



European Monitoring Centre
for Drugs and Drug Addiction

THE PAPER ATLAS OF ILLICIT DRUG USE IN THE EU: LEGISLATIVE APPROACHES

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Introduction

In accordance with the initial request by the French Interdepartmental mission for the fight against drugs and drug addiction (Mission Interministérielle de Lutte contre la Drogue et la Toxicomanie (MILDT)), the aim of this paper is to provide an outline of current legal provisions and amendments on the use and possession of drugs for personal use (1), in the Member States of the European Union. In view of the interest expressed in this subject and having received other requests for information, we have decided, in accordance with our mandate, to disseminate this document to wider public, including also the available information from the new EU Member States. In addition to documentary resources (the European Legal Database on Drugs – ELDD) and the current work of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) in the field, some thirty studies and other publications were consulted.

The first part of the document contains background information on the international legal framework governing the use of 'drugs' and their possession for personal use. The second part, addressing national legislations, begins with consideration concerning conventional definitions of the terms 'decriminalisation' and 'depenalisation', and continues with a summary description of the various national legislations in the European Union, based on the analysis of the legal texts, the role of quantity in prosecutions, and the judicial practices. The principal results of this review are summarised in the conclusion.

This paper is intended more as an overview of Member States legal provisions than as an in-depth analysis. No recommendations are made on any point and the document does not claim to offer an exhaustive analysis of the relevant provisions and practices. The manuscript was completed on 18 November 2004.

(1) Throughout the paper we use the expression 'drugs' to mean those substances controlled by national and international laws, primarily narcotic drugs under the 1961 UN Convention and psychotropic substances under the 1971 UN Convention.

International legal framework on drugs

Classification of drugs in the United Nations Conventions

The United Nations Conventions on drugs classify narcotic drugs and psychotropic substances by virtue of their danger to health, risk of abuse and therapeutic value. The 1961 Convention classifies narcotic drugs in four schedules, while its 1971 counterpart places psychotropic substances in four other schedules. The 1988 Convention (intended as a response to international trafficking on drugs) lists 'precursors' in two schedules ⁽²⁾.

It is interesting to note that some substances are listed twice in the same Convention. Cannabis ⁽³⁾ and heroin (as well as 15 other substances) for instance are placed by the 1961 Convention in *Schedule I*, as substances whose properties give rise to dependence and which present a serious risk of abuse; and in *Schedule IV*, among the most dangerous substances, by virtue of the associated risks of abuse, their particularly harmful characteristics and their extremely limited medical or therapeutic value ⁽⁴⁾. This 'twofold' classification might reflect a desire on the part of legislators, from 1961 on, to stress the toxicity of the substances, and has the consequence of limiting and controlling their possible use for medical purposes even more strictly ⁽⁵⁾.

United Nations Conventions and control of drug use

While the three United Nations Conventions govern the international drugs control, their provisions *are not self-executing*. The signatory countries are required to transpose them into domestic law *in accordance with the principles of their law* (and in good faith – that is, while respecting the general objectives of the Conventions ⁽⁶⁾), by way of national legislation.

⁽²⁾ United Nations (UNO) (1961, 1971, 1988), Single Convention on Drugs (1961); Convention on Psychotropic Substances (1971); Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (<http://www.incb.org/e/conv>).

⁽³⁾ Note that there is no single generally accepted definition of cannabis, but that at least three are found: 1. a 'broad' definition (applied mainly by France, Greece and Sweden), according to which cannabis is any plant of *Cannabis sativa* L.; 2. an 'international' definition, contained in the United Nations Conventions, as 'the flowering tops of the female plant of *Cannabis sativa* L.'; and 3. a 'European' definition, which permits the industrial utilisation of hemp, including *Cannabis sativa*, if its THC content is less than 0.2%.

⁽⁴⁾ For more information on the classification of drugs, see http://eldd.emcdda.eu.int/trends/trends_law.shtml and F. Cabalero & Y. Bisiou, *Le Droit de la drogue*, Dalloz, 2000, pp. 476–488.

⁽⁵⁾ Even though use for medical purposes is possible according to the conventions: See further: EMCDDA, May 2002, *Medicinal cannabis and derivatives – A legal analysis of the options, their limitations, and current practice in the EU ELDD Comparative Study*, and EMCDDA, November 2000; And, reviewing legal aspects of substitution treatment at international level, in the EU ELDD comparative study published at http://eldd.emcdda.org/databases/eldd_comparative_analyses.cfm.

⁽⁶⁾ Art. 31 General rule of interpretation, Vienna Convention on the Law of Treaties 1969 (<http://www.un.org./law/ilc/texts/treaties.htm>).

The United Nations Conventions provide that the use of all drugs (under control) must be limited to medical and scientific purposes (7). Any use other than as provided by the Conventions, and in particular recreational use, may therefore be deemed a violation of international law (8). The Conventions specify punishable offences, such as *possession, acquisition, distribution or offering for sale*, etc. (9) and recommend that certain of these should be serious offences punished with *deprivation of liberty*.

However, the Conventions do not specify *simple use* among the punishable offences, though each Party can establish simple drug use as a specific offence if it chooses to do so. Certain authors see here a fundamental difference between simple use and possession of drugs, since possession of drugs is an activity that always carries the risk of 're-sale', while simple use doesn't (10).

Indeed, the official UN commentary to the article 36 of the '61 convention confirms the existence of this difference. It recites: 'It will be noted that paragraph 1 does not refer to 'use'. As has been pointed elsewhere, article 36 is intended to fight the illicit traffic and unauthorised consumption of drugs by addicts does not constitute 'illicit traffic' ' (United Nations 1973 p.428/7). The same difference is evincible in another section of the commentary which establishes that 'There can be no doubt that Governments may refrain from imposing imprisonment in cases of possession of drugs held for personal consumption without legal authority. Possession of drugs for distribution without such authority must, on the other hand, be made punishable 'by imprisonment or other penalties of deprivation of liberty' ' (United Nations 1973 p.113/23) (11). The '61 Convention therefore draws a clear line of distinction between possession for personal use, where governments *have the right* not to impose imprisonment, and possession for distribution that must be subject to 'deprivation of liberty' sanctions (12).

Nevertheless, the UN Convention of 1988 requesting *criminal punishment* for 'possession for personal consumption' (art.3.2), rather than just 'possession', as in the 1961 text, could imply the requirement for countries to *punish use* (indirectly via the possession) by criminal penalties.

(7) Art. 4c, 1961 Single Convention on Drugs, United Nations, New York 1977.

(8) B. De Ruyver, G. Vermeulen, T. Van der Beken, F. Van der Laenen, K. Geenens, *Multidisciplinary Drug Policies and the UN Drug Treaties*, Institute for International Research on Criminal Policy, Ghent University, Maklu, 2002, p. 23.

(9) Article 36.1.a of 1961 Convention; Article 3 of 1988 Convention.

(10) See Boellinger, L., 'The Evolution of Drug Policy in Germany', SENLIS Council (ed.): *Global Drug Policy. Building a New Framework. The Lisbon Int. Symposium On Global Drug Policy, Paris 2003*, pp. 151–160 and Albrecht H.J., *Drug Policies and Drug Problems in the Federal Republic of Germany – Development and Trends*.

(11) United Nations (UNO), *Commentary on the Single Convention on Narcotic Drugs 1961*, New York 1973, English version and see also Bewley-Taylor, Fazey, Boekhout van Solinge, 2004.

(12) This distinction seems rather straightforward, however to add confusion to an already complex issue, we have noted that the French version of the official commentary says at the paragraph 23 art.4 ' (...) the governments *have the right* to not punish with imprisonment possession for personal use (...) (in French '*Les gouvernements ont le droit de ne pas punir de peines de prison la détention (...)* '); while the English version at the same paragraph says '(...) Governments *may refrain* (and not 'have the right' which is certainly stronger of 'may refrain') from imposing imprisonment in cases of possession for personal consumption (...)' These differences in languages could add problems of interpretation. However besides linguistic issues, it is seem that countries have the right to not impose prison sanctions as described above.

Article 3 of the 1988 United Nations Convention

The question if possession of drugs for personal use, should be deemed a criminal offence or not, has caused a great deal of ink to flow since the inclusion of Article 3(2) in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

In the second paragraph of this Article, for the first time the necessity is expressly mentioned, 'subject to constitutional principles and basic concepts' of countries' legal systems, to establish 'as a criminal offence [...] the possession, purchase or cultivation of drugs [...] for personal consumption' (13).

At first sight, this provision appears unambiguous: *the sanctions imposed for possession for personal use must be criminal.*

However, a closer look at the structure of the article and its Official Commentary (by the United Nations) (14), as well as a short review of the relevant legal literature, *suggests that this conclusion is not so clear-cut.*

Note first of all that Article 3 invites the signatory countries to establish the possession of drugs as a 'criminal offence', whether the possession is for the purpose of offering paragraph 1, or personal use, paragraph 2.

The addition of a *second paragraph*, specifically relating to 'possession for personal use', allowed legislators to introduce *safeguard clauses* to ensure that the relevant requirement conformed to 'constitutional principles' and the 'basic concepts of [the domestic] legal system'. Yet for possession *not* for personal use, paragraph 1 of Article 3 does not include such 'safeguard clauses'. The clauses of the article 3.2 thus seem to allow signatory countries more freedom to determine the penalties to be imposed for personal-use offences than for trafficking offences (15).

Moreover, according to the United Nations Official Commentary on the 1988 Convention, the spirit of Article 3 is the '*improvement of the efficacy of national criminal justice systems in the field of drug trafficking*'. Hence, having regard to the general rules on the interpretation of treaties (1969 Vienna Convention on the Law of Treaties), which provide that States parties to conventions shall interpret them 'in good faith' and 'in the light of [their] object and purpose' (16), the conclusion must be that the main reason for criminalising possession for personal use, in

(13) Art. 3.2. Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.

(14) United Nations (UNO), Commentary on the United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, 1988, New York 2000.

(15) See also The Police Foundation, Report of the Independent Inquiry into the Misuse of Drugs Act 1971, London, 2000, p. 13.

(16) Swiss Institute of Comparative Law (<http://isdc.ch/f/default.asp>), Consolidated legal opinion concerning the compatibility of proposed national drugs laws with relevant international conventions (2001). The Vienna Convention on the Law of Treaties can be accessed at <http://www.un.org./law/ilc/texts/treaties.htm>.

accordance with the 'ratio' of article 3, is to improve control of international drug trafficking, and not the fight against drug use as such (17).

Finally, a small review of studies and literature on the interpretation of this article suggests that *countries must prohibit all acts preparatory to the illicit use of drugs – that is, possession, acquisition, import and cultivation – but retain the right (where the aim of the offence is personal use) to determine the type of penalty (criminal or administrative) to be applied* (18).

The following general conclusion that may be drawn from the above, suggests that countries are legitimate to both criminalise drug use offences or choose other kinds of sanctions of non-criminal nature, as best measures to tackle the illicit use of drugs and its related problems.

The International Narcotics Control Board (INCB)

Whereas the application of the international conventions is the responsibility of each signatory country, monitoring of their application is a matter for the International Narcotics Control Board established by the 1961 Convention.

The Board exists, in particular, to promote the application by governments of the provisions of the drugs treaties. Although it cannot compel signatory states to adopt a single interpretation of the terms of the conventions (19), it can express its views on the meaning to be assigned to these provisions and on the measures adopted by the relevant governments in relation to the objectives of the treaties.

The Board also has the power to request governments to modify their policies if it considers that a measure is likely to do *serious harm* to the objectives of the Conventions. On this basis, the Board has expressed reservations about recent changes in the law of certain western European countries (20).

In 2000, commenting on the Portuguese draft law providing that the abuse and possession of drugs for personal use would no longer constitute criminal offences but instead administrative violations, the INCB took the view that this was 'not in line with international drug control treaties, which require that drug use be limited to medical and scientific purposes and that States parties make drug possession a criminal offence' (21). A little later, in 2002, however, the INCB Report no longer specifically takes issue with the legislative amendments since introduced in Portugal (as well as similar developments in Luxembourg), but merely points out that Article 3(2) invites States

(17) European Monitoring Centre for Drugs and Drug Addiction (2001), Drug users and the law in the EU: a balance between punishment and treatment. *Drugs in focus*, (<http://www.emcdda.eu.int/?nnodeid=519>)

(18) See Caballero & Bisiou, 2000; Cesoni, 2000; De Ruyver et al., 2002 ; Dorn & Jamieson, 2001; Note politique du Gouvernement Fédéral Belge 2001; Krajewsky, 1999; Swiss Institute of Comparative Law, 2001.

(19) Articles 5–18 of the 1961 Convention and Articles 22 and 23 of the 1988 Convention.

(20) International Narcotics Control Board (INCB), 2001 Report (§ 214), United Nations, New York, 2002.

(21) International Narcotic Control Board (INCB), 1999 Report (449), United Nations, New York, 2000.

'to establish as a criminal offence [...] possession [...] for personal consumption [...] keeping in mind that parties have to meet their fundamental obligation under [the] conventions to limit the use of controlled substances to medical and scientific purposes' (22).

More recently, the INCB has expressed reservations about the United Kingdom's proposal to transfer cannabis from Class B to Class C (23), having regard to the 'confusion' and 'widespread misunderstanding' that would in its view result. The British Government reacted officially to the Report, notably in a speech by its delegation at the meeting of the Commission on Narcotic Drugs in Vienna on 8 April 2003 (24).

Again, the recent Belgian proposal to amend the law on drugs, under which criminal sanctions against drug users would be only a last resort, was not criticised by the INCB, which, in its letter to the Belgian Minister of Justice dated 28 March 2003 (25), *confirms that the proposal is in line with the conventions*, while pointing out that lifting the ban on acts preparatory to drug use (which were not proposed in the draft law) *would be contrary to the conventions*.

It might be of interest here to recall that the Spanish and Italian options to apply *administrative sanctions for possession for personal use of all drugs* (respectively from 1992 and 1990), were not met with disapproval in the INCB reports of those years. A possible interpretation is that in Spain and Italy the legislative amendments took the form of a change from a situation in which a certain conduct was not subject to sanctions, to one of prohibition punishable by administrative sanctions; in other words, the law was stiffened in both cases. More recently, in the other countries, the change has been from a criminal offence, possibly carrying a penalty of imprisonment, to a prohibition subject to sanctions other than deprivation of liberty (at least for a first offence) (26).

Despite the criticisms, these provisions seem to be consistent with the direction also suggested by the INCB in its Report of 1996, to make 'greater use of treatment and alternative penalties,

(22) International Narcotic Control Board (INCB), 2001 Report (509), United Nations, New York, 2002.

