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# Legislative activity in the period 2000–2004

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**Contribution to the evaluation of the EU action plan on drugs (2000–2004)**

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## 1. Introduction

The paper has been written to inform the Commission's contribution to the EU Action Plan on Drugs 2000-2004.

The subject matter was chosen in line with the resources available. It was decided to use the data collection systems of the EMCDDA in the form of the Reitox National Focal Point Annual Reports, sections 1.2 (Legal framework) and 1.3 (Laws implementation), and the Legal Correspondent network that is responsible for updating the European Legal Database on Drugs (ELDD). Both these two sources and the paper itself answer to Action 1.5 of the Action Plan: to share information on national drug-related legislation.

The methodology was to use the resources to create a list of the legislation that had been reported to EMCDDA in the period as "drug-related". The list was drawn up by analysis of the NFP Annual Reports and inputs to the ELDD, and then checked by the Legal Correspondents.

This list was then compared with those Actions specified in the Action Plan, to indicate those actions which were initially judged as a high priority by Member States (in their position as Council representatives approving the Action Plan), and those which then actually received legislative attention during the period. This paper refers to the enumerated points of the Action Plan as Section, Sub-section or Action as appropriate. As many laws do not seem to address a specific Action, they may have been attributed to a Section or Sub-section, to acknowledge that legislation was passed within that more general sphere. With over 250 texts submitted or reported in 11 languages, attribution has mainly been on the basis of the description of the text by the national experts, rather than a detailed analysis of the text itself.

As the terms laws, regulations, decrees, orders, etc may be used by different countries or translated in different ways, this paper refers to laws as a general term to cover all different types of national legal text unless otherwise stated. Parliamentary and governmental resolutions, and prosecutorial circulars, directives and guidelines were also included where reported, as documents of the parliament / government designed to bring about a change in the implementation of the drug legislative framework. However, major court decisions, though sometimes reported as affecting the legal framework, have been excluded, as they were not the action of the [elected] legislature.

It should be noted that neither presence nor absence of legislative activity on a topic is a clear indicator of a country's policy response to that particular topic. For example, the report describes legislative activity during a certain period. If a country had already legislated on that topic prior to the period, that may well explain absence of legislation during the period; and legislation prior to the reporting period is not the subject of this paper. Attention may also be given to a topic in a form other than by adoption of a legal text – policy papers, public campaigns, resource allocation etc. Finally, there is no consideration of the "weighting" of each text quoted – whether or not a parliamentary law should be considered as somehow more important than a ministerial regulation, etc, as this would have required a detailed understanding of the legislative procedure in each of the 15 countries in order to be accurate. Nevertheless, the main aim of this paper is to highlight visible data where there is clear legislative activity, as a positive indicator of where Member States considered that legislation was necessary.

As a paper covering national legislative activity, Actions requested of EU bodies have not normally been addressed. However, they may be considered where they apply indirectly to Member States, for example, where an EU body should “encourage Member States to” act.

## 2. Overview

In total, some 278 laws, regulations or guidelines were reported as being drug-related by the 15 countries in the data collection period January 1999 – February 2004.

In purely quantitative terms per country, these ranged between 8 in Germany to 34 in Spain over the period.

When viewed by year, 51 of the above laws were passed in 1999, 38 in 2000, 66 in 2001, 65 in 2002 and 52 in 2003.

When applied to the Action Plan main headings, the reported laws could be attributed as follows:

| Section of EU Action Plan              | Actions requested of Member States | Attributable Laws Reported |
|--|------------------------------------|----------------------------|
| Section 1 – Coordination               | 6                                  | 44                         |
| Section 2 – Information and Evaluation | 5                                  | 6                          |
| Section 3 – Demand Reduction           | 25                                 | 157                        |
| Section 4 – Supply Reduction           | 12                                 | 61                         |
| Section 5 – International Cooperation  | 10                                 | 3                          |
| Laws not attributed                    |                                    | 63                         |

Quantitatively, although numbers are given for informational purposes, they do not represent a mutually exclusive categorisation of each text into a certain category; laws may address more than one of the categories discussed. It should also be remembered that the Sections are not broken down into an equal number of Actions, and some Sections may be seen to have a higher proportion of Actions for the Member States than others (which address the European institutions). A large proportion of laws reported as “drug-related” by the Member States did not clearly fit into any Action listed in the Action Programme. These included laws on the classification of substances, industrial hemp, and the regulatory framework on licit medicinal use of controlled substances, including cannabis. It is also conceivable that the laws most reported to the EMCDDA would be those laws considered as most relevant to the work of the EMCDDA.

