cases and persons (statistical factors), to the priority given to the enforcement by criminal law agencies of specific types of offences (criminal policy factors), and also to the "true" crime levels and reporting rates of offences, that is to say to substantial factors (for details, see von Hofer, 2000; Aebi, 2010; Harrendorf, 2018).

This means that the number of crimes included in different national criminal justice statistics cannot be compared directly, even when the comparison is based on offences that, after translation, seem to bear the same name. "From a criminal law perspective, theft is not *Diebstahl* is not *кра́жа* is not *varkaus* is not *kradzież* is not theft, although each of these words is simply a translation of the others" (Harrendorf, 2019: p. 326). In fact, offence definitions — one of the key legal factors mentioned above — differ significantly across Europe (Harrendorf, 2012; Aebi et al., 2014: pp. 369; Aebi, 2019). To give just one example, the Anglo-American concept of burglary —defined as entering into a building with the intention to commit any crime— cannot be found as such in most continental European systems (Tonry and Farrington, 2005: p. 3; Linde & Aebi, 2021). The comparison of the overall crime rates is even more complex, since the borderline between criminal and non-criminal behavior is drawn somewhat differently in each country (Harrendorf, 2012; 2018).

That is the reason why the group of experts that created the ESB in 1990s did not include the total crime rate in its first edition. That group of experts also developed a methodology to measure the influence of the factors mentioned above, which consists in providing a short standard definition of an offence, accompanied by a series of subcategories that the person in charge of filling the questionnaire (the *national correspondent* in the ESB terminology) is asked to include or exclude (see Aebi et al., 2021). In the early 2000s, this methodology was adopted with slight modifications by the *United Nations Survey on Crime Trends and the Operations of Criminal Justice Systems* (UNCTS) as well as by the *Eurostat crime and criminal justice statistics*. Since the mid-2010s, these two data collections share methodology and data collection procedures with the UNCTS (Eurostat, 2017: pp. 4, 9) and have adopted definitions inspired by the International Classification of Crime for Statistical Purposes (ICCS) developed by the United Nations (UNODC, 2015). For some offences —for example, theft— the ICCS definitions do not fully coincide with those of the ESB. Hence, the ESB, the UNCTS and the Eurostat statistics are useful tools to foster statistical comparability of crime and criminal justice data. The three of them provide standardized offence definitions supported by some rules for cases of doubt, which clearly state whether such cases should be included in or excluded from the data. However, this is not enough to guarantee compliance with the

definition provided. Some countries simply cannot meet the definition, others do not have detailed information on the offences recorded, which could allow them to add or subtract some subcategories of offences from the total, and still in other countries the person providing the data does not dare or is not authorized to provide data that differs from the one published in their official statistics. That is why, the three statistical collections mentioned above allow countries to state to which extent they followed the definitions provided.

In parallel, since the 1980s, the *Council of Europe Annual Penal Statistics* (better known by their French acronym *SPACE*[1]) have been collecting data on the distribution of sentenced offenders according to the offence they were convicted for, but without providing a standard definition of these offences. The rationale behind that decision is twofold. First, the SPACE questionnaires are filled by the Prison Administrations, which are tied by the legal definitions of their country. Second, most prison administrations receive little information on the offences that led their inmates to prison. In continental countries, that information is usually limited to the article of the criminal code for which they were convicted.

That is a quite different situation from the one faced by the National Correspondents of the ESB, who are usually criminologists or researchers in criminology and, consequently, are not tied by legal definitions when conducting research for the ESB project. Accordingly, they can combine different sections of their criminal statistics to adapt them as much as possible to the standard definitions provided by the ESB. One must highlight, however, that most of the figures adapted by the ESB national correspondents belong to the police section of the questionnaire, most probably because of the second limitation mentioned above.

Against that background, one can hypothesize that a comparison of the definitions used in the ESB and in SPACE, coupled with a comparison of the data collected in both, could highlight not only the differences in the definitions but also their consequences on the data collected. That is the hypothesis tested in this paper, which is originally one of the outcomes of the LINCS project and has now been updated with the latest validated data collected for the sixth edition of the ESB. Besides, we collected the SPACE data through a special module on definitions added to the 2016 SPACE I questionnaire. This module included definitions based on the ones of the ESB and their subcategories. As the goal is to know how much the legal definitions of the countries differ from each other, the national correspondents were asked to mention whether their legal definitions included or excluded the different subcategories, but did not receive instructions on which of them were theoretically included or excluded in the definitions developed by the ESB.

While several publications already tried to relate offence definitions to crime and criminal justice data (see, *e.g.*, von Hofer, 2000; Harrendorf, 2012; 2018), until so far there has not been an attempt to systematically assess the influence of offence definitions on imprisonment rates in total and for different offences. This paper tries to fill that lacuna, relying on data and definitions (*i.e.*, metadata) taken from the ESB and SPACE, as well as from the 2016 SPACE annual module on offence definitions.

[1] *Statistiques Pénales Annuelles du Conseil de l'Europe*.

The aim of this study is to answer two research questions: Do the legal definitions of offences have an influence on imprisonment rates? And, if the answer is affirmative, how is that influence exerted? The main hypothesis in that context is that, all other factors being equal, broader definitions should lead to higher rates of imprisonment for the offences so defined.

The paper is structured as follows: First, we analyse the general structure and comparability of the definitions used in the ESB and in SPACE. That analysis will help us identify the adaptations that need to be introduced to the available data in order to produce a meaningful assessment of the impact of offence definitions on the imprisonment rate. Then we will briefly compare the overall imprisonment rates across countries before focusing our analysis on the comparison of the average rate of persons imprisoned for different offences according to SPACE I and according to the ESB.

In principle, the ESB collects data on 43 member states of the Council of Europe (only the microstates are excluded).[2] For the United Kingdom (UK), it reports differentiated data for the separate criminal justice systems of England and Wales, Scotland, and Northern Ireland. In total, the maximum coverage of the ESB corresponds thus to 45 nations. SPACE I collects data from the 52 prison administrations of the 47 member states of the Council of Europe (the UK, Spain and Bosnia-Herzegovina have more than one prison administration). Logically, we will only compare data for the 45 nations that are in principle covered in both data collections. In a few analyses, however, the number of nations compared will be lower than that because not all the administrations provided data for all the variables required.

II. Definitions

We will start our analysis with a comparison of the similarities and differences between the definitions of the ESB (sixth edition, with data covering the years 2011 to 2016) and SPACE I (2016 questionnaire). The analysis is limited to the offences for which an imprisonment rate is collected in both.

a. The ESB definitions

The ESB uses the concept of *standard definitions*, which are accompanied by a list of items that should be included in or excluded from the data reported. Table 1 shows the definitions of all offences for which prison data are collected in the latest, sixth survey wave of the ESB:

Table 1: ESB definitions of offences for which prison data are collected

Offence name	Definition	Include	Exclude
Total crime	All offences subject to criminal proceedings	• minor theft and other minor property offences • minor assault and other minor violent offences • criminal offences committed by minors • crimes according to a military penal code	• all traffic offences subject to proceedings outside the criminal justice system • all traffic offences sanctioned by fines issued automatically by a technical system • administrative offences subject to proceedings

[2] Microstates are very small (in terms of population and surface) sovereign states whose inclusion in statistical analyses affects the validity and reliability of such analyses. The ones that are members of the Council of Europe are Andorra, Liechtenstein, Monaco and San Marino. All these countries have less than 100,000 inhabitants.

		• traffic offences, if they are subject to criminal proceedings • all other criminal offences subject to criminal proceedings	outside the criminal justice system • minor offences subject to proceedings outside the criminal justice system
Major road traffic offences	Road traffic offences subject to criminal proceedings	• negligent homicide and negligent injury in road traffic • dangerous / reckless driving (i.e.: driving in a way that falls far below what would be expected of a competent and careful driver and is obviously endangering life or health of another person or leads to the danger of serious damage to property) • seriously endangering road traffic in other ways (e.g., removing traffic signs, building obstacles, throwing objects onto the motorway) • driving under the influence of drugs or alcohol • all other traffic offences subject to criminal proceedings	• offences committed outside road traffic (e.g., involving trains, airplanes, ships, or boats) • all traffic offences subject to proceedings outside the criminal justice system
Intentional homicide	Intentional killing of a person	• assault leading to death • euthanasia • infanticide • attempts	• assistance with suicide • abortion • negligent killing • war crimes, genocide, crimes against humanity
Bodily injury (assault)	Inflicting bodily injury on another person with intent	• minor bodily injury • aggravated bodily injury • bodily injury of a public servant/official • bodily injury in a domestic dispute • attempts	• assault leading to death • threats • assault only causing pain (e.g., slapping) • sexual assault • negligent bodily injury
Aggravated bodily injury (aggravated assault)	Inflicting serious (e.g., life-threatening or disabling) bodily injury to another person with intent, or under aggravated circumstances (use of weapons, or on a vulnerable victim)	• serious and lasting (i.e., disabling) bodily injury • life-threatening bodily injury • use of weapons (dangerous objects) • particularly vulnerable victim • attempts	• assault leading to death (which should be recorded as homicide, see above) • mere threats • sexual assault • negligent bodily injury

Sexual assault	Physical sexual contact with a person against her/his will or with a person who cannot validly consent to sexual acts	• any sexual acts committed with violence or threat of violence • any sexual acts committed with abuse of authority or undue pressure • any sexual acts committed against a helpless person • any sexual acts committed against a marital partner against her/his will • acts considered as rape • acts considered as physical sexual abuse of a child • attempts	• any verbal or any other form of non-physical molestation • pornography • pimping • buying / offering paid sex • exhibitionism
Rape	Sexual intercourse with a person against her/his will (per vaginam or other)	• penetration other than vaginal (e.g., buggery) • forced intra-marital sexual intercourse • sexual intercourse without force with a helpless person • sexual intercourse of an adult with a child or any other person who cannot validly consent • attempts	• sexual intercourse between children, if factually (i.e., regardless of legal validity) consented by both partners • sexual intercourse between a child and a juvenile, if factually (i.e. regardless of legal validity) consented by both partners and the age difference is not larger than three years
Sexual abuse of a child	Any form of physical sexual contact of a person above the age of sexual consent with a person below the age of sexual consent, except of sexual intercourse	• any form of physical sexual contact not amounting to (statutory) rape • attempts	• verbal or any other form of non-physical molestation (e.g. via the internet) • distribution and possession of child pornography • acts considered as rape • sexual acts between children, if factually (i.e., regardless of legal validity) consented by both partners • sexual acts between a child and a juvenile, if factually (i.e., regardless of legal validity) consented by both partners and the age difference is not larger than three years
Robbery	Theft with force or threat of force against a person	• muggings (bag-snatchings) • theft immediately followed by force or threat	• pick-pocketing • extortion • blackmailing

		of force against a person used to keep hold of the stolen goods • attempts	• theft with force against property only
Theft	Depriving a person or organization of property with the intent to keep it	• minor (e.g., small value) theft • theft committed by means of burglary (i.e., by breaking and entering) • theft of motor vehicles • theft by employees • attempts	• robbery • fraud • receiving/handling stolen goods
Fraud	Deceiving someone or taking advantage of someone's error with the intent to unlawfully gain financial benefits, thereby causing the deceived person to enter any operation that will be damaging to his/her or a third person's financial interest	• cyber fraud (i.e., fraud committed by means of computer-mediated communication, e.g. via the internet) • attempts	• receiving/handling stolen property • forgery of documents • tax and customs offences • subsidy fraud • fraud involving welfare payments • money laundering • forgery of money or payment instruments • consuming goods or services without the intent to pay (e.g., fare dodging) • breaching of trust / embezzlement
Drug offences	All illicit intentional acts in connection with narcotic drugs and psychotropic substances as defined in the international drug control conventions	• cultivation • production and manufacture • extraction and preparation • offering and offering for sale • distribution • purchase • sale • delivery on any terms whatsoever • brokerage • dispatch and dispatch in transit • transport • importation • exportation • financing of drug operations • possession not in connection with personal use • possession for personal use (i.e.: possession of small quantities) • consumption • attempts	• offences with respect to precursor substances

The definitions section of the ESB checks in detail the conformity of data with the standard definitions both for the police and conviction sections of the questionnaire. On the contrary, there is no specific option available to give detailed information on the offence definitions used in prison statistics. In the prison section, there is only a general metadata question which asks: "Do the offence definitions […] differ from those in the 'Definitions' part of the questionnaire?". The reason is that, as mentioned above, there is little room for adapting data to the definitions in prison statistics. Yet, it can be assumed that the definitions are usually identical or somewhat similar, since 17 of the 21 countries (81 %) that answered this question confirmed that there were no differences.

In that perspective, Figure 1 shows the extent to which countries managed to meet the standard ESB definitions in the police section. If all items of the include list could be included and all others excluded, it is assumed that the reported data fulfil the definition completely. For example, 24% of the countries fulfilled the definition of intentional homicide in all respects, while 50% did not. In addition, 24% of the countries gave unclear answers for several definitions. Finally, no evaluation of the definition was made for those countries that did not provide quantitative data.

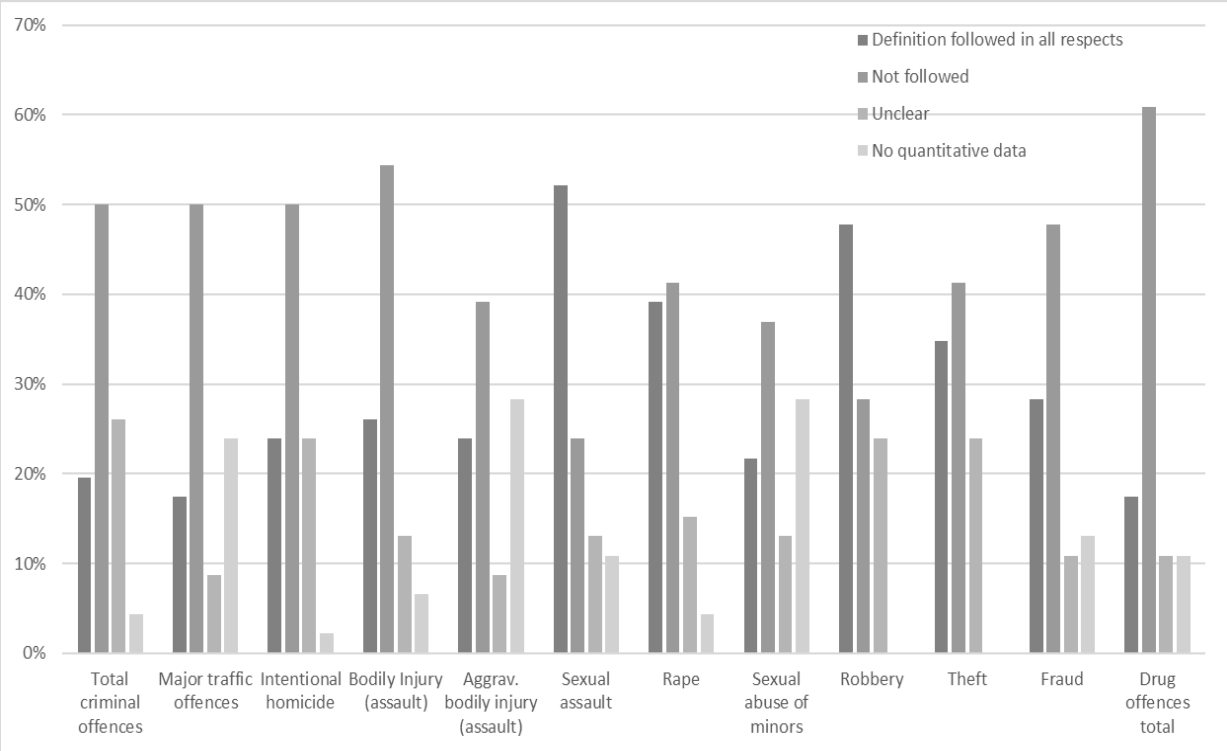

Figure 1: Conformity with offence definitions at the police level for ESB data (N= 38), expressed as percentage of countries complying (or not) with the standard definition

Figure 1 shows that sexual assault (52%), robbery (48%), and rape (39%) show moderate conformity rates, whereas total crime (20%), major traffic offences and drug offences (both 17%) only have a low conformity rate.

b. The SPACE definitions

The definitions included in the special module of SPACE are based on the ones used in the 5th edition of the ESB because the module was launched before the modification of the ESB

questionnaire for its 6th edition. Consequently, there are a few subcategories of offences that are not included in SPACE. In addition, there are a few offences for which SPACE does not collect data, mainly because they represent an extremely low percentage of the sentenced prisoners. Despite that, the definitions used in SPACE remain broadly similar to those in the ESB.[3]

In particular, the special module of SPACE also provides a general definition, which is usually identical or at least similar to that of the ESB (*e.g.*, homicide is defined in both cases as the "intentional killing of a person"). A check list of items included in or excluded from the data is also given. However, the SPACE I questionnaire does not provide a rule regarding which of the items should be included and which should be excluded.[4] The reason for that decision is that, from the discussions with the SPACE national correspondents that took place during previous research projects (see Aebi et al., 2019) it became clear that the vast majority of them did not have the possibility of adapting the definitions by adding or subtracting some subcategories. Usually, they only receive information on the general category of offence for which the inmates placed under their responsibility were sentenced (in continental countries, the information received is generally the article of the criminal code). That is the reason why, although the ESB requires national correspondents to adapt their data to the definition provided, the prison data published in the ESB is very close to that published in SPACE. For example, in the 5th edition of the ESB, an empirical comparison of the prison data included in the ESB and in SPACE revealed only very minor differences (see Aebi et al., 2014: 268). That is the reason why it was possible for the 6th edition of the ESB to refer to the available SPACE data on the number of prisoners by offence and allow correspondents to simply confirm whether these data are correct. This means that the data on sentenced prisoners included in SPACE correspond to the one that is published or would be published —as in several countries that information is not publicly available — in the national prison statistics. The situation is completely different in the case of police statistics, in which one can find clear examples of the efforts accomplished by the ESB national correspondents to adapt the data to the standard definitions.

In that context, the aim of the SPACE special module was to collect information on the legal definitions applied in each country. This means that the subcategories included in the SPACE questionnaire have a descriptive function but not, as in the ESB, a prescriptive function. For example, in the cases of homicide and assault, it is possible that assault leading to death was counted by country *A* for both offences, by country *B* only for homicide and by country *C* only for assault.

In sum, the SPACE definitions should correspond to the legal definitions used in each country, while the ESB group of experts expects correspondents to modify their national data in such a way that they fit, as close as possible, the ESB standard definition. Consequently, it is expected that the national differences will be more pronounced in the SPACE data, while the

[3] As stated in the special module of the SPACE questionnaire, "The following definitions are […] inspired from the European Sourcebook of Crime and Criminal Justice Statistics […] as well as the International Classification of Crime for Statistical Purposes (ICCS) […]."

[4] The rule provided in the special module of the SPACE questionnaire is simply: "The general definition of each offence is complemented with a list of specific items, and you are requested to specify if they are included or excluded in the statistics of your country."

ESB data will be more comparable. This gives us the opportunity of testing the effects of adopting —or not adopting— a standard definition on the data collected.

The ESB definitions were presented in Table 1, while the SPACE definitions are presented in Table 2. Nevertheless, presenting them in a meaningful way requires establishing a reference for the subcategories included or excluded. We have already mentioned that the SPACE questionnaire does not provide a rule for them, which allows us to fix that rule on the basis of the definitions used for the ESB. In this way it will be possible to compare directly both sources of information for every country included in the analysis. In that perspective, the category "other", which is part of the item lists of each definition in SPACE, has not been considered.

Table 2: SPACE I offence definitions (in reference to the ESB / ICCS standards)

Offence	Definition	Include (acc. to ESB / ICCS)	Exclude (acc. to ESB / ICCS)
Homicide	Intentional killing of a person	Assault leading to death Euthanasia Infanticide Attempts	Assistance with suicide Abortion Negligent homicide
Source	ESB		
Assault and battery	Inflicting bodily injury on another person intentionally	Aggravated bodily injury Minor bodily injury Bodily injury of a public servant/official Bodily injury in a domestic dispute Attempts	Assault leading to death Assault only causing pain (e.g., slapping) Threats Sexual Assault Negligent bodily injury
Source	ESB		
Rape	Sexual intercourse with a person against her/his will (per *vaginam* or other)	Penetration other than vaginal (e.g., buggery) Male victim Violent intra-martial sexual intercourse Sexual intercourse without force with a person incapable of giving consent Sexual intercourse with force with a child Attempts	Sexual intercourse with a child without force
Source	ESB		
Other Sexual Offences	Any sexual aggression that is not considered as a rape	Attempts Sexual intercourse with a child without force	Penetration other than vaginal (e.g., buggery) Male victim Violent intra-marital sexual intercourse Sexual intercourse without force with a person incapable of giving consent Sexual intercourse with force with a child
Source	no external source		

Robbery	Depriving a person of property with intent to keep it, using force or threat of force	Muggings (bag-snatchings) Theft immediately followed by force or threat of force used to keep hold of the stolen goods Attempts	Pickpocketing Minor (e.g., small value) theft Theft by means of burglary (i.e., by breaking and entering) Other theft with force against property (e.g., breaking of an automated teller machine) Theft of motor vehicles Extortion Blackmailing
Source	ESB		
Theft	Depriving a person or organization of property with intent to keep it, excluding the cases of robbery	Pickpocketing Minor (e.g., small value) theft Theft by means of burglary (i.e., by breaking and entering) Other theft with force against property (e.g., breaking of an automated teller machine) Theft of motor vehicles Embezzlement (including theft by employees) Attempts	Muggings (bag-snatchings) Theft immediately followed by force or threat of force used to keep hold of the stolen goods Extortion Blackmailing Receiving/handling stolen goods
Source	ESB		
Economic and Financial Crimes	Acts involving fraud, deception, or corruption	Fraud Money laundering Corruption	
of which: Fraud	Obtaining money or other benefit, or evading a liability through deceit or dishonest conduct	Financial fraud Identity theft Impersonation Attempts	Tax and customs fraud Social welfare fraud Immigration fraud Fraudulent insolvency Breaching of trust/embezzlement Counterfeiting documents Counterfeiting products Receiving, handling, disposing of, selling, or trafficking stolen goods
Source	ICCS		

of which: Money laundering	Conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of such property	Illicit acquisition, possession, or use of laundered property Concealment or continued retention of the proceeds of crime Conversion or transfer of property Attempts	
Source	ICCS		
of which: Corruption	Unlawful acts as defined in the United Nations Convention against Corruption and other national and international legal instruments against corruption	Active corruption Passive corruption Corruption of domestic officials Corruption of foreign officials and officials of public international organizations Abuse of function Treading in influence Attempts	Corruption in the private sector
Source	ESB/ICCS		
Traffic offences	Offences against the road traffic law	Negligent homicide and negligent injury in road traffic Dangerous/reckless driving Seriously endangering road traffic in other ways Driving under the influence of drugs or alcohol Driving while impaired for other reasons Driving while disqualified or licence suspended/revoked Hit- and-run driving	Parking violations All other traffic offences
Source	ESB		
Drug Offences	All illicit intentional acts in connection with narcotic drugs and psychotropic substances as defined in the international drug control conventions	Possession for personal use Purchase Consumption Production manufacture, extraction, and preparation possession not in connection with personal use production manufacture, extraction, and preparation offering and offering for sale Distribution/dispatch Sale Transportation Importation Exportation Attempts Financing of drug operations	
Source	ESB		

Figure 2 shows the general conformity with the definitions of SPACE (in reference to the ESB / ICCS standards). Full conformity with the include and exclude rules taken from the ESB and the ICCS can only be found for four offences (rape, robbery, drug offences, traffic offences) and only for very few countries. A relatively good conformity level —even higher than the one found for ESB data— can be reached for drug offences. This corroborates the hypothesis advanced above in the sense that, as the SPACE data reflect legal definitions, the differences between countries will be much higher than those found using ESB data.

