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Drug law and young people 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 with regard to two aspects. Firstly, the clear political priority attributed to the problems of drugs and young people, as shown by the eight references to them in the EU Action Plan. Secondly, the resources available. The European Legal Database on Drugs (ELDD) had published a study on a similar topic to inform the European Conference on Drug Use Among Young People held in Malaga, Spain in October 2003, and so the data from that study could be used. In addition, 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 ELDD, were once again consulted. Finally, another paper in this series, "Legislative Activity", has been drafted at the same time by consulting the latter two sources in order to create a list of all legislative instruments reported as drug-related in the last five years, which had been (approximately) indexed by topic and attributed to Actions or Sections of the EU Action Plan. A draft of this paper has been kindly reviewed by the Legal Correspondent network, the P4 Scientific Sub-Committee (Profs De Ruyver and Bisiou), and Mr Ian Clements, Head of Young People's Policy in the Drug Strategy Directorate at the UK Home Office.

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, in their role 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.

The study has been limited to the national laws of the countries, thus excluding legislative instruments of the EU or the international framework. Being a study of drug laws, it also excludes non-legislative activity, that may be reflected in educational or training programmes; agreements or rules of national educational associations; agreements or rules of national sports institutions etc, all of which are well-placed to design and implement effective prevention or even treatment activities for young people but will not be shown in a study of the data sources outlined above. This study is also limited to the period 1999-2004, so it does not acknowledge the terms of the laws before this date, which may already be sufficient to address the issue, and therefore did not require alterations during the period. Lack of legislative activity should therefore not necessarily be interpreted as lack of relevant or effective activity by the Member State. On the other hand, where legislative activity has taken place in line with the EU Action Plan, this paper does not claim the EU Action Plan to be the cause of that legislation.

One other limitation of the EMCDDA's data collection system is that National Focal Point personnel and Legal Correspondents are not necessarily experts in the full framework of laws governing minors in their own countries, which is often a discrete and complex body of law with its own rules and procedures.

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.

The October 2003 ELDD study examined the issue from three angles; young people as victims of drugs, young people as drug users, and young people as traffickers. It found that a clear majority of countries studied have chosen to insert some form of detailed provisions in their legislation aimed at protecting minors from drugs, but a few countries prefer to leave the facts of any offence involving minors to judicial interpretation. Regarding young drug law offenders, both as users and traffickers, it seemed that the direction towards education and treatment reported by most countries is in line with the provision in the UN Convention of the Rights of the Child, which encourages their reintegration into society. For users in particular, this confirmed the trend in the EU of removing custody and imprisonment, and fostering treatment measures.

This study aims to identify what legal activity might be attributed to, or in the spirit of, those Sections, Sub-sections, and Actions in the EU Action Plan which clearly refer to young people. It addresses those which call for action by Member States, and generally does not address those which call for action by European institutions. (**Action 2.1.6**, calling on the Commission to launch a Eurobarometre study on attitudes of the public, especially youth, every two years is the main example of this.)

2. Mapping of laws to Action Plan, by Action

Apart from Action 2.1.6, mentioned above and applicable to the Commission, all references to young people in the EU Action Plan 2000-2004 may be found in **Section 3** (Reduction of demand, prevention of drug use and of drug-related crime). **Sub-section 3.1.1** aims to reduce significantly over five years the prevalence of drug use, as well as new recruitment to it, particularly among young people under 18 years of age (Strategy target 1). Such a motive is visible in the laws of six countries. It may partly be the aim of the law in the UK in 2003 that lowers the age of on-charge drug testing by police from 18 to 14 in certain circumstances, in order to identify young users and refer them to treatment. The UK's Association of Chief Police Officers have also addressed minors in a guidance note to police officers when using their discretion to enforce cannabis laws; this specifically directs the police to arrest minors caught with cannabis, again so that they can be directed to appropriate assistance. Reduction of use is also declared as the aim of the ministerial directive of May 2003 in Belgium, which clearly specifies that use of any drugs in front of minors will be considered as an aggravating circumstance, thus removing the option of non-prosecution that may otherwise have been available. The accompanying new law of April 2003 also states that drug offences committed "with regard to minors" will be severely punished, repeating the provisions of the earlier law. Similar provisions in the Luxembourg law of 2001 list any drug use in front of minors or in or near educational establishments or activities as a specific offence, with an increase in sentence foreseen if committed by a staff member of that establishment. In Denmark, the Consolidated Social Services Act of 2002 permits a substance-abusing child to be taken into care if necessary, and in France, a Circular from the Ministry of Justice in December 2002 reminded judges to use an option of imposing training on the parents as a condition of no further action against a young user. In Sweden, the Social Services Act of 2001 states that the social welfare committee shall ensure that young addicts receive the care they are in need of. (Though not reported as a law, the Irish National Drug Strategy has instigated the development of a protocol for the treatment of under-18 year olds with serious drug problems.)