## 3. Analysis of Action Plan by section

### Coordination

The first Section of the Action Plan is dedicated to coordination. **Action 1.2.2** requests the Council to encourage Member States to establish or strengthen the national coordination system and/or national

coordinator. 16 laws were reported that touched this subject, by Belgium, France, Italy, Portugal and Greece, in order to appoint individuals and establish or develop various coordination bodies. **Action 1.2.4**, requesting Member States to ensure that the balanced and multidisciplinary approach is actually implemented, could be reflected in some 20 texts from Belgium, France, Italy, the Netherlands, Austria, Finland and the UK which most often referred to the prosecution policy addressing offenders against the national laws on drug control; however, these include the change of law in Belgium to establish a case-manager system for justice and health, and texts in Portugal and Spain addressing implementation of the national Action Plan and Strategy respectively.

**Section 1.3**, requesting the involvement of civil society, was reflected in a law of Spain that created a National Council of NGOs involved in Social Action.

**Action 1.4.2** requesting appropriate funding for proactive measures to prevent use, drug-related crime, and negative health and social consequences, could apply to five laws in Italy and Greece. Two laws in France and Spain also contributed to this Action when referring to the seized assets of traffickers that would be earmarked for drug [prevention and treatment] activities, and the Resolution approving the Action Plan of Portugal contained budgetary figures.

### Information and evaluation

**Action 2.1.4**, requesting that Member States ensure the national focal points have necessary support to implement the five key indicators, saw six laws in Portugal, Italy and Belgium. The Belgian laws may also contribute to the aim of **Action 2.1.7** to support national toxicological analysis centres, by its legislative support to allow anonymous transfer of data to the Focal Point.

**Section 2.2**, to ensure that actions against drugs are evaluated, asks Member States directly to assess the effectiveness of preventing and combating organised drug-related crime (**Action 2.2.6**). However, it also asks the Horizontal Working Party on Drugs (HWPD) to examine, on the basis of the reports provided for in the Joint Action of December 1996 [concerning the approximation of the laws and practices of the Member States to combat drug addiction and trafficking], the activities taken by Member States, their implementation and effectiveness. This paper does not address the HWPD's actions, nor the reports mentioned, but it may be noted that the EMCDDA Annual Report of 2004 will report on various evaluations of drug laws.

### Reduction of Demand, prevention of drug use and of drug-related crime

Spain reported a regional law for prevention, treatment and rehabilitation of drug dependencies in the region, relating generally to **Section 3.1** of the EU Action Plan (to give greater priority to drug prevention and demand reduction, particularly new recruitment to drug use, as well as the reduction of the adverse consequences of drug use). It could also be said that the package of three laws in Belgium of 2003, considerably revising the drug legislation, address the same subject, in their restructuring of penalties for cannabis offences and introduction of an offender case management system. The aim of **Sub-section 3.1.1**, to reduce the prevalence of drug use, particularly among young people under 18, can be seen in the UK laws to drug test those people charged with certain offences, and particularly to lower the age of drug testing to 14 years old in certain cases so that such users can be identified and referred to treatment. Four laws from France, Spain and Portugal reflected **Action 3.1.1.1**, with the first two countries' laws encouraging drug prevention in school curricula and the latter encapsulating a regional prevention

programme. In response to **Action 3.1.1.4's** request to develop innovative approaches to the prevention of the abuse of synthetic drugs, various actions in the forms of laws or guidelines have been taken. Some may be to tighten the prescription controls of drugs that may be abused, as done by Luxembourg (Ritalin and Rohypnol) and Ireland (guidelines on benzodiazepines), or to criminalise their unauthorised possession, as in the UK (benzodiazepines). Sweden passed a law that effectively allowed for fast classification (and thus control) of new drugs. France and the UK also recognised the link between synthetic drugs and the clubbing scene, tightening planning controls and issuing targeted “Safer Clubbing” guidance respectively.