(23) International Narcotic Control Board (INCB) 2002 Report (499), United Nations, New York, 2003: The Board comments as follows on the announcement from the United Kingdom Government that cannabis was to be placed in a schedule subject to less severe control measures: 'the worldwide repercussions caused by that announcement [...] [include] confusion and widespread misunderstanding. A survey undertaken in the United Kingdom found that as many as 94 per cent of children believed that cannabis was a legal substance or even some type of medicine. The survey also discovered that nearly 80 per cent of teachers in the United Kingdom believed that the recent reclassification of cannabis would make educating pupils about the dangers of drug abuse more challenging and difficult. Several opinion polls taken in July and August 2002 found that the majority of the population did not support that reclassification.'

(24) Extract from the British Delegation's speech at the last meeting of the Commission on Narcotic Drugs in Vienna on 8 April 2003: '... the UK Government felt compelled to write to the Board on 3 March 2003 to express its dismay at comments made in the Board's report for 2002 about the UK's decision to reclassify cannabis. In particular the UK Government was concerned about the alarmist language used, the absence of any references to the scientific evidence on which the decision was based, and the misleading way in which the decision was presented by INCB representatives to the media.'

(25) Letter from the Secretary of the Board, Mr Herbert Schaepe, to the Belgian Minister of Justice, Mr Verwilghen, dated 28 March 2003.

(26) The Italian law was however object of disagreement by the INCB in the 1999 Report, where critics have been moved towards the 1993 amendment: '*the decriminalisation of drug possession and abuse, which was introduced in Italy in 1993, is not in line with several provisions of the 1961 Convention and the 1988 Convention*'. While not wishing to interpret this opinion, we should like to point out that the French version of the Report uses the word 'dépénalisation' where the English version has 'decriminalisation'.

as well as imposing shorter prison sentences on minor offences' and that 'it is vital the penalties imposed by criminal justice system be commensurate with the seriousness of the offences' (27). In the same Report, the Board also recalled that the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders had invited Member States 'to consider the use of non-custodial measures in relation to the personal use of drugs and to provide medical, psychological and social treatment programmes for drug-dependent offenders in appropriate cases' (28).

The Board however, points out that 'in supporting appropriate recourse to treatment and non-custodial measures for minor offences, is in no way suggesting that drug-related offences should be decriminalised or that the implementation of the international drug control treaties should at all be weakened' (29).

The European Union Institutions and the illicit use of drugs

The European Union does not have its own classification for 'drugs' and refers to the United Nations Conventions. However, the 'flax and hemp' regulation (30) permits industrial utilisation of cannabis varieties containing less than 0.2% THC.

EU competence in the field of drug use is not wide. For instance, the penal or administrative treatment of drugs use falls within the responsibility not of the European Union but of Member States.

Nevertheless, the Amsterdam Treaty of 1997 sought to reduce the differences between Member States by providing for the approximation of legislation in the field of judicial cooperation and penal matters (31). As a result, in 2001 the European Commission presented a Communication (32) proposing a framework decision on the establishment of minimum rules relating to drug trafficking. The EU's Council of Ministers finally found a consensus on this text in December 2003.

With regard to the subject of this paper, it should be noted that this Commission Communication made a clear distinction between the *transfer of drugs for profit*, which would constitute drug

(27) INCB, Annual Report 1996, Chapter 1 Drug abuse and the criminal justice system paragraph D. Effective use of criminal justice systems, sub-para 23 and 26 at <http://www.incb.org/e/index.htm>.

(28) INCB report 1966 Reference n.11 Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.21.

(29) Ibid. 27.

(30) See OJ L 146 of 4 July 1970; OJ L 193 of 29 July 2000; OJ L 10 of 12 January 2002.

(31) Article 31 of the Treaty on European Union.

(32) COM (2001), 259 final (10372/01 DROIPEN 60 CORDROGUE 45 COMIX 494), Brussels, 22 November 2002.

trafficking, and the *transfer of drugs other than for profit*, which would be treated in the same way as action deemed to constitute personal consumption ⁽³³⁾.

The final text makes the same distinction, excluding from the scope of the framework decision (trafficking on drugs) all conduct 'committed by its perpetrator exclusively for their own personal consumption as defined by national law' (Article 2(2)).

The European Parliament has debated several times the problem of cannabis, and in particular whether its use should be decriminalised. For example, the 1997 D'Ancona report ⁽³⁴⁾ suggested that the trade in and production of cannabis and its derivatives be regulated. In 2003, the Van Buitenweg report ⁽³⁵⁾ proposed a recommendation on the reform of the drugs conventions, which urged the Council and the EU Member States to 'take account of the positive results achieved in a number of countries by putting in place policies based on [...] decriminalising the use of certain substances, partially decriminalising the sale of cannabis and its derivatives [...]' ⁽³⁶⁾. The European Parliament did not adopt the two reports, possibly owing to the differences on these matters prevailing within the Union.

More recently, the European Union Governments manifested their concern about cannabis with the endorsement of a Council Resolution (July 2004). The text underlines the dangers posed by cannabis use and shows the resoluteness of Member States to maintain the attention on cannabis high. The Resolution confirms that this concern will be considered in the new EU drugs strategy and plan ⁽³⁷⁾.

⁽³³⁾ Proposal for a Council framework decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking – COM/2001/0259 final – CNS 2001/0114, Official Journal No C 304 E of 30 October 2001, pp. 0172–0175. Article 1(1) defines drug trafficking as the act, without authorisation, of selling and marketing as well as, for profit, of cultivating, producing, manufacturing, importing, exporting, distributing, offering, transporting or sending or, for the purpose of *transferring* and for *profit*, of receiving, acquiring and possessing narcotic drugs or psychotropic substances. The Commission proposes that the scope of the framework decision should exclude (i) simple users who illegally produce, acquire and/or possess narcotics for personal use and (ii) users who sell narcotics without the intention of making a profit (for example, someone who passes on narcotics to their friends without making a profit).

⁽³⁴⁾ Rapport sur l'harmonisation des législations des Etats membres en matière de drogues, A4-0359/97 of 11 November 1997.

⁽³⁵⁾ Report of 10 April 2003, the European Parliament rejected it with 169 votes in favour, 267 against and 13 abstentions.

⁽³⁶⁾ The concepts of 'decriminalising' and 'partially decriminalising' are not defined in this proposal for a recommendation (Proposal for a Recommendation on the Reform of the Conventions on Drugs, B5-0541/2002 of 23 December 2002, p. 5).

⁽³⁷⁾ The Council of The European Union, Council Resolution on Cannabis, Brussels, 7 July 2004, 11267/04 CORDROGUE 59.

National drug use legislation across the European Union

'Depenalisation' and 'decriminalisation': semantic considerations

The issues of '*depenalisation*' and '*decriminalisation*' of the use of drugs or their possession for personal use has lately received considerable media attention, in particular with the announcement of amendments or proposed amendments to legislation in some European countries.

However, despite the plethora of literature on the subject, it is difficult to find a precise, validated scientific definition of these two terms, and in particular one that is universally shared. This fact may underlie much of the confusion observed. Before describing the legal position on the use of drugs and/or their possession for personal use in the various EU countries, we therefore considered it desirable to adopt a conventional definition of these two terms. For this purpose we analysed a number of specialised documents in the literature and consulted several professionals and academics. The following definitions are a synthesis of the various contributions. While not laying claim to an exhaustive treatment of the subject or to having reached definitive conclusions, we feel that our analysis of some of the relevant literature, together with the consultation of specialists ⁽³⁸⁾, enables us to put forward the following tentative definitions.

According to our convention '*decriminalisation*' comprises removal of a conduct or activity from the sphere of criminal law. Prohibition remains the rule, but sanctions for use (and its preparatory acts) no longer fall within the framework of the criminal law (elimination of the notion of a criminal offence). This may be reflected either by the imposition of sanctions of a different kind (administrative sanctions without the establishment of a police record – even if certain administrative measures are included in the police record in some countries, such as France), or the abolition of all sanctions. Other (non-criminal) laws can then regulate the conduct or activity that has been decriminalised.

According to our convention '*depenalisation*' means relaxation of the penal sanction provided for by law. In the case of drugs, and cannabis in particular, depenalisation generally signifies the elimination of custodial penalties. Prohibition remains the rule, but imprisonment is no longer provided for, even if other penal sanctions may be retained (fines, establishment of a police record, or other penal sanctions).

Notwithstanding the need for a conventional definition, it must be acknowledged that the adoption of this phrasing, with its origins in the English language, may add to the confusion of, say, the Italians, French or Spanish, in whose mother tongues the term '*depenalisation*' generally may denote what we have just defined as '*decriminalisation*'.

Some national situations cannot be neatly accommodated in either of these two definitions as the following presentation shows.

⁽³⁸⁾ H. Albrecht, Y. Bisiou, S. Broshu, M.L. Cesoni, A. Decourrière, K. Krajewski, B. De Ruyver and E. Single all contributed with interpretations of these two terms.

Laws on illicit use and possession of drugs: sanctions 'not including deprivation of liberty'

Laws may prohibit the use of drugs as such (*simple use*), and/or just the *possession of drugs*. In the following paragraph we describe the legal provision for both cases.

Simple use

At present (November 2004), there are 7 countries (out of 26 ⁽³⁹⁾) – Cyprus, France, Finland, Greece, Luxembourg (the latter except for cannabis) Sweden and Norway – in which the *simple use* of drugs is deemed a *criminal offence* ⁽⁴⁰⁾.

Simple use is deemed an *administrative offence* in Estonia, Spain, Latvia and Portugal.

The other Member States *do not directly prohibit the simple use of drugs*, but indirectly do so by prohibiting acts preparatory to use, in particular, *possession*. The legal provisions on use in these countries therefore actually relate to the *possession of small quantities for the purposes of personal use*, a concept that includes not only the idea of *single use* but also its preparatory acts.

Possession of drugs for personal use

The *possession of drugs for personal use* (in the sense of possession for unauthorised purposes) is expressly *prohibited in all EU countries*.

Sanctions may vary: in *seven countries* (listed below), in the absence of *aggravating circumstances* and in the case of *small quantities* for personal use only, the law foresees sanctions '*not including deprivation of liberty*' ⁽⁴¹⁾. This means that the prosecutor when the above conditions are met cannot impose a prison term sentence, but instead he/she has recourse to a non-custodial measure; pecuniary fines are among the most referred to there. Outside these conditions, and when '*more serious*' circumstances are involved, prison sentences will apply.

In the Czech Republic, Spain, Italy and Portugal this concerns all drugs, while in Ireland, Luxembourg and Belgium just cannabis.

⁽³⁹⁾ The work of the EMCDDA covers the 25 EU countries plus Norway. It covers also the EU candidate countries not included in this paper.

⁽⁴⁰⁾ However, in the case of aggravated circumstances or a repeat offence, drug use still carries a penalty of imprisonment in these countries. In Luxembourg, where the 2001 legislation introduced administrative sanctions for the simple use of cannabis, persons who illicitly use it in the presence of a minor or minors or in schools and the workplace are liable to imprisonment for between eight days and six months and a fine, or one of these penalties only. Technically, too, in the United Kingdom and Ireland it is against the law to smoke opium, but according to the literature this rule, which dates back to the colonial period, has fallen into disuse.

⁽⁴¹⁾ We prefer this expression, whose language has been imported from the text of the UN Conventions, to identify those sanctions commonly called '*administrative*', which although normally do not imply custodial measures or criminal records can originate from both penal or administrative laws. Therefore it would be technically wrong to define a sanction as administrative when originated by a penal law. The expression sanctions '*not including deprivation of liberty*', gives us the possibility of better describing measures not involving prison sentences such as pecuniary fines or suspension of driving licence without involving their source of law.

In the *Czech Republic*, if anyone is caught with a small quantity of drugs (less than about 10 doses) on him/her without intention to supply, the police/prosecutors will deliver the case to the specialised local Police units that are competent to impose a non-criminal (administrative) sanction to the offender (a fine or warning) under the Act on Violations. Prosecutorial guidelines define the limit quantities. Since 1998, possession of an amount 'greater than small' is a criminal offence with the possibility of up to two years' imprisonment. (This quantification of amount 'greater than small' is obligatory for police and public prosecutors but not for courts).

Under the *Spanish* system, in the case of use and *possession* for personal use *in public*, as well as where a number of other aggravating circumstances apply (use while driving or leaving a syringe in a public place) offenders may be fined between €301 and €30 050 (42).

In *Italy*, the sanctions for the *possession* of drugs for personal use (as well as for their *purchase* and *import*) comprise suspension of the offender's driving licence (or his/her licence to carry firearms, passport and residence permit in the case of a foreign national) for one to three months (for cannabis) and two to four months (for other drugs); these penalties apply with effect from the second offence. A caution is given in the case of a first offence or if the offender is a minor (43).

In *Portugal*, the law 30 November 2000 'decriminalises'(44) the *use, purchase and possession* for personal use of all drugs (for an average individual quantity sufficient for ten days) and establishes 'the Commissions for Dissuasion of Drugs Use' (outside the penal system) responsible for public action. The use of drugs remains illegal and subject to police intervention, and users may be fined (between €25 and an amount equivalent to the minimum national wage). However, this is a system to be used as a last resort, and as a rule, in the absence of signs of dependence and if no other action (such as psychological support) is necessary, and if the use is manifestly occasional, the imposition of the fine is suspended and the person is placed on probation for a certain period. In the event of subsequent offences, a fine or other administrative coercive measures may be imposed on users (45). However, if the person is a confirmed addict, the law requires referral to health or social services.

In 2001, *Luxembourg* passed a law amending the penalties for *cannabis use* (as well as for the *possession, transport and purchase of cannabis* for personal use) replacing the previous penalty of imprisonment by a fine of between €250 and €2 500. However, what is defined as use deemed dangerous to others (at school or in the workplace) remains subject to a custodial sentence of between eight days and six months (or up to two years if 'in the presence of one or more minors'). *The use of other 'illicit drugs' remains subject to criminal sanctions* (46).

(42) Articles 25 and 28 of Ley Orgánica 1/1992 de 21 de febrero, sobre protección de la seguridad ciudadana, Article 379 of the Penal Code, Article 530 of the Penal Code (annexed).

(43) Article 75 DPR No 309 of 9 October 1990. We have to signal that a project of law proposed by the government and currently in discussion in Parliament might change the above situation introducing penal sanctions for simple use of drugs.

(44) Here we have used the letter of the law 'decriminalizaçao' translated as decriminalisation.

(45) See Articles 15 and 17 of Law No 30/2000 of 29 November, annexed.

(46) See Law of 27 April 2001 amending the Amended Law of 19 February 1973 on the Sale of Substances, annexed.

