



## EMCDDA PAPERS

# Alternatives to punishment for drug-using offenders

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**Abstract:** Based on the options provided by the international drug control legal framework, this paper considers the rehabilitative measures of treating, educating or reintegrating drug users as alternatives or additions to conviction or punishment that are established in the laws of many countries in Europe today. Distinguishing them from 'alternatives to prison', it outlines the variety of rehabilitative measures in use and sets out the main issues in their design, implementation and evaluation.

The paper finds that alternatives to punishment are available across Europe to varying degrees and with inconclusive evaluations suggesting positive results. The success of these measures depends partly on the degree to which they are accurately targeted to specific objectives and specific users. The policy arguments in favour of them seem to have developed along two lines: reducing harms to the individual and society by problem drug users, and addressing structural burdens on the justice system by non-problem users. Yet the paper finds that this distinction, or prioritisation, is not always clear in the design or

implementation of the different measures, which can in turn affect the few evaluations carried out. Compromises between the two different aims of the laws (to treat or to punish these offenders) can also have unintended effects on the outcomes. Clarity on these issues should assist development and implementation of more successful measures in the future.

**Keywords** drug law offences  
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## Introduction

In recent years, Europe's policymakers have come under increasing pressure to find effective and appropriate responses to manage people who come into contact with the criminal justice system for drug law offences. The numbers reflect the importance of this challenge, with over one million use-related drug law offences reported in European countries in 2013 (EMCDDA, 2015). In this context, the debate on providing alternatives to punishment and prison has returned to the top of the policy agenda. The EU Drugs Strategy (2013–20) states that 'In order to prevent crime, avoid recidivism and enhance the efficiency and effectiveness of the criminal justice system while ensuring proportionality, the EU shall encourage, where appropriate, the use, monitoring and effective implementation of drug policies and programmes including arrest referral and appropriate alternatives to coercive sanctions (such as education, treatment, rehabilitation, aftercare and social reintegration) for drug-using offenders' (Council of the European Union, 2012). It is thus an area that warrants further investigation, and where there has been a significant accumulation of new and diverse experience and evidence at the national level. This paper takes a first step at both defining the concepts involved, and in setting out the broad range of measures utilised.

The use and supply of illicit drugs is a global issue, which is governed by an international drug control system that has developed over many years. This includes a range of international conventions, to which most countries are signatories. These seek to restrict access to psychoactive substances that are considered likely to be misused and result in significant harms to users and society, while still permitting their use for medical and scientific purposes. This international legal framework asks for unauthorised drug possession to be penalised, according to the seriousness of the offence, with prison or other criminal penalties (United Nations, 1961, 1971, 1988). This was originally intended to deter or punish those involved in the supply chain, but in recent decades has been visibly and vigorously applied to deter and punish drug users also. Yet that same international framework has for 40 years also made it clear that users of drugs may be given, 'as an alternative to conviction or punishment or in addition', measures such as 'treatment, education, aftercare, rehabilitation and social reintegration', i.e. rehabilitative rather than deterrent or retributive responses (United Nations, 1961, as amended, Article 36(1)(b)). These alternatives have received more attention in the last 20 years as the evidence builds to question the effectiveness of the deterrence model, and users, particularly problem drug users, are viewed more as sick than as deviant.

These alternatives or additions to punishment or coercive sanctions may be implemented to solve a variety of problems at different levels. The first is at the level of the individual — to

deliver a proportionate response to an offence, to treat addiction and reduce the stigma attached to it. The second is at the level of society — to reduce drug-related crime such as acquisitive crime, as treatment has been shown to be effective at reducing such crime (Holloway et al., 2008), or to reduce disease transmission and other public health and societal harms. And the third is at the level of state structure — to reduce the pressure on the criminal justice system and the resources used by courts and prisons. The objectives of the policy can therefore be manifold.