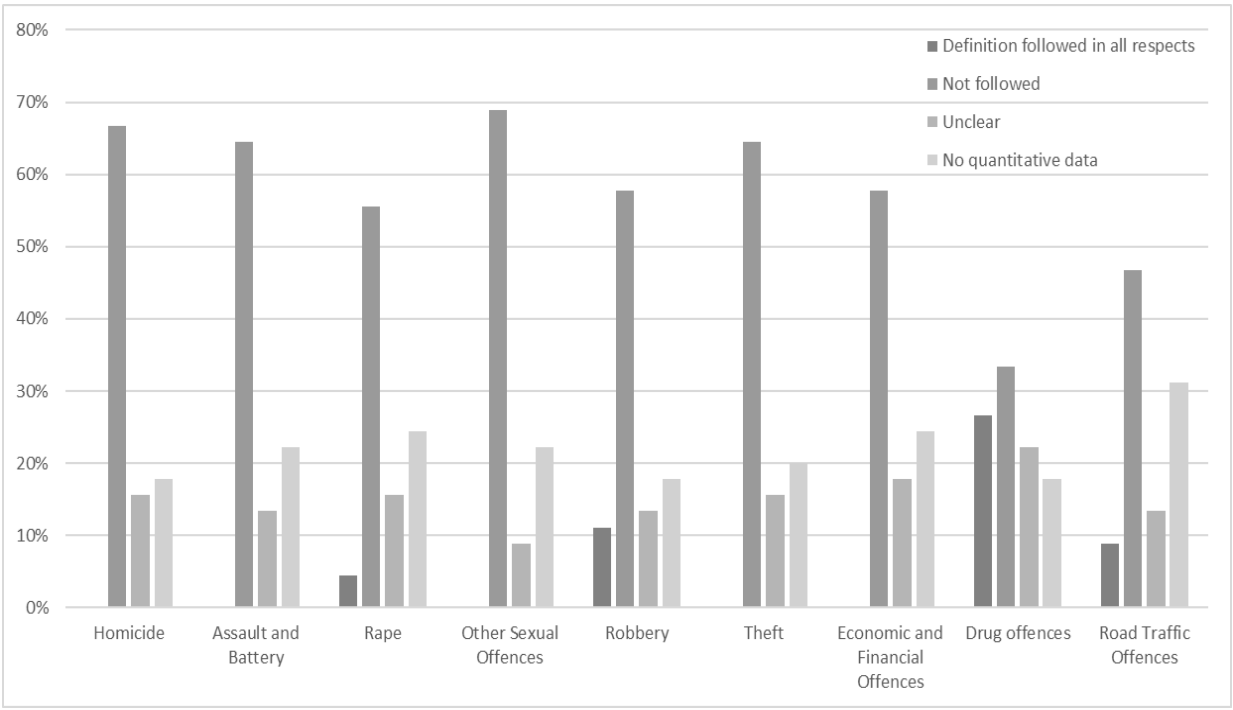

Figure 2: Conformity with offence definitions for SPACE I data (N=35), expressed as percentage of countries complying (or not) with a definition based on ESB/ICCS standards

Figure 2 shows that for several offences —namely homicide, assault, other sexual offences, theft, and economic and financial offences— none of the countries matches the standard definition of the ESB/ICCS. The only offences for which there are some compatibilities are rape, robbery, road traffic offences and drug offences. For the latter, 27% (N=12) of the countries match the definition, but for the rest of offences the percentage is around 10%, which corresponds to a maximum of five countries only.

This means that the comparability of the SPACE definitions is much lower than that of the ESB which, in turn, means that the comparability of the prison data collected is also lower because they are not based on the same concepts. However, it must be mentioned that the general availability of data is higher for SPACE than for the ESB, and that there are less cases of unclear definitions in the former than in the latter. This means that more countries answered the SPACE questionnaire than that of the ESB and that the answers to SPACE were less ambiguous.

III. Imprisonment rates

Figure 3 shows the percentage of countries[5] that provided prison data for the different offences in both collections. For each type of offence, more than 60% of the countries that completed the SPACE questionnaire did provide data. The lowest response rate is slightly below 70% for road traffic offences, the highest is almost 90% for total crime. For the ESB there are far more fluctuations in this respect. Very few countries have been able to report data for aggravated assault and sexual abuse of minors. Again, the highest availability of prisoner data is found for total crime with almost 90%. For many other offences, a 70% response rate was achieved. And yet, data availability for all offence types is still slightly lower for the ESB data. One of the reasons is that the ESB in this edition offered the option to overtake the already available prison data from SPACE I. Although correspondents were asked to check whether SPACE data for their countries were correct and provide modifications where necessary, in practice few of them provided new or updated data for the prison section.

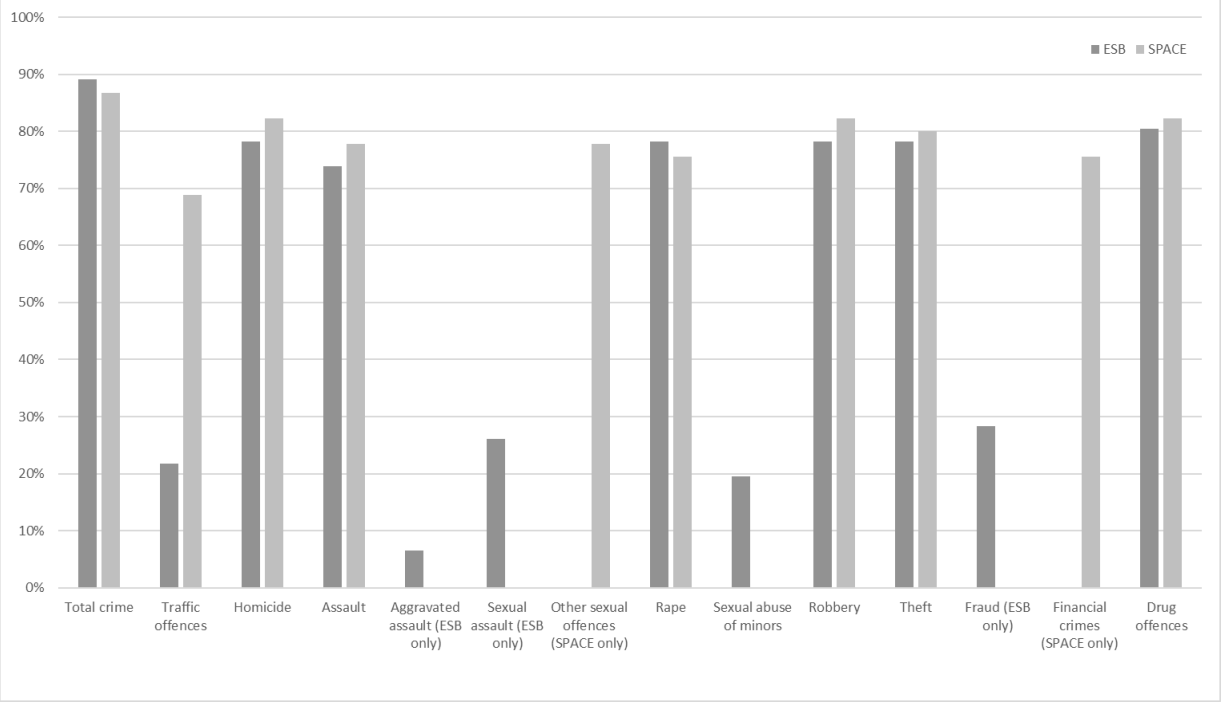

Figure 3: Percentage of countries providing imprisonment data by type of offence (all responding countries; ESB: N=38; SPACE: N=35)

Figure 4 adds another dimension by showing the average European prison population rates by offence according to the ESB and to SPACE. At first glance, there are no major differences between both sources. On the contrary, in many cases the average values of the imprisonment rates are approximately the same, although the reference dates differ by one year (the ESB data relates to 1 September 2015, while the SPACE data relates to 1 September 2016) Larger differences can only be found for total crime, theft and homicide. It is also relevant to point out that the imprisonment rates are almost identical for fraud (collected only in the ESB) compared to economic and financial offences (collected only in SPACE). As shown in Table 2, economic crimes according to the SPACE definition comprise not only fraud, but also money laundering and corruption. Theoretically, this should have led to a higher average prison

[5] Including the three sub-national regions England and Wales, Scotland and Northern Ireland in the case of the UK.

population rate in SPACE than in the ESB. In practice, however, the results show that money laundering and corruption seem to play only a subordinate role in the total number of economic and financial offences. This could, inter alia, be related to the increase of cyber frauds in recent years.

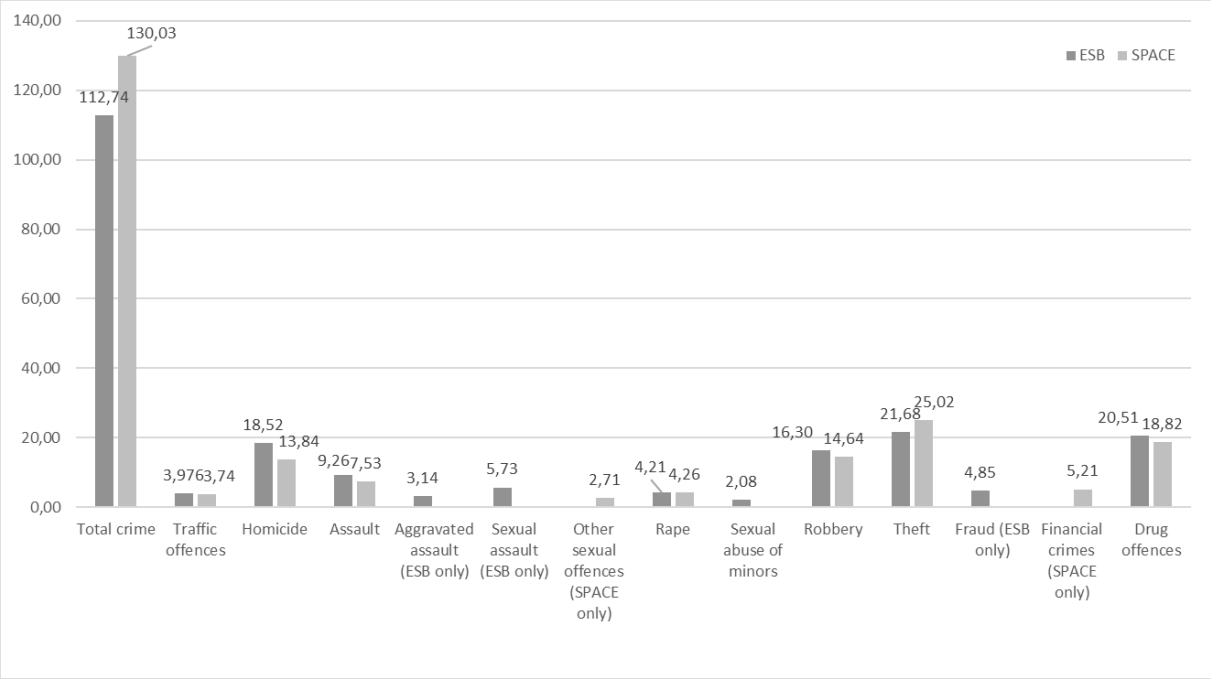

Figure 4: Average imprisonment rates by type of offence (all responding countries; reference date for ESB: 1 September 2015, for SPACE: 1 September 2016)

Since the aim of this study is to examine the influence of the definitions on imprisonment rates, in the rest of the analyses we will exclude countries that provided a definition but no data and vice versa (*i.e.*, countries that have only provided data but no definition). The result of these exclusions in terms of the general availability of the data can be appreciated in Figure 5.

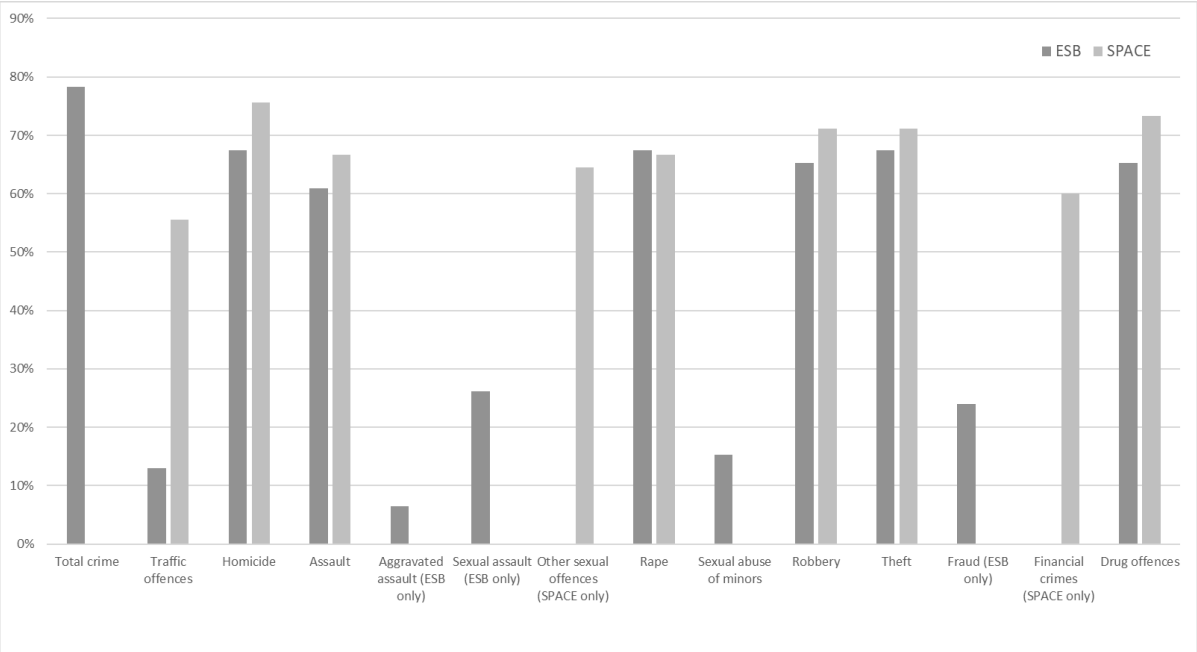

Figure 5: Percentage of countries providing imprisonment data by type of offence (only countries that also provided definitions; N= 38 countries for the ESB and 35 countries for SPACE)

Figure 5 shows a decrease of data availability for each of the offences both in the ESB and in SPACE, with the noteworthy exception of aggravated assault and sexual assault, for which there is no relevant decrease. In the case of SPACE, the decreases in data availability for economic and financial crimes (-16%) and road traffic offences (-13%) are particularly noticeable; followed closely by the ones on assault and robbery (-11% in both cases). The missing imprisonment rate for all offences (total crime) is explained by the fact that SPACE did not ask for it. Apart from that, the general availability of the data reported to SPACE is still comparatively high, reaching at least 60% for each of the other offence groups (except traffic offences).

In the case of the ESB, the greatest reduction in data availability concerns the rates for drug offences (-15% in), followed closely by assault and robbery (-13% each) as well as homicide and theft (-11% for each of them). Overall, this means that data availability for the ESB is now lower than before and the difference with the data available for SPACE —which remains higher— is more pronounced. However, Figure 6 shows that the decrease in the number of countries for which data are available does not have a strong effect on the European average imprisonment rates according to both sources. In practice, there are only a few minor changes regarding theft, robbery, and drug offences.

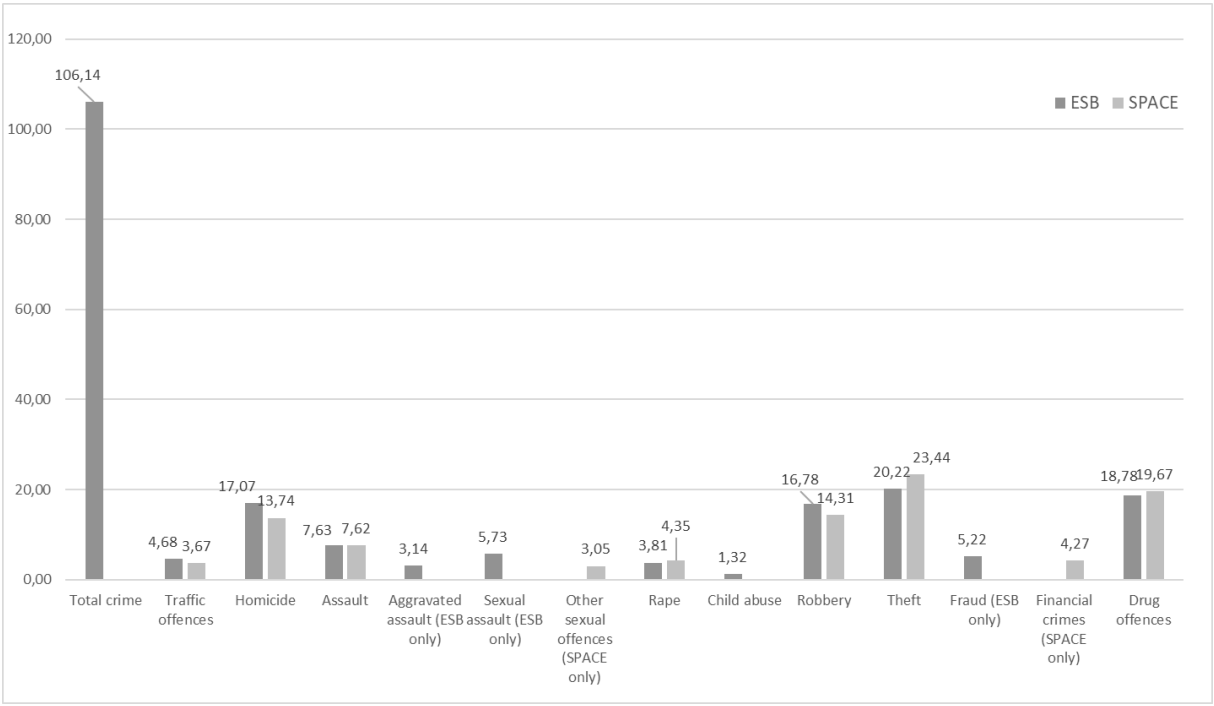

Figure 6: Average imprisonment rates by type of offence (only countries that also provided definitions; reference date for ESB: 1 September 2015, for SPACE: 1 September 2016)

IV. Correlations between definitions and imprisonment rates by offence

After cleansing the contents of our database, we can start the analysis of the correlations between (a) the definition of each offence and (b) the imprisonment rate for that offence. The already mentioned low data availability for the ESB may complicate the interpretation of the results for a few offences. Nevertheless, for most offences data availability seems to be sufficient and hence the comparison between the two sources is feasible. In practice, only the imprisonment rate for aggravated assault will not be related to the respective offence definition in the following analysis because the total number of countries providing data and definitions is too low (n=3).

The first question to address is the way in which such a comparison should be conducted, that is to say the methodology of the comparison. In fact, the question of how to relate offence definitions and imprisonment rates to each other is not straightforward. If for the sake of this exercise we accept as a premise that there are no fundamental differences in terms of levels of crime, then it can be hypothesized that broader legal definitions should lead to more cases falling under the definition and, consequently, to higher imprisonment rates for those offences. To test that hypothesis, it is necessary to assess the relationship between the broadness of an offence definition and the offence-related imprisonment rate.

In that perspective, the first step consists in developing a scale to measure the broadness of the definitions. In that perspective, it seems reasonable to assume that the more items a country has included in an offence definition, the broader the definition is and the higher the imprisonment rate for that offence will be. Hence, we started by creating a reference for each offence that corresponds to the addition of all its subcategories, that is to say a sort of “all inclusive” definition. This reference is then compared to the number of subcategories included in each country, and the result is expressed as a percentage. For example, if there are ten

subcategories for an offence, and a given country includes six of them in its definition, the score of the country in the scale —that we will call the *inclusion ratio*— will be 60%.

Before starting an offence-by-offence and country-by-country analysis, Figure 7 uses the ESB definitions section to show the distribution of countries in relation to the broadest possible definition for each offence in police statistics. The Figure shows that for rape, robbery, and drug offences there are only a few countries that include all items (*i.e.*, even those placed on the list of items to be excluded) in their definitions. For the rest of the offences, no country used the broadest possible definition.