In *Belgium*, the legislative reform concerning the *use of drugs* and their *possession* for use took effect in June 2003 following the adoption of four new texts ⁽⁴⁷⁾. The underlying principle of this legislative reform is that the *application of the criminal law* as a response to illegal drug use should now constitute only a *last resort*. Cannabis use (possession of a quantity of cannabis that can be used on a single occasion or at most within 24 hours – i.e. 3 grams) will thus involve a police registration. The law provides that users shall be fined €75 to €125 for a first offence, or €130 to €250 for a repeat offence within a year of the first conviction. They may be sentenced to eight days' to one month's *imprisonment* and a fine of €250 to €500 in the event of a further offence in the same year. In the case of 'public nuisance' or 'problem use' ⁽⁴⁸⁾, a standard record (of the place, date and time of the relevant facts, type of substance and form of use) is drawn up and the substance is confiscated. For public nuisance stricter measures may also be imposed, such as three months' to one year's imprisonment and a fine of €5 000 to €500 000, or only one of these penalties. The law confirms that the possession and cultivation of cannabis remain offences, and provides for increased penalties for illicit production or trafficking. The law is based on the *principle of deterrence from all drug use*, including recreational use by adults. It is expressly stated that use by adults in the presence of minors will be treated more severely, with custodial penalties.

Finally, the *Irish Misuse of Drugs Act*, although dating from 1977, has some interesting aspects. Section 27 – penalties – lays down a system of *progressive penalties* for repeat offences. In the case of *possession of cannabis for personal use*, the court will, for a first offence, impose a fine not exceeding €63; for a second offence (no time limit is mentioned in the relevant section), the fine increases to €127; and for a third offence, it may rise to €317, or, at the discretion of the court, a penalty of up to 12 months' imprisonment, or both. In all other cases (possession of other drugs for personal use), there is no explicit (written) progression (as there is for cannabis), and the penalty for possession for personal use is €317 or, at the court's discretion, up to 12 months' imprisonment, or both.

Estonia, Latvia and Lithuania should also be identified in this group. In fact *possession* of a small amount of any drug is reported to be a '*non-criminal offence*'; however, according to national legal systems, a '*non-criminal offence*' may be punished by '*deprivation of liberty*' in an '*arrest-house*' for up to 30, 15 and 45 days respectively, making impossible any categorisation with the above mentioned countries ⁽⁴⁹⁾.

⁽⁴⁷⁾ 1) the Law (3 May 2003) amending the Law of 24 February 1921 on the Trafficking of Poisonous, Soporific, Narcotic, Disinfectant and Antiseptic Substances; 2) the Law (4 April 2003) Amending the Law of 24 February 1921 on the Trafficking of Poisonous, Soporific, Narcotics, Disinfectant and Antiseptic Substances and Article 137 of the Code of Criminal Procedure; 3) the Royal Decree (16 May 2003) amending the Decrees of 31 December 1930, 22 January 1998 and 26 October 1993; and 4) the Ministerial Directive (16 May 2003) on Prosecution Policy in Relation to the Possession and Retail Sale of Illicit Drugs'.

⁽⁴⁸⁾ The text of the Belgian Law defines the terms 'public nuisance' and 'problem use' as follows. 'Problem use' means a level of dependence that prevents users from controlling their consumption, and is characterised by various physical or physiological symptoms. 'Public nuisance' signifies the possession of cannabis in prison, in an educational establishment or social-services building or in their immediate surroundings or other places of an educational, sporting or social nature that are frequented by minors.

⁽⁴⁹⁾ In Lithuania, possession for personal use can be considered also as a criminal offence for example if this amount is larger than the 'small amount'.

Other typologies of approaches towards the possession of drugs for personal use

In other countries, certain provisions of the drugs laws are directly relevant to the subject matter in this chapter, although in a less distinctive way than the countries mentioned above. Their description is certainly relevant but a categorisation with the above would have not been appropriate.

In the following countries' laws, prosecution policy, circulars or other legal instruments allow public authorities a wider discretion. In others prison penalties for drug use possession have been reduced.

In *Austria*, the Law on Drugs (BGBl. I 112/1997), which took effect in January 1998 gives the public prosecutor more freedom (than before) not to impose a penalty for the *purchase* or *possession* of a small quantity of drugs for personal use (Article 35(1)). The law simplifies the procedure for offences involving cannabis, as the opinion of the health authority no longer needs to be obtained before the decision as to whether or not to prosecute is made (this opinion *must* be obtained for all other substances) (Article 35(4)).

In *Germany*, the Law on Drugs, as amended on 26 January 1998 (Federal Law Gazette Part I p. 160), provides that the public prosecutor may decide not to impose a penalty (imprisonment for a term of up to five years) if the offence can be deemed minor – that is, if a criminal prosecution would not be in the public interest and if the offender cultivates, produces, imports, exports, carries in transit or purchases drugs for his or her personal use only, in other words, obtains or possesses insignificant quantities. Together with this law it is important to recall also the 1994 judgment of the Federal Constitutional Court of Karlsruhe, which drew attention to 'the prohibition of excessive penalties inherently provided for in the German Constitution'. Since then, cannabis possession should not result in prosecution if the following conditions are satisfied: (a) personal use; (b) small quantity; (c) occasional use; (d) no harm to other people ⁽⁵⁰⁾.

In the *United Kingdom* in 2002, following a two-year inquiry by a Parliamentary Committee, the Government announced its intention to transfer cannabis from Class B to Class C under the Misuse of Drugs Act 1971. Psychoactive substances are placed in three categories (A, B and C) in the UK according to the degree of danger they present: Class A: methadone, morphine, MDMA, LSD, opium, heroin, etc.; Class B: codeine, *cannabis* (until 29 January 2004), amphetamines, etc.; Class C: sedatives, benzodiazepines, anabolic steroids, etc. The severity of the penalties imposed depends on the class of drug. Despite the transfer of cannabis from Class B to Class C, the police have retained the power of arrest. They may, as a minimum, simply confiscate the substance and warn the offender unofficially provided that there are no aggravating circumstances (if there are aggravating circumstances, arrest and prosecution may follow and a custodial sentence of up to two years may still be imposed). The reclassification took effect in January 2004.

⁽⁵⁰⁾ Böllinger, L., Symbolic Criminal Law without Limits, Commentary on the Cannabis Decision of the German Federal Constitutional Court.

In France, a Ministry of Justice circular of June 1999 on judicial responses to drug addicts ⁽⁵¹⁾ requests prosecutors to order mainly (but not exclusively) treatment for simple users because *custodial sentences for users who have not committed other offences should constitute a last resort*.

Also in Denmark, a 1992 circular issued by the State Prosecutor's Office (the first was dated 1969) requests prosecutors to impose less severe measures for *possession* of cannabis for personal use ⁽⁵²⁾. However in 2004, a new law and a new circular have intensified efforts against the possession of drugs. With this new law the police warning, that beforehand settled a case is now substituted by a fine ⁽⁵³⁾.

In the Netherlands, the criminal law, prosecution and police action are governed by the *expediency principle*, and the legal approach to drug use is enshrined in the Board of Procurators General Directives. Contrary to popular opinion, *possession of all drugs is punishable* under the 'Opium Law' ⁽⁵⁴⁾. Article 11(5) of the Law, interpreted by the 1996 Board of Procurators General Directive, provides that no penalties shall be applied where the quantities of hashish or marijuana in a person's possession do not exceed 5 grams. Indeed, *sale, possession* (and *use*) of cannabis in coffee shops will not be liable to prosecution if the coffee shop satisfies certain conditions, known as the 'AHOJ-G criteria': A) prohibited drugs may not be advertised; H) 'hard' drugs may not be sold; O) the coffee shop must not cause a 'public nuisance'; J) drugs may not be sold to minors (under 18 years of age), who must also not be allowed into the shop; and G) maximum sale of 5 grams per person per transaction ⁽⁵⁵⁾. Currently, the Government is discussing the adoption of a Plan to discourage cannabis use in Netherlands ⁽⁵⁶⁾.

In Hungary, the new Penal Code provisions of March 2003 removes '*consumption*' from the list of offences, and exempts any user from punishment who enters treatment before sentencing. (Between 1999 and 2003 consumption was a criminal offence and this exemption was only available to addicts.)

In Greece, Law No 3189, which took effect on 21 October 2003, amends certain provisions of the Greek drugs Law, No 1729/87. The *possession* and/or *use* of any drug 'in a quantity

⁽⁵¹⁾ Ministère de la Justice, Circulaire relative aux réponses judiciaires aux toxicomanes, 17 June 1999 ; NOR JUN A 9900148 C.

⁽⁵²⁾ Jepsen, Laursen, in European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Prosecution of drug users in Europe: varying pathways to similar objectives, EMCDDA Insights Series, No 5, Office for Official Publications of the European Communities, Luxembourg, 2002 (p. 115).

⁽⁵³⁾ Act No.175/2004 amending the Euphoriant Act of 1955.

⁽⁵⁴⁾ List I – Substances presenting an unacceptable risk, or List II – Other substances (including cannabis), and see Articles 2.c., 3 c. and 11.1 and 10 of the 1976 Opium law in ELDD http://eldd.emcdda.eu.int/databases/eldd_legal_text.cfm?id=2142&lang=en&T=2.

⁽⁵⁵⁾ National Drug Monitor 2000, Fact Sheet, Cannabis Policy Up-to-date, 2000, and Fact Sheet 6: Drugs Nuisance Policy, at www.trimbos.nl.

⁽⁵⁶⁾ See <http://www.sidv.nl/cannabis/index.htm>.

corresponding solely to the user's own needs' will henceforth be subject to a penalty of ten days' to one year's imprisonment (instead of not more than five years as hitherto).

The list of legal provisions presented here should not generate the feeling that in the 25 EU countries imprisonment for drug use is not anymore possible or applied. In certain countries, legislations and policies maintain drug use and related offences under a penal sphere. At the same time, in the majority, the tendency to avoid as much as possible sanctions involving deprivation of liberty for simple drug use when no other offences or circumstances are involved is evident. This is, however, applied in many different ways with varying degrees of political commitment and recognition behind it.

Application of laws (*)

The analysis of legal texts is certainly important to understand the state's response to drugs, however it is common knowledge that laws and practice may be in some cases rather different⁽⁵⁷⁾. Therefore, it is important for a comparative study not to merely describe legal texts, but to flesh out its account with an analysis of police and judicial practice. Unfortunately, the information currently available to the EMCDDA is insufficient for a valid in-depth analysis of these practices. Only some initial hypotheses or indications, based on information that is neither complete nor wholly comparable, can be advanced to stimulate further reflection. These must on no account be used as a basis for conclusions of any kind.

According to the 2003 EMCDDA *Annual report* it appears that the majority (over 50%) of reported drug offences in the EU countries are related to *drug use or possession for use*⁽⁵⁸⁾. In 2001, cannabis remained the drug most often involved in drug law offences accounting for 59% in Austria, 67% in Belgium (2000), 73% in the United Kingdom (2000), 63% in Greece, and 86% in France.

It must be also noted that police reports⁽⁵⁹⁾ for drug offences have increased consistently throughout the EU since 1985, although it is not known *precisely* whether (i.e. to what extent) this is due to intensification of or increased police activity, an increase in drugs use and trafficking, or better performance of the data gathering systems in some countries (or other factors).

As to the *activity of the courts*, in 2001, the EMCDDA studied *probable prosecutions for drug offences* on the basis of interviews with police and judicial professionals⁽⁶⁰⁾. The study suggests

(*) Information not available for all 25 EU countries.

⁽⁵⁷⁾ Conference proceedings Conference on Drug Policy In Europe, workshop no. 2 Comparison of drug legislations, Brussels 1995 European Commission.

⁽⁵⁸⁾ New EU countries' data are not included in this section. See also statistical table 27: Offence type mostly involved in the 'reports' for drug offences in EU countries and Norway (<http://ar2003.emcdda.eu.int/pdfs/stattab27-en.pdf>).

⁽⁵⁹⁾ According to the EMCDDA Annual Report 2003, the term 'reports' for drug law offences covers different concepts, varying between countries (police reports of suspected drug law offenders, charges for drug law offences, etc.). For an exact definition for each country refer to 'Definitions of 'reports for drug law offences' in the EU countries and Norway at <http://ar2003.emcdda.eu.int/en/inserts/olbox13-en.html> (the term 'arrests' was used in EMCDDA annual reports prior to 2003).

some initial hypotheses – for instance, that prosecutors and courts are increasingly adopting measures aimed mainly at avoiding severe penalties and, in particular, custodial sentences, for drug users. The research indicates a *trend for proceedings to be suspended or dropped* by the police and judicial authorities in the case of *drug possession for personal use* in the absence of *aggravating circumstances* and where the *quantities possessed* (together with other objective aspects of the case) do not indicate a purpose other than personal use.

The small volume of data gathered by the EMCDDA thus suggests, but does not unequivocally show, that *police activity* focuses on deterrence from use (on the streets), with a large number of arrests (reports) in particular for cannabis offences, whereas the *courts* tend to discontinue criminal proceedings or suspend them and place the offender on probation (at least in the case of a first offence) when simple users are concerned; where necessary, offenders may be referred for treatment or even psychological support ⁽⁶¹⁾.

Laws and quantities

It is noticeable in the previous chapters how the *quantity* of the drug in possession of the offender is key to the determination of the penalty. In 2003, a study by the EMCDDA ⁽⁶²⁾ showed that, as a rule, quantity is one of the main factors in the *legal distinction* between *possession* for personal use and *trafficking*, or in determining the gravity of an offence. The definition of quantity and the way it is taken into account in the classification of offences varies from country to country within the EU, and more than one criteria may be used in the same country for differing quantities; the following criteria were found:

- 13 countries determine quantity on the basis of proportions stated to be ‘small’ or ‘large’;
- three take monetary value as the basis, while three use a multiple of daily doses;
- six define quantities by the maximum number of grams per substance or by a threshold (e.g. up to 5 g);
- five base thresholds on the weight of active chemical substance involved.

In those countries with laws using terms such as ‘small’ or ‘large’, there may be a subsidiary regulation or prosecutors’ directive that gives limits for these terms. On six occasions, countries did not mention any quantity but simply recognised differences between possession for personal use or resale, in which the quantity could be taken into account by the judge. Table 1 (in annex)

⁽⁶⁰⁾ European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) 2002, Prosecution of drug users in Europe: varying pathways to similar objectives Insights No 5, Office for Official Publications of the European Communities, Luxembourg, 2002.

⁽⁶¹⁾ In Cyprus however, the Constitution indicates that only the Attorney General who is in charge of all criminal prosecutions may decide on discontinuing or dropping a case. Thus, neither the police, nor the courts may act as mentioned above.