The seven Actions listed in **Sub-section 3.1.2**, to reduce drug-related health damage and death, appear to have received considerable legislative attention. **Action 3.1.2.1**, to develop outreach work and services for users, including treatment, counselling, and the provision of prophylactics, was reflected in no less than 27 texts, with the majority of these (21) concerning the legal framework regulating substitution treatment, in Belgium, Denmark, France, Greece, Germany, Luxembourg, Finland, Sweden and the UK. These laws were to permit the legal concept of substitution treatment, and even maintenance treatment, in some way; to list the substances permitted for such treatment (methadone, buprenorphine, but not LAAM), and their prescription periods; to establish entry criteria for such treatment; to define or list the professions who could prescribe or administer the drugs (doctors, nurses, specialists), or their approved locations; and even for their financing and prescription while in police custody. Laws were also passed addressing distribution of sterilising accessories for injecting in the UK, syringe exchange in Belgium, France and Luxembourg, and outreach work in Portugal. In contrast, **Actions 3.1.2.2** (awareness-raising campaigns) and **3.1.2.3** (using new means of communication to provide information) could only be linked with the safer clubbing guidelines issued in the UK, and the laws establishing the Contact and Information Points in Portugal.

The issue of the effects of driving under the influence of drugs (**Action 3.1.2.5**) could be seen in legislation addressing the research over some 12 texts in total. Belgium, Greece, France, Austria, Italy and Portugal have passed laws permitting and/or ordering the testing of drivers in certain circumstances such as accidents or fatal accidents, and elaborated the procedures associated with such testing, which may assist collection of statistics of causes of accidents.

Under **Action 3.1.2.6**, Member States were asked to increase services for drug abusers not integrated into existing programmes and at high risk of severe health damage or fatal accidents, to reduce individual and public health risk. Austria's two laws on behavioural counselling of drugged drivers, and laws in Finland and Luxembourg on drug testing persons to ascertain their drug use, as well as the Dutch SOV law on compulsory treatment of hard-core addicts, address this issue in various ways. It can also be seen in the Finnish law that regulates what data a social service provider is permitted or obliged to give without the client's consent.

The principle of **Sub-section 3.1.3**, to increase the number of successfully treated addicts, may be applied to some eight laws. This includes the Dutch SOV law, above; the Italian establishment of a council of operators and experts in drug dependence; continuance of the Danish legal option of compulsory treatment; German social security law easing transfer between treatment systems; and laws in France, Portugal and Finland on treatment of addicts. Laws in Belgium, France and Greece addressing treatment services in prison – discussed more under Action 3.4.3 – might also be included. In more detail, **Action 3.1.3.1** to provide a wide variety of treatment services, including measures to reduce health-related damages, has been reflected in some 11 laws of eight countries, permitting harm reduction policy in Portugal, techniques such as syringe exchange programmes in France and Belgium or consumption rooms

in Germany, regulating treatment centres in France and Italy, and increasing the number of authorised treatment centres in Austria. The issue of allocation of resources for treatment (**Action 3.1.3.2**) was the subject of a social security law in France, and France, Portugal and Italy passed laws to aid definition of guidelines for standards and goals of treatment services, as requested in **Action 3.1.3.3**. **Action 3.1.3.4**, to pay attention to social and professional rehabilitation and reintegration of addicts, was the subject of some six laws in Spain, Greece and Sweden to give various unemployment benefits, social integration guarantees, access to training programmes and subsidies to ex-addicts.

**Action 3.2.2**, to provide resources of research into the causes, prevention and behaviour of addiction and drug consumption, is in a way reflected in the law in Spain to regulate the composition and function of the National Institute for Investigation and Training about Drugs. The same law may answer **Section 3.5**, requesting the training and interchange of experience in the prevention of drug use. In Ireland, the Children Act of 2001 appears to address both **Actions 3.3.1** (to develop and implement preventative actions, particularly for children and young people) and **Action 3.4.2** (to provide alternatives to prison, especially for young drug offenders).

The principle of **Section 3.4**, to prevent crime linked to drugs, features in the prosecution directives of Belgium, the Netherlands, Austria, Finland and the UK that have been discussed under Action 1.2.4 (implementation of policy). **Sub-section 3.4.1**, to reduce the number of drug-related crimes, could be seen primarily in six laws of Belgium, Denmark, Ireland, Netherlands and the UK which addressed drug-related nuisance, relating to nuisance via drug use, premises for drug use or public order offences. Two laws of the UK to drug-test certain offenders also aim to reduce property crime by addicts. [Laws removing some drug use offences from the sphere of criminal law, by Luxembourg and Portugal, will reduce crime statistics, though not necessarily offence statistics.] The Drug Courts established in Ireland and Scotland, though not strictly stemming from legislative changes, may be mentioned as new processes to reduce offending, dependence, and prison sentences. **Action 3.4.2**, to set up mechanisms to provide alternatives to prison, is touched by nine laws regarding reduction or removal of custodial sentences for users in Belgium, Greece, France, Luxembourg, Netherlands, Finland and Portugal, and application of criminal responsibility to minors in Spain, as well as technical amendments to provisions for non-prosecution. **Action 3.4.3**, to provide prevention and treatment services in and after prison, can be seen in laws in Belgium, Spain in the link of parole and detoxification programmes, France, Greece on prisoner care, and detoxification, and Netherlands on drug testing in prison.