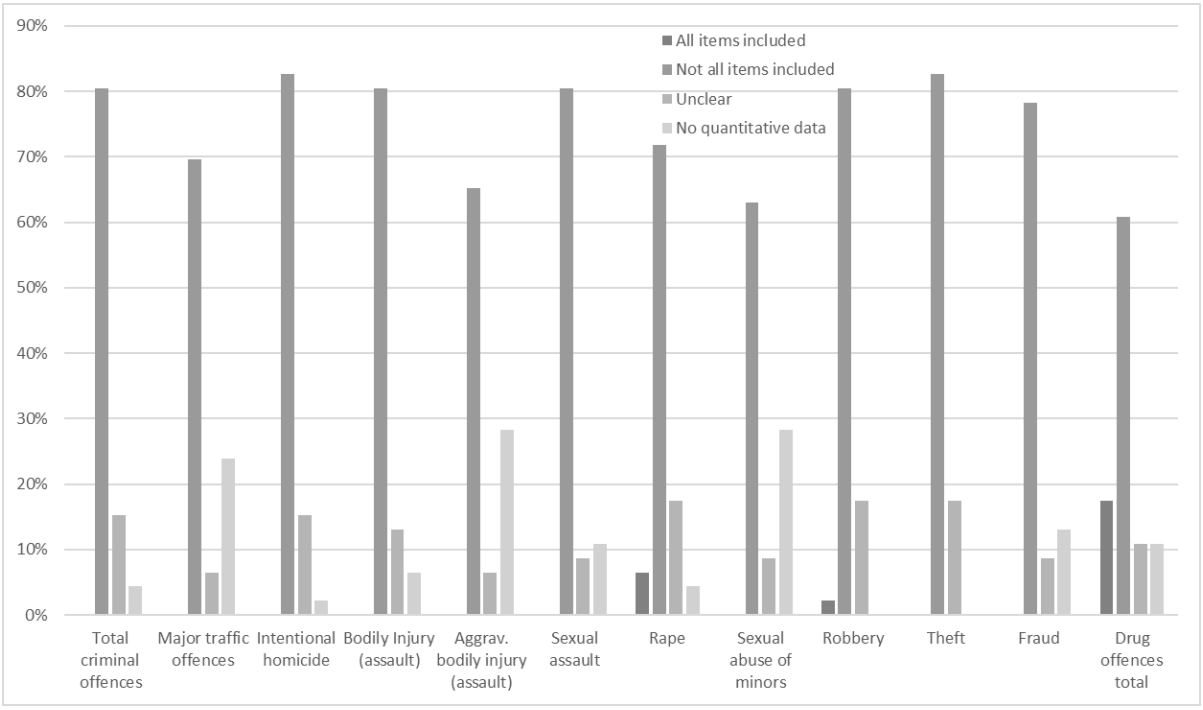

Figure 7: Conformity with broad, "all-inclusive" offence definitions at the police level for ESB data (N=38)

A clearly different picture emerges from Figure 8, which conducts the same analysis but using SPACE data. Although most countries do not use the broadest possible definition, a comparison with Figure 2 shows that the percentage of countries applying that broad definition is higher than the percentage of countries that follow a definition in line with the ESB/ICCS templates. This is particularly noticeable in the case of other sexual offences and rape, which means that some countries provided the same data for the two offences. One reason might be that in some countries the distinction between rape and other sexual offences cannot be established on the basis of the subcategories included in the questionnaire.

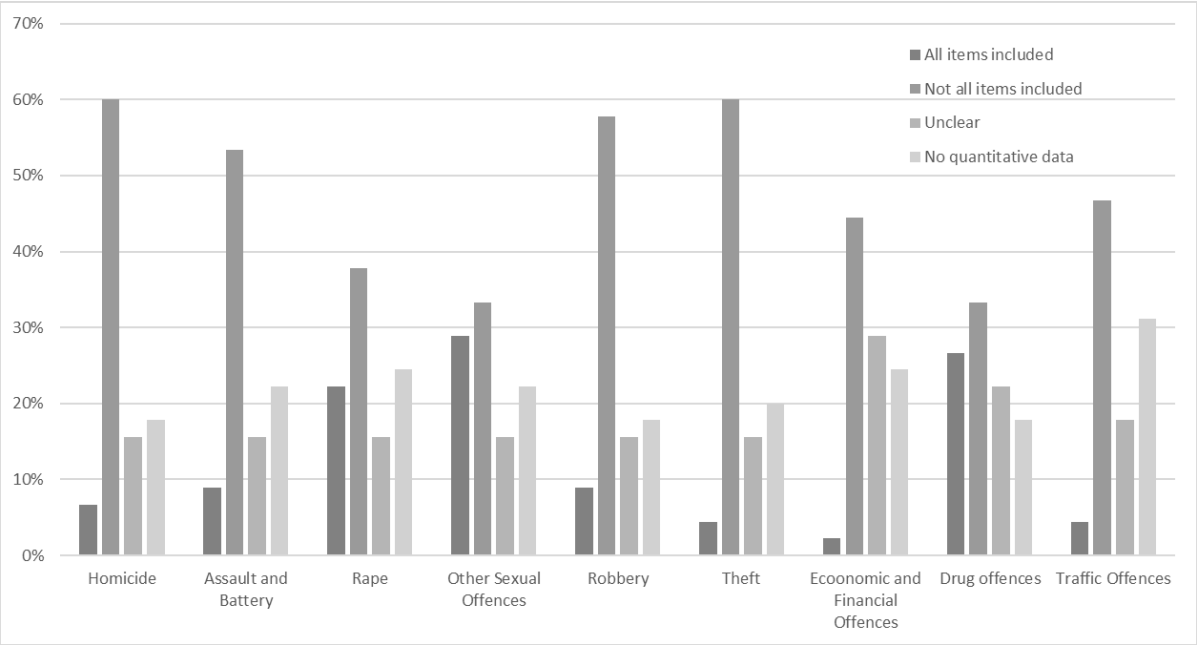

Figure 8: Conformity of SPACE data with the broadest possible definition for each offence (N=35).

This method of checking the conformity with the broadest possible definition is a useful first step to analyse the relationship between offence definitions and imprisonment rates because it is easily understandable and easy to survey. Nevertheless, the individual subcategories on the definition lists are of different relevance. For example, assault leading to death will play a much more important role in homicide than in bodily injury, as it will amount to a higher percentage of homicide cases than assault cases. This means that it is also useful to weight the data according to the influence of each subcategory.

The main questions here is how to weight the cases properly. On the one hand, the relative number of specific offences varies according to the stage of the criminal justice procedure. For example, the number of homicide offences and suspects of homicide represent less than 0.5% of the total number of offences and offenders recorded in Europe; on the contrary, the percentage of prisoners convicted for homicide represent more than 10% of the total number of inmates. This is explained by the fact that the first two measures are *flow* indicators (they measure the number of offences and offenders during a whole year), while the third one is a *stock* indicator (it measures the number of inmates at a specific date). The stock is sensitive to the presence of persons serving long prison sentences, which are typical for homicide, and lead to the same persons being counted in the total stock year after year. On the other hand, we have seen that prison data are not sensitive to the subcategories of offences listed in the definition. Most prison administrations will record an inmate sentenced for homicide, without being able to know if it was a case of intentional or negligent homicide, or an assault leading to death. Moreover, it would be inappropriate to use prison data for weighting the figures and then relate weighted percentages to imprisonment rates because that would constitute an obvious self-reference.

In that perspective, police data are the most sensitive to the different subcategories of each offence. In addition, they are useful as a reference for weighting because they indicate the maximum potential input into prison, although in some countries, imprisonment is not the

standard sanction. For that reason, we adopted a pragmatic approach and took all the available data for every subcategory of each offence from the German Police Crime Statistics. After summing all these subcategories, we built ratios for each of them in accordance with their relative weight. In addition, we relied on Swedish Police Crime Statistics for road traffic offences, as this category is not recorded in German police statistics. Obviously, it can be objected that the resulting weighted data can only be used reliably for Germany (or Sweden for traffic offences) because the structure and relative importance of crimes in other countries is probably different. This is partially true, but an analysis of the distribution of the offences across countries in the different editions of the ESB suggests that the differences are not irreconcilable. Quite the contrary, once differences in the definitions are controlled for, the percentages of offences are relatively similar across countries. This means that the categories that are important in one country (i.e., those that represent a relatively high percentage of all offences) will often be also important in others; conversely, statistically unimportant categories in one country usually also have a low statistical relevance in other countries too (see Harrendorf, 2012 and 2013, for some confirming evidence).

For a few subcategories data were not available in the German police statistics, which led us to use the available estimates of their respective influence; however, when the latter did not seem reliable, we did not compute weighted rates. That is the case for drug offences on the one hand and the broad category of "Economic and Financial Crimes" used in the SPACE dataset on the other.

It was also impossible to find data, or at least reliable estimates, on the consequences of the exclusion of the subcategories "all traffic offences subject to proceedings outside the criminal justice system", "all traffic offences sanctioned by fines issued automatically by a technical system", "administrative offences subject to proceedings outside the criminal justice system", and "minor offences subject to proceedings outside the criminal justice system" for the ESB definition of total crime. The same is true for the exclusion of the subcategory "all traffic offences subject to proceedings outside the criminal justice system" for the definition of traffic offences in the ESB. Following the logic described above, it was decided to exclude these categories from the weighting procedure. This decision can seldom be challenged because such offences will almost never lead to imprisonment as, per definition, these are all categories explicitly placed outside the criminal justice system.[6] Their inclusion would, if at all, be negatively, instead of positively, related to imprisonment rates. As a negative weight for these groups cannot be validly estimated, and their inclusion is a very rare occurrence, it seems acceptable to simply give no weight at all to them.

The weights applied based on the procedure described above can be looked up in table 3 in the annex.

1. Total crime

The SPACE questionnaire does not include a definition for the general category of "total crime" because the figures used for that item correspond to the total number of inmates, which include pre-trial detainees and sentenced prisoners. On the contrary, for the rest of

[6] With possible exceptions for „all traffic offences sanctioned by fines issued automatically by a technical system", yet this category also by definition will not contain cases that may lead to imprisonment.

offences, the figures correspond only to sentenced prisoners. Consequently, in this section we will only use ESB data.

1.a. Unweighted (total crime)

Figure 9 shows the relationship between the overall imprisonment rates and the percentage of subcategories (items) included in the total number of offences recorded in each country according to the ESB. There is, in fact, no correlation (r=-0.03; p=0.864). This means that, at least for total crime in the ESB, a high conformity with the broadest possible definition does not necessarily lead to a higher imprisonment rate. Some countries fulfil this condition, such as Cyprus, which has a relatively low imprisonment rate and a low inclusion rate, or Latvia, for which both rates are relatively high. There are, however, results that go on the opposite direction. Georgia and the Netherlands are particularly striking, as the former has the highest and the latter the lowest imprisonment rate of all responding countries, while the inclusion ratio is identical. The high number of countries with a 60 % ratio is due to the fact that these are roughly the countries that followed the original standard ESB definition, respecting the include and exclude rules completely. One of the reasons for the differences observed may be that the percentage of pre-trial detainees in the total imprisonment rate differs considerably from one country to another.

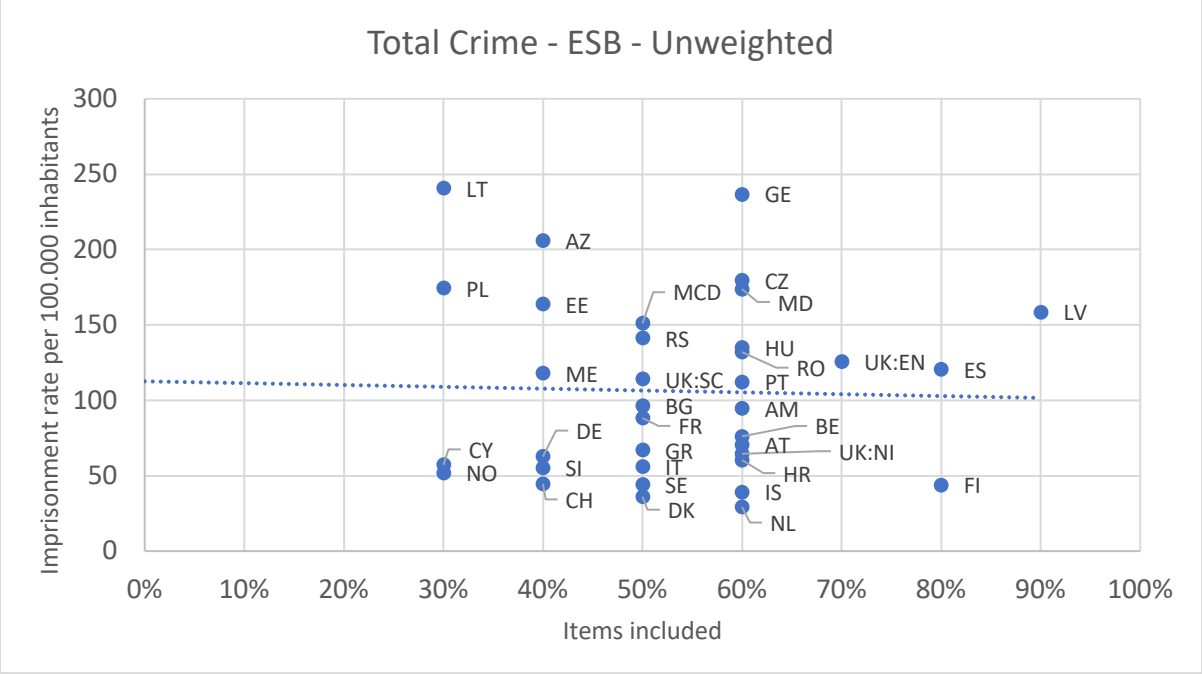

Figure 9: Relation between unweighted item inclusion ratios and imprisonment rates for total crime (ESB)

Figure 9 also corroborates that imprisonment rates do not only depend on the broadness of offence definitions. There are other factors that probably have a much larger influence on them, including mainly the legal, statistical, substantial, and criminal policy factors mentioned in the introduction, but also the general political and economic situation. This means that similar inclusion rates do not necessarily mean similar imprisonment rates. This cannot only be expected for total crime, but also for the other crime categories.

1.b. Weighted (total crime)

After weighting the items on the definition list for total offences[7], the results change slightly (see Figure 10), but the correlation coefficient remains close to zero (r=0.016). Once again, it seems as if there are no strong influences visible due to the high conformity of definitions. Many countries follow the definition in all respects, but still show vast differences in their respective imprisonment rates. This could imply that the ESB controls in a relatively efficient way the statistical differences related to offence definitions, so that the remaining differences can mainly be attributed to other factors.

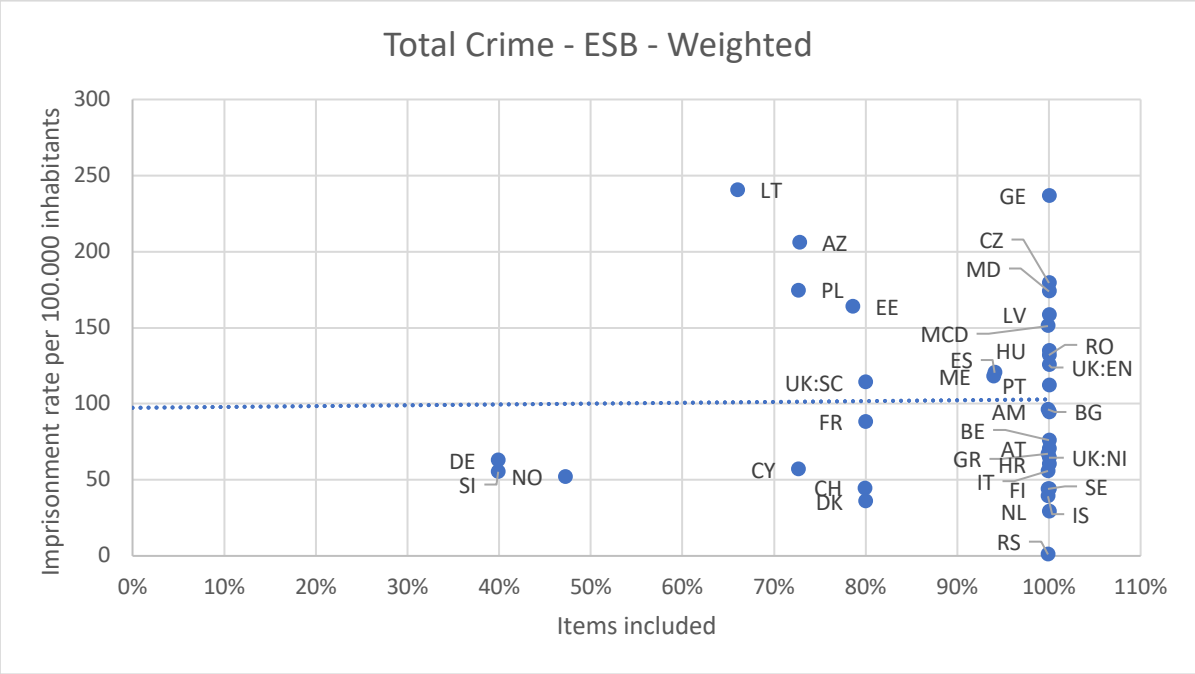

Figure 10: Relation between weighted item inclusion ratios and imprisonment rates for total crime (ESB)

2. Traffic offences

The relationship between imprisonment rates for traffic offences and the percentage of items included in their definition (inclusion ratio) is illustrated in Figure 15 (ESB) and Figure 16 (SPACE) for unweighted data, and in Figure 17 (ESB) and Figure 18 (SPACE) for data weighted according to their frequency and relative importance at the police level.

2.a. Unweighted traffic offences

Looking at traffic offences (Figures 11 and 12) the results show some significant differences with those for total crime. There is a quite strong negative correlation for the ESB unweighted data (Figure 11), which is statistically significant (r=-0.86; p=0.013). This negative correlation is certainly unexpected, but there are only 6 countries (actually 7, but the obviously incorrect entry for Italy was not taken into account here) out of 45 that provided data. On the contrary, SPACE provides significantly more data for this kind of offence. Specifically, Figure 12 shows that 25 countries were able to transmit data on persons imprisoned for traffic offences. In this case the correlation remains negative, but it is much weaker and statistically non-significant (r=-0.265; p=0.2).

[7] For an explanation of this method and its general problems, see section III (Imprisonment rates) above.

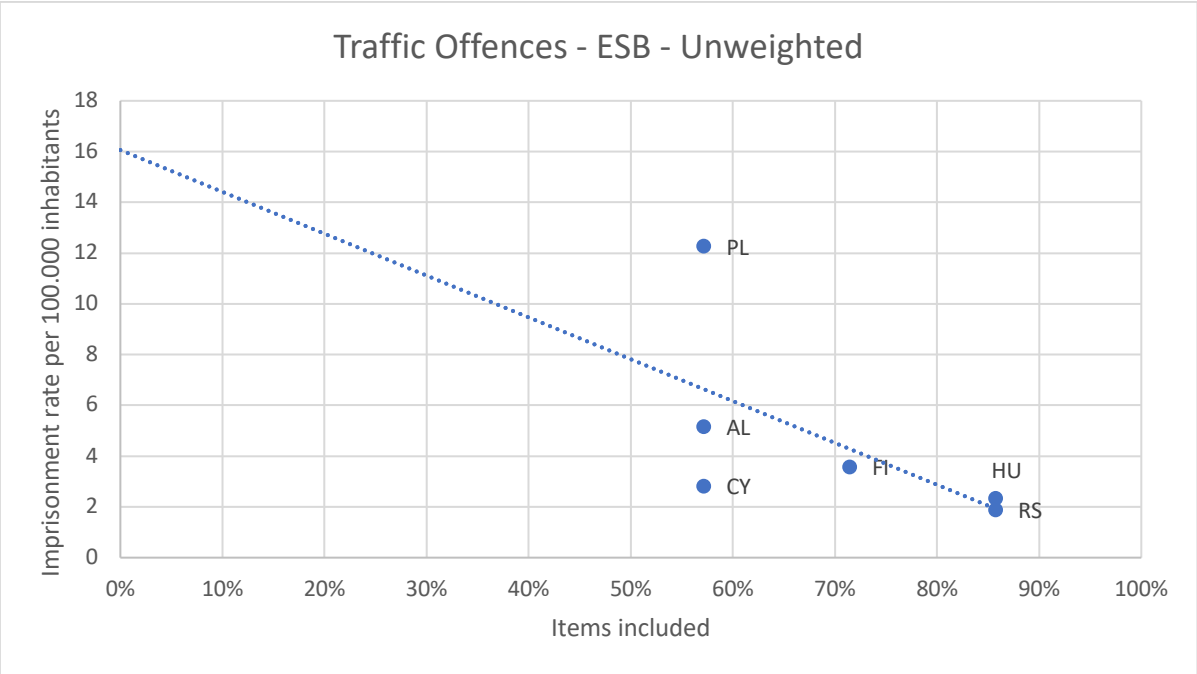

Figure 11: Relation between unweighted item inclusion ratios and imprisonment rates for traffic offences (ESB, N=6)

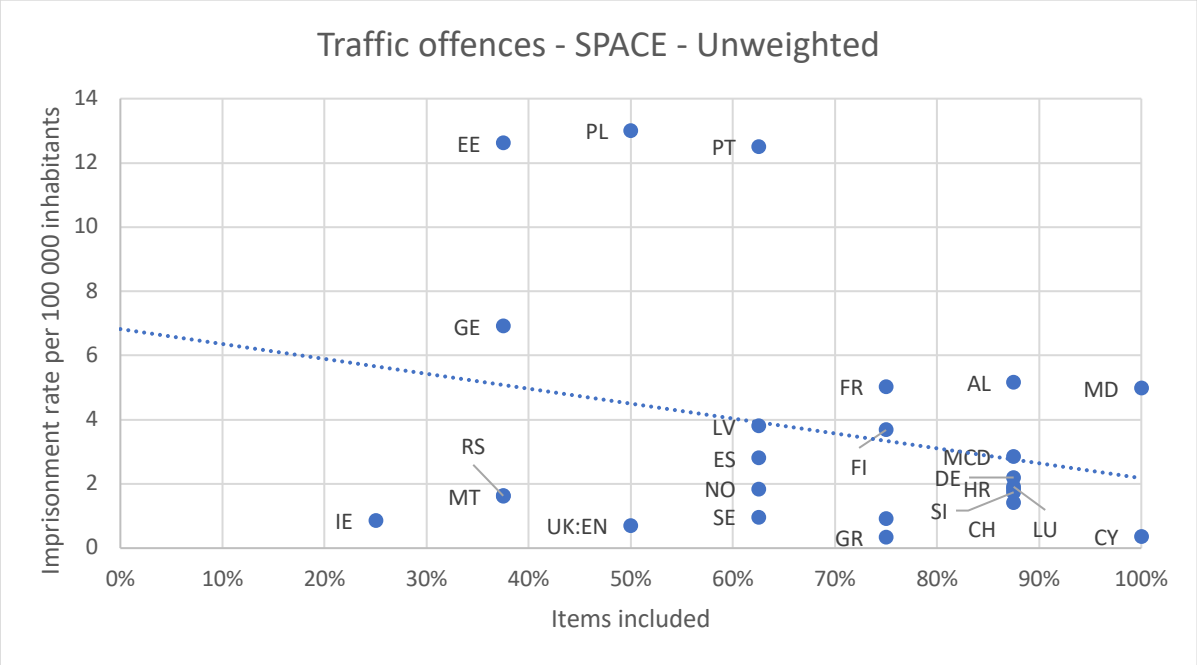

Figure 12: Relation between unweighted item inclusion ratios and imprisonment rates for traffic offences (SPACE, N=25)

Comparing Figures 11 and 12, the main similarity is the negative correlation. This result contradicts our hypothesis of a positive correlation between the number of items included in the definition and the number of prisoners. Nevertheless, it is too early to draw general conclusions. In particular, at least three major methodological issues must be taken into account. First, the Figures show that imprisonment rates for traffic offences tend to be extremely low, regardless of whether a few items or all items are included. The reason is that

most traffic offences are minor offences that are not sanctioned with imprisonment. Second, we have seen that the standard definitions are not specifically aimed at prison data, which means that the adjustments introduced in police data to match that standard definition may not have been applied in the same way to imprisonment rates. In particular, in the case of traffic offences, the average inclusion ratio is 71% and all country ratios are close to that value, which suggests that they made a major effort to adapt their national definitions to the standard definition. However, and probably because of the first reason mentioned above — the low imprisonment rates for traffic offences— such adjustments may have had a minor impact on imprisonment rates. Only major traffic offences lead the offender to prison, and the differences across countries in this kind of offences could be irrelevant. This interpretation is supported by the fact that the SPACE data, which is provided unmodified (*i.e.*, according to the national definitions) also shows a negative correlation, despite their more varied distribution. Finally, as always, we cannot control for the impact of substantial, statistical, and other legal differences on the data collected, and that impact could be stronger when definitional differences are reduced.