⁽⁶²⁾ European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) 2003, The role of the quantity in the prosecution of drug offences, ELDD Comparative Study, European Legal Database on Drugs at <http://eldd.emcdda.eu.int>.

gives specific illustrative information on quantity determination for certain countries for which information was available.

The study shows in particular that the *decisive* determinant of the severity of an offence is the *intention* rather than the quantity possessed. The vast majority of countries have opted to mention 'small' quantities in their laws or directives, leaving it to the discretion of the courts (or police) to determine the type of offence (*personal use or trafficking*); no country uses quantity as the sole criterion to sharply distinguish between *users* and *traffickers*.

Partnership with health and social welfare systems (*)

We have noticed how therapeutic measures are often referred to in laws as alternatives and/or complements to prosecution and penalties. These are not only existent in every European Union Member State but also provided for expressly in the International Conventions (e.g. Article 36 of the 1961 Convention).

In this paper we do not address all the highly complex instruments in exhaustive detail, instead we provide an illustrative account of some experiences, that might demonstrate a trend in the implementation of the, often announced, principle of 'treatment instead of punishment' for drugs users.

In *Portugal*, the aim of the process of 'decriminalisation' occurred in 2000/01 was not to lift the ban on drug use but to give State intervention a character deemed 'more human and more effective' (these principles – humanism, pragmatism and effectiveness – were adopted as the basis of the Portuguese strategy for the control of drugs from its inception in 1999). The purpose of establishing administrative authorities acting (in the case of personal use) in the place of the courts (the '*Commissions for Dissuasion of Drugs Use*') is to provide a reception and initial contact system for persons arrested by the police for the illicit use (and possession) of drugs, so as to deter them from continuing to use drugs, whether occasionally, regularly or in a manner giving rise to problems.

In *Italy*, the Prefect, in performing the function of initial contact with users reported by the police, is assisted by '*Operational Drug Addiction Teams*' (NOTs). Based physically in Prefecture buildings, the NOTs are responsible for initial contacts and for conducting interviews intended to identify cases in need of therapeutic treatment or social assistance.

The *United Kingdom* has had an '*arrest referral scheme*' since 1999, offering detained persons with addiction problems the possibility of treatment immediately after their first contact with the police when arrested. The project aims principally to use the criminal justice system to identify potential problem drug users and to put them in touch with the appropriate therapeutic facilities. Arrest referral schemes are undertaken in partnership with social workers and the police. They are not alternatives to prosecution or the criminal justice system. The available statistics on the project show that social workers interviewed a large number of arrestees (19 190) between

(*) Information not available for all 25 EU countries.

October 2000 and March 2001 – 23% for shoplifting, 16% for selling and possession of drugs, 10% for burglary and 10% for other theft – and that over half (56%) were referred for therapy ⁽⁶³⁾.

In *Ireland*, a pilot 'Drug Court' project was initiated in 2001. Drug Courts are treatment-oriented, and the judge administers justice with the aid of an integrated team of professionals who give their opinions and advise on appropriate treatment for offenders (this is the definition given in the fifth report of the Drug Courts working party). The main objective of the Drug Courts is crime reduction through offender 'rehabilitation'. In this project, the judge belongs to a team of professionals (social workers, doctors, educators, etc.) whose aim is to break the vicious circle of crime and drugs for non-violent offenders by offering treatment, supervision and follow-up. The final evaluation of the pilot project (October 2002) recommends extension of the project to other parts of the country, accompanied by continued research with a view to improvement ⁽⁶⁴⁾.

In *Belgium*, the Government published a Policy Note in January 2001 setting out its drugs strategy and action plan; this provides for the appointment of 'justice case managers' at each court with a view to rationalising the relations between the justice and health systems. In 2003 this was translated into law. These treatment coordinators are judicial assistants whose duties include dealing with drugs problems. Case managers inform prosecutors and the police about the various forms of assistance available to users and advise on the appropriateness of measures to encourage users to accept treatment.

In *France*, multiannual agreements known as Departmental Agreements on Aims (Conventions Départementales d'Objectifs) are concluded between Public Prosecutors and Prefects. These allow the development of partnerships between the justice, health and social welfare and/or educational systems for dealing with addicts. In particular, they allow the development of discontinuance procedures whereby drug users are referred to an appropriate facility. Some courts have full-time diagnostic and guidance teams. Following a court decision, these teams can then refer addicts to appropriate health services.

⁽⁶³⁾ Statistics from the arrest referral monitoring programme for October 2000 to March 2001, Home Office (UK), at http://www.drugs.gov.uk/ReportsandPublications/Communities/1034258640/ArrestReferral_stat_update.pdf

⁽⁶⁴⁾ Dr. Michael Farrell, Farrell Grant Sparks Consulting, Courts Service final evaluation of the pilot drug court, October 2002.

Conclusions

The relevant United Nations Conventions invite signatory countries to prohibit the use of drugs for other than medical and scientific purposes, but apparently leave the type of sanctions to be applied to the discretion of each country.

In the EU Member States, notwithstanding different positions and attitudes, we can see a trend (in many of them) to conceive the illicit use of drugs (including its preparatory acts) as a relatively 'minor' offence, to which it is not adequate to apply 'sanctions involving deprivation of liberty'. In these countries, prisons sentences do not seem to be the most effective instrument to prevent (and punish) drugs use. Even though use and possession of drugs for personal use are among the majority of drugs related offences reported to the judiciary, indeed the courts seems to prefer treatment, other social support measures and to a certain extent sanctions not involving deprivation of liberty, such as discontinuance, suspension of proceedings, cautioning and fines, in particular and for very small quantities, when simple use of drugs is not accompanied by aggravating circumstances.

The analysis of national drug strategies, legal literature, laws, and judicial practice, suggests that in several EU countries public action is based on a) a more powerful focus on treatment rather than on criminal punishment; b) on a sense of disproportion between custodial sentences (often involving a criminal record) and illicit use of drugs; and c) on the perception that cannabis is less dangerous to health compared to other drugs⁽⁶⁵⁾. Indeed, the increased recourse to social welfare and treatment systems (for drugs such as heroin, cocaine, amphetamines and, more recently, cannabis), rather than custodial sentences is an integral part of the legal approach to drug use.

At the same time it would be a mistake to define the above as a trend in a 'relaxation' or a 'softening' of the drugs laws in Europe.

First, because all the countries that have recently modified their laws stress that their intention is not to regulate use, let alone to legalise it, but to modify and adapt the State's response to conduct that remains illegal and subject to sanctions. Second, because some governments do not intend to modify their laws that are based on the prohibition and penalisation of drugs use (France, Sweden) and others seems to move in that direction (Italy). Third, because the enlargement has brought 10 new countries in which many consider use or possession for personal use as criminal offences punishable by sanctions of 'deprivation of liberty'.

As the 2003 session of the Commission on Narcotic Drugs in Vienna shows there is a school of thought critical of legislative approaches deemed 'too lenient', concerned about the problems of cannabis use and the attitude taken by in particular by some countries⁽⁶⁶⁾. In his opening

⁽⁶⁵⁾ It is not for the EMCDDA to express a view on the accuracy of this perception.

⁽⁶⁶⁾ Resolution X. Efforts to counter the trend towards the legalisation of drugs for non-medical use: 'Also concerned about the trend towards the development of lenient policies relating to cannabis and other drugs that are not in accordance with international drug control treaties and about the fact that such trends may have a negative impact on efforts being made to eradicate cannabis cultivation and to combat drug trafficking; [...] 1. Invites the International Narcotic Control Board to continue to monitor and report on the application of the international drug control treaties by Member States with regard to cannabis and other drugs; 2. Requests the United Nations International Drug Control Programme, in collaboration with the World Health Organization, to report on new trends with regard to cannabis.' See http://www.unodc.org/pdf/document_2003-04-30_1.pdf.

speech for the Ministerial-Level Segment of the session of the Commission on Narcotic Drugs, the Executive Director of the UNODC emphasised that cannabis use remained a major problem, disputed the view that cannabis was a 'soft' drug that called for a 'soft' interpretation of the Conventions, and reminded States' parties of the need to observe the spirit of the treaties: '*Pacta sunt servanda*'⁽⁶⁷⁾.

Again, the debate on the 'decriminalisation' and 'depenalisation' of illicit drug use is being conducted mainly by various groups of players, commonly labelled as 'prohibitionists' and 'anti-prohibitionists', organised in competing associations (of municipalities, non-governmental organisations, etc.). Often positions and attitudes are prejudicially distorted so that sometimes the vigorous confrontations do not always make for clarity in their exchanges of views. This may limit the possibilities of a clear understanding on effective ways to tackle drug use and its related problems.

Hence the legal and political approach to drug use, and cannabis use in particular, remains an extremely controversial issue that raises complex and difficult questions worthy of further detailed research.

⁽⁶⁷⁾ Commission on Narcotic Drugs 46th Session Ministerial-Level Segment, 16 April 2003, Speech of the Executive Director of the United Nations Office for Drugs and Crime, Mr Antonio Costa.

Annex 1

Table 1: Quantity limits in the definition of offences involving drug possession for personal use

Country (Source)	Cannabis		Heroin and cocaine	
	Possession for personal use	Trafficking: sale, possession for, etc.	Possession for personal use	Trafficking: sale, possession for, etc.
Belgium (Law 2003)	Without signs of sale or trafficking, possession of a quantity of cannabis not exceeding the 3 g limit is to be regarded as for personal use (directive 16 May 2003). First offence: fine of EUR 75 to EUR 125.			
Czech Republic (instruction of Supreme Public Prosecutor no. 6/2000)	Less than 0.3 g of THC (10 cigarettes with 30 mg THC); administrative offence, punished by police fine of up to 15,000 CZK (EUR 500) or warning. More than this is a criminal offence, punishable by up to 2 yrs or fine. Possession of over 7.5 g of THC (about 250 doses of 30 mg) is a significant quantity punishable by 1–5 years.	1–5 years' prison for trafficking; incl. possession for the other person; 2–10 years' prison for trafficking in larger extent.	Less than 5 doses of 30 mg of heroin, or 50 mg of cocaine; administrative offence, punished by police fine of up to 15,000 CZK (EUR 500) or warning. More than this is a criminal offence, punishable by up to 2 yrs or fine. Possession of over 1.5 g of heroin (30 doses of 50 mg) or 5 g of cocaine (100 doses of 50 mg) is a significant quantity punishable by 1–5 years.	1–5 years' prison for trafficking; incl. possession for the other person; 2–10 years' prison for trafficking in larger extent.
Denmark Ibid (52) 115–133	First offence up to 10 g: police fine; over 10 g: fine. Second offence: 0–10 g: EUR 40 fine; 10–15 g: EUR 67 fine; 50–100 g: EUR 135 fine.	n.a.	n.a.	n.a.
Germany ibid. (50) (134–161)	6–30 g (depending on <i>Land</i>): no (pro)active police investigation; where appropriate, discontinuance of proceedings, but record kept.		Based on practice: Limit up to 1–2 g of heroin or cocaine or 10–30 ecstasy tablets (depending on <i>Land</i>): discontinuance, possibly with a medical alternative, fine, or unpaid community service.	
Estonia	Use or possession of less than 50 g of marihuana, 10 g of hashish or 5 g of hashish oil is a misdemeanour; police fine up to 200 units (about EUR 770) or 30 days' administrative arrest. More than this amount is crime with 1–10 yrs.	Possession of small amount (see possession) with intent of trafficking receives up to 3 years prison; if more than the amounts given, 1–10 yrs.	Use or possession of less than 0.1 g heroin, 1 g of cocaine, or 10 ecstasy tablets, is a misdemeanour; police fine up to 200 units (about EUR 770) or 30 days' administrative arrest. More than this amount is crime with 1–10 yrs.	Possession of small amount (see possession) with intent of trafficking receives up to 3 years prison; if more than the amounts given, 1–10 yrs.
Spain ibid. (4)	Judicial practice suggests that trafficking comprises amounts exceeding 40 g of hashish.		Judicial practice suggests that trafficking comprises 1.5–3 g of heroin, 5 g of cocaine or 30–50 doses of LSD (Cesoni, ibid. 4, and De la Cuesta & Blanco, quoted in <i>Droit de la drogue</i> , p. 772, note 5)	

Table 1: Continued

Country (Source)	Cannabis		Heroin and cocaine	
	Possession for personal use	Trafficking: sale, possession for, etc.	Possession for personal use	Trafficking: sale, possession for, etc.
Cyprus (Law 1977 as amended)	Cultivation of no more than two plants, or possession of less than 30 grams of cannabis or its products, is likely to be regarded as for personal use (s.30A). Penalty: up to 8 years in prison.	Cultivation of three or more plants, or possession of 30 g or more of cannabis or its products, may be presumed to be for the purpose of supplying unless the accused can convince the court to the contrary (s.30A). Penalty: up to life in prison.	Less than 10 g of prepared opium or its produce, or less than 10 g of prepared cocaine or its products, or less than 20 g of other drugs in solid form, is likely to be regarded as for personal use (s.30A). Penalty: up to life in prison.	10 g or more of prepared opium or its produce, or 10 g or more of prepared cocaine or its products, or 20 g or more of other drugs in solid form, may be presumed to be for the purpose of supplying unless the accused can convince the court to the contrary (s.30A). Penalty: up to life in prison.
Latvia	Use or possession of less than 5 g of undried marihuana, 1 g of dried marihuana, 0.1 g of hashish or 0.003 g THC is an administrative offence, punishable by police fine up to 75LVL (about EUR 130) or 15 days' administrative arrest. More than this amount, not committed for purpose of sale, is crime with up to 7 yrs (s.253(1)).	Possession for purpose of sale receives up to 10 years prison (s.253(2)). If more than 1 kg of undried marihuana, 100 g of dried marihuana, 50 g of hashish or 1 g THC, then 8–15 yrs prison (s.253(4)).	Use or possession of less than 0.001 g heroin, 0.01 g cocaine is an administrative offence, punishable by police fine up to 75LVL (about EUR 130) or 15 days' administrative arrest. More than this amount, not committed for purpose of sale, is crime with up to 7 yrs (s.253(1)).	Possession for purpose of sale receives up to 10 years prison (s.253(2)). If more than 1 g heroin or 5 g cocaine, then 8–15 yrs prison (s.253(4)).
Lithuania	Possession without intention to distribute is a misdemeanour punished by restriction of freedom, fine or arrest. Less than 5 g. of herb, or 0.25 of resin is a misdemeanour. More is a crime punished by up to 2 yrs.	Possession with aim to distribute; up to 3 yrs. Possession of large amount (500 gr. of herb, 25 g. of resin) with aim to distribute 2–8 yrs. Possession of very large amount (2.5 kg. of herb, 125 g. of resin) (aim immaterial); 5–15 yrs.	Possession without intention to distribute is a misdemeanour punished by restriction of freedom, fine or arrest. Less than 0.02 g heroin or cocaine is a misdemeanour. More is a crime punished by up to 2 yrs.	Possession with aim to distribute; up to 3 yrs. Possession of large amount (at least 2g heroin, 20 g cocaine) with aim to distribute; 2–8 yrs. Possession of very large amount (at least 10 g heroin, 100 g cocaine) (aim immaterial); 5–15 yrs.
Hungary	For possession, up to 5 yrs. If a small quantity 2 yrs. If a substantial quantity 5–10 yrs. Lower ranges are given for addicts. No punishment is given for small quantities if the offender registers for treatment or counselling.	For trafficking, 2–8 yrs. If a small quantity, 2 yrs. If a substantial quantity; 5–15 yrs or life. Lower ranges are given for addicts.	For possession, up to 5 yrs. If a small quantity; 2 yrs. If a substantial quantity; 5–10 yrs. Lower ranges are given for addicts. No punishment is given for small quantities if the offender registers for treatment or counselling.	For trafficking, 2–8 yrs. If a small quantity; 2 yrs. If a substantial quantity; 5–15 yrs or life. Lower ranges are given for addicts.