### Supply reduction

New regulations to extend drug controls to the customs-free zone of an airport in Ireland clearly aim at supply reduction. **Section 4.1** of the Action Plan, to reinforce the fight against organised crime and illicit trafficking, has been reflected in four laws in Greece, France and Austria, whether legally defining such an organised group or increasing the possible sentence against them. Prosecution policy directives and laws in Netherlands have also examined the organised crime phenomenon, considering factors in drug dealing and cannabis cultivation.

**Sub-section 4.1.1**, to reduce the availability of illicit drugs, is the aim of some 15 laws by Denmark, Greece, Spain, Ireland, Netherlands, Austria, Sweden, and the UK. These may have been for investigative techniques such as undercover agents, temporary detention or body searches, establishing quantitative limits for specific substances to guide prosecution, or increasing drug trafficker sentencing periods or conditions. **Action 4.1.1.2**, requesting EU guidelines to combat illicit drugs activities by the internet, may

take note of the Austrian law to specifically punish propaganda encouraging drug use via the internet, though it excludes counselling and prevention activities. Ireland and Portugal passed laws reinforcing their efforts against maritime drug trafficking as requested by **Action 4.1.1.3**, and Belgian law now permits the retention of synthetic drug reference samples by the Institute of Public Health in the spirit of **Action 4.1.1.4**. In France, an inter-ministerial circular instituted multi-disciplinary groups between police, gendarmerie, tax and customs authorities, as recommended in **Actions 4.1.1.5** and **4.2.1** (to establish joint investigative units).

Laws regarding the general aim of **Sub-section 4.1.2**, to reduce money laundering and precursor trafficking, have been passed on 10 occasions, though the majority of these were to classify the precursor substance norephedrine in the national legislation, following its UN and EU classification; Greece reported changes to the legal framework of precursor import/export controls. Concrete steps taken against money laundering, requested by **Action 4.1.2.2**, saw 12 laws, in Belgium, Denmark, Spain, France, Luxembourg, the Netherlands, Portugal, Sweden and the UK. These include expansion of predicate offences to include all criminal offences, and obligation of more professions and institutions to report suspicious activity (in line with the new FATF recommendations). In Belgium, an authorised party can report if a suspect is located in a third state with weak money laundering controls; in France, a system of automatic declarations has been established in response to new information technology; the Portuguese have legislated for new evidence collection; and the Netherlands have set up controls to check those benefiting from public subsidies and permits.

Establishment of joint teams between Member States to counter drug trafficking between them (**Action 4.2.2**) was the aim of a law in Ireland that recognised its Agreement with the UK on this issue; a law in Finland touches on this with reference to international jurisdiction and the Schengen Agreement. **Action 4.2.5** on new investigation techniques, and research and documentation of drug-related crime, has been addressed by some six laws, five in Finland and one in Denmark, which consider under-cover dealing and telecoms data and surveillance.

### International Cooperation

Only Greece and Spain reported legislation regarding bilateral agreements concluded during the period.

## 4. Trends observed

Some 62 texts were not attributed to an Action or Section of the EU Action plan. The majority of these (50 texts) were for the 15 countries to classify or reclassify various substances as controlled drugs under national legislation, usually in response to UN scheduling or the EU Joint Action on New Synthetic Drugs (4-MTA, GHB, 2-CB, PMMA...), though also acting individually to prevent a perceived public health threat from substances (5-MeO-DIPT, Amineptine...).

Without doubt the most notable quantity of reported legislation that could be attributed to a single Action was that which answered the principle of Action 3.1.2.1, to develop outreach work and treatment for users, with 21 laws addressing the legal regulation of substitution treatment. Since its EU-wide formalisation in the mid-nineties, the availability of substitution treatment has almost doubled - from around 200 000 places in 1995, to 319 000 in 1999/2000 and to 410 000 in 2002/2003. It is thus logical that there will be a need to strengthen the legislative framework, and together this seems to be, *prima facie*, a considerable acknowledgement of the priority that legislatures have given to this treatment method.