2.b. Weighted traffic offences

Figure 13 shows that, for the ESB data, there is a slight tightening of the correlation (r=-0.842; p=0.002) when the items are weighted according to their frequency and relative importance at the police level (according to Swedish police statistics, as stated above). However, we have already seen that only six countries provided data for the analysis.

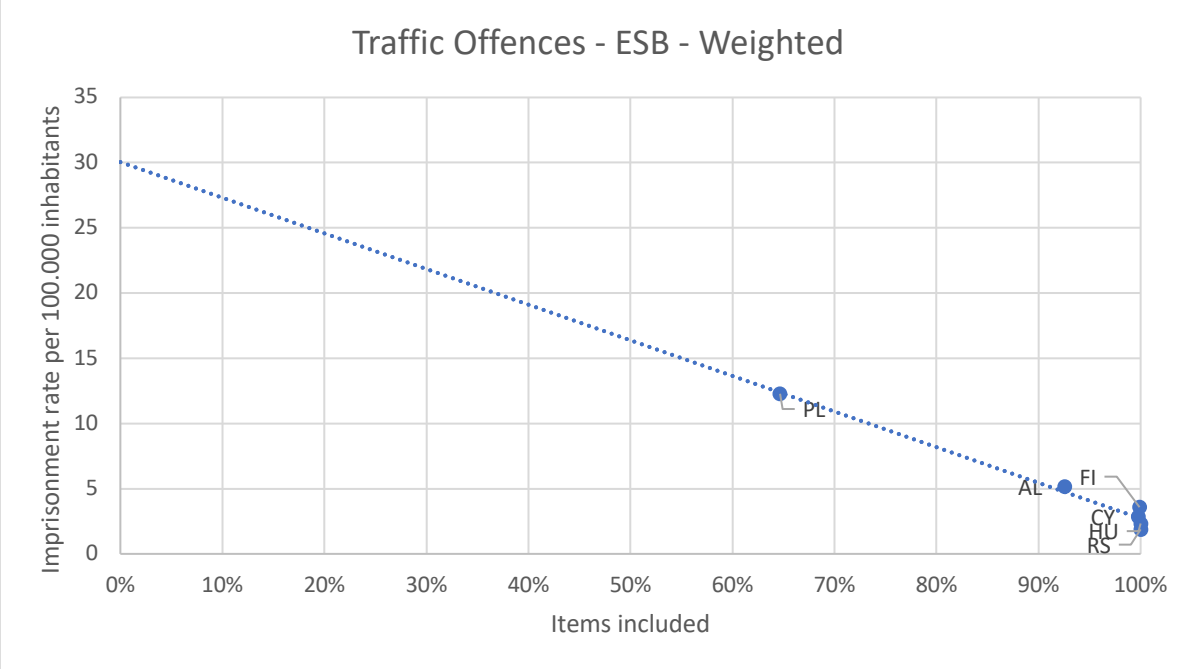

Figure 13: Relation between weighted item inclusion ratios and imprisonment rates for traffic offences (ESB, N=6)

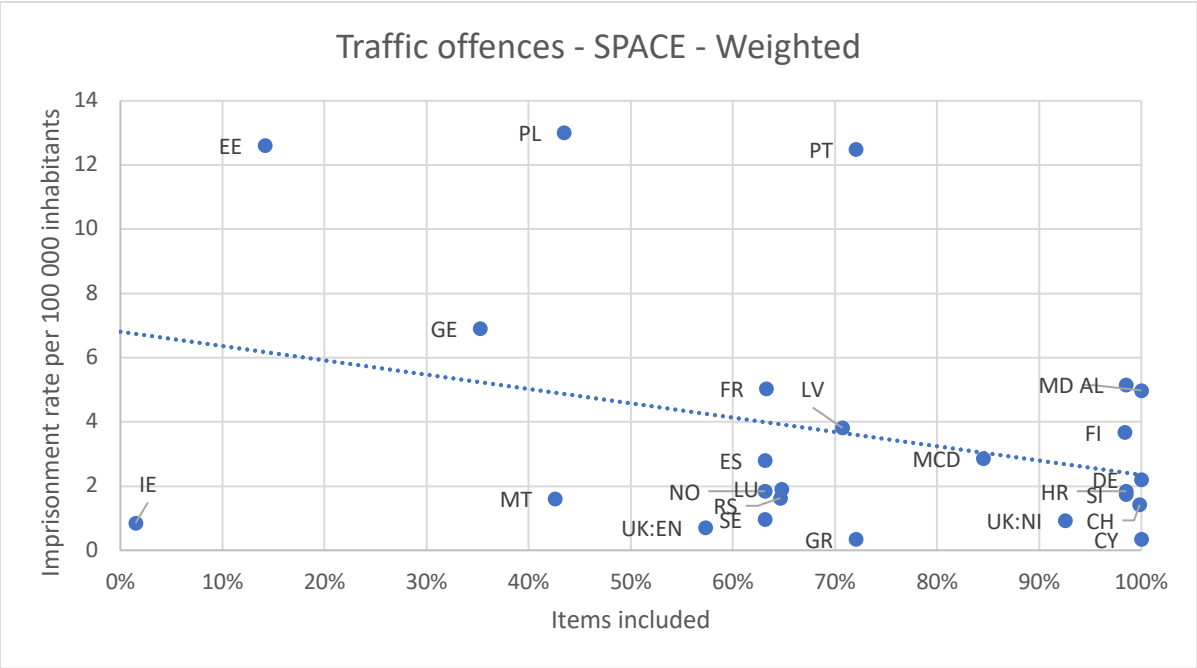

Figure 14: Relation between weighted item inclusion ratios and imprisonment rates for traffic offences (SPACE, N=25)

The SPACE data, when weighted (Figure 14), also reach a slightly higher negative correlation coefficient (r=-0.317), which remains statistically non-significant (p=0.112). The distribution also shows several outliers, namely Ireland, Estonia, Poland, and Portugal. In particular, Ireland and Estonia have contrasting imprisonment rates, even if their weighted inclusion ratios are quite close. The Irish position is not surprising as the country only includes one item, which is also the most insignificant one (all other traffic offences, which represents 1.5% of the total offences), and consequently has a relatively low imprisonment rate. However, this explanation does not apply to countries such as Greece or Cyprus, which have even lower imprisonment rates for traffic offences, although they include more and weightier items in their definitions. In sum, once more the negative correlation found cannot be plausibly explained by a direct influence of the offence definitions.

3. Intentional homicide

The relationship between imprisonment rates for homicide and the percentage of items included in its definition (inclusion ratio) is illustrated in Figure 15 (ESB) and Figure 16 (SPACE) for unweighted data, and in Figure 17 (ESB) and Figure 18 (SPACE) for data weighted according to their frequency and relative importance at the police level.

3.a. Unweighted intentional homicide

The ESB data (Figure 15) show that most countries have similar inclusion ratios, with a peak at 50%. At the same time, there is an extremely weak correlation between the inclusion ratio and the imprisonment rate for homicide (r=-0.147), suggesting that the latter seem to be more dependent on other factors than on the (adapted) definitions.

The analysis of the SPACE data presented in Figure 16 shows a completely different picture. A total of 34 out of 45 countries provided data on intentional homicide and there is a medium-strong positive correlation, which is statistically significant (r=0.436; p=0.01). In this case, the

correlation supports our hypothesis: higher inclusion ratios are associated with higher imprisonment rates. One can also see several countries with similar inclusion rates, but the variance of the distribution is much more pronounced than in Figure 15 since, as explained before, the SPACE questionnaire does not provide rules on inclusion or exclusion of items.

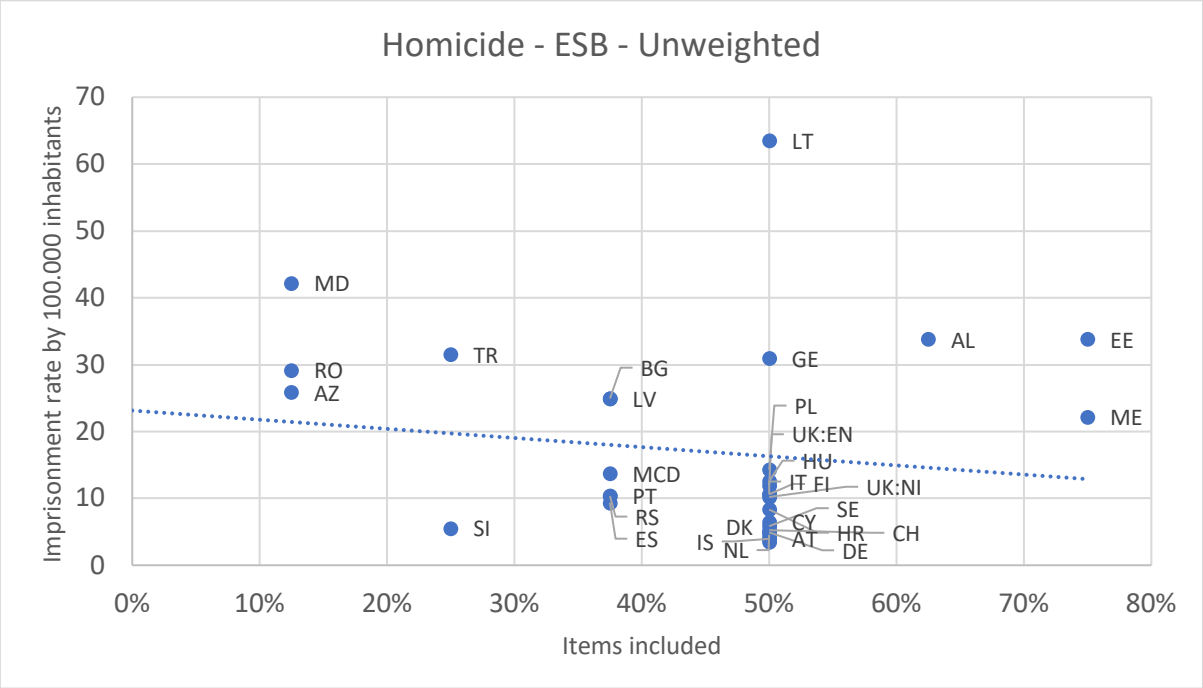

Figure 15: Relation between unweighted item inclusion ratios and imprisonment rates for homicide (ESB)

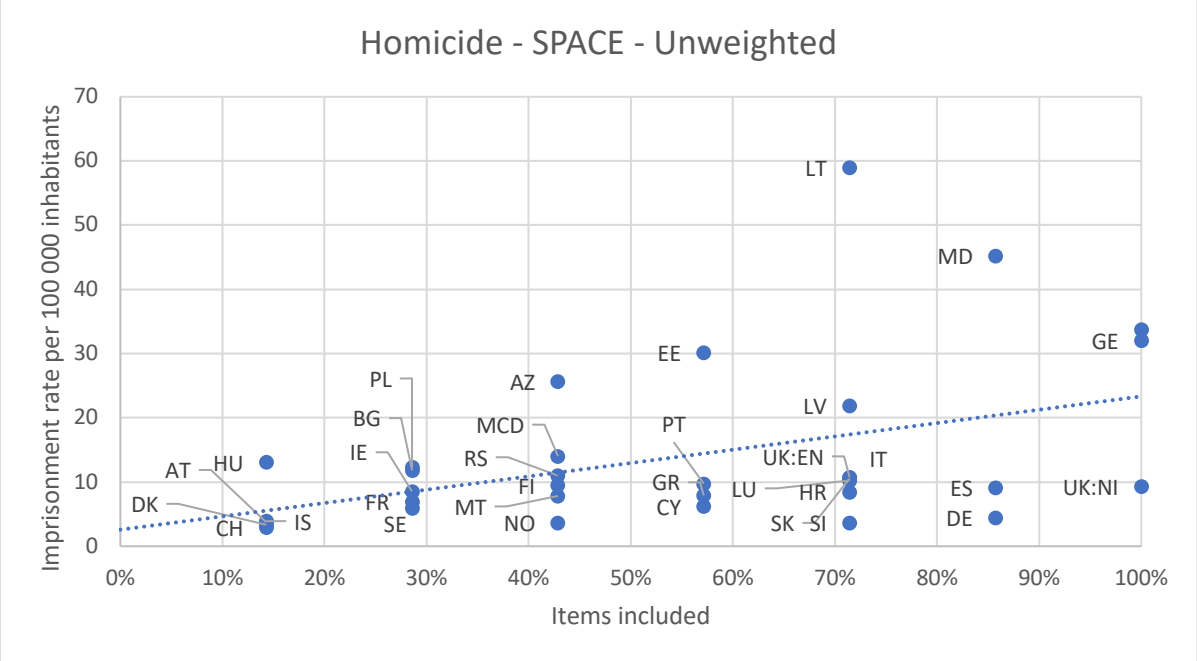

Figure 16: Relation between unweighted item inclusion ratios and imprisonment rates for homicide (SPACE)

3.b. Weighted intentional homicide

When the ESB data are weighted (Figure 17), the weak negative correlation increases slightly (r=-0.275) but remains statistically non-significant. On the contrary, when the weighting is applied to the SPACE data (Figure 18) the correlation becomes weaker and statistically non-significant (r=0.279; p=0.110). In both cases, the correlations seem to be affected mainly by the role played by attempted homicides, which were included by most countries, and have the largest weight (>50%) in these figures.

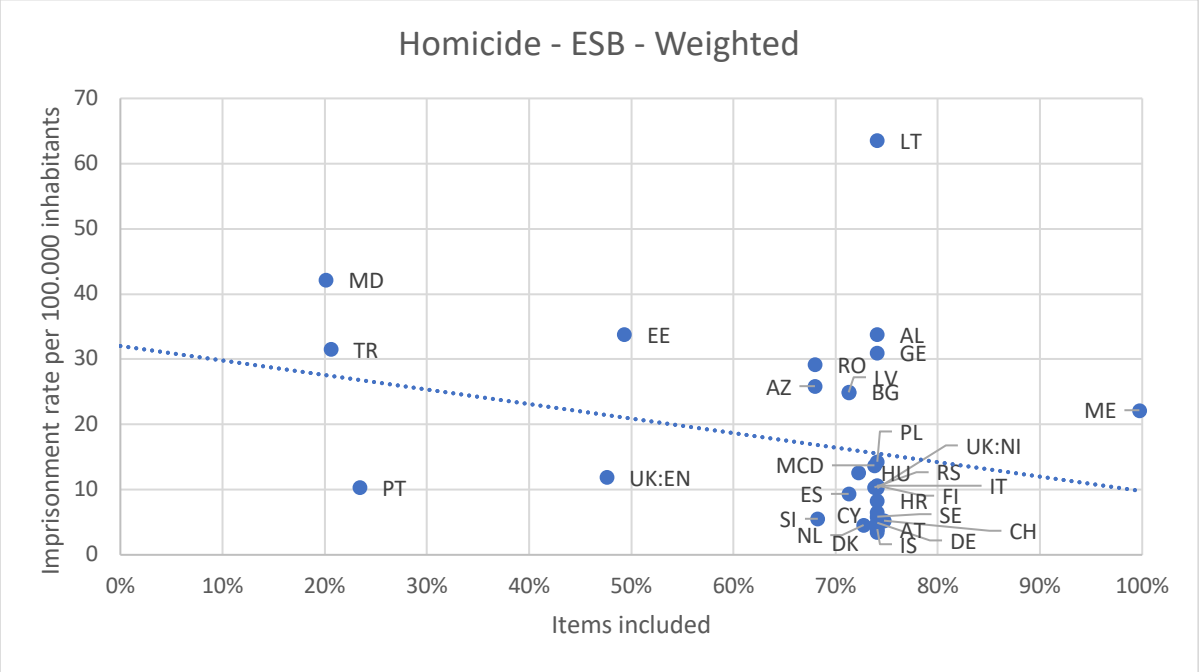

Figure 17: Relation between weighted item inclusion ratios and imprisonment rates for homicide (ESB)

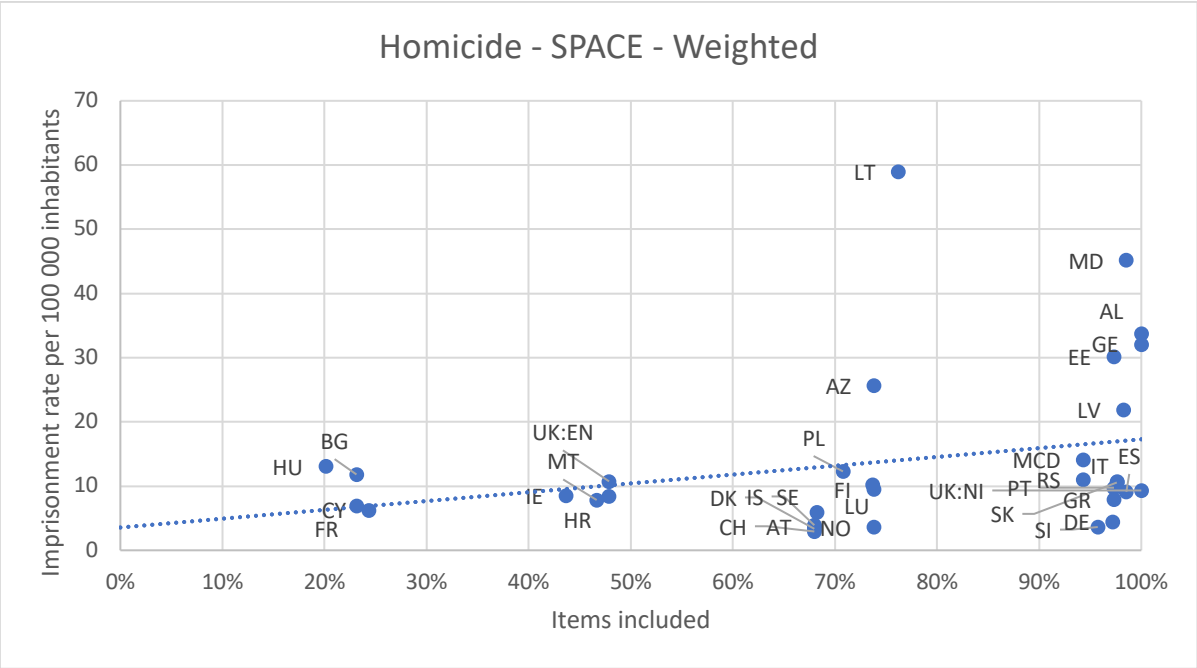

Figure 18: Relation between weighted item inclusion ratios and imprisonment rates for homicide (SPACE)

4. Assault

The relationship between imprisonment rates for assault and the percentage of items included in its definition (inclusion ratio) is illustrated in Figure 19 (ESB) and Figure 20 (SPACE) for unweighted data, and in Figure 21 (ESB) and Figure 22 (SPACE) for data weighted according to their frequency and relative importance at the police level.

4.a. Unweighted assault

The interpretation provided above for homicide also applies to the ESB data for assault (Figure 19). Due to the relatively high conformity with the standard definition, most countries accumulate at and around one value of the independent variable. In this case, it is around the inclusion ratio of 50 %. Once more, the remaining variation in the imprisonment rates can be attributed to other factors than definitions; concretely, there is only a weak correlation identifiable (r=-0.273).

Again, the 30 countries that provided data for SPACE show a different outcome (Figure 20). As in the case of homicide, we find a significant correlation in the expected direction (r=0.443; p=0.014). A major difference is that the countries that could be found around the 50 to 60 percent inclusion ratio in the ESB (Figure 19) present a dispersed distribution according to the SPACE data (Figure 20). For example, Bulgaria, Germany, and Georgia (all at 50% in the ESB diagram) can now be seen at 40, 70 and 100%.