Table 1: Continued

Country (Source)	Cannabis		Heroin and cocaine	
	Possession for personal use	Trafficking: sale, possession for, etc.	Possession for personal use	Trafficking: sale, possession for, etc.
Netherlands ibid. (60) (268–276)	<p>No prosecution for sale (in coffee shops) and possession for use up to 5 g.</p> <p>5–30 g: fine of EUR 23 to EUR 68</p> <p>30 g to 1 kg: fine of EUR 2.30 to EUR 4.60 per gram</p> <p>1–5 kg: fine of EUR 2 200 to EUR 4 500 and/or 2 weeks' imprisonment per kg</p> <p>5–25 kg: up to 6 months' imprisonment and up to EUR 11 300 fine</p> <p>(Coffee shops may stock up to 500 g of cannabis.)</p>		<p>Less than 0.2 g: the police discontinue prosecution but keep a record and seize the drug.</p> <p>15–300 g: 6–18 months' imprisonment.</p> <p>Over 300 g: 18 months' to 4 years' imprisonment.</p>	
Austria (EMCDDA study on quantities) ibid. (62)	<p>Austrian law uses the criterion of 'large quantity' as the threshold for distinguishing between serious and other offences.</p> <p>The 'serious-offence' limit is 20 g of THC. A 'small quantity' is 2 g (10% of the serious-offence limit).</p>		<p>The 'serious-offence' limit is 30 g of ecstasy, 15 g of cocaine and 3 g of heroin; 'small quantities' are defined as 0.5 g of heroin, 1.0 g of methadone or ATS (*), 0.001 g of LSD and 1.5 g of cocaine.</p>	
Portugal (EMCDDA study on quantities) ibid. (62)	<p>Up to average individual quantity for 10 days: discontinuance and probation, referral for treatment or administrative penalties (daily dose: 2.5 g of marijuana, 0.5 g of hashish, 0.005 g of THC).</p> <p>Possible prosecution for amounts exceeding the average individual quantity for 10 days.</p>		<p>Up to average individual quantity for 10 days: discontinuance and probation, referral for treatment or administrative penalties (daily dose: 0.1 g of heroin, 0.2 g of cocaine, 0.1 g of ATS).</p> <p>Possible prosecution for amounts exceeding the average individual quantity for 10 days.</p>	
Finland (EMCDDA study on quantities) ibid. (62)	<p>Up to 10 g of hashish and 15g of marijuana: 5–15 day-fines. According to judicial practice, the lower limit for a custodial sentence is 100 g.</p>		<p>Up to 3 g of ATS, 10 ecstasy tablets, 1 g of heroin or 1.5 g of cocaine: 10–30 day-fines. According to judicial practice, the lower limit for a custodial sentence is 10 g of ATS, 40 ecstasy tablets, 4 g of cocaine or 2 g of heroin.</p>	

(*) Amphetamine type stimulant.

Annex 2

Table 2: Hypotheses on practice in relation to drug possession (for personal use, small quantities without aggravating circumstances)

Country	Probable sanction for possession of drugs for personal use	
	Cannabis	Other drugs
Belgium (laws and 2003 directive)	Registration only. Police penalty, 1st offence, EUR 75–125; 2nd (repeat offence, same year) EUR 130–250; 3rd (2nd repeat offence, same year) EUR 250–500 and 8 days' to 1 month's imprisonment.	The police draw up a standard record of the facts. Discontinuation of criminal proceedings and possible transfer of information to specialist aid and treatment unit. Public action halted on payment of a certain sum.
Denmark	First offence up to 10 g: police fine; over 10 g: fine. Second offence: 0–10 g: EUR 40 fine; 10–15 g: EUR 67 fine; 50–100 g: EUR 135 fine.	n.a.
Germany	No (pro)active police investigation; discontinuance of proceedings (6–30 g).	Discontinuance of proceedings or discontinuance of proceedings with fine or referral to specialised treatment unit.
Greece	Conversion of penalty to fines (at court); suspension or discontinuance of proceedings.	n.a.
Spain	Offence (for use in a public place) punished by a fine of EUR 301–30 000 or suspension of driving licence.	n.a.
France	Probable police arrest (probable police custody, 24 h, renewable for 24 h).	Police arrest (police custody 24 h, renewable for 24 h). Usually, penalty for use/possession.
Ireland	Fines imposed for the first two offences: 1st offence, EUR 63, 2nd offence, EUR 127. Imprisonment possible from 3rd offence: up to 1 year's imprisonment and/or EUR 317 fine.	Penalty varies according to first or repeat offence. Usually a probation order is made and the penalty suspended. Most common penalties include fines or community service.
Italy	1st offence: discontinuance of proceedings; subsequent offences: suspension of driving licence for up to 3 months and compulsory therapeutic opinion.	1st offence: discontinuance of proceedings; subsequent offences: suspension of driving licence for up to 4 months and compulsory therapeutic opinion.
Luxembourg	Offence punishable by a fine of EUR 250–2 500	Offence punishable by a fine of EUR 250–2 500 and/or 8 days' to 6 months' imprisonment.
Netherlands	Police do not investigate possession for personal use, which is 'tolerated' in coffee shops subject to certain conditions.	Less than 0.2 g: police discontinue proceedings and seize the drug. 15–300 g: custodial sentence, 6–18 months. Over 300 g: custodial sentence, 18 months to 4 years.
Austria	1st offence: police investigation and probation (2 years). Subsequent offence: compulsory therapeutic opinion.	Compulsory health authority opinion on need for treatment. Users generally agree to treatment (50%) or probation (2 years); no treatment: 50%.
Portugal	Up to average individual quantity for 10 days: police investigation and referral to administrative authority. Suspension of sanction with probation; fine or other sanctions for repeat offences.	Up to average individual quantity for 10 days: suspension of sanction and referral for treatment.
Sweden	Police investigation and prosecution. Suspension of proceedings (rare) for minor offences.	Minor offence (up to 0.05% heroin): fine or imprisonment up to 6 months. Suspension of penalty and treatment possible.
Finland	Police investigation and prosecution, suspension of proceedings rare.	Custodial sentence probable, possible suspension if treatment.
United Kingdom	Police caution.	Fine or community service; referral for treatment if necessary.

Source: European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) 2002, EMCDDA Insights No 5, Office for Official Publications of the European Communities, Luxembourg, 2002; and ELDD country profiles section: Prosecution and judicial practice – Scenario 1: possession of heroin for personal use by an adult offender.

Annex 3

Extract of the text of laws

Full versions can be accessed on <http://eldd.emcdda.eu.int>

[Translation non-official, texts both in UN official languages English or French. EU protocol order]

Belgium

3 MAI 2003. Loi modifiant la loi du 24 février 1921 concernant le trafic des substances vénéneuses, soporifiques, stupéfiantes, désinfectantes et antiseptiques

Art. 16. Un article 11 rédigé comme suit, est inséré dans la même loi :

Art. 11. § 1er. Par dérogation à l'article 40 de la loi sur la fonction de police du 5 août 1992, en cas de constatation de détention, par un majeur, d'une quantité de cannabis à des fins d'usage personnel, qui n'est pas accompagné de nuisances publiques ou d'usage problématique, il ne sera procédé qu'à un enregistrement policier.

2° au § 3, dernier alinéa, les mots « en groupe » sont remplacés par les mots « en présence de mineurs d'âge ».

[note de l'auteur: l'article modifié lisait: Art. 3. <L 09-07-1975, art. 3> Seront punis des peines prévues à l'article 2bis, § 1, ceux qui auront fait usage en groupe des substances qui y sont spécifiées. Seront punis des peines prévues à l'article 2bis et selon les distinctions qui y sont faites, ceux qui auront facilité à autrui l'usage à titre onéreux ou à titre gratuit des substances spécifiées à l'article 2bis, § 1, soit en procurant à cet effet un local, soit par tout autre moyen, ou qui auront incité à cet usage.]

16 MAI 2003. - Arrêté royal modifiant l'arrêté royal du 31 décembre 1930 concernant le trafic des substances soporifiques et stupéfiantes, et l'arrêté royal du 22 janvier 1998 réglementant certaines substances psychotropes, en vue d'y insérer des dispositions relatives à la réduction des risques et à l'avis thérapeutique, et modifiant l'arrêté royal du 26 octobre 1993 fixant des mesures afin d'empêcher le détournement de certaines substances pour la fabrication illicite de stupéfiants et de substances psychotropes

Article 26bis. Pour l'application du présent chapitre, on entend par :

1° « substances soporifiques et stupéfiantes » : les substances énumérées à l'article 1er, alinéa 1er;

2° « 1re catégorie » : les infractions d'importation, de fabrication, de transport, d'acquisition et de détention de substances soporifiques et stupéfiantes, ainsi que de culture de plantes de cannabis visée à l'article 1er, alinéa 1er, 15°, pour l'usage personnel;

3° « 2e catégorie » : les infractions de 1e catégorie qui sont commises dans le cadre des circonstances aggravantes telles que prévues à l'article 2bis de la loi du 24 février 1921 concernant le trafic des substances vénéneuses, soporifiques, stupéfiantes, désinfectantes ou antiseptiques et des substances pouvant servir à la fabrication illicite de substances stupéfiantes et psychotropes, modifié par les lois des 9 juillet 1975, 14 juillet 1994, 4 avril 2003 et 3 mai 2003;

4° « 3e catégorie » : les infractions à la loi du 24 février 1921 précitée, autres que celles contenues aux 1ère et 2ème catégories;

Loi de 4 avril 2003 modifiant la loi du 24 février 1921 concernant le trafic des substances vénéneuses, soporifiques, stupéfiantes, désinfectantes et antiseptiques, et l'article 137 du Code d'instruction criminelle

Chapitre II. - Dispositions, modificatives

Art. 2. Dans la loi du 24 février 1921 concernant le trafic des substances vénéneuses, soporifiques, stupéfiantes, désinfectantes ou antiseptiques, il est inséré un article 2ter, rédigé comme suit :

« Art. 2ter . Le Roi peut, par arrêté délibéré en Conseil des Ministres, en fonction des distinctions et des catégories qu'il établit conformément à l'article 2bis , § 1er, alinéa premier, définir les infractions qui, en dérogation des peines prévues à l'article 2bis , seront punies :

- 1° d'une amende de 15 à 25 EUR pour la première infraction;
- 2° d'une amende de 26 à 50 EUR en cas de récidive dans l'année depuis la première condamnation;
- 3° d'un emprisonnement de huit jours à un mois et d'une amende de 50 à 100 EUR en cas de nouvelle récidive dans l'année depuis la deuxième condamnation;
- 4° d'un emprisonnement de trois mois à un an, et d'une amende de 1.000 à 100.000 EUR, ou de l'une de ces peines seulement.

Directive ministérielle de 16 mai 2003 relative à la politique des poursuites en matière de détention et de vente au détail de drogues illicites

Les produits dérivés du cannabis

1. La détention de cannabis reste une infraction, même si cette détention n'a lieu qu'en vue d'une consommation personnelle et qu'aucune circonstance aggravante n'est constatée.

On entend par importation, fabrication, transport, acquisition et détention pour l'usage personnel, la détention d'une quantité de cannabis qui peut être consommée en une seule fois ou, au maximum, en 24 heures.

(...) la détention d'une quantité de cannabis ne dépassant pas le seuil de 3 (trois) grammes doit être considérée comme relevant de l'usage personnel.

De même, la détention de cannabis sous forme d'autre préparation (huile, confiserie,...) ne doit pas être considérée comme une détention en vue d'une consommation personnelle quelque soit la quantité découverte.

On entend par culture de plants de cannabis pour l'usage personnel, la détention d'une quantité de plants femelles de cannabis qui ne peut mener à une production qui dépasse les nécessités d'une consommation personnelle, soit au maximum 1 plante (et donc pas une graine, une plante en culture et une récoltée).

Pour une meilleure compréhension de la directive et par esprit de clarté, on notera que les mots « détention de cannabis » visent dans cette circulaire tant la possession de cannabis que la culture de plants femelles de cannabis

8. En ce qui concerne la détention de cannabis pour consommation personnelle (infraction de la première catégorie - voir supra), la nouvelle loi remplace les peines correctionnelles prévues par la loi du 24 février 1921 par des peines de police (amende de 15 à 25 euros). A l'instar de ce que la loi prévoit en matière d'ivresse publique, la première récidive dans l'année depuis la première condamnation est punie d'une peine plus forte (amende de 26 à 50 euros) et la seconde récidive dans l'année de la seconde condamnation est punie d'une peine correctionnelle (emprisonnement de 8 jours à 1 mois et une amende de 50 à 100 euros). (...)

Czech Republic

Section 187a

(1) A person who keeps, without authorization, a narcotic or psychotropic substance or a poison in a quantity greater than small shall be punished by imprisonment for a term of up to two years or by a pecuniary penalty.

(2) An offender shall be sentenced to imprisonment for a term from one to five years if he commits an act under subsection (1) on a significant scale.

Denmark

Circular No. 144 15th of July 1969 on the prosecution in case of violation of the legislation on euphoric drugs (...)

I. Consumption (Possession, purchase, acquisition).

According to l. 169 of the 24th of May 1955 (the rules concerning seizures has been changed by l. 213

by the 4th of June 1965 § 69), import, export, sale, purchase, delivery, reception, production, elaboration and possession of the drugs mentioned in the decree number 125 from 27th of March 1963 and decree number 156 of 3rd of May 1966 are forbidden except in cases with special permission.