The targets of the policy — the drug users — may also have varied profiles but, for ease of reading, this report will consider there to be two broad groups of users. The first group is problem or high-risk drug users. The EMCDDA defines high-risk drug use as 'recurrent drug use that is causing actual harms (negative consequences) to the person (including dependence, but also other health, psychological or social problems) or is placing the person at a high probability/risk of suffering such harms' (EMCDDA, 2013). Across Europe generally, problem drug users represent a small share of the total number of drug users, but their use patterns and behaviours are the cause of significant social harms, such as drug-related crime and disease. The main problems are at the individual and societal level and the involvement of this group of users with the criminal justice system may often be a result of acquisitive offending and disorder, rather than drug offences. By contrast, while there are far more of the second group, i.e. non-problem drug users, their patterns of use are generally associated with lower levels of harm. Large numbers of drug law offenders are registered for cannabis offences and may make up the majority of drug users entering the justice system; in some countries, these numbers cause problems at the structural level.

Interest has grown in the use of alternatives or additions to punishment for drug users, as concerns about the cost-effectiveness of more punitive approaches have increased. In the current context of financial austerity, reducing levels of criminal justice expenditure and achieving value for money will be increasingly important. However, although there have been a number of high-profile descriptions of certain alternative approaches for dealing with drug-using offenders — for example drug courts and the Portuguese model — a more general overview of the wide variety of alternatives that have been used within Europe has been lacking. This report aims to provide such an overview — of the alternatives, their target groups, and what is known about their effectiveness — to assist those policymakers considering such approaches to choose a more appropriate response to their specific issue. It may also assist those practitioners in the justice and health fields who are involved in designing, implementing and evaluating these systems in the different countries, and help to clarify their role and the roles of their counterparts in these multidisciplinary measures. This paper primarily draws on the

main EMCDDA data collections in this area carried out since 2006 (see the box on methods), but does not constitute an exhaustive review of the literature.

The report begins with a brief review of the history of the topic and clarifies the definition of ‘alternatives to punishment’ discretely from the common term ‘alternatives to prison’. It then illustrates some of the various legal mechanisms associated with the range of approaches used in Europe today, with a brief comment on drug courts in the United States, and discusses the extent of their use, where known. Next, the report looks at whether these measures might be considered successful or not. Finally, the report provides a framework for considering the various different measures and the type of drug users at whom each measure should be aimed, with guidance to assist more robust evaluations in the future. The report does not go into details of the design of successful treatment programmes, information on which can be found online in the EMCDDA Best practice portal. The term ‘alternatives to punishment’ is used throughout the report as shorthand to describe the wide range of measures with a rehabilitative or preventative focus that are used instead of or alongside more traditional criminal justice measures for drug-using offenders. The extent to which they replace such measures, or are simply additional to them, will vary from place to place and over time, and is often difficult to identify in practice.

## Context and definitions

### History and shifting focus

A summary of historical developments in the concept of alternatives to punishment in drug control policy can contextualise some of the current issues in this area.

Early international conventions focused more on controlling the trade in drugs than on the drug users. For example, the International Opium Convention of 1912 established a system of international control of trade, with punishments for non-compliance, and countries were simply asked to ‘examine the possibility of enacting laws or regulations making it a penal offence to be in illegal possession’ of opium products (Article 20).

The first significant convention to show concern for protecting or improving the health of drug users was the United Nations Single Convention on Narcotic Drugs of 1961, which established the modern international legal framework for drug control. It opens with the Parties declaring themselves to be ‘Concerned with the health and welfare of mankind’, and Article 38 clearly instructed Parties to ‘give special attention to the provision of facilities for the medical treatment, care and rehabilitation of drug addicts’. Nevertheless, Article 36 (1), much as its predecessors did, requested that drug possession and distribution be a punishable offence, with serious offences liable to adequate punishment such as

## Methods

This paper is based on reports made to the EMCDDA by the Reitox network of national focal points and information submitted by the legal correspondents network, supplemented by other information where available.

Sources include:

- annual Reitox reports, with a particular focus on those for 2009–11;
- the special chapter of those reports on sentencing statistics in 2008;
- structured questionnaires on ‘alternatives to prison’ completed by national focal points in 2006 and 2010; and
- the ELDD Topic overview on ‘treatment alternatives to prison’.