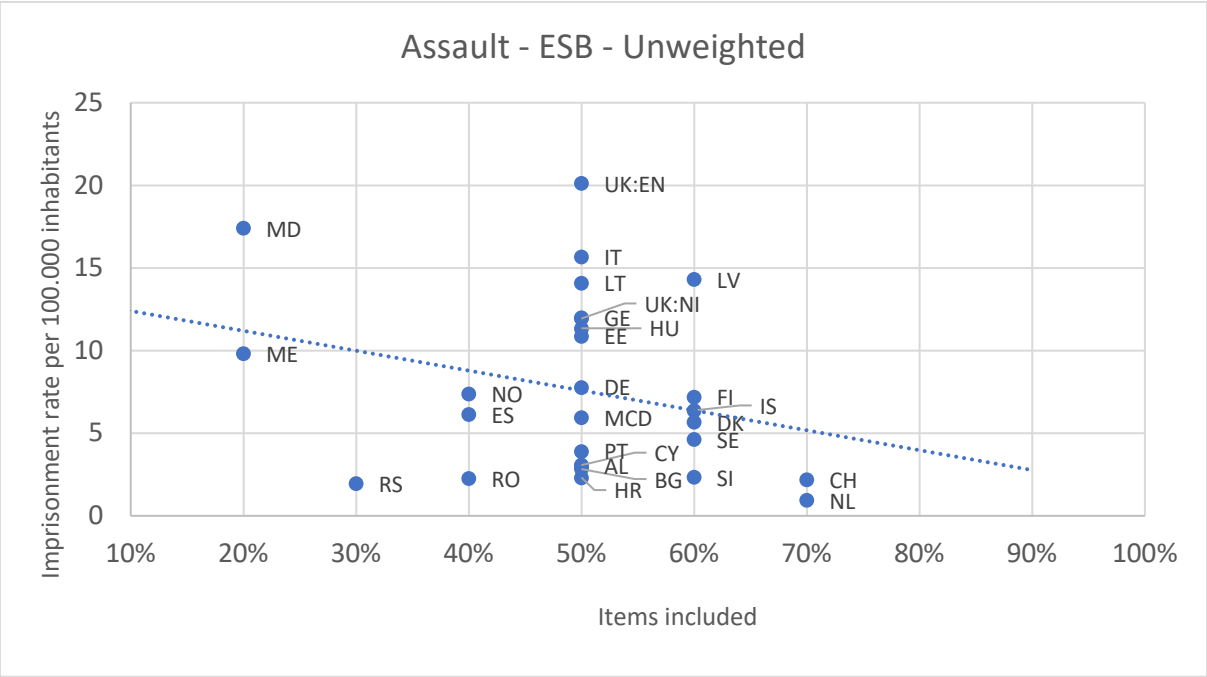

Figure 19: Relation between unweighted item inclusion ratios and imprisonment rates for assault (ESB)

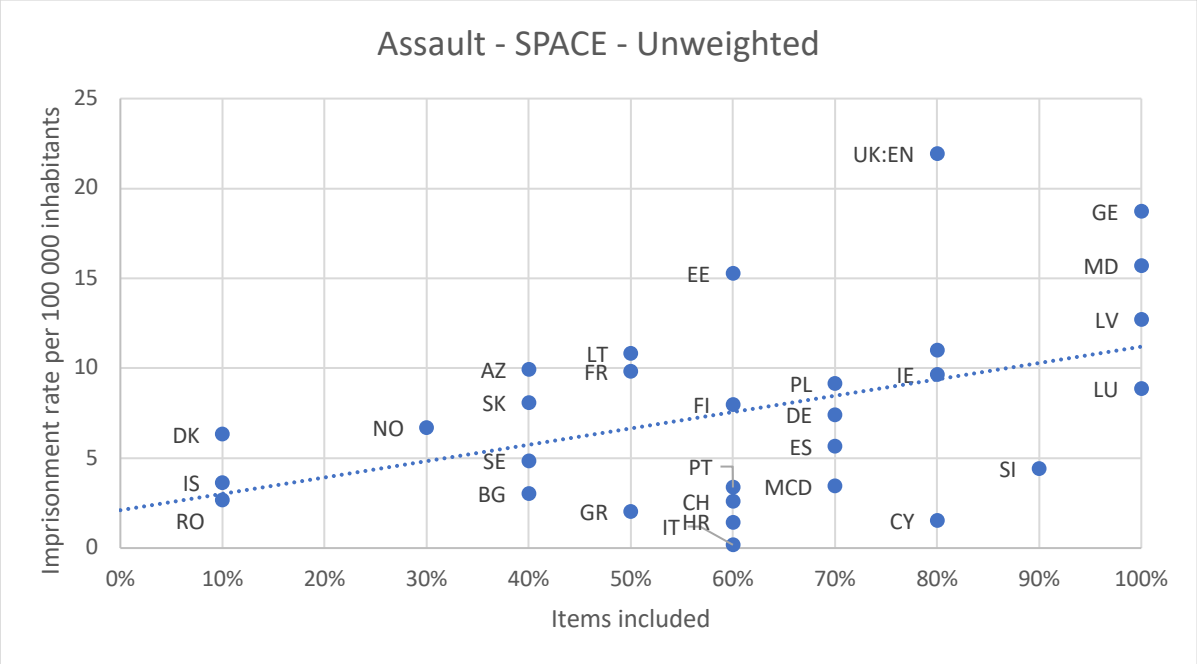

Figure 20: Relation between unweighted item inclusion ratios and imprisonment rates for assault (SPACE)

4.b. Weighted assault

The weighting of the data does not introduce any major change in the correlation between the assault definition and imprisonment rates for the offence according to ESB data (Figure 21; r=-0.23). Rather, due to the relatively low variance in definitions, almost all countries are now clustered at the end of the x-axis, showing very high weighted inclusion ratios.

Once again, the results for the SPACE data (Figure 22) are very different and show (when compared to the unweighted data) a slightly weaker, but still significant correlation (r=0.366; p=0.047). The result is comparable to the one already found for homicide, but even more pronounced. The assumption that offence definitions for these offences have an impact on imprisonment rates is further supported by the fact that the better-standardized data for the ESB do not show comparable results.

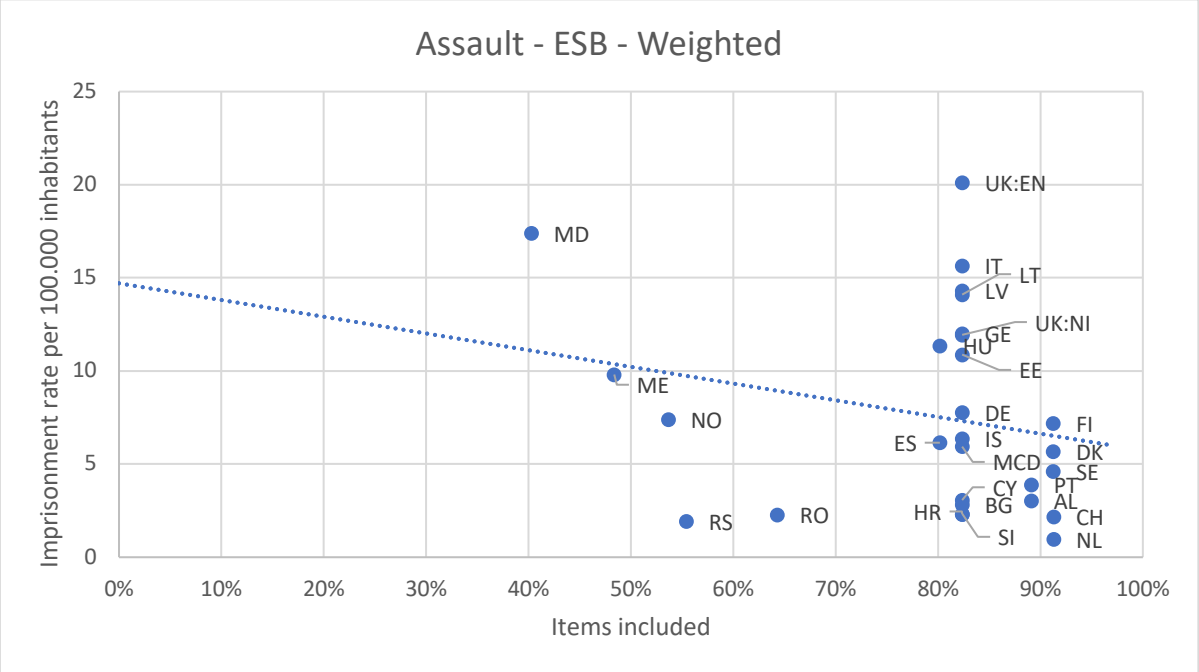

Figure 21: Relation between weighted item inclusion ratios and imprisonment rates for assault (ESB)

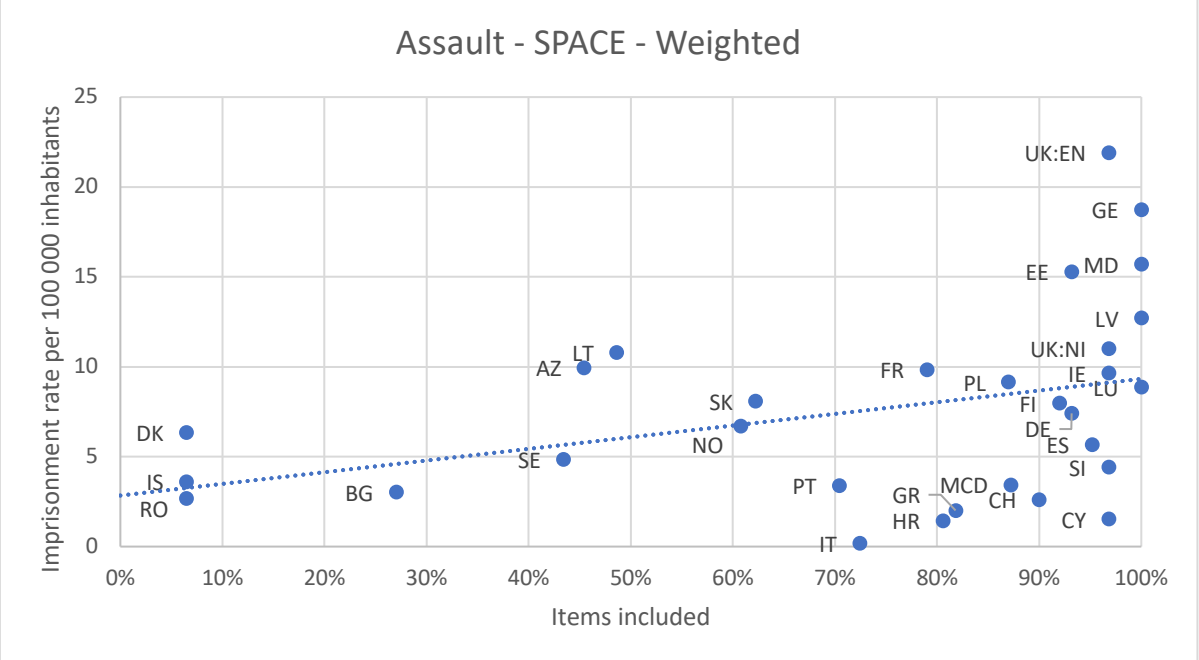

Figure 22: Relation between weighted item inclusion ratios and imprisonment rates for assault (SPACE)

5. Rape

The relationship between imprisonment rates for rape and the percentage of items included in its definition (inclusion ratio) is illustrated in Figure 23 (ESB) and Figure 24 (SPACE) for unweighted data, and in Figure 25 (ESB) and Figure 26 (SPACE) for data weighted according to their frequency and relative importance at the police level.

5.a. Unweighted rape

The number of countries (N=31) that provided eligible data on rape for the ESB (Figure 23) is higher than for the offences studied previously. However, once again, there is no correlation to be found (r=0.032; p=0.865). The main difference with the previous offences is that, in the case of rape, no correlation can be found with the SPACE data either (Figure 24). In fact, a correlation of r=0.093 means that the variables are practically unrelated. This is rather surprising since, until now, SPACE data had shown correlations in the expected direction, while only the ESB data did not.

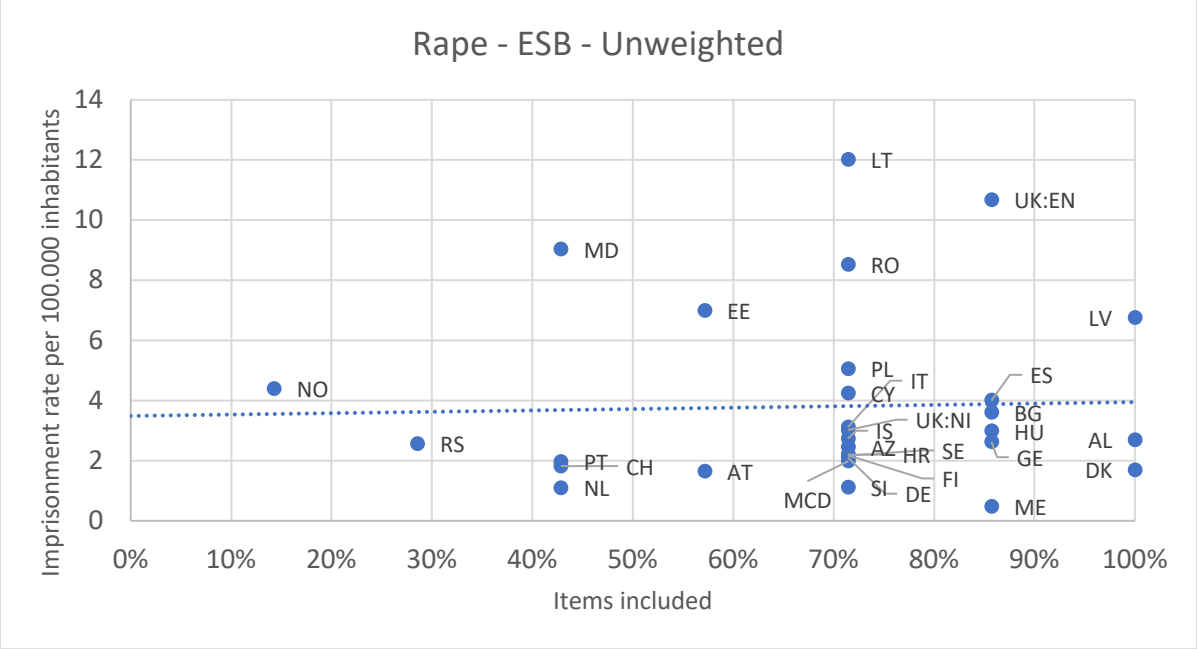

Figure 23: Relation between unweighted item inclusion ratios and imprisonment rates for rape (ESB)

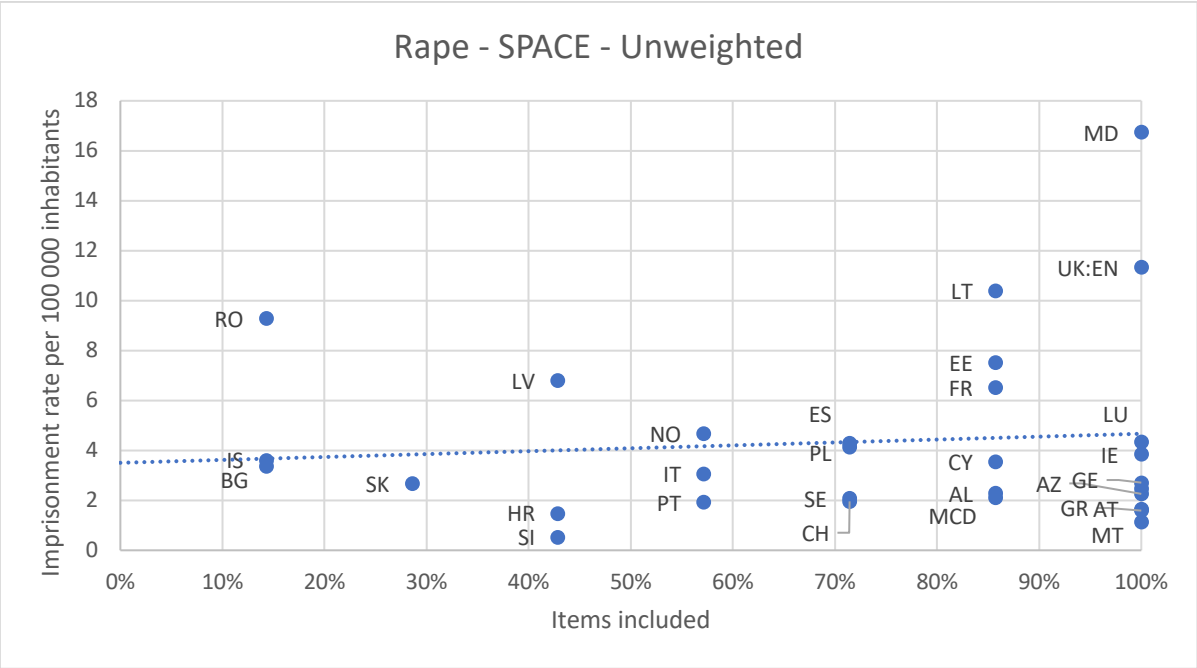

Figure 24: Relation between unweighted item inclusion ratios and imprisonment rates for rape (SPACE)

5.b. Weighted rape

Applying the weighting on the ESB data results in a shift of the data towards higher percentages (Figure 25). If previously most of the countries reached a percentage of just over 70% now the majority reaches a little over an inclusion ratio of 90%. Still no correlation can be found (r=0.062, p=0.741).

In the case of SPACE, Figure 26 shows that there are practically no changes to the results obtained with unweighted data (Figure 24). It is true that there is a slight shift towards higher percentages of inclusion, but they hardly influence the correlation (r=0.104).

Summing up, in the case of rape, no correlation between definition broadness and imprisonment rates can be found for any of the surveys, both for weighted and unweighted data. There are however some striking differences in the answers given by some countries to each survey. For example, in the unweighted data, Latvia reaches an inclusion ratio of 100% for the ESB, but just over 40% for SPACE; nonetheless, and quite surprisingly, the imprisonment rate remains the same in both surveys. A similar result can be found for Romania (ESB: >70%; SPACE: <20%).

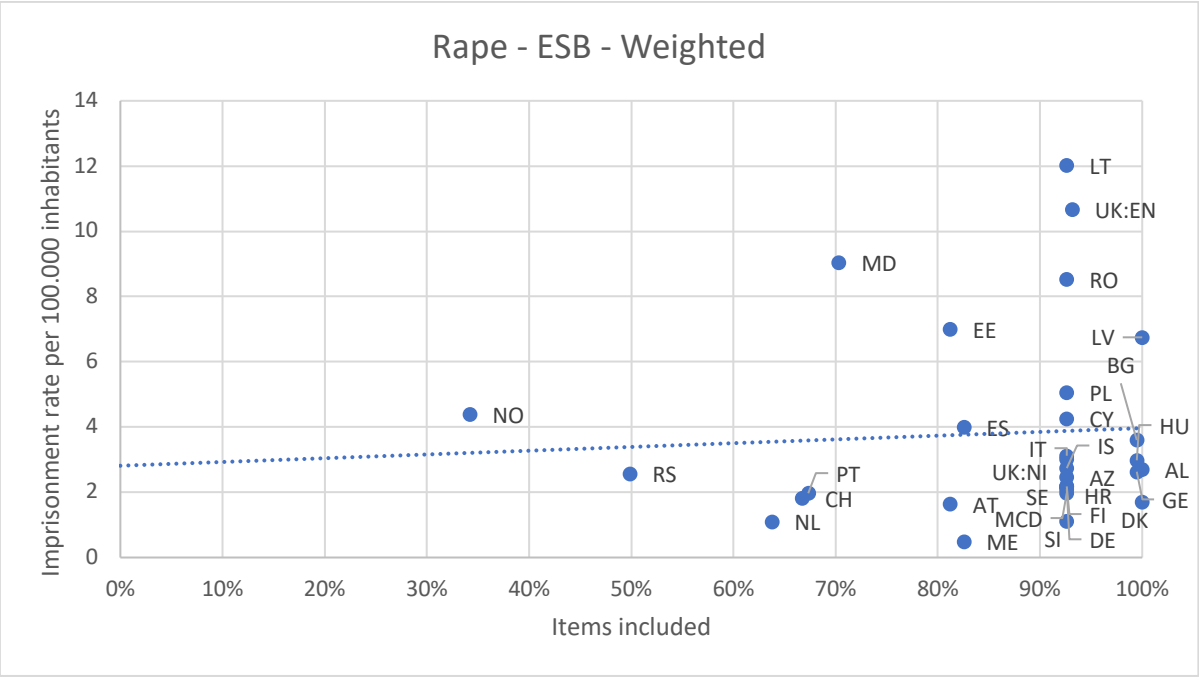

Figure 25: Relation between weighted item inclusion ratios and imprisonment rates for rape (ESB)

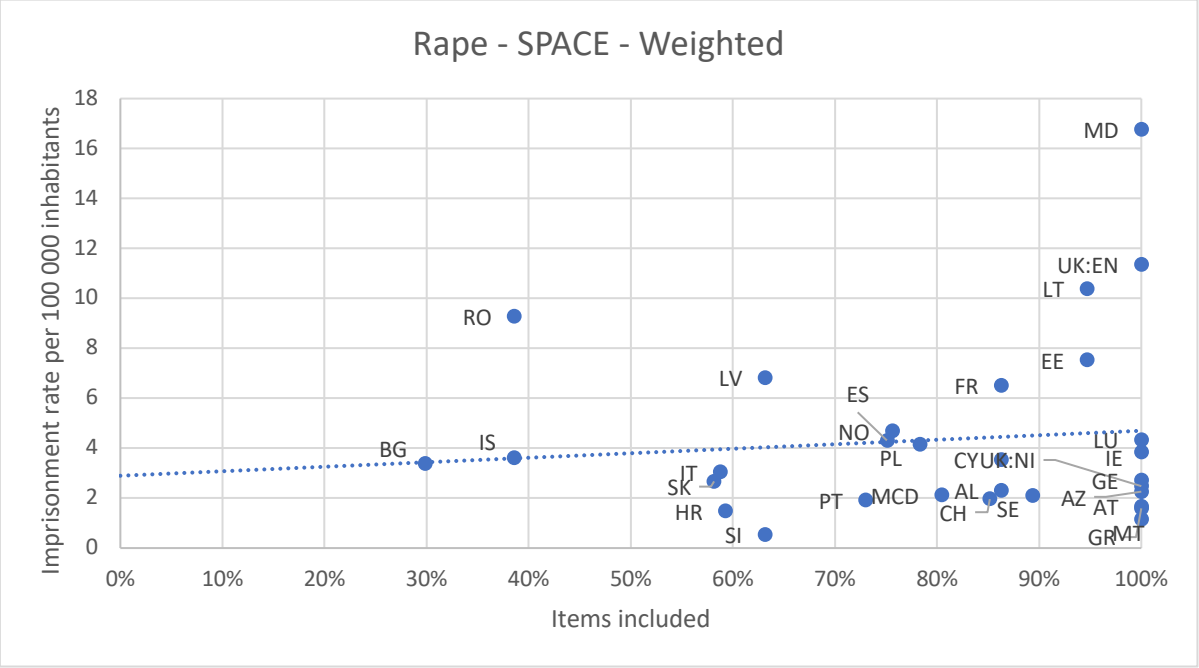

Figure 26: Relation between weighted item inclusion ratios and imprisonment rates for rape (SPACE)

6. Sexual abuse of minors

The influence of the weighting in sexual abuse of minors (collected only in the ESB) is particularly impressive. While the unweighted data for the ESB (Figure 27) still show a weak correlation in the positive direction (r=0.25, p=0.598), when the weighting is applied (Figure 28), the correlation turns radically in the opposite direction (r=-0369). Regrettably, the number of countries included in the analysis is once more too low to allow drawing valid conclusions.