By **Action 3.1.1.1**, Member States were to encourage the inclusion in school curricula of the prevention of licit and illicit drugs in schools and to set up programmes to assist parents. This has been indicated by legal texts in France, Portugal and Spain. In Portugal, the Resolution approving the National Action Plan effectively endorsed the inclusion of prevention in school curricula, and in Spain, two reported Royal Decrees of August 2001 laid down the curricula of secondary schools and high schools, which include

studying aspects of drug addiction. In France, parental assistance may be in a way by the law imposing training on them, mentioned above, and a Circular of the Minister of Interior in October 1999 asks the police to develop prevention activities in schools. (Aside from these laws reported, a 1998 law and 2001-2008 strategy in Ireland addresses this issue, and the UK's Updated 2002 national strategy reports that substance misuse education is now part of the National Curriculum).

No laws were reported to provide leisure time activities for the young, especially in socially deprived urban areas, as requested in **Action 3.1.1.3**.

The laws described above for Sub-section 3.1.1, and particularly Action 3.1.1.1, could also be interpreted as a response to **Sub-section 3.3.1** of the EU Action Plan, which requested Member States to develop and implement preventive actions and strategies for all age groups, particularly children and young people. When considering the term "strategies" in a more formal manner, Portugal reported the Resolution of the Council of Ministers approving the National Action Plan on Drugs, which contained extensive provisions on prevention activities for the young; and in Spain a Royal Decree of 1999 approved the National Strategy 2000-2008, which also contained clear plans on such prevention activities. Though many other national action plans and strategies were published within the period [see separate paper "Drugs strategies and action plans in the European Union 2000-2004"], no legislation framing them has been reported.

Sub-section 3.4 aims to prevent crime linked to drugs, notably juvenile and urban delinquency. In this area, Ireland passed the Children Act in 2001, which raises the age of criminal responsibility from 7 to 12 years, though this clause itself has not yet been implemented. It may also be the direction of legislative adjustments to the Child Law in Finland, made by the Act on the Status and Rights of Social Welfare Clients in 2000, which outlines when social service providers or implementers are permitted or obliged to give information without a client's consent. Once again, the UK law allowing drug testing on arrest for 14 – 18-year-olds, mentioned above, aims to contribute to this by identifying juvenile users and breaking the cycle of crime.

Within this sub-section, **Action 3.4.1.1** asks the Commission and Member States to set up programmes to promote best practice in the prevention of criminal activities linked among other issues to drugs, juvenile and urban delinquency, but no legislation was reported that established such programmes (apart from the general Action Plans and Strategies approved).

Action 3.4.2 asks Member States to set up concrete mechanisms to provide alternatives to prison, especially for young drug offenders. A number of laws can be seen to broadly reflect this. Firstly, one should consider the laws of Portugal in 2000, Luxembourg in 2001, Belgium and Greece in 2003, and to a lesser extent the UK in 2004, that removed or reduced prison sentences for certain drug use or possession offences, ostensibly for all adults though this would include young adults (and minors) as well. The Circular in France of 1999, above, recommended custody as a last resort for young offenders. The Children Act of Ireland, already mentioned, makes the same recommendation, and emphasises prevention and the diversion of young offenders from prosecution. To this end, as well as raising the age of criminal responsibility, it also enshrines the Juvenile Diversion Scheme in statutory law. Furthermore, a law of 1999 that instilled a mandatory 10-year prison sentence on certain drug traffickers in Ireland exempted minors from this provision. A law on the criminal responsibility of minors in Spain in January 2000 applies to those minors between 14 and 18 who were fully intoxicated, or suffering severe withdrawal symptoms, at the time of committing an offence and offers a variety of penalties, both including and excluding custodial measures. The laws in Denmark and Sweden which gave the options of taking children into care