The study also draws on other sources, such as the European Commission’s research project on quasi-

compulsory treatment (2002–05), and from the Council of Europe Pompidou Group’s Criminal Justice Forum, which focused on quasi-coerced treatment (2007–10), as well as other published sources. The measures discussed in these sources may include treatment alongside punishment and alternatives to prison, reflecting the unclear ‘boundaries’ of the topic.

While this study has the advantage of drawing on information that may not be readily available in the academic literature, particularly concerning the types of interventions available, it is not a systematic review, and may have gaps. It is also important to note that a particular challenge in this area is that the increasing interest in the potential of such alternatives to punishment means the situation in many countries is changing quite rapidly, so some of the information reported may no longer be accurate.

imprisonment. This focus on deterrence and punishment was strengthened by the UN Convention against Illicit Traffic 1988, which (with safeguard clauses) specifically asks Parties to establish possession for personal use as a criminal offence. In 2009, the UNODC reported that ‘Drug possession and sale are illegal in most countries of the world, and, as a result, the drug problem was long seen as primarily a criminal justice issue’ (UNODC, 2009).

By comparison, little attention has been paid to the Article 36.1(b), inserted by the 1972 protocol to the 1961 convention (and echoed in the 1971 UN Convention on Psychotropic Substances), which states that ‘when abusers of drugs have committed such offences, the Parties may provide ... either as an alternative to conviction or punishment or in addition ... that such abusers shall undergo measures of treatment, education, after-care, rehabilitation and social reintegration’. It is noteworthy that this uses the word ‘abusers’, as distinct from ‘addicts’ in Article 38, above. Moreover, while much focus has been on the 1988 convention’s requirement to establish personal possession as a criminal offence, it simultaneously widened the scope of application of rehabilitative alternatives or additions to conviction or punishment (in Article 3.4 (b–d)). This permitted the same measures of treatment, education, aftercare, rehabilitation and social reintegration to be an option for drug offenders in general, whether drug abusers or not, including for those who have committed minor supply offences. It also recognises that these need not be exclusively delivered by courts, suggesting ‘bridges between the criminal justice system and the treatment system might also be envisaged at other stages of the criminal process, including the prosecution stage’ (United Nations, 1998a, para. 3.108).

However, between 1988 and 1992, the policy discussion on ‘alternatives to conviction or punishment’, which were rehabilitative responses, largely metamorphosed into one on ‘alternatives to prison’, at least in Europe, where the latter term was still used in the 2009–12 EU Drugs Action Plan (1). Both

(1) The ‘Report on national programmes for drug demand reduction in the European Community’ of 8 November 1990 summarised legal responses to users as therapeutic and ‘an alternative to prison’, even while the annexed summaries of national reports only referred to alternatives to punishment. The first European Plan to Combat Drugs, of 10 December 1990, referred in section III, A, 2 (D) to the need to ‘promote the treatment and rehabilitation of drug addicts serving sentences for criminal offences by means of medical and social support in prison or in alternative systems to detention where they exist’, though its Annex 1 did refer to ‘applying measures alternative to punishment ... as recommended by’ the 1988 convention. The subsequent ‘Resolution of the Council and the Ministers for Health, meeting within the Council of 11 November 1991 on the treatment and rehabilitation of drug addicts serving sentences for criminal offences’ requested a systematic inventory of alternatives to prison but did not mention alternatives to punishment. The second European Plan to Combat Drugs, in 1992, only commented that ‘Most Member States have implemented measures to support drug misusers in prison, ... and the offering of in-patient addiction clinic treatment as an alternative to imprisonment.’ There was no mention in the European Action Plan 1995–99, but following a conference on drug policy in 1995, the EMCDDA launched a study on ‘alternatives to prison’ for persons convicted of drug offences in 1997. ‘Alternatives to prison’ have then featured regularly in the treatment sections of EU action plans 2000–12.