Qualitatively, Portugal and Belgium seem to have undergone the most fundamental changes to their legislation. Both followed the drawing up an evidence-based, comprehensive new strategy, both comprised integrated packages of laws, regulations and directives that removed certain offences of drug use from the criminal statute or reduced penalties / allowed their non-prosecution, and both used such legislation to establish formal mechanisms to link the judicial and health sectors. In Belgium this even involved creating a new legal distinction between substances that had not been done before. Both countries have received considerable media attention as a result, which has not always been accurate.

It has also been possible to see a general trend in the reduction of prosecution or maximum sentences for drug users, and particularly cannabis users, often with the removal of the offence from the sphere of criminal law, as the Member States view the problem of drug use to be solved with tools other than the criminal justice system. Such laws were passed in Belgium, Greece, Luxembourg, Portugal, Finland and the UK, and the trend has been noted by the EMCDDA in a policy briefing on the matter (Drugs in Focus No. 2). No Member State passed legislation to increase criminal action against simple users, though nuisance use will not be tolerated.

(At this point it should be borne in mind that in November 2003 the government in Italy proposed a fundamental change in its drug law, to reinstate quantitative limits and the criminal status of the offence. The government in Denmark is also proposing to change the law to fine first-time users, rather than warning them as is the current practice, and the government in France is considering fundamental changes to the drug law of 1970, with a possible proposal to treat some drug use as an administrative offence in order to enforce the punishment, according to media reports. Nevertheless, to date all of these remain proposals.)

One step further than the Action requested in 3.1.2.5 regarding research on driving after taking drugs (which would permit evidence-based responses), Spain, France, Austria, Sweden and Finland have moved directly to a dissuasive position by establishing or increasing criminal punishment for driving after taking drugs, and behavioural counselling of drugged drivers is regulated in Austria to treat the problem afterwards. It is outside the resources of this paper to analyse the link (if any) between the research already completed and the changes in the criminal law. The trend in legislative activity in this field has already been reported by the EMCDDA in its Annual Report of 2002 and a Comparative Study in the ELDD.

On the periphery of Action 4.1.2.2 to combat money laundering, France, Spain and Finland also passed separate legislation on confiscation of traffickers' assets. The laws already reported may also contain provisions that address asset confiscation, but it can be seen that this issue is being given increasing legislative priority in its own right.

A sub-group of legislation to minimise or combat public or social nuisance was visible, as noted in those laws supporting Sub-section 3.4.1, which in various ways aimed to minimise or punish the impact that drug use or dealing has on its direct neighbours.

Denmark, Finland and Sweden reported some six laws regarding the legal regulation of controlled substances as medicines. Three laws in the Netherlands and Belgium specifically addressed the concept of cannabis as a medicine, with the Belgian law permitting clinical trials and the Dutch creating a full legal framework for the cultivation and distribution of the drug under medical conditions.

In contrast, there was comparatively little legislation reported regarding the involvement of civil society (Sub-section 1.3), or awareness and public information campaigns (Actions 3.1.2.2 and 3.1.2.3). There was also little legislation to facilitate the exchange of samples of new synthetic drugs (Action 4.1.1.4). Apart from the Action 3.1.2.5 on the effects of drugs on driving, there were few texts reported that supported those actions calling for research and resources (1.4.2, 2.1.4, 3.1.1.3, 3.1.3.2, 3.1.3.3, 3.2.2, 4.2.5). As concluded in a separate paper, there was also comparatively little legislative action regarding young people, which is notable when compared to the number of Actions that address them. These observations are made with the caveat outlined at the beginning of this paper; that such subjects may have been already covered in the legislative framework, or were supported in a non-legislative manner.

The acknowledgement of the political commitment of the Council in the Action Plan has thus been reflected clearly in some areas more than others by the national legislatures.

As a note for the future, it has been suggested that a distinction be drawn between real legal binding instruments and other texts, as for example circulars or prosecutorial guidelines, because of the more long term and more sustainable effects of real laws and acts. Within the 4-year period under analysis, policy papers and guidelines have almost as much weight as laws; a policy paper may be heavily pushed by the government of the day, against the fact that major changes in law can take time to filter down and be accepted/implemented by the police and judiciary. Nevertheless, the matter may well be borne in mind for any analysis of a longer term, such as a 10-year strategy.