According to the preliminary works of the law the ban against possession – and similar rules regarding purchase and acquisition – is especially based on technical reasons: possession will often be an indication of a distribution, which cannot be proofed.

As a consequence, there will generally be no reason to start an investigation with the aim of determining an offence for possession (purchase or acquisition), when there is only suspicion of own consumption of euphoric drugs. In accordance to this, there ought to be shown reluctance when it comes to investigation on ones own initiative at for instance schools, even if the police has reason to believe that misuse of euphoric drugs has occurred.

Germany

Act to regulate the traffic in narcotics (Narcotics Act)

In the version of the notification of 1 March 1994 (Federal Law Gazette 1994 I p. 358), lastly amended by Article 4 of the Act of 26 January 1998 (Federal Law Gazette Part I p. 160)

Section 31a

Refraining from prosecution

1) If the substance of the proceedings is an offence under Section 29, subsection 1, 2 or 4, the public prosecution office may refrain from prosecution if the offence of the offender can be regarded as minor, a criminal prosecution would not serve the public interest and the offender cultivates, produces, imports, exports, carries in transit, acquires, otherwise procures or possesses narcotics only for his own use in insignificant quantities. (2) If the charge has already been preferred, the court may discontinue the proceedings at any stage thereof subject to the prerequisites laid down in subsection 1 above, with the consent of the public prosecution office and of the accused. The accused's consent shall not be required if the trial cannot be conducted for the reasons stipulated in Section 205 of the Code of Criminal Procedure or if, in the cases referred to in section 231, subsection 2, Section 232 and Section 233 of the Code of Criminal Procedure, the trial is conducted in absentia. The decision shall be made by court order, which shall not be subject to appeal.

Judgment of German Constitutional Court on Cannabis – 09 March 1994

Basic principles with respect to the judgment of the second Senate [panel of judges] of 9 March 1994

1. a) Involvement with drugs is subject to the provisos laid down in Art. 2 Par. 1 GG [Grundgesetz 'Basic Law' the German Constitution]. There is no such thing as a 'Right to Intoxication' which is exempt from these restrictions.

b) The penalty provisions of the Narcotics Act which threaten punishment for unauthorized involvement with cannabis products are to be tested against the criterion of Art. 2 Par. 1 GG with respect to the prohibition enforced by penalties and against Art. 2 Par. 2 Sent. 2 GG with respect to the threatened imprisonment.

2. a) When evaluating the suitability and necessity of a measure chosen to achieve an intended aim (as required by the principle of commensurateness), and when assessing and predicting the dangers threatening the individual or the public, (as is also required in this context), the legislature is entitled to a freedom of judgment which can only be reviewed to a restricted extent by the Federal Constitutional Court. b) When the severity of an intervention is being measured against the importance and urgency of the grounds adduced in its justification, the limit of what can be considered reasonable for those subject to the prohibition must not be exceeded (prohibition of excess, or commensurateness in the narrow sense). Application of this criterion may lead to a situation in which the intended means of protecting a legal right or interest may not be permissible because the resulting restrictions on the constitutional rights of the person concerned are clearly more significant than the increased protection for the right or interest, meaning that it is inappropriate to make use of the means of protection envisaged.

3. In so far as the penalty provisions of the Narcotics Act [BtMG] make types of behaviour punishable which are exclusively preparatory to the occasional personal use of small quantities of cannabis products and do not involve endangerment of others, they do not thereby contravene the prohibition of excess, since

the legislature has made it possible for the prosecution authorities to take account of any individual element of wrongdoing or guilt being only minor by refraining from imposing a penalty (cf. § 29 Par. 5 BtMG) or refraining from prosecution (cf. §§ 153 ff. StPO [Code of Criminal Procedure], § 31a BtMG). In such cases, the prohibition of excess will basically require that the prosecution authorities refrain from prosecution of the offences set out in § 31a BtMG.(...)

Estonia

Narcotic Drugs and Psychotropic Substances Act

§ 15. Unlawful handling of small quantities of narcotic drugs or psychotropic substances

Consumption of narcotic drugs or psychotropic substances without a prescription, or illegal manufacture, acquisition or possession of small quantities of narcotic drugs or psychotropic substances is punishable by a fine of up to 200 fine units or by detention.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

Penal Code

§ 184. Unlawful handling of large quantities of narcotic drugs or psychotropic substances

(1) Illegal manufacture, acquisition, possession, trafficking, mediation, transportation, import, export, transit or other illegal handling of large quantities of narcotic drugs or psychotropic substances is punishable by 1 to 5 years imprisonment.

(2) The same act, if committed:

by a group or a criminal organisation, or

at least twice, is punishable by 2 to 10 years imprisonment.

An act provided for in subsection (1) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

An act provided for in clause (2) 2) of this section, if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.

For an offence provided for in this section, a court may impose a fine to the extent of assets as a supplementary punishment pursuant to § 53 of this Code.

Greece

Law No. 1729 Combat against the spread of drugs, protection of youth and other provisions.

Article 12 Users of narcotic substances

1. Any person who, for his own exclusive use gets or possesses in any way whatsoever drugs in a small quantity or makes use of them is punished by imprisonment. The punishment is executed at a special correctional institution of therapeutic character.

2. If the user provided in paragraph 1 has not been finally convicted for another violation of the present law and does not present symptoms of addiction from narcotic substances, the court, evaluating the particular circumstances as well as the personality of the accused, imposes, instead of the punishment of para. 1, the measure of attendance of an appropriate advisory, supporting programme, specified by the Minister of Health, Welfare and Social Security, upon the suggestion of the Council of article 1 para. 1 at the health centres seating in each prefecture, at advisory stations or other similar institutions. In case of non compliance, the court imposes the confinement in an appropriate institution for the attendance of the same programme.

Spain

Constitutional Law No. 1/1992, of 21 February, on the Protection of Public Safety

CHAPTER IV System of Penalties

Section One. Infractions

Article 23

For the purposes of this Law, the following shall constitute serious infractions:

(...)

(h) The toleration of the illegal consumption of or trafficking in toxic drugs, narcotics or psychotropic substances in public premises or establishments, or the lack of diligence in preventing this, on the part of the owners, administrators or persons in charge;

(...)

Article 25

1. The consumption in public places, streets, establishments or conveyances, as well as the illicit possession, even if not for the purposes of trafficking, of toxic drugs, narcotics or psychotropic substances, provided no criminal offence is involved, and also the abandonment of apparatus or instruments used for the consumption of these substances at the aforementioned places, shall constitute serious infractions of public safety.

Section Two. Penalties

Article 28

1. One or more of the following penalties may be imposed by the competent authorities for the infractions described in the preceding section:

(a) A fine of from five million and one pesetas to 100 million pesetas for very serious infractions; of from 50,001 pesetas to five million pesetas for serious infractions; and of up to 50,000 pesetas for minor infractions;

2. For the infractions contemplated in article 25, penalties may also be imposed in the form of the suspension, for a period of up to three months, of the permit to drive a motor vehicle or the withdrawal of the firearms permit or licence and, in any case, the confiscation of the toxic drugs, narcotics or psychotropic substances.

3. In cases of serious or very serious infractions, the applicable penalties may be replaced by expulsion from Spanish territory when the offenders are foreign nationals, in accordance with the legislation on the rights and freedoms of foreign nationals in Spain.

France

Code de la Santé Publique, Articles L.3421 - 3424

Titre II : dispositions pénales et mesures d'accompagnement

Article L. 3421-1 à L. 3421-4. Infractions d'usage, de provocation à l'usage et au trafic et peines applicables. (Chapitre I : peines applicables)

Art. L. 3421-1. - L'usage illicite de l'une des substances ou plantes classées comme stupéfiants est puni d'un an d'emprisonnement et de 3750€ d'amende.

Circulaire du ministère de la justice du 17 juin 1999 relative aux réponses judiciaires aux toxicomanies

1.4. L'adaptation des réponses judiciaires dans les phases sentencielle et postsentencielle

L'emprisonnement ferme à l'encontre d'un usager n'ayant pas commis d'autre délit connexe doit constituer un ultime recours.

Les ajournements de peine, les peines alternatives à l'incarcération et les mesures d'aménagements de peines restent trop rarement prononcées en faveur des toxicomanes.

Pourtant, il s'agit de mesures structurantes dont la mise en œuvre à l'égard des personnes présentant une dépendance avérée aux opiacés est aujourd'hui facilitée par les traitements de substitution qui rendent possible une stabilisation de l'état des intéressés. C'est pourquoi, sans méconnaître la gravité des infractions commises, les procureurs de la République s'attacheront, lors des audiences correctionnelles ou lors des commissions d'application des peines, à ce que soient prononcées de telles mesures à l'égard des toxicomanes dont le motif de condamnation est en lien avec l'usage de drogues.

Ireland

No. 12/1977: Misuse of Drugs Act, 1977

27 Penalties.

27.(1) Subject to section 28 of this Act, every person guilty of an offence under section 3 of this Act shall

be liable

(a) where the relevant controlled drug is cannabis or cannabis resin and the court is satisfied that the person was in possession of such drug for his personal use:

- (i) in the case of a first offence, to a fine on summary conviction not exceeding fifty pounds,
- (ii) in the case of a second offence, to a fine on summary conviction not exceeding one hundred pounds,
- (iii) in the case of a third or subsequent offence, to a fine on summary conviction not exceeding two hundred and fifty pounds or, at the discretion of the court, to imprisonment for a term not exceeding twelve months, or to both the fine and the imprisonment;

(b) in any other case

- (i) on summary conviction, to a fine not exceeding two hundred and fifty pounds or, at the discretion of the court, to imprisonment for a term not exceeding twelve months, or to both the fine and the imprisonment, or
- (ii) on conviction on indictment, to a fine not exceeding fifteen hundred pounds or, at the discretion of the court, to imprisonment for a term not exceeding seven years, or to both the fine and the imprisonment.

Italy

D.P.R. October 1990, no.309 - Consolidation of the laws governing drugs and psychotropic substances, the prevention, treatment and rehabilitation of drug Addiction

Section 75

Administrative sanctions

(Law No. 162 of 26 June 1990, s.15(1), (2) and (3))

1. Anyone who unlawfully imports, acquires or in any way possesses narcotic and psychotropic substances in doses no greater than the daily average requirement for personal use alone, calculated on the basis of the criteria set forth in s.78(1), shall be liable to the administrative sanction of loss of driving license, of arms license, passport and any other equivalent document, and in the case of a foreign national, the loss of the residence permit for tourism, or the prohibition on obtaining said documents for a period of between two and four months, if the narcotic and psychotropic substances are those set forth in Tables I and III pursuant to s.14, and for a period of between one and three months if the substances are the narcotic and psychotropic substances set forth in Tables II and IV pursuant to s.14. The Prefect of the place where the offence is committed is responsible for applying the administrative sanction.

2. If the offences provided by subsection (1) relate to the substances set forth in Tables II and IV, and the evidence indicates that the person will in future abstain from committing them again, in place of the penalty, and for one time only, the Prefect shall settle the matter by formally inviting the offender not to use the substances again, warning him of the consequences of his action.

Cyprus

The Narcotic Drugs And Psychotropic Substances Law Of 1977

10. Subject to section 32 of this Law, it shall be an offence for a person-

a. To smoke, or otherwise take or use prepared opium, cocaine, cannabis or cannabis resin or any of their products; or

b. to frequent a place used for the purpose of smoking, taking or use of opium, cocaine, cannabis, cannabis resin or any of their products; or

c. to have in his possession:

(i) any pipes or other utensils made or adapted for use in connection with the smoking, taking or use of opium, cocaine, cannabis, cannabis resin or any of their products being pipes or utensils which have been used by him or with his knowledge and permission in that connection or which he intends to use or permit others to use in that connection; or

(ii) any utensils which have been used by him or with his knowledge and permission in connection with the preparation of smoking, taking or use of opium, cocaine, cannabis or cannabis resin or any of their products.

(d) to take in any way any controlled drug.

Latvia

Code on Administrative Offences

paragraph Nr 46

Unauthorized acquisition or storage small amounts of narcotic and psychotropic substances or usage of narcotic and psychotropic substances without medical prescription the applicable sentence is a fine max 75LVL (approx.130€) or administrative detention max 15 days.

A person who has voluntarily turned in narcotic or psychotropic substances or voluntarily go for medical treatment, shall be released from administrative liability for acquisition and storage of such substances, and for usage of narcotic and psychotropic substances without medical prescription.

Penal Code:

Section 253. Unauthorised Manufacture, Acquisition, Storage, Transportation and Conveyance of Narcotic and Psychotropic Substances

(1) For a person who commits unauthorised manufacture, acquisition, storage, transportation or conveyance of narcotic or psychotropic substances, the applicable sentence is deprivation of liberty for a term not exceeding seven years, with or without confiscation of property.

(2) For a person who commits the same acts, if such have been committed for purposes of sale, or who commits unauthorised sale of narcotic or psychotropic substances, the applicable sentence is deprivation of liberty for a term not exceeding ten years, with or without confiscation of property, and police supervision for a term not exceeding three years.

(3) For a person who commits acts provided for in Paragraphs one or two of this Section, if commission thereof is repeated or by a group of persons pursuant to prior agreement, or by a person who has previously committed theft of narcotic or psychotropic substances, the applicable sentence is deprivation of liberty for a term of not less than five and not exceeding twelve years, with or without confiscation of property and police supervision for a term not exceeding three years.

(4) For a person who commits the acts provided for in Paragraphs one or two of this Section, if such have been committed regarding large amounts of narcotic or psychotropic substances or regarding especially dangerous narcotic or psychotropic substances, or commits unauthorised sale of narcotic or psychotropic substances to a minor, the applicable sentence is deprivation of liberty for a term of not less than eight and not exceeding fifteen years, with or without confiscation of property, and police supervision for a term not exceeding three years.

Lithuania

Penal Code

Article 259. Illegal handling of narcotic or psychotropic substances without the aim to distribute them

A person who illegally produced, processed, acquired, possessed, transported or sent narcotic or psychotropic substances without the aim to sell or otherwise distribute them is punished by fine or arrest, or imprisonment up to two years.

A person who illegally produced, processed, acquired, possessed, transported or sent narcotic or psychotropic substances without the aim to sell or otherwise distribute them and thereby committed a misdemeanour is punished by community service or restriction of freedom, or fine, or arrest.

A person who voluntarily addressed a health care institution for medical assistance or addressed a state institution with the aim to hand over illegally produced, acquired, possessed narcotic or psychotropic substances without the aim to distribute them is acquitted from criminal responsibility for production, acquisition and possession of narcotic or psychotropic substances consumed or surrendered.