terms appear to have been used interchangeably in important policy documents. The 1998 UN Declaration on the Guiding Principles of Drug Demand Reduction reminded countries to consider alternatives to punishment (United Nations, 1998b). In 2004, when discussing how to respond to drug users coerced into trafficking, the INCB supported treatment as an alternative ‘to prison’ (United Nations, 2005, para. 27), highlighting specific concerns about the potential damaging impact of time in prison on young offenders. Nevertheless, in its focus on proportionality in its 2007 report, it emphasised that the measures listed in the conventions could be applied as ‘complete alternatives to conviction and punishment’ in minor personal possession cases (United Nations, 2008, para. 18). In March 2012, the representatives at the Commission on Narcotic Drugs (CND) drafting Resolution 55/12, whose preamble recalled that the conventions provide for alternatives to conviction or punishment, went on to agree the main text which discussed ‘alternatives to prosecution or prison’, including community service and electronic tagging (Commission on Narcotic Drugs, 2012). In Europe, the EU Action Plans on Drugs 2000–04 (Action 3.4.2), 2005–08 (Objective 13) and 2009–12 (Objective 7 and Action 16) all focused on the development and use of ‘alternatives to imprisonment’ as components of treatment objectives, while in the Americas, a 2013 proposal from the government of Colombia to the Inter-American Drug Abuse Control Commission (CICAD) led to the drafting of a ‘Technical report on alternatives to incarceration for drug-related offences’ (Inter-American Drug Abuse Control Commission, 2015).

The latest EU Action Plan on Drugs 2013–16 (Action 21) better reflects the original wording of the conventions, encouraging provision of ‘alternatives to coercive sanctions (such as education, treatment, rehabilitation, aftercare and social reintegration) for drug-using offenders’. At the most recent session of the Commission on Narcotic Drugs (2015), a draft resolution proposed by the United States referred to ‘alternatives to incarceration’ but the text was finally agreed with the emphasis on ‘alternatives to conviction or punishment’.

## What is an ‘alternative to punishment’?

While ‘alternatives to conviction or punishment’ emphasises the aim of the policy response, ‘alternatives to prison’ emphasises the setting. Despite the two terms appearing to be used almost interchangeably, they are quite distinct.

The term ‘punishment’ has been defined for the purposes of this paper as ‘the intentional infliction of pain or of something unpleasant’ (by an authority, for breaking rules) (Peters, 1966) — a measure with a retributive aim. Imprisonment has retribution as a key purpose but there are many lesser penalties, such as fines, electronic tagging, or community

service that are also punitive. The 'Handbook of basic principles and promising practices on alternatives to imprisonment' (UNODC, 2007) observes that the caseload of the criminal justice system may be reduced by policies of alternatives to conviction (decriminalisation) and alternatives to punishment (diversion). A country may establish alternatives to conviction through a process of decriminalisation, but decriminalisation is understood as maintaining the punishment though outside the criminal law. The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) establish what such punishments (sanctions) may be: verbal sanctions, such as admonition, reprimand and warning; conditional discharge; status penalties; economic sanctions and monetary penalties, such as fines and day-fines; suspended or deferred sentence; and community service order (United Nations, 1990). While these penalties may be given as alternatives to conviction or prison — and are frequently given to drug law offenders in Europe (EMCDDA, 2009) — this report considers them as conceptually distinct from 'measures such as education, rehabilitation or social reintegration ... as well as ... treatment and aftercare', and for this reason they will not be addressed here.

Prison and many of the other punishments imposed through the criminal justice system may also have a rehabilitative element. Focussing on the term 'alternatives', this paper does not address measures that take place inside prison or following early release from prison. However, there remain other measures, difficult to classify, which have components of treatment or rehabilitation that may or may not be combined with punitive components such as probation orders, according to the judge's instructions in each case. In many of the measures, some punitive element, such as the acquisition of a criminal record, some monitoring of behaviour or a fine, will be retained, while in some countries, the sentence is the order for treatment itself. Similarly, in many countries it is stated that the offender may receive a 'warning', and it is often not known how much these warnings are intended as a deterrent, reminding the offender not to break the law as he or she risks punishment, or as an early intervention, reminding the offender of the dangers of drug use present or future — or any combination of the two. Thus the extent to which the rehabilitative element is, strictly speaking, an alternative to punishment or an addition to it will vary. There is essentially a continuum of practice from a main focus on punishment, such as incarceration with or without some provision of rehabilitative services, to an emphasis on rehabilitation which may be supported by some degree of coercion. For simplicity we talk of alternatives to punishment and focus on that part of the spectrum that gives greater emphasis to rehabilitative measures; this was described by UNODC (2010) as a 'health-oriented approach' in contrast to 'a sanction-oriented approach'.