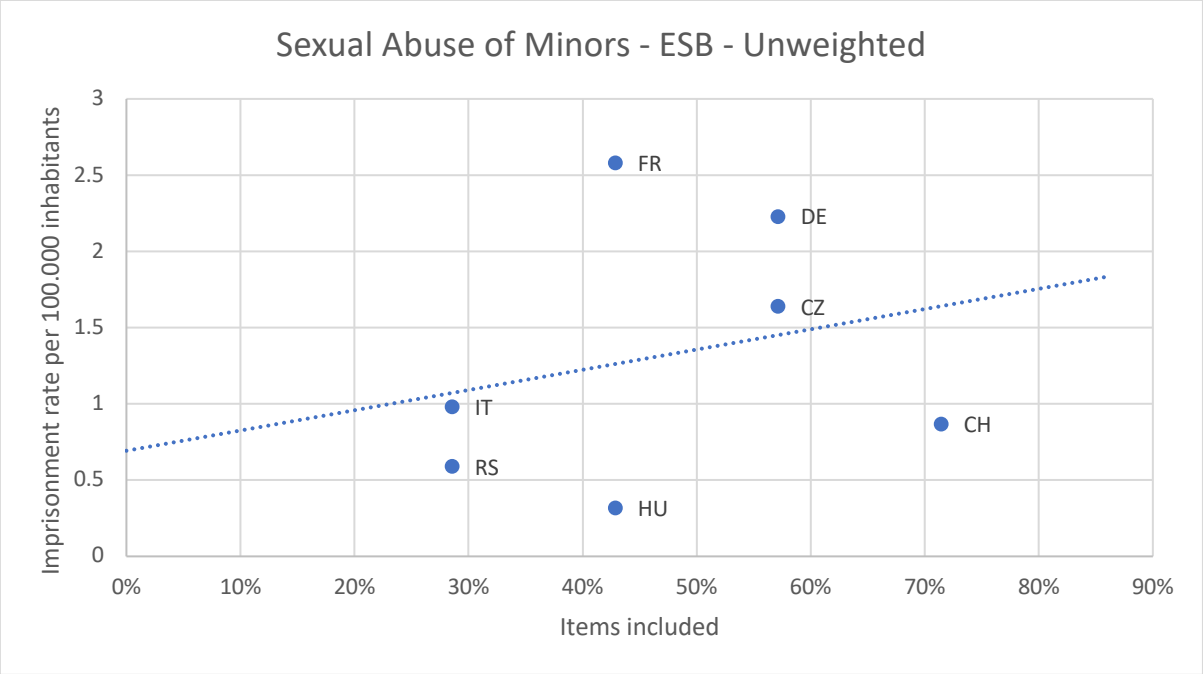

Figure 27: Relation between unweighted item inclusion ratios and imprisonment rates for sexual abuse of minors (ESB)

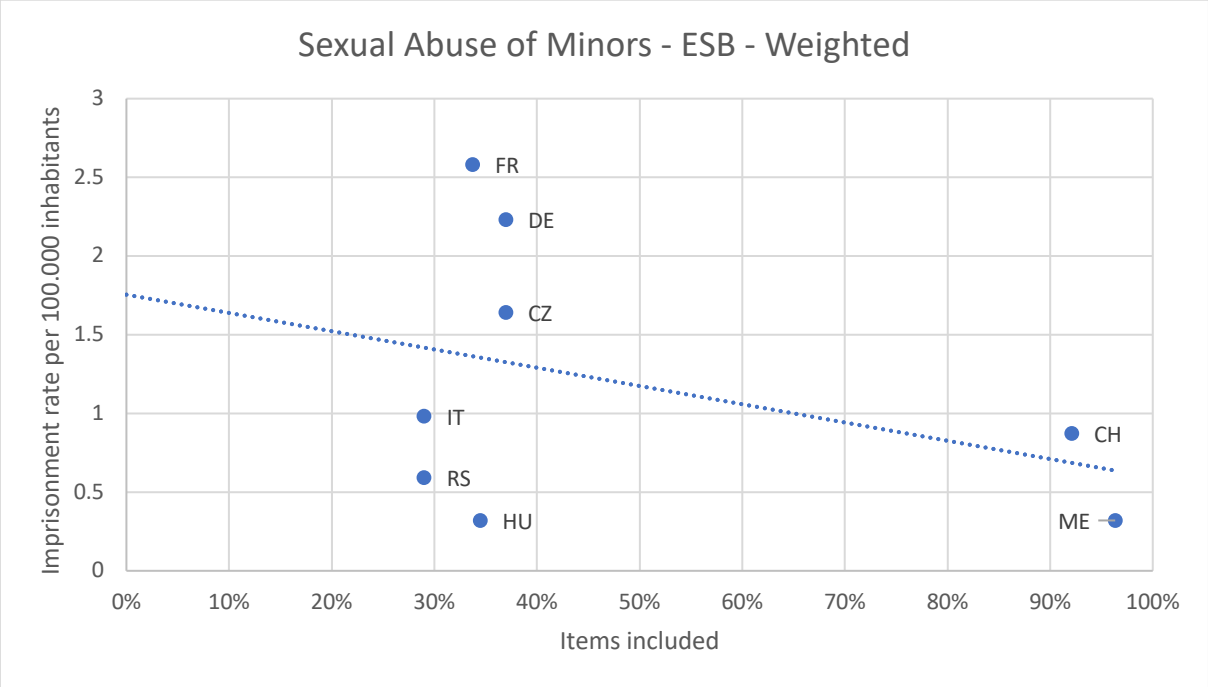

Figure 28: Relation between weighted item inclusion ratios and imprisonment rates for sexual abuse of minors (ESB)

7. Sexual assault (ESB) / other sexual offences (SPACE)

The relationship between imprisonment rates for sexual assault (in the ESB data) and other sexual offences (in SPACE data) and the percentage of items included in their respective definitions (inclusion ratio) is illustrated in Figure 29 (ESB) and Figure 30 (SPACE) for

unweighted data, and in Figure 31 (ESB) and Figure 32 (SPACE) for data weighted according to their frequency and relative importance at the police level.

7.a. Unweighted (Sexual assault and other sexual offences)

In principle, sexual assault is the offence that achieves the highest conformity rates with the standard definition of the ESB (table 1). Only 13 countries submitted data on imprisonment rates for sexual assault in total, but Figure 29 shows a relatively strong and significant (yet negative) correlation (r=-0.786; p=0.002). As it happened before with traffic offences, it is difficult to draw conclusions based on such a small sample of countries. The Figure shows that the data are well-standardized with only few differences in the definition, which suggests that the correlation could be spurious.

The SPACE data (figure 30), which do not refer to sexual assault, but to sexual offences other than rape, show once more a correlation in the expected direction, although this time it is only weak and not significant (r=0.249; p=0.193). Similarly to what we observed before, the SPACE data show a larger variation in definitions than the ESB data. This corroborates that there is an effect of offence definitions on prison data, especially when contrasting the results with those of the well-standardized ESB data.

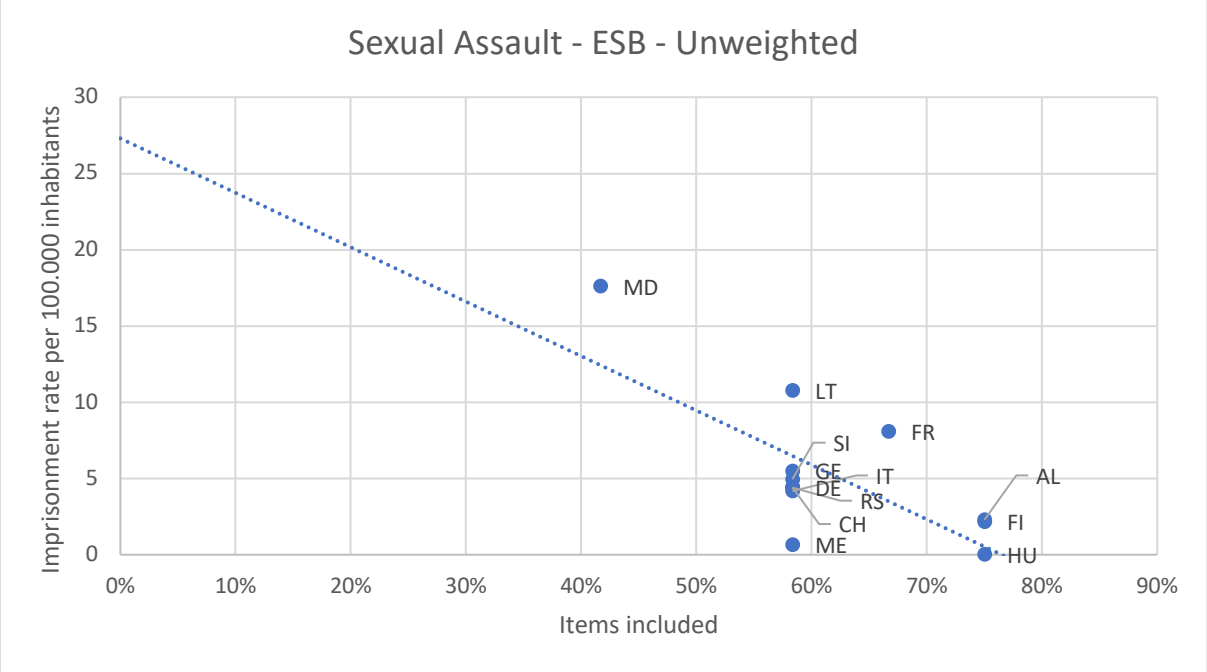

Figure 29: Relation between unweighted item inclusion ratios and imprisonment rates for sexual assault (ESB)

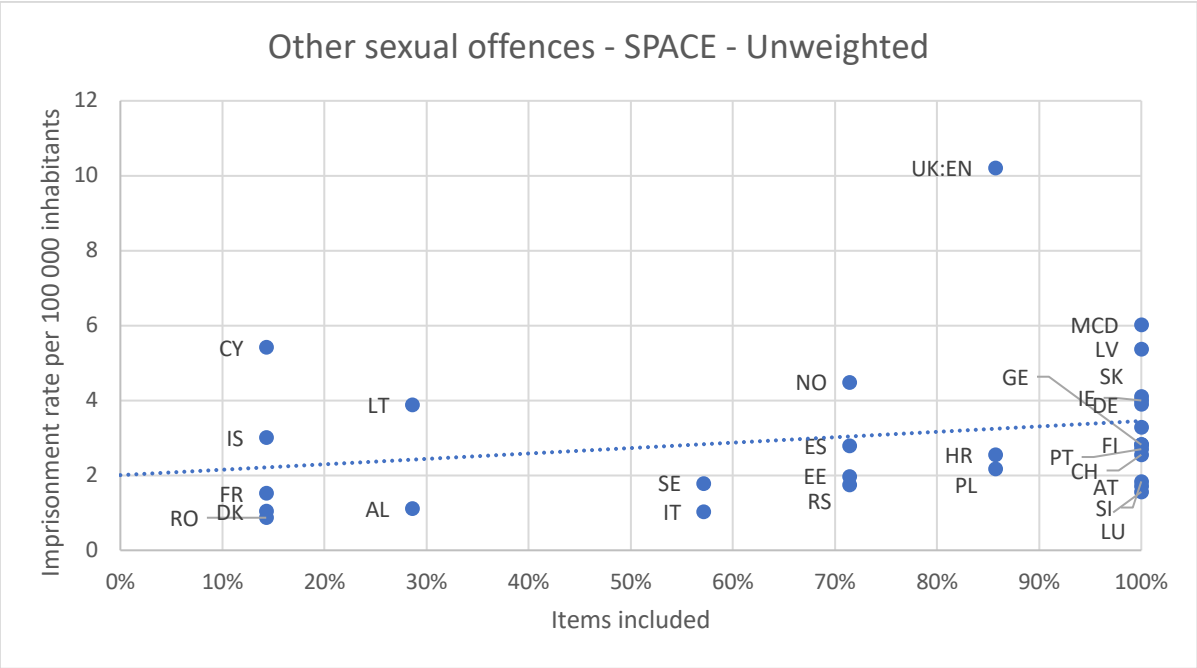

Figure 30: Relation between unweighted item inclusion ratios and imprisonment rates for other sexual offences (SPACE)

7.b. Weighted sexual assault and other sexual offences

Once the data on sexual assult is weighted (Figure 31) the negative correlation found previously with the ESB data decreases slightly and becomes non-significant (r=-0.284; p=0.346). The weighted inclusion ratios for most countries are still very close to each other, due to the strong standardization of the ESB data. As before, this homogeneity implies that it is implausible to assume that the differences observed could be attributed to the definition of sexual assault. In the case of SPACE (Figure 32), the correlation coefficient for the weighted data (r=0.226) is almost identical to that of the unweighted data, and the result is also non-significant (p=0.239).

If we summarize the general direction of the correlations found with the SPACE data until now, almost all of them —the exceptions are traffic offences and rape— are positive both for the unweighted and the weighted data, even if sometimes they are relatively weak. On the contrary, the correlations found with the ESB data are inexistent or negative, with the only exception of the insignificant positive correlation found with the unweighted data for sexual abuse of a minor. These partial results tend to corroborate our hypothesis about the overall influence of the definitions on the data collected. The design of the ESB, with a strong emphasis on definition comparability, reduces the impact of the definitions, while the design of SPACE, based on the definitions used in each country, leads to a higher degree of heterogeneity in the definitions and, in that case, our assumption that a high item inclusion ratio favours a higher imprisonment rate for the same offence seems to bear some truth.

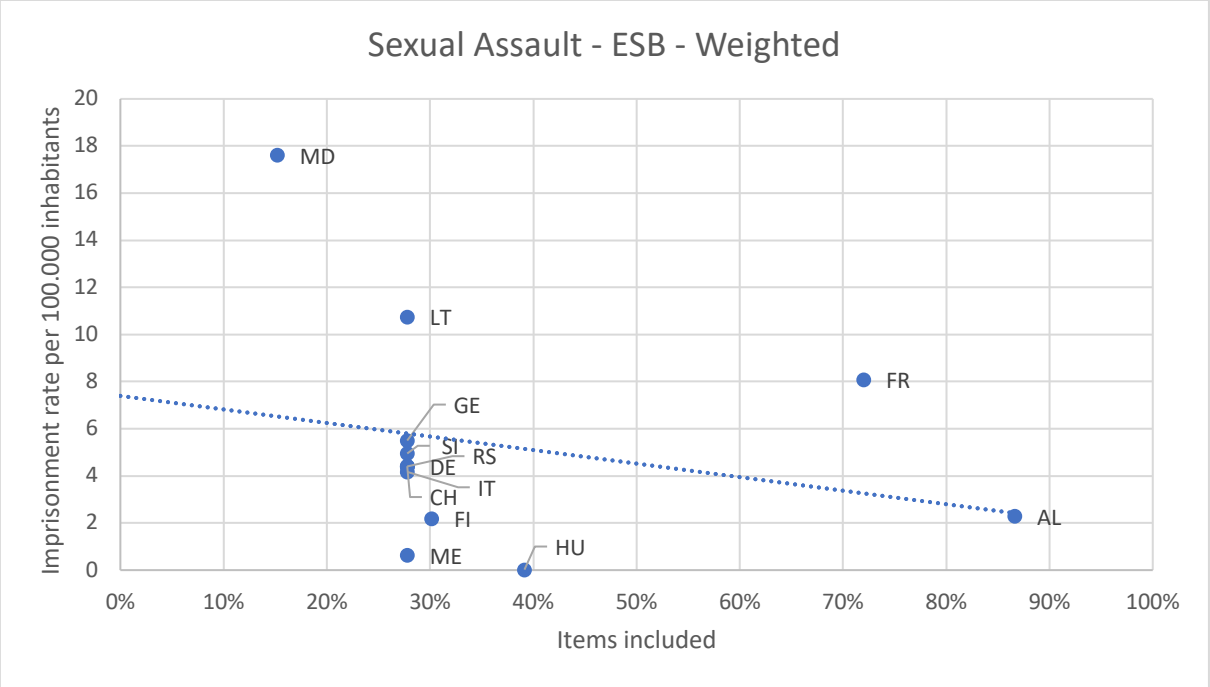

Figure 31: Relation between weighted item inclusion ratios and imprisonment rates for sexual assault (ESB)

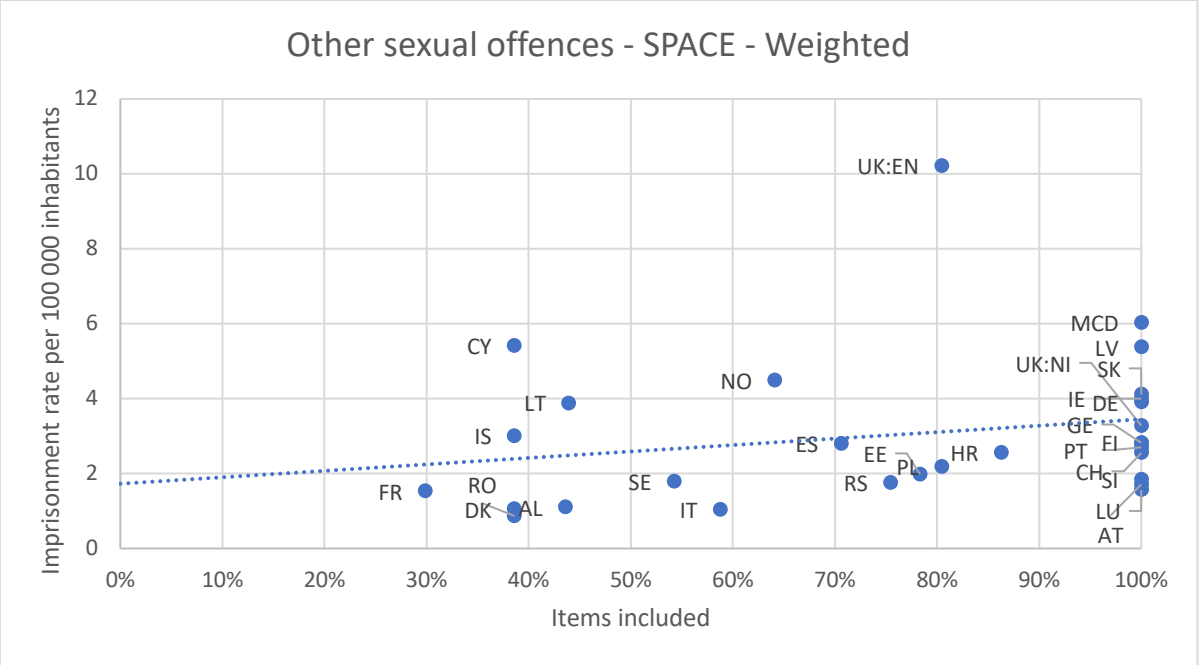

Figure 32: Relation between weighted item inclusion ratios and imprisonment rates for other sexual offences (SPACE)

8. Robbery

The relationship between imprisonment rates for robbery and the percentage of items included in its definition (inclusion ratio) is illustrated in Figure 33 (ESB) and Figure 34 (SPACE) for unweighted data, and in Figure 35 (ESB) and Figure 36 (SPACE) for data weighted according to their frequency and relative importance at the police level.

The ESB robbery data (figure 33) show that countries tend to cluster around a 40% of conformity with an "all-inclusive" definition. Unsurprisingly there is in this case only a weak, insignificant negative correlation (r=-0.199; p=0.291) to be found. This corroborates that a high conformity in definitions does not allow for the identification of effects of the inclusion ratio on prison data.

The results obtained with the SPACE data (Figure 34) point to the opposite direction. The inclusion ratios are widely spread across the diagram (indicating strong differences in definitions) and this introduces a certain logic that supports our hypothesis. In countries with a high inclusion ratio, the imprisonment rate also tends to be high, and that correlation is significant (r=0.360; p=0.043).

8.a. Unweighted robbery

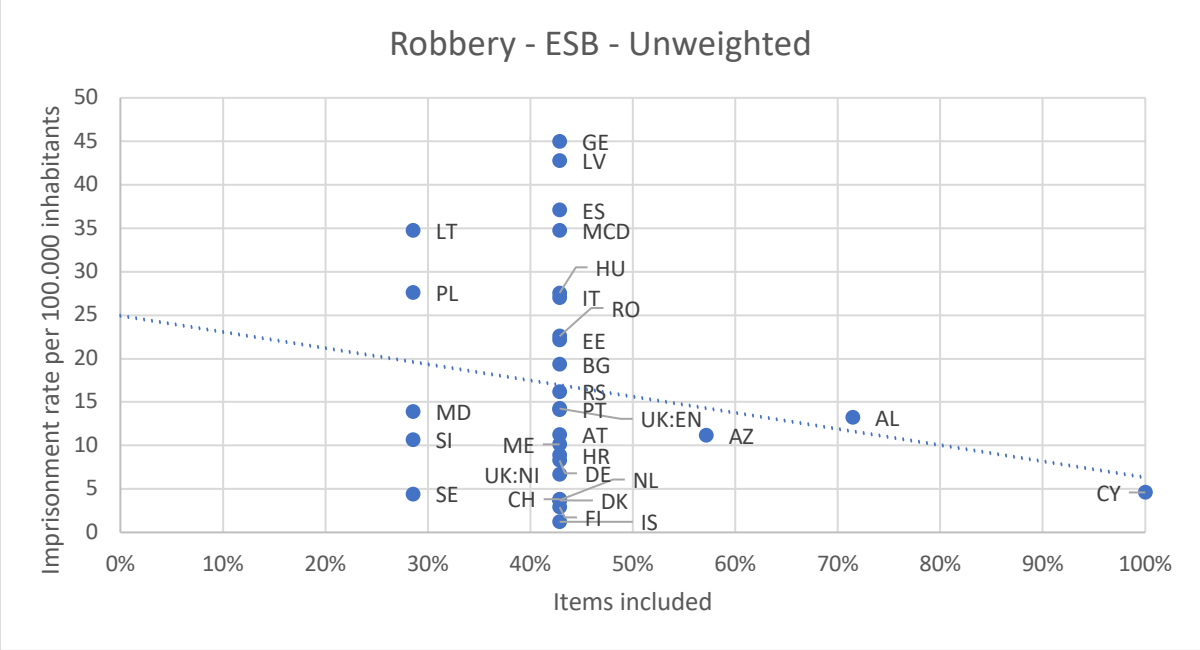

Figure 33: Relation between unweighted item inclusion ratios and imprisonment rates for robbery (ESB)

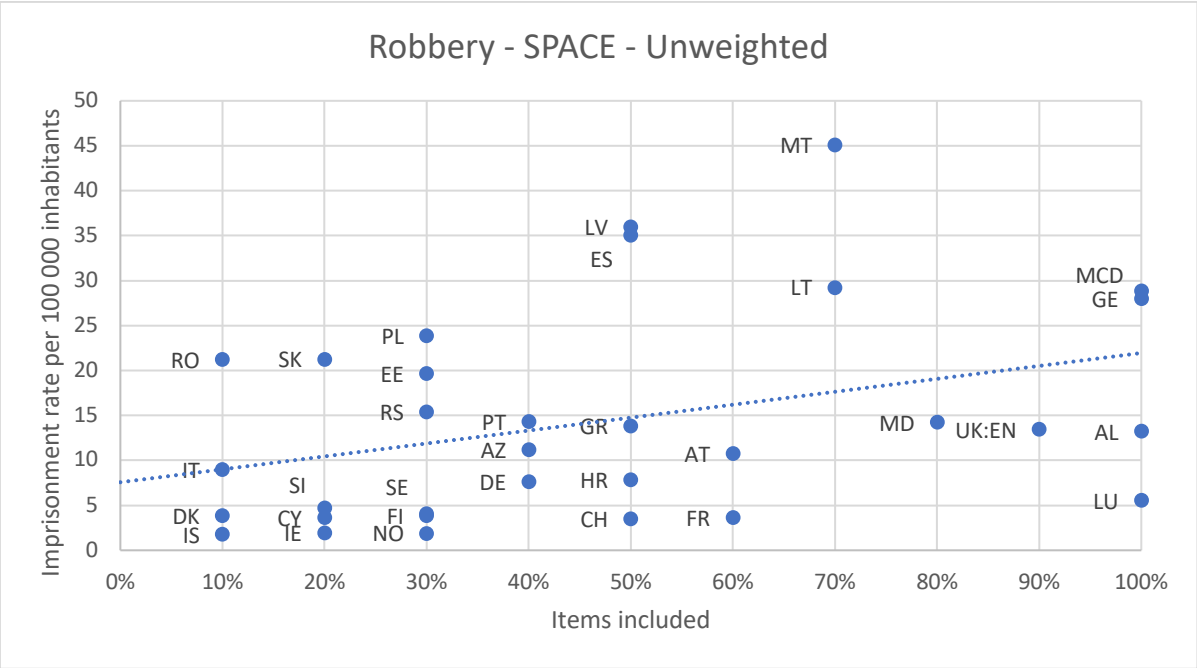

Figure 34: Relation between unweighted item inclusion ratios and imprisonment rates for robbery (SPACE)

8.b. Weighted robbery

The variation in the item inclusion ratios is reduced even further when the ESB data are weighted (Figure 35). Under that condition, most countries are placed on the line of the 20% inclusion ratio, but that has no influence on the correlation (r=-0.212).