Luxembourg

Loi du 27 avril 2001 modifiant la loi modifiée du 19 février 1973 concernant la vente de substances
Art.2.

L'article 7 de la loi modifiée du 19 février 1973 concernant la vente de substances médicamenteuses et la lutte contre la toxicomanie est modifié comme suit:

«Article 7».

A.1. Seront punis d'un emprisonnement de huit jours à six mois et d'une amende de 10.001,- à 100.000,- francs, ou de l'une de ces peines seulement, ceux qui auront, de manière illicite, en dehors des locaux spécialement agréés par le Ministre de la Santé, fait usage d'un ou plusieurs stupéfiants ou d'une ou de plusieurs substances toxiques, soporifiques ou psychotropes déterminées par règlement grand-ducal ou qui les auront, pour leur usage personnel, transportés, détenus ou acquis à titre onéreux ou à titre gratuit.

2. Seront punis d'un emprisonnement de un mois à un an et d'une amende de 10.001,- à 500.000,- francs, ou de l'une de ces peines seulement, ceux qui auront, de manière illicite, fait usage des substances visées à l'alinéa A.1. du présent article, devant un ou des mineurs ou sur les lieux de travail.

B.1. Seront punis d'une amende de 10.001,- à 100.000,- francs, ceux qui auront, de manière illicite, fait usage de chanvre (cannabis) ou des produits dérivés de la même plante, tels qu'extraits, teintures ou résines, ou qui les auront, pour leur seul usage personnel, transportés, détenus ou acquis à titre onéreux ou à titre gratuit.

3. Seront punis d'un emprisonnement de huit jours à six mois et d'une amende de 10.001,- à 100.000,- francs, ou de l'une de ces peines seulement, ceux qui auront, de manière illicite, fait usage devant un ou des mineurs ou dans les établissements scolaires et lieux de travail des substances visées à l'alinéa B.1. du présent article.

Hungary

Section 282

(1) Any person who, without authorization, produces, manufactures, acquires, possesses, imports or exports narcotic drugs into or from Hungary or who transports such through the territory of Hungary is guilty of a felony and shall be punished by up to five years' imprisonment.

(5) If the criminal act is committed in respect of a small quantity of narcotic drugs, the punishment shall be a) up to two years' imprisonment for a misdemeanor in the case of Subsection (1),

Section 282/C

(1) Any drug-addicted person who, without authorization, produces, manufactures, acquires, possesses, imports or exports narcotic drugs into or from Hungary or transports such through the territory of Hungary is guilty of a misdemeanor and shall be punished by up to two years' imprisonment.

(5) If the criminal act is committed by a drug-addicted person in respect of a small quantity of narcotic drugs, the punishment shall be

a) up to one year's imprisonment, community service or a fine for a misdemeanor in the case of Subsection (1) or Subsection (2) ,

Section 283

(1) No punishment shall apply on the grounds of misuse of narcotic drugs

a) if it involves a small quantity produced, manufactured, acquired or held for own consumption [Paragraph a) of Subsection (5) of Section 282],

b) if it involves a small quantity offered or supplied to be consumed jointly [Paragraph a) of Subsection (6) of Section 282/A],

c) if it involves a small quantity produced, manufactured, acquired or held by a person over the age of eighteen by using a person under the age of eighteen for own consumption [Paragraph a) of Subsection (7) of Section 282/B],

d) if it involves a small quantity offered or supplied

1. by a person between the ages of eighteen and twenty-one to a person under the age of eighteen, or

2. by a person under the age of twenty-one inside or in the proximity of a building serving the purpose of education, public learning, child welfare, child protection or cultural and educational activities to be consumed jointly [first part of Paragraph *b*) of Subsection (7) of Section 282/B if the criminal act violates Paragraph *a*) or Paragraph *b*) of Subsection (2)],

e) if it involves a drug-addicted person who

1. produces, manufactures, acquires, possesses, imports or exports a small quantity of narcotic drugs into or from Hungary or transports such through the territory of Hungary for own consumption [Subsection (1) and Paragraph *a*) of Subsection (5) of Section 282/C], and
2. offered or supplied a small quantity of narcotic drugs to be consumed jointly [Subsection (2) and Paragraph *a*) of Subsection (5) of Section 282/C],

f) if it involves a drug-addicted person who has committed another crime - that is punishable by up to two years' imprisonment - in connection with the criminal act defined under Paragraph e) 1, provided the perpetrator in question is able to produce an official document before he is sentenced in the first instance to verify that he has been treated for drug addiction for at least six consecutive months or that he has participated in a drug addiction program or a preventive-consulting service.

(2) Paragraphs *b*), *d*) and *e*) 2 of Subsection (1) shall not apply if the criminal liability of the perpetrator has been established within the framework of criminal proceedings initiated owing to the perpetrator's misuse of narcotic drugs on at least one occasion within the two years preceding the commission of the act or if the indictment against the perpetrator has been suspended.

Malta

Medical And Kindred Professions Ordinance

s.120A:

(2) Every person charged with an offence against this Ordinance shall be tried in the Criminal Court or before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the Attorney General may direct, and if he is found guilty shall, in respect of each offence be liable –

(a) on conviction by the Criminal Court –

(i) where the offence consists in selling or dealing in a drug listed under Part A of the Third Schedule contrary to the provisions of this article, or in an offence under subarticle (1)(f), or of the offence of possession of a drug, contrary to the provisions of this Ordinance, under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender, or of the offences mentioned in subarticles (1C) or (1D) or (1E), to imprisonment for life:

Provided that: (aa) where the Court is of the opinion that, when it takes into account the age of the offender, the previous conduct of the offender, the quantity of the drug and the nature and quantity of the equipment or materials, if any, involved in the offence and all other circumstances of the offence, the punishment of imprisonment for life would not be appropriate; or (bb) where the verdict of the jury is not unanimous, then the Court may sentence the person convicted to the punishment of imprisonment for a term of not less than four years but not exceeding thirty years and to a fine (*multa*) of not less than one thousand liri but not exceeding fifty thousand liri; and

(ii) for any other offence to imprisonment for a term of not less than twelve months but not exceeding ten years and to a fine (*multa*) of not less than two hundred liri, but not exceeding ten thousand liri; or

(b) on conviction by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) –

(i) where the offence consists in selling or dealing in a drug listed under Part A of the Third Schedule to this Ordinance contrary to the provisions of this article, or in an offence under subarticle (1)(f), or of the offence of possession of a drug, contrary to the provisions of this Ordinance, under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender, or of the offences mentioned in subarticles (1C) or (1D) or (1E), to imprisonment for a term of not less than six months but not exceeding ten years and to a fine (*multa*) of not less than two hundred liri but not exceeding five thousand liri; and

(ii) for any other offence, to imprisonment for a term of not less than three months but not exceeding twelve months, or to a fine (*multa*) of not less than two hundred liri but not exceeding one thousand liri or to both such imprisonment and fine,

and in every case of conviction for an offence against this Ordinance, all articles in respect of which the offence was committed shall be forfeited to the Government, and any such forfeited article shall, if the court so orders, be destroyed or otherwise disposed of as may be provided in the order.

Netherlands

Law of 12 May 1928, containing regulations concerning opium and other narcotic substances (Opium Act) and modifications

Article 3

It shall be illegal to:

A. bring into or outside the territory of the Netherlands; B. grow, prepare, treat, process, sell, supply, provide or transport; C. possess; or D. manufacture a drug as referred to in List II accompanying this Act or designated pursuant to Article 3a, fifth paragraph.

[Author's note: List II drugs: cannabis (Hashish, Hemp)]

Article 11

1. A person acting contrary to a prohibition given in Article 3 shall be punished with imprisonment of at most one month or a fine of the second category.
2. A person wilfully acting contrary to a prohibition given in Article 3, under B, C or D, shall be punished with imprisonment of at most two years or a fine of the fourth category.
3. A person wilfully acting contrary to a prohibition given in Article 3, under B, in connection with practising a profession or operating a business shall be punished with imprisonment of at most four years or a fine of the fifth category.
4. A person wilfully acting contrary to a prohibition given in Article 3, under A, shall be punished with imprisonment of at most four years or a fine of the fifth category.
5. The second paragraph shall not apply if the offence pertains to a quantity of hemp or hashish of at most 30 grams.
6. The second and fourth paragraph shall not apply if the offence pertains to a small quantity, intended for personal use, of the drugs stated in list referred to in Article 3, first paragraph. [4]

Opium Act Directive 02 November 2000

3. General starting points

3.1 Distinction between hard drugs and soft drugs

The starting point of the policy continues to be the distinction drawn in the Opium Act between drugs that constitute a demonstrable risk to public health (hard drugs) and drugs carrying a minor risk (soft drugs).

3.2. Policy of toleration and low investigation priority

In the directive, punishable offences are tolerated in connection with 'coffee shop policy' (where, in the Netherlands, soft drugs can be bought over the counter) and the 'users' area'.

2. List II section b substances (cannabis products) in excess of less than 30 grams

Prohibited transactions involving List II section b (cannabis products) are described in Article 3(1) (and 3b: disclosure) of the Opium Act. This covers to groups of punishable offences:

- Taking the substances into or outside Netherlands territory (2.1.)
- Producing and possessing for the purposes of a profession or business: cultivation, preparation, processing, selling, supplying, providing and transporting (2.2)

2.1. Taking substances into or outside Netherlands territory

Investigation: targeted investigation; deployment of police custody.

Prosecution: if possible (in view of Article 67(a) of the Code of Criminal Procedure): demand for pre-trial detention.

2.2. Producing and having in one's presence for the purposes of a profession or business: cultivation, preparation, processing, selling, supplying, providing and transporting

Non-commercial cultivation If the crop contains less than 5 plants, it is assumed it is not intended for commercial purposes. Discovery of the crop involves police dismissal and surrender. Non commercial cultivation of a limited amount for personal use is not given priority if the suspect is over the age of majority. Cultivation by minors is still liable to a criminal measure.

4. Less than 30 grams of List II, section b substances

The limit of what is tolerated is set at 5 grams for the sale of cannabis products by coffee shops. It stands to reason that the same limit should in principle be deployed as regards possession of cannabis products. Amounts up to and including 5 grams, the quantity for personal use, hence incur a police dismissal. Penal action will be taken if quantities of between 5 and 30 grams are discovered.
Investigation: no targeted investigation.

Austria

Narcotic Substances Act (BGBl. I 112/1997)

Judicial criminal provisions for narcotic drugs

Section 27.

(1) Any person who in violation of existing regulations acquires, possess, produces, imports, exports, gives to another person or purchases a narcotic drug shall be punished by up to six months imprisonment or a fine of up to 360 per diem units.

Provisional deferment of charge by the public prosecutor's office

Section 35.

(1) Should a person be charged with purchase or possession in violation of existing regulations of a small amount of narcotic substance for his own use, the public prosecutor's office shall provisionally defer the charge for a probationary period of two years under the conditions set forth hereafter.

(2) Should a person be charged with an offence otherwise punishable under Sections 27 and 30 or because of his dependence on narcotic substances for an offence connected with the acquisition of a narcotic substance that is not within the competence of the Schoffengericht [local court consisting of one judge and two lay judges] or jury court, the public prosecutor's office may provisionally defer the charge for a probationary period of two years under the conditions set forth hereafter if the culpability is not serious and the deferment does not appear less likely than a sentence to prevent the accused from committing such offences.

(3) Provisional deferment of a charge shall be contingent on

1. information from the Federal Ministry of Labour, Health and Welfare within the meaning of Section 25, and

2. a report from the district administrative authority acting as health authority indicating whether the person charged requires a health-related measure under Section 11 paragraph 2 or not and whether such a measure is expedient, feasible, reasonable and not manifestly futile under the given circumstances.

(4) The public prosecutor's office may waive the requirement for a report from the district administrative authority if a person is charged exclusively for purchase or possession of substances or preparations made from cannabis plant in small quantities for his own use and if there is no reason to assume that the person requires a health-related measure. A report is to be obtained, however, if a person has already been charged on this account within the previous five years.

(5) Before making its report the district administrative authority shall obtain an expert opinion on the person charged from a doctor sufficiently familiar with questions of narcotic drug abuse, who should if necessary collaborate with a member of the clinical psychology or psychotherapy professions authorised to practise independently.

(6) Should the person charged require a Health-related measure as referred to in Section 11 paragraph 2, the public prosecutor's office shall make the provisional deferment of the charge contingent on the person charged agreeing to receive such a measure with the consent of his legal representative if applicable.

(7) If expedient the deferment of the charge may be made contingent on the person charged with the consent of his legal representative if applicable -agreeing to supervision by a probation officer.

(8) The person charged, the Federal Ministry of Labour, Health and Welfare and the district administrative authority if it has filed a charge or submitted a report pursuant to Section 14 paragraph 1 shall be informed without delay of the deferment of the charge. The person charged shall also be informed at the same time of the significance and legal consequences of the deferment of the charge. The probationary period shall not be counted towards the limitation period.

Section 36.

own use and if there is no reason to assume that the person requires a health-related measure. A report is to be obtained, however, if a person has already been charged on this account within the previous five years.

Poland

The Act Of 24 April 1997 On Counteracting Drug Addiction

Article 48.

1. Whoever contrary to the provisions of this Act possesses narcotic drugs or psychotropic substances, shall be subject to the penalty of deprivation of liberty for up to 3 years.
2. In a case of lesser gravity, the perpetrator shall be subject to the penalty of deprivation of liberty for up to one year, limitation of liberty or a fine.
3. If the act mentioned in Section 1, involves a considerable quantity of narcotic drugs or psychotropic substances, the perpetrator shall be subject to the penalty of deprivation of liberty for up to 5 years and a fine.

Portugal

Law no. 30/2000, of 29 November

Defines the legal framework applicable to the consumption of narcotics and psychotropic substances, together with the medical and social welfare of the consumers of such substances without medical prescription

Article 2 - Consumption

- 1 – The consumption, acquisition and possession for own consumption of plants, substances or preparations listed in the tables referred to in the preceding article constitute an administrative offence.
- 2 – For the purposes of this law, the acquisition and possession for own use of the substances referred to in the preceding paragraph shall not exceed the quantity required for an average individual consumption during a period of 10 days.

Article 15 - Penalties

- 1 Non-addicted consumers may be sentenced to payment of a fine or, alternatively, to a non-pecuniary penalty.
- 2 Non-pecuniary penalties shall be applied to addicted consumers.
- 3 The commission shall set the penalty in accordance with the need to prevent the consumption of narcotics and psychotropic substances.
- 4 In applying penalties, the commission shall take into account the consumer's circumstances and the nature and circumstances of consumption, weighing up namely:
 - a) The seriousness of the act; b) The degree of fault; c) The type of plants, substances or preparations consumed; d) The public or private nature of consumption; e) In the case of public consumption, the place of consumption; f) In the case of a non-addicted consumer, the occasional or habitual nature of his drug use; g) The personal circumstances, namely economic and financial, of the consumer.