'Alternatives to punishment' are most commonly understood to be programmes of treatment targeted at problem drug users who enter the criminal justice system, using the threat of (more severe) criminal sanction if the treatment is not undertaken to the satisfaction of the authorities; a European Commission-funded project called this quasi-compulsory treatment (Schaub et al., 2010). Such treatment programmes have had a consistently high political profile in Europe during the last decade, under the EU action plans described previously and as a special focus of the Criminal Justice Forum of the Council of Europe's Pompidou Group from 2007 to 2010 (where the approach was called 'quasi-coerced treatment'). Measures of 'aftercare, rehabilitation and social reintegration' would also be targeted at problem drug users, but there seems to be considerably less information on these. The EMCDDA recently published a detailed review of social reintegration programmes, defined as 'any social intervention with the aim of integrating former or current problem drug users into the community' and consisting primarily of housing, education and employment (EMCDDA, 2012).

Yet 'drug-using offenders' also includes those who are not dependent or problem drug users, and these are usually the most numerous. In various countries in Europe, this group of offenders has been addressed through de facto or de jure decriminalisation (punishment without criminal conviction) or depenalisation (closure of minor cases) (EMCDDA, 2011a). Nevertheless, in some countries, there are some systems implemented where such offenders are given forms of 'education', and these are included in this report.

Therefore, this paper addresses rehabilitative measures applied by the criminal justice systems in Europe that are usually oriented towards treatment or post-treatment interventions for problem drug users, or towards education for non-problem users. This is an artificial division of a continuum of drug-use behaviours, used here for ease of description, and it will be apparent at some points that certain responses do not easily fit under either heading. Similarly, when reporting on the different laws and papers, there are inconsistencies in vocabulary, such as drug user, abuser, problem user and addict, and the balance between harmonisation for ease of reading and accurate reporting of the original is a challenge. Generally, the paper tries to categorise the rehabilitative options in a flexible way proportionate to the level of problems measured in each user. The various 'treatment alternatives to punishment' that are specified in the national laws of the different Member States may be found online in the EMCDDA Legal database on drugs (ELDD).

The measure may be given at any stage in the criminal justice system, whether by the court, the prosecution, or the police. The term 'criminal justice system' is used for simplicity, but refers also to non-criminal (civil, administrative) systems for sanctioning minor drug use or possession that are used in

## Terminology

Discussions on the topic of alternatives to punishment may use the following terms, and it is important that they are used consistently. EMCDDA preferred usage, as adhered to in this report, is as follows:

- **Decriminalisation** — an alternative to conviction that is usually a punishment.
- **Depenalisation** — closure of minor criminal cases without punishment.
- **Alternatives to prison** — measures that take place outside prison, which may be retributive or rehabilitative.
- **Alternatives to punishment** — measures that are rehabilitative, such as treatment, education, aftercare, rehabilitation and social reintegration.

some countries. Alternatives or additions to punishment are usually given as an option for the judicial authorities, but they may also be obligatory; for example, in Portugal, for a first offence it is obligatory to suspend proceedings.

This paper addresses alternatives for adults only, as very few European countries choose to punish minors for drug use-related offences (EMCDDA, 2003).

## Overview

### Legal mechanisms in Europe today

This section presents a brief overview of the alternatives or additions to punishment available in Europe today, examining the range and diversity of the various factors such as eligibility criteria, the types of offender involved, the aim and type of measure available (e.g. treatment, education) and setting, and the stages of the criminal justice system at which they may be invoked. Rehabilitative mechanisms used for problem drug users are discussed first, before moving on to those designed for other users.

### Rehabilitative options for problem drug users

Alternatives or additions