Conversely, in the case of the SPACE data (Figure 36), two opposite groups assemble most of the data, one around a 13% inclusion ratio and the other around 100%; in addition, there is still a lot of variation in the inclusion rates of the countries placed between these extremes. In that context, the correlation becomes slightly weaker (r=0.297; p=0.122).

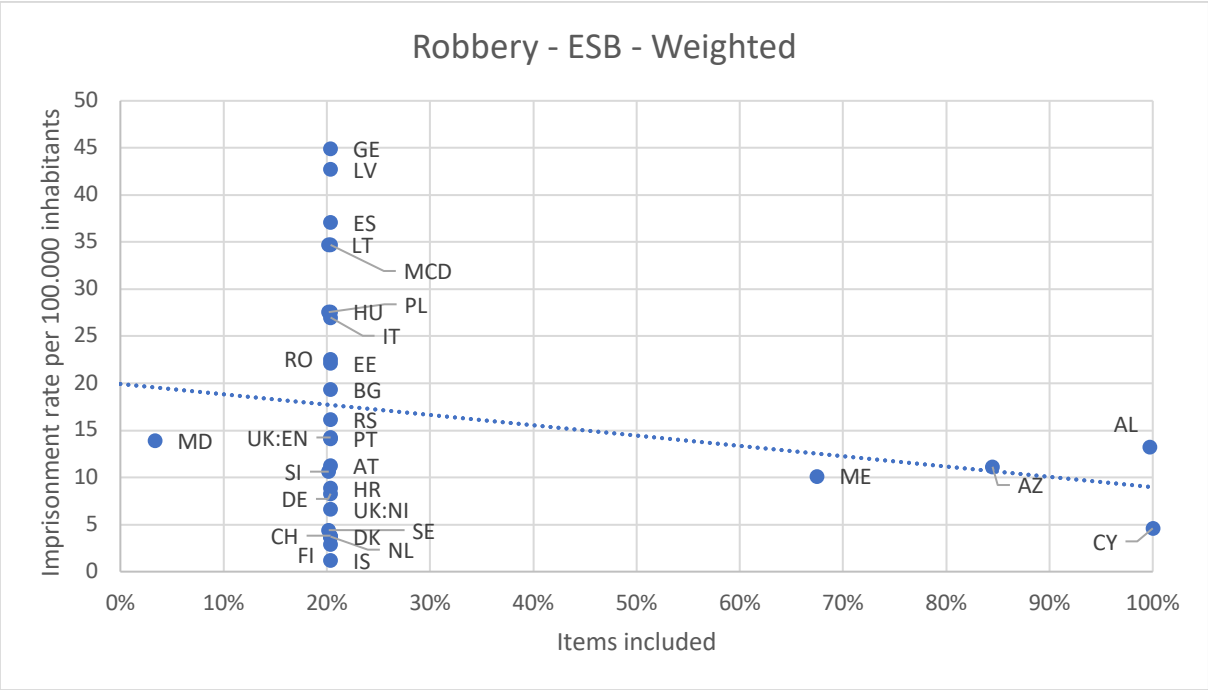

Figure 35: Relation between weighted item inclusion ratios and imprisonment rates for robbery (ESB)

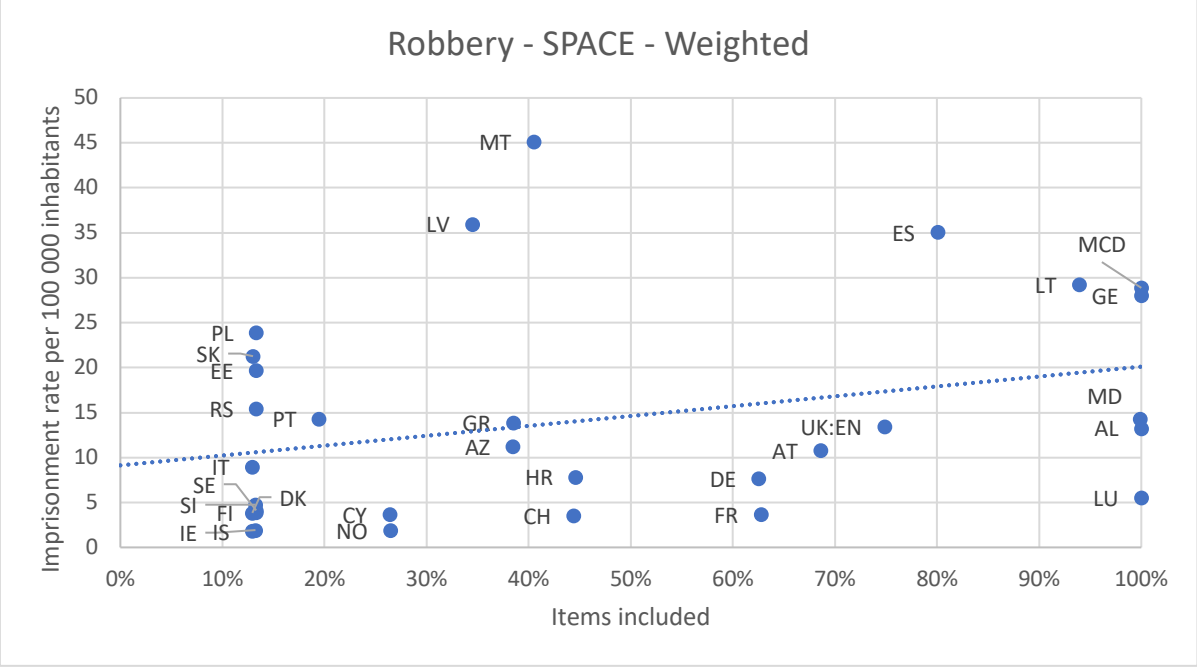

Figure 36: Relation between weighted item inclusion ratios and imprisonment rates for robbery (SPACE)

9. Theft

The relationship between imprisonment rates for theft and the percentage of items included in its definition (inclusion ratio) is illustrated in Figure 37 (ESB) and Figure 38 (SPACE) for unweighted data, and in Figure 39 (ESB) and Figure 40 (SPACE) for data weighted according to their frequency and relative importance at the police level.

9.a. Unweighted theft

Theft is another offence for which the ESB data show clustered inclusion ratios, which in this case oscillate between 50% and 60%. Consequently, there is no correlation (Figure 37) between the imprisonment rate and the inclusion ratio (r=0.146; p=0.434). Once more, the plausible explanation is that the high conformity of the ESB definitions hinders the finding of any clear relation between imprisonment rates and offence definitions.

Once again, Figure 38 corroborates that the SPACE data on definitions varies much more than the ESB data, and this is accompanied by a significant correlation between these definitions and the imprisonment rates according to SPACE (r=0.401; p=0.023).

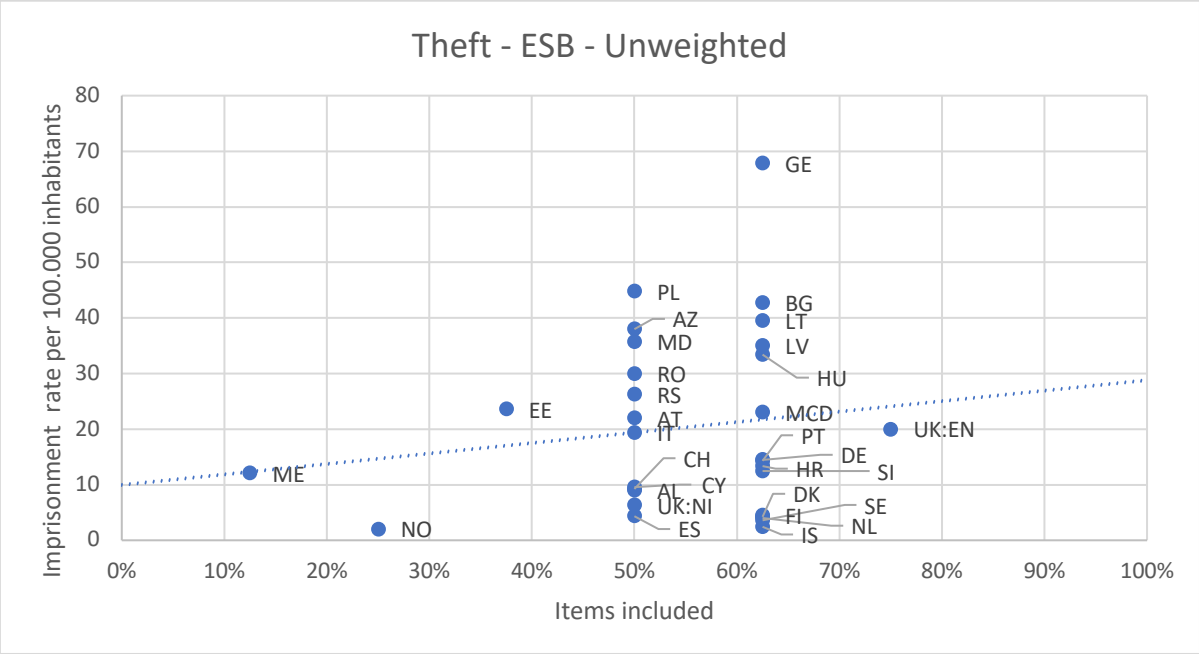

Figure 37: Relation between unweighted item inclusion ratios and imprisonment rates for theft (ESB)

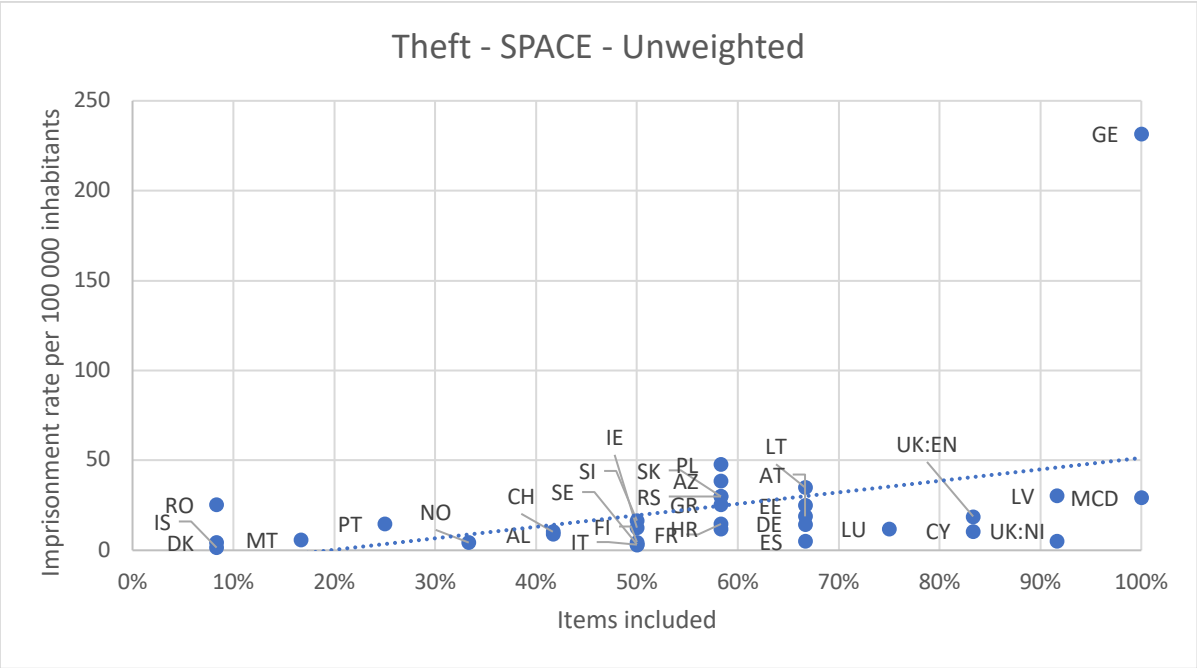

Figure 38: Relation between unweighted item inclusion ratios and imprisonment rates for theft (SPACE)

9.b. Weighted theft

Weighting the ESB data for theft (Figure 39) reduces even further the almost non-existent correlation between definitions and imprisonment rates for that offence, to the point that it becomes slightly negative (r=-0.062). On the other hand, weighting the SPACE data (Figure 40) does not change the direction of the correlation, which remains positive as expected, but becomes weaker (r=0.248) and non-significant. (p=0.171). In this case, the main difference with the unweighted data is that most countries reach inclusion rates of 90% or more.

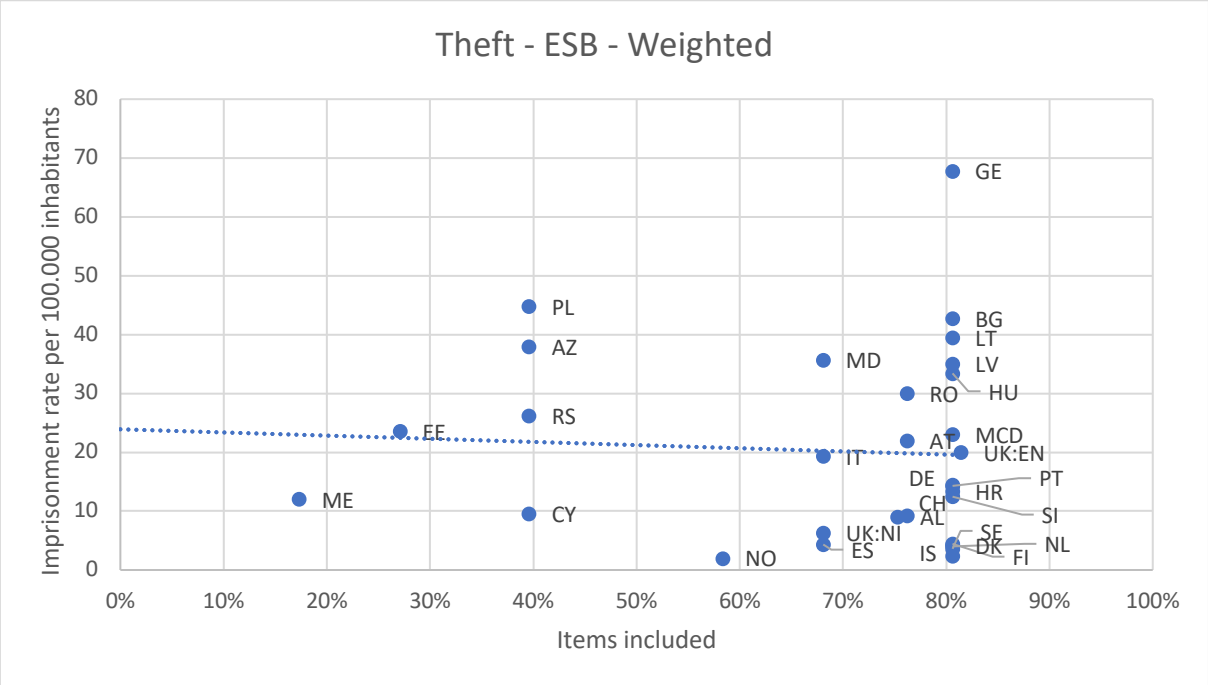

Figure 39: Relation between weighted item inclusion ratios and imprisonment rates for theft (ESB)

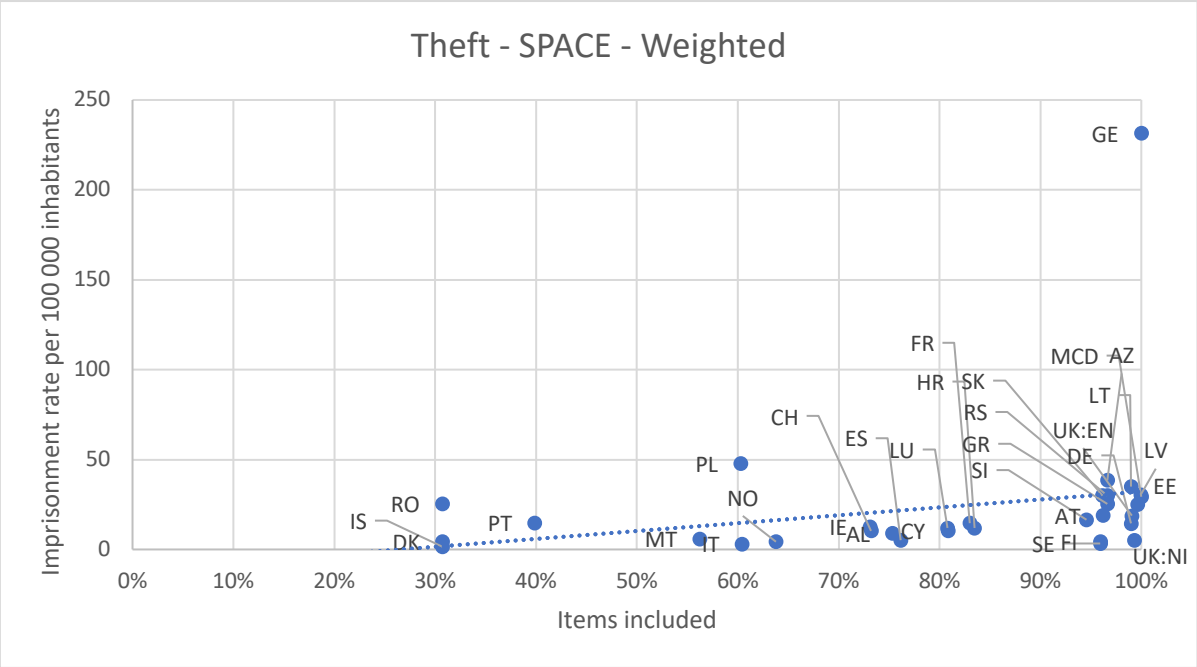

Figure 40: Relation between weighted item inclusion ratios and imprisonment rates for theft (SPACE)

10. Fraud (ESB) / Economic and financial crimes (SPACE)

The relationship between imprisonment rates for fraud (in the ESB data) and economic and financial crimes (in SPACE data) and the percentage of items included in their respective definitions (inclusion ratio) is illustrated in Figure 41 (ESB) and Figure 42 (SPACE) for unweighted data, and in Figure 43 (ESB) and Figure 44 (SPACE) for data weighted according to their frequency and relative importance at the police level.

10. a. Unweighted fraud / economic and financial crimes

The distribution of the ESB data for fraud (Figure 41) clusters strongly at the inclusion ratio that represents the standard definition (in this case, 20%). The correlation is negative, but non-significant (r=-0.309; p=0.355), in such a way that, once more, one can identity no clear influence of the definition on the data collected.

In the case of the SPACE data for economic and financial crimes (Figure 42), there is a slight, but non-significant correlation in the expected direction (r=0.276; p=0.163). This increases the number of results obtained with the SPACE data that corroborate the main hypothesis of this paper. In this case, the high number of subcategories included in the definition of economic and financial crimes increases the dispersion of the inclusion rates presented in the Figure.