Article 16 - Fines

- 1 –In the case of plants, substances or preparations contained in tables I-A, I-B, II-A, II-B and II-C, the fine shall be fixed between a lower limit of PTE 5.000\$00 and an upper limit equivalent to the national minimum monthly wage.
- 2 – In the case of substances or preparations contained in tables I-C, III and IV, the fine shall be fixed between PTE 5.000\$00 and PTE 30.000\$00.

Article 17 - Other penalties

- 1 – Instead of a fine, the commission may issue a warning.
- 2 – Without prejudice to the provisions of paragraph 2 of article 15, the commission may apply the following penalties, as an alternative measure to a fine or as the main penalty:
 - a) Banning from the exercise of a profession or occupation, namely those subject to licensing requirements, when such exercise jeopardises the well being of the consumer or third parties; b) Banning from certain

places; c) Prohibiting the consumer from accompanying, housing or receiving certain persons; d) Forbidding the consumer to travel abroad without permission; e) Presenting himself periodically at a place to be indicated by the commission; f) Disenfranchisement, removing the right to be granted or to renew a fire arms license for defense, hunting, precision shooting or recreation; g) Seizure of objects belonging to the consumer which represent a risk to him or her or to the community or which encourage the committing of a crime or other offence; h) Privation from the right to manage the subsidy or benefit attributed on a personal basis by public bodies or services, which shall be managed by the organization managing the proceedings or monitoring the treatment process, when agreed to by the consumer.

Article 18 - Warnings

1 – The commission may issue a warning if, in view of the personal circumstances of the consumer, the type of consumption and the type of plants, substances or preparations consumed, it considers that the consumer will abstain from future consumption.

2 – The warning shall consist of an oral reprimand, with the consumer being expressly warned of the consequences of his behaviour and urged to abstain from consumption.

3 – The commission shall deliver the warning when the decision to apply it becomes definitive.

4 – The commission shall deliver an immediate warning if the consumer declares that he waives the right to bring an appeal.

Slovenia

Production Of And Trade In Illicit Drugs Act 1999

Article 33

Individuals shall be liable to a monetary fine of between SIT 50,000 and SIT 150,000 or a prison sentence of up to 30 days for committing the offence of possessing illicit drugs in contravention of the provisions of this Act.

Individuals shall be liable to a monetary fine of between SIT 10,000 and SIT 50,000 or a prison sentence of up to 5 days for committing the offence of possessing a smaller quantity of illicit drugs for one-off personal use.

In accordance with the provisions of the Misdemeanours Act, persons who commit the offence specified in the first paragraph of this article and who possess a smaller quantity of illicit drugs for one-off personal use and persons who commit the offence specified in the preceding paragraph may be subject to more lenient punishment if they voluntarily enter the programme of treatment for illicit drug users or social security programmes approved by the Health Council or Council for Drugs.

Slovakia

Illicit production and possession of drugs and psychotropic substances, toxic substances and precursors and trafficking with it

Section 186

Whoever unlawfully possess a narcotic drug, psychotropic substance, toxic substance or precursor for personal use (*) shall be liable to a term of imprisonment up to three years or forfeiture of an object.

Section 187

(1) Whoever without permission a narcotic drug, psychotropic substance, toxic substance or precursor

- a) produces, exports, imports or transports,
- b) purchases, interchanges or procures by other means,
- c) sales or exchanges by other means, or
- d) harbours for any time

shall be liable to a term of imprisonment of two to eight years or to the forfeiture of property sentence, or to pecuniary penalty, or to the forfeiture of a thing sentence.

(2) An offender shall be liable to a term of imprisonment of three to ten years if he commits the offence referred to in paragraph 1

a) against the person under eighteen years of age or person exempted of the legal capacity or person handicapped by the mental illness,

b) against person attends from drug addiction or

c) repeatedly

(3) The sentence set out in paragraph 2 shall be imposed on the offender who,

a) through the commission of the offence referred to in paragraph 1, causes serious bodily harm,

b) the offence referred to in paragraph 1 commits in considerable extend

(4) An offender shall be liable to a term of imprisonment of eight to fifteen years if he commits the offence referred to in paragraph 1

a) in the capacity of a member of a criminal group, or

b) against person under fifteen years of age

(5) The sentence set out in paragraph 4 shall be imposed on the offender who,

a) through the commission of the offence referred to in paragraph 1 breaches a specific duty connected with his employment, profession, position or function,

b) the offence referred to in paragraph 1 commits in extensive extend

c) through the commission of the offence referred to in paragraph 1 causes serious bodily harm to several persons, or

d) through the commission of the offence referred to in paragraph 1 causes a death

(6) An offender shall be liable to a term of imprisonment of ten to fifteen years if he commits the offence referred to in paragraph 1 in conjunction with organised group acting in several countries.

(7) An offender shall be liable to a term of imprisonment of twelve to fifteen years or to extraordinary punishment if he commits the offence referred to in paragraph 1 as a member of the criminal group or if he causes death of several persons

(*) Section 89 Paragraph 12 of the Penal Code defines possession for personal use as meaning *unlawfully in possession for any time, in the maximum quantity of the one-shot dose for a personal use.*

Finland

Penal Code (139/1989)

Chapter 50 - narcotics offences (1304/1993)

Section 1 narcotic s offence (1304/1993)

A person who unlawfully

1. produces or attempts to produce a narcotic substance or cultivates opium poppy, coca or cannabis for use as a narcotic substance or the raw material for a narcotic substance,

2. imports or attempts to import or exports or attempts to export a narcotic substance, or transports it or has it transported,

3. sells, supplies, conveys or otherwise distributes or attempts to distribute a narcotic substance or possesses or attempts to obtain a narcotic substance, (654/2001)

shall be sentenced for a offence to a fine or to imprisonment for at most two years.

Section 2a - Unlawful use of narcotics (654/2001)

A person who unlawfully uses or for personal use possesses or attempts to obtain a small amount of a narcotic substance shall be sentenced for unlawful use of narcotics to a fine or to imprisonment for at most six months. (...)

Sweden

Narcotic Drugs (Punishments) Act given at the Palace of Stockholm, March 8, 1968.

Swedish Code of Statutes 1968:64

Section 1

Any person who unlawfully

1. transfers narcotic drugs,

2. manufactures narcotic drugs intended for misuse
3. acquires narcotic drugs for the purpose of transfer,
4. procures, processes, packages, transports, keeps or in some other similar way handles narcotic drugs which are not intended for personal use,
5. offers narcotic drugs for sale, keeps or conveys payment for narcotic drugs, mediates contacts between seller and purchaser or takes any other such measure, if the procedure is designed to promote narcotic drugs traffic, or
6. possesses, uses or otherwise handles narcotic drugs shall, if he has acted willfully, be sentenced for a narcotic drugs offence to imprisonment for not more than three years. (SFS 1988:286)

United Kingdom

Misuse of Drugs Act 1971

Restrictions relating to controlled drugs etc.

5.- (1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession. .

(2) Subject to section 28 of this Act and to subsection (4) below, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1) above.

(3) Subject to section 28 of this Act, it is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply it to another in contravention of section 4(1) of this Act.

Law enforcement and punishment of offences

25.- (1) Schedule 4 to this Act shall have effect, in accordance with subsection (2) below, with respect to the way in which offences under this Act are punishable on conviction.

(2) In relation to an offence under a provision of this Act specified in the first column of the Schedule (the general nature of the offence being described in the second column)-

(a) the third column shows whether the offence is punishable on summary conviction or on indictment or in either way;

(b) the fourth, fifth and sixth columns show respectively the punishments which may be imposed on a person convicted of the offence in the way specified in relation thereto in the third column (that is to say, summarily or on indictment) according to whether the controlled drug in relation to which the offence was committed was a Class A drug, a Class B drug or a Class C drug ; and

(c) the seventh column shows the punishments which may be imposed on a person convicted of the offence in the way specified in relation thereto in the third column (that is to say, summarily or on indictment), whether or not the offence was committed in relation to a controlled drug and, if it was so committed, irrespective of whether the drug was a Class A drug, a Class B drug or a Class C drug; and in the fourth, fifth, sixth and seventh columns a reference to a period gives the maximum term of imprisonment and a reference to a sum of money the maximum fine.

Schedule 4 - Prosecution and punishment of offences - (extract)					
Section creating offence	General nature of offence	Mode of Prosecution involved	Punishment		
			Class A drug involved	Class B drug involved	Class C drug involved
S. 5(2)	Having possession of a controlled drug.	(a) Summary	12 months or £400, or both.	6 months or £400, or both.	6 months or £200, or both.
		(b) On indictment	7 years or a fine, or both.	5 years or a fine, or both.	2 years or a fine, or both.
S. 5(3)	Having possession of a controlled drug with intent to supply it to another.	(a) Summary	12 months or £400, or both.	12 months or £400, or both.	6 months or £200, or both.
		(b) On indictment	14 years or a fine, or both.	14 years or a fine, or both.	5 years or a fine, or both.

Statutory Instrument 2003 No. 3201 The Misuse of Drugs Act 1971 (Modification) (No. 2) Order 2003
 (2) In paragraph 1(a) of Part I of that Schedule, 'Cannabinol, except where contained in cannabis or cannabis resin' and 'Cannabinol derivatives' shall be deleted.

(3) In paragraph 1(a) of Part II of that Schedule, 'Cannabis and cannabis resin' shall be deleted.

(4) In paragraph 1(a) of Part III of that Schedule, there shall be inserted after 'Camazepam', 'Cannabinol', 'Cannabinol derivatives' and 'Cannabis and cannabis resin'.

(5) In paragraph 1(d) of Part III of that Schedule, there shall be inserted after 'above', 'or of cannabinol or a cannabinol derivative'.

Explanatory Note (This note is not part of the Order)

This Order reclassifies four substances in Schedule 2 to the Misuse of Drugs Act 1971 which specifies drugs which are subject to control under the Act. The four substances, cannabinol and cannabinol derivatives (previously Class A drugs) and cannabis and cannabis resin (previously Class B drugs), are reclassified as Class C drugs. In addition, any substance which is an ester or ether either of cannabinol or of a cannabinol derivative (previously a Class A drug) is reclassified as a Class C drug.

Criminal Justice Act 2003

Schedule 28

Section 284 Increase in Penalties for Drug-Related Offences

Misuse of Drugs Act 1971 (c. 38)

1 (1) Schedule 4 to the Misuse of Drugs Act 1971 (prosecution and punishment of offences) is amended as follows.

(2) In column 6 of that Schedule (punishments for offences under that Act committed in relation to Class C drugs), in each of the following entries, for '5 years' there is substituted '14 years'.

ACPO Cannabis Enforcement Guidance 12 September 2003

The purpose of this paper is to issue guidance to officers dealing with simple offences of possession of cannabis by adult offenders when the drug is reclassified from Class B to Class C of Schedule 2 of the Misuse of Drugs Act 1971.

2. Arrest

2.1 A consequence of transferring cannabis from Class B to Class C is that under current legislation cannabis possession would ordinarily not be an arrestable offence under Section 24 of PACE 1984.

However, the law is being amended in Parliament so that it will continue to be defined as an arrestable offence, but the presumption should be against using this power for simple possession offences.

2.2 There will be circumstances where it is appropriate to arrest for possession of cannabis. This is very much left to the discretion of officers who will be expected to take into account the prevailing circumstances in deciding whether to arrest or not. An officer may consider arrest in the following situations:

2.3 Beyond simple possession of cannabis

Context

The smoking of cannabis in public view is not in the spirit of re-classification. Such flagrant ignorance of the law has the potential of undermining the illegal status of possession of a controlled drug. A similar undermining could occur where, on a local basis, a police officer is aware of a person who is repeatedly dealt with for possession of cannabis.

Police officer may arrest

- Where a person is smoking cannabis in public view
- Where locally a person is known to be repeatedly dealt with for possession of cannabis.

2.4. Youth Offenders

Context

The Crime and Disorder Act provides a statutory framework for Youth Offenders to be dealt with in a different way to adult offenders using the options of a reprimand, final warning and charge. Youth offenders will continue to be dealt with through the Crime and Disorder Act provisions and not this Cannabis Enforcement Guidance. The Crime and Disorder Act legislation requires offenders to be dealt with at the police station which, in practice, means that police officers should arrest persons aged 17 years or under who are in possession of cannabis for personal use.

2.5 Locally Identified Policing Problem

Context

There may be circumstances such as a fear of public disorder associated with the use of cannabis which are causing a local policing problem that cannot be effectively dealt with by other powers.

Officers may arrest

Persons who are in possession of cannabis under circumstances that are causing a locally identified policing problem.

2.6 Protect Young People

Context

There may be occasions where the possession of cannabis may create a risk to young people. However, this guidance is subordinate to any partnership agreement or memorandum of understanding within education establishments.

Officers may arrest

Persons in possession of cannabis inside or in the vicinity of premises frequented by young persons, e.g. schools, youth clubs, play areas.

3. Offenders Under 10 Years

3.1 When children under the age of 10 years are found in possession of cannabis, this should be considered an 'at risk' incident prompting the appropriate referrals to other agencies through the child protection team.

4. Vulnerable Persons

4.1 The term 'vulnerable person' includes a person who may be mentally disordered or mentally handicapped or incapable of understanding the significance of questions or replies. They should be dealt with within the terms of this strategy by being arrested, their own personal welfare and interests being paramount. Final disposal will be within the ACPO Case Disposal Guidelines. All case disposal options, including Formal Warning, are available for consideration by the custody officer.

Norway

Act of 4 December 1992 no 132 on medical products etc

§ 24. It is prohibited to be in unlawful possession of or to use narcotics etc, or to purchase such goods under false pretences for example by giving false information as to name address, illness or symptoms

of illness. Such goods may not be used for purposes other than those for which they are supplied, and may not without legal warrant be surrendered or acquired by any person other than the one to whom the prescription or requisition is issued. Prescriptions or requisitions may not be surrendered to or acquired by persons other than those to whom they are issued.

Chapter X. Penalty. Confiscation.

§ 31. Any person who intentionally or negligently violates this Act or regulations, bans or directions issued by virtue of this Act, will be punished by fines or by imprisonment up to 3 months, or both.

Unlawful possession and use of narcotics etc. in accordance with § 24, first subsection will be punished by fines or by imprisonment up to 6 months, or both.

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