have already been described and could be included, and in the UK, two more sentencing powers were given to the courts for young offenders over the period: a child curfew, applicable to up to 15 year olds as of August 2001, and a referral order for 10-17 year olds that was implemented nationally in April 2002.

3. Trends observed

Overall, a total of 22 laws, passed by 11 Member States, were found to somehow address the issues raised by the eight Sections, Sub-Sections and Actions (five of which were Actions addressed to Member States) of the European Action Plan 2000-2004 that concerned young people.

The most changes were seen in establishment of concrete mechanisms to provide alternatives to prison, especially for young drug offenders, requested in Action 3.4.2, where 10 countries passed legislation that addressed this. This is not only a reflection of the European trend to view the problem of drug use to be solved with tools other than those of the criminal justice system, as noted in the EMCDDA policy briefing on the matter (Drugs in Focus No.2), but also a reflection of the international viewpoint in line with Article 40(1) of the 1990 UN Convention on the Rights of the Child, which encourages the reintegration of young offenders into society. Besides this, six countries passed laws that aimed to reduce the prevalence of drug use, requested in Action 3.1.1.

Nevertheless, what stood out from this study was that no less than eight issues were linked to young people in the EU Action Plan, and yet comparatively little original legislative attention seemed to be given to them by the end of the period. For example, although 10 countries passed legislation to provide alternatives to prison, five of these focused primarily on adults rather than young people. Apart from the response to this Action, the attention implied or requested by the Council in the design of the EU Action Plan can not easily be seen to be reflected in the laws reported over the period by the 15 countries. However, the caveat at the start of this paper should be borne in mind, that lack of legislation on a topic does not necessarily mean lack of relevant or effective activity on that topic.

This raises the question of just how much legislation remains in line with political intentions and concrete examples of good practice that may have been implemented in the country. Although this paper has not looked in any detail at the practices implemented, only the laws referring to them, the Malaga Conference of October 2003 demonstrated a considerable amount of (non-legislative) activity by Member States in the area of young people. Mapping the laws to the activities, rather than mapping the laws to the EU Action Plan, may yet show how much a legislative change is needed in order to consolidate law and practice – or, indeed, how a legislative change may be used as a tool to promote a change in practice.

Perhaps linked to the above, one observation from the start of the research for this paper was how young people were referred to in the structure of the EU Action Plan itself. The terminology used in the EU Action Plan in these matters differed, listing respectively youth, young people under 18, the young, children and young people, juvenile delinquency, and young offenders. Comparably, from a legal point of view, the ELDD study on drug laws and young people found that there were great differences in the lower age for criminal responsibility; “minors” were consistently under 18, but different laws may apply to those under 21 or even 25 in certain countries. Nevertheless, Member States’ actions aimed at different groups of young people, for example in schools, colleges, and universities, would not necessarily have to follow the legal distinction of the ages of majority or minority. In which case it would be conceivable that the Action Plan left interpretation of the above phrases to the Member States in order to achieve the most appropriate

coverage, and one of the sources for this paper, a legal study focussing on laws addressing minors, would not encompass all laws that address young people.

A final observation was that, with initiation to drug use taking place mainly in the teenage years, it would seem logical to put emphasis on prevention and information activities during this period. The Action Plan requests a survey of young peoples' opinions in Action 2.1.6, yet very little legislation is reported that specifically aims to change those opinions, even if prevention and media campaigns are generally regarded as the best tools for this. On the other hand, the relationship between opinions and legislation has been reflected in the UK 2002 Updated Strategy, which declared that one of the reasons of reclassification of cannabis was to make the law more credible to young people, and it has been reported by the media that the law in France is under review also due to its credibility.