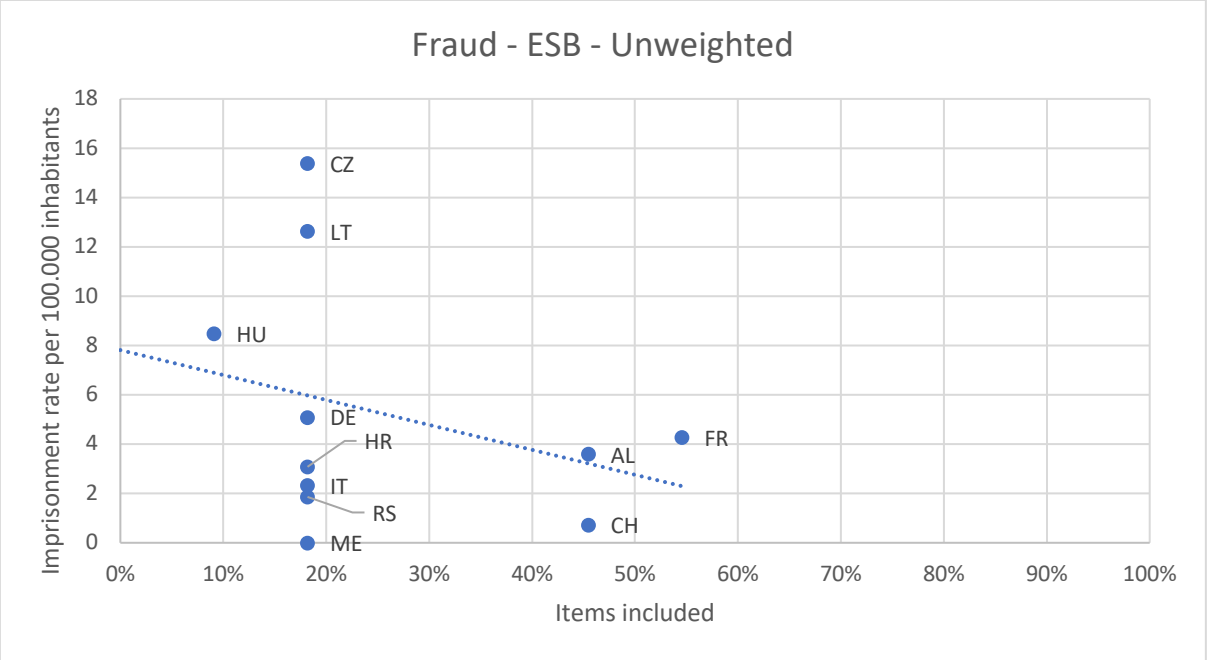

Figure 41: Relation between unweighted item inclusion ratios and imprisonment rates for fraud (ESB)

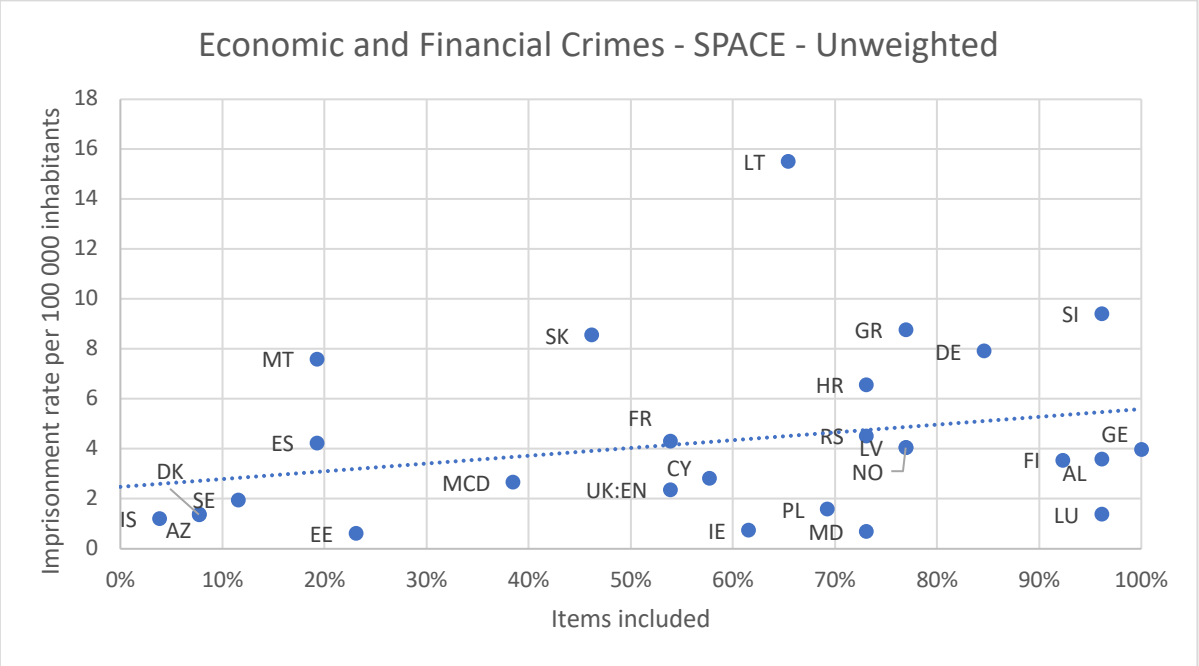

Figure 42: Relation between unweighted item inclusion ratios and imprisonment rates for economic and financial crimes (SPACE)

10.b. Weighted fraud

Once more, the weighting procedure renders the correlation even weaker (r=-0.246; p=0.417) for the ESB data (Figure 43). The inclusion ratios remained clustered around the value that corresponds to the inclusion ratio of the standard definition (55%), corroborating that when data reach a high level of standardization, there are no clear effects of the offence definition on the imprisonment rates. In that case, the remaining cross-national differences need to be

explained using other factors. For the reasons explained above, it is not possible to weight the data on economic and financial crimes included in SPACE.

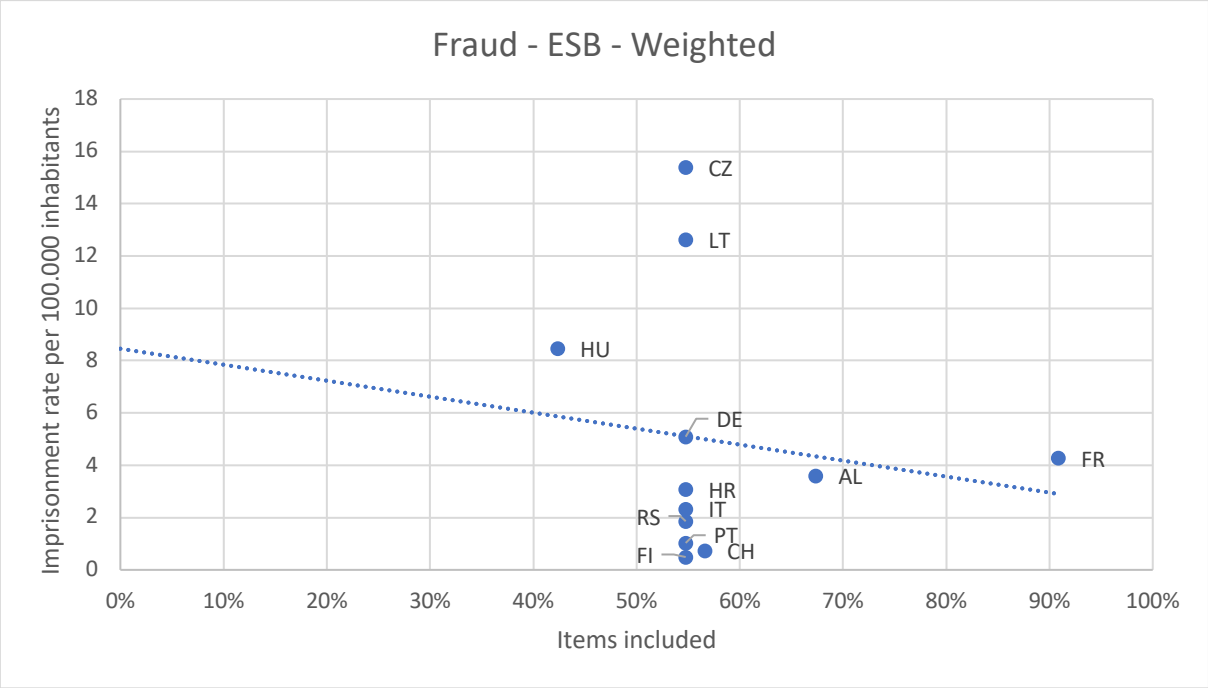

Figure 43: Relation between weighted item inclusion ratios and imprisonment rates for fraud (ESB)

11. Drug offences

As it happened with a few other offences, it was impossible to find a weighting procedure for drug offences. Therefore, Figures 44 and 45 show only unweighted results for the conformity with an "all-inclusive" offence definition.

For drug offences, both the ESB and the SPACE data show a slightly positive, but non-significant correlation coefficient (ESB r=-0.333; SPACE r=0.161). At the same time, both data collections achieve very high item inclusion ratios for almost all countries (in the case of SPACE, the exceptions are Iceland, Denmark, and Romania). This means that the variance in inclusion ratios is somewhat low, especially for the ESB data, and that could explain why, in the case of drug offences, there is no strong effect of the offence definitions on the imprisonment rates.

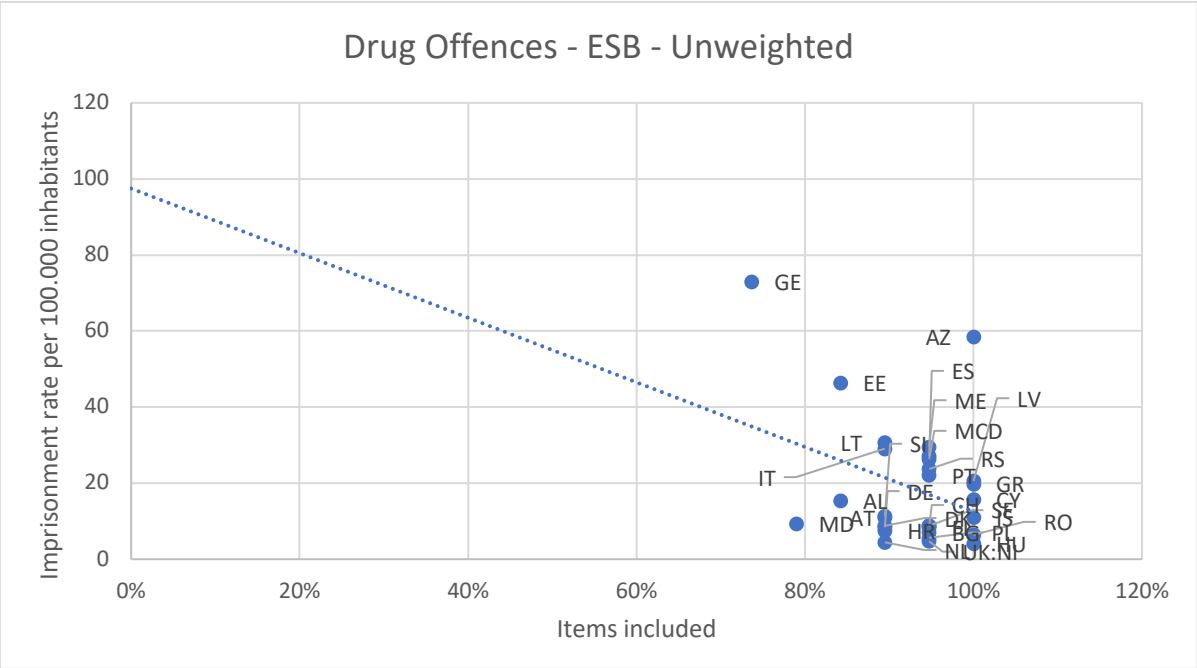

Figure 44: Relation between unweighted item inclusion ratios and imprisonment rates for drug offences (ESB)

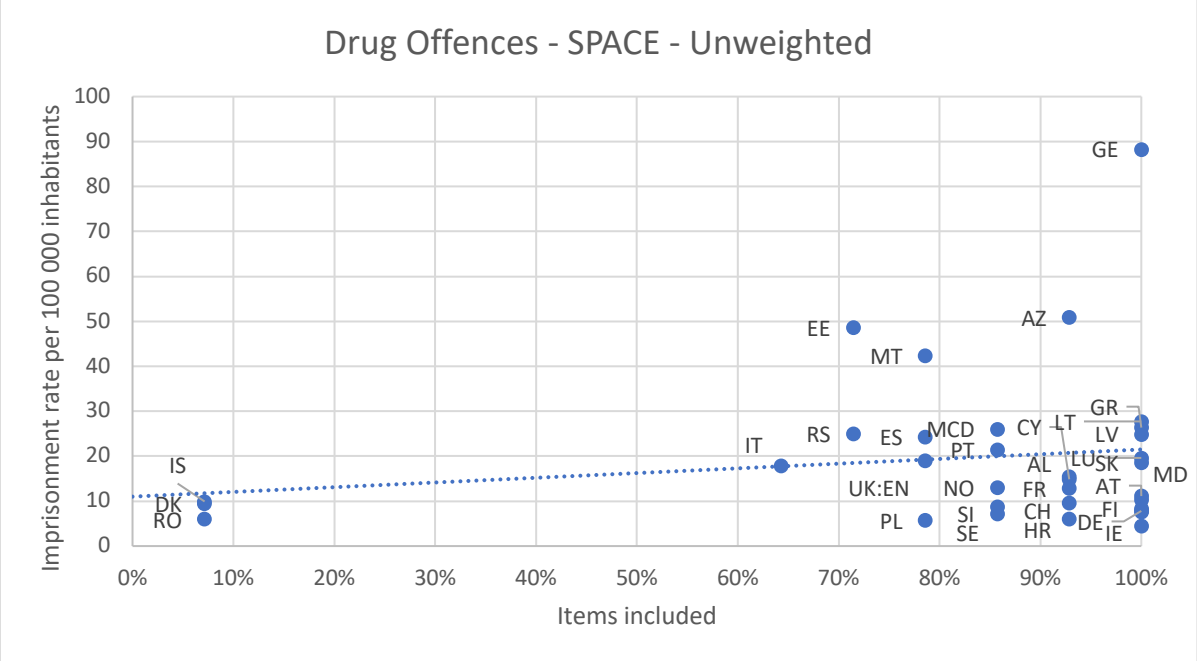

Figure 45: Relation between unweighted item inclusion ratios and imprisonment rates for drug offences (SPACE)

V. Conclusions

As stated in the introduction, the aim of this study is to answer two questions: Do the legal definitions of offences have an influence on imprisonment rates? And, if the answer is affirmative, how is that influence exerted?

The data collected for the SPACE questionnaire, which is based on the legal definitions of offences in each country, shows that the answer to the first question is affirmative. Even if

prisons are at the end of the criminal justice system and therefore cumulate all the limitations of official measures of crime and the influence of legal, statistical, substantial, and criminal policy factors, the analyses suggest that broader definitions are often associated with higher imprisonment rates for the offences so defined.

On the contrary, the data collected for the ESB are based on standard definitions that the countries are required to follow. As a result, leaving aside very few exceptions, no positive effect of the broadness of offence definitions on imprisonment rates could be found through our analyses. This means that most countries tried to follow the standard definitions proposed by the ESC strictly. Consequently, there is little variation in their definitions, which in turn affects the possibility of finding correlations between them and the imprisonment rates.

These results corroborate our hypothesis, which postulates that, all other factors being equal, broader definitions should lead to higher rates of imprisonment for the offences so defined. When countries applied their own definitions —as it is the case in SPACE— there is a wide diversity in the way in which offences that bear the same name are defined. In that context, we have seen that the countries with the broader definitions show also higher imprisonment rates for the offences so defined, and that explains why our analyses of the SPACE data found positive and sometimes signification correlations between these factors.

All the analyses were conducted using weighted and unweighted inclusion ratios for the subcategories of the different offences. The weighted ratios constantly showed lower correlation coefficients than the unweighted, but with the data available one cannot clearly establish which of the results is the more reliable.

In terms of research, our results show that the use of legal definitions decreases the validity of international comparisons of crime rates. They also suggest that the use of standard definitions in international crime and criminal justice surveys —a procedure introduced in the 1990s by the European Sourcebook Group— can improve such comparisons. However, the effect of using standard definitions cannot be fully appreciated in this research because it is based on prison statistics, whose figures can seldom be adjusted by including or excluding subcategories. On the contrary, police statistics are much more malleable, and should reflect the positive effect of the use of ESB definitions to adapt the data and increase the validity of international comparisons of crime and criminal justice statistics.

In terms of evidence-based European criminal policy, our results suggest that a certain level of homogenization of the data collected can be achieved through the use of standard definitions with subcategories to include or exclude. In that perspective, the key issue is to allow the person who is filling the questionnaire to adapt the data according to these definitions. That can easily be achieved within the ESB network because the national correspondents are criminologists who are not representing any official institution of the country. On the contrary, when the questionnaire is filled by a public official —as it is the case for the Eurostat and the UNCTS collection— he or she should be allowed to add or subtract subcategories of offences even if this implies reporting data that is not identical to the one published in national statistics. In addition, it would be necessary to help those respondents without a background in law or criminology.

In short, it can be said that this study delivers some evidence for a positive influence of the broadness of offence definitions on imprisonment rates, although that effect is not particularly strong. It also showed the inherent value of prescriptive offence definitions for an enhanced data comparability. Nevertheless, understanding crime rates and trends, requires considering also the rest of substantial, statistical, legal, and criminal policy factors that affect the comparability of the data collected in national statistics.

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Annex

Table 3: Weights applied for the weighting of offence definition subcategories[8]

Offence name	Subcategory	Weight[9]
Total crime (ESB only)	Minor theft and other minor property offences	21,3%
	Minor assault and other minor violent offences	5,9%
	Criminal offences committed by minors	12,6%
	Crimes according to a military penal code	*0,1%*
	Traffic offences, if they are subject to criminal proceedings	20,0%
	All other criminal offences subject to criminal proceedings	40,1%
	All traffic offences subject to proceedings outside the criminal justice system	N/A
	All traffic offences sanctioned by fines issued automatically by a technical system	N/A
	Administrative offences subject to proceedings outside the criminal justice system	N/A
	Minor offences subject to proceedings outside the criminal justice system	N/A
Major road traffic offences (ESB)	Negligent homicide and negligent injury in road traffic	0,2%
	Dangerous / reckless driving	7,3%
	Seriously endangering road traffic in other ways	35,2%
	Driving under the influence of drugs or alcohol	28,0%
	All other traffic offences subject to criminal proceedings	29,2%
	Offences committed outside road traffic (e.g. involving trains, airplanes, ships or boats)	0,1%
	All traffic offences subject to proceedings outside the criminal justice system	N/A
Major road traffic offences (SPACE)	Negligent homicide and negligent injury in road traffic	0,2%
	Dangerous/reckless driving	7,3%
	Seriously endangering road traffic in other ways	35,2%
	Driving under the influence of drugs or alcohol	14,0%
	Driving while impaired for other reasons	*14,0%*
	Driving while disqualified or licence suspended/revoked	N/A
	Hit and run driving	27,8%
	Parking violations	N/A
	All other traffic offences	1,5%
Intentional homicide	Cases unassigned to a subcategory[10]	17,3%
	Assault leading to death	2,8%
	Euthanasia	0,3%
	Infanticide	3,0%
	Attempts	50,7%
	Assistance with suicide	*0,9%*

[8] For an explanation of the weighting procedure, see in the text under IV.

[9] Percentages calculated based on German Police Crime Statistics for 2015, except for traffic offences, for which the Swedish Police Crime Statistics of the same year were used. For categories listed with "N/A", no weights could be calculated (also see explaining text in the report under IV.). Values in italics are based on estimates.

[10] Not all definitions feature an exhaustive list of subcategories, hence for some of the offences, cases unassigned to a subcategory also needed to be taken into account.

	Abortion	1,5%
	Negligent killing	23,5%
	War crimes genocide, crimes against humanity	0,0%
Bodily injury (ESB) / assault and battery (SPACE)	Minor bodily injury	38,4%
	Aggravated bodily injury	14,2%
	Bodily injury of a public servant/official	2,0%
	Bodily injury in a domestic dispute	22,8%
	Attempts	6,4%
	Assault leading to death	0,0%
	Threats	1,7%
	Assault only causing pain (e.g. slapping)	*8,2%*
	Sexual assault	3,2%
	Negligent bodily injury	3,2%
Sexual assault (ESB only)	Any sexual acts committed with violence or threat of violence	0,3%
	Any sexual acts committed with abuse of authority or undue pressure	0,8%
	Any sexual acts committed against a helpless person	1,6%
	Any sexual acts committed against a marital partner against her/his will	3,1%
	Acts considered as rape	9,4%
	Acts considered as physical sexual abuse of a child	8,8%
	Attempts	3,8%
	Any verbal or any other form of non-physical molestation	44,2%
	Pornography	14,6%
	Pimping	0,3%
	Buying / offering paid sex	2,0%
	Exhibitionism	11,0%
Rape (ESB)	Cases unassigned to a subcategory	20,3%
	Penetration other than vaginal (e.g. buggery)	*8,4%*
	Forced intra-marital sexual intercourse	21,1%
	Sexual intercourse without force with a helpless person	*17,5%*
	Sexual intercourse of an adult with a child or any other person who cannot validly consent	11,4%
	Attempts	13,9%
	Sexual intercourse between children, if factually (i.e. regardless of legal validity) consented by both partners	0,5%
	Sexual intercourse between a child and a juvenile, if factually (i.e. regardless of legal validity) consented by both partners and the age difference is not larger than three years	6,9%
Rape (SPACE)	Cases unassigned to a subcategory	24,9%
	Penetration other than vaginal (e.g. buggery)	*9,8%*
	Male victim	5,0%
	Violent intra-martial sexual intercourse	19,6%
	Sexual intercourse without force with a person incapable of giving consent	*16,3%*
	Attempts	13,7%
	Sexual intercourse with force with a child	*5,3%*

	Sexual intercourse with a child without force	*5,3%*
Sexual abuse of a child	Cases unassigned to a subcategory	8,0%
	Any form of physical sexual contact not amounting to (statutory) rape	17,3%
	Attempts	3,7%
	Verbal or any other form of non-physical molestation (e.g. via the internet)	22,7%
	Distribution and possession of child pornography	35,7%
	Acts considered as rape	4,7%
	Sexual acts between children, if factually (i.e. regardless of legal validity) consented by both partners	2,5%
	Sexual acts between a child and a juvenile, if factually (i.e. regardless of legal validity) consented by both partners and the age difference is not larger than three years	5,4%
Other sexual offences (SPACE only)	Cases unassigned to a subcategory	24,9%
	Penetration other than vaginal (e.g. buggery)	9,8%
	Male victim	5,0%
	Violent intra-martial sexual intercourse	19,6%
	Sexual intercourse without force with a person incapable of giving consent	16,3%
	Attempts	13,7%
	Sexual intercourse with force with a child	5,3%
	Sexual intercourse with a child without force	5,3%
Robbery (ESB)	Cases unassigned to a subcategory	2,4%
	Muggings (bag-snatchings)	0,2%
	Theft immediately followed by force or threat of force against a person used to keep hold of the stolen goods	0,8%
	Attempts	17,0%
	Pick-pocketing	15,2%
	Extortion	0,1%
	Blackmailing	0,1%
	Theft with force against property only	64,1%
Robbery (SPACE)	Cases unassigned to a subcategory	0,9%
	Muggings (bag-snatchings)	0,1%
	Theft immediately followed by force or threat of force used to keep hold of the stolen goods	0,3%
	Pick-pocketing	6,0%
	Minor (e.g. small value) theft	47,4%
	Theft by means of burglary (i.e. by breaking and entering)	6,2%
	Other theft with force against property (e.g. breaking of an automated teller machine)	25,1%
	Theft of motor vehicles	1,9%
	Extortion	0,1%
	Blackmailing	0,1%
	Attempts	12,0%
Theft (ESB)	Cases unassigned to a subcategory	15,7%
	Minor (e.g. small value) theft	41,0%

	Theft committed by means of burglary (i.e. by breaking and entering)	5,3%
	Theft of motor vehicles	1,6%
	Theft by employees	*4,4%*
	Attempts	12,5%
	Robbery	1,1%
	Fraud	17,4%
	Receiving/handling stolen goods	0,8%
Theft (SPACE)	Cases unassigned to a subcategory	17,5%
	Muggings (bag-snatchings)	0,1%
	Theft immediately followed by force or threat of force used to keep hold of the stolen goods	0,2%
	Pick-pocketing	4,5%
	Minor (e.g. small value) theft	35,7%
	Theft by means of burglary (i.e. by breaking and entering)	4,6%
	Other theft with force against property (e.g. breaking of an automated teller machine)	18,9%
	Theft of motor vehicles	1,4%
	Extortion	0,04%
	Blackmailing	0,04%
	Embezzlement (including theft by employees)	3,0%
	Receiving/handling stolen goods	0,7%
	Attempts	13,2%
Fraud (ESB only)	Cases unassigned to a subcategory	34,6%
	Cyber fraud (i.e. fraud committed by means of computer-mediated communication, e.g. via the internet)	12,4%
	Attempts	7,7%
	Receiving/handling stolen property	2,2%
	Forgery of documents	3,7%
	Tax and customs offences	2,1%
	Subsidy fraud	0,04%
	Fraud involving welfare payments	1,4%
	Money laundering	0,7%
	Forgery of money or payment instruments	0,4%
	Consuming goods or services without the intent to pay (e.g. fare dodging)	23,5%
	Breaching of trust / embezzlement	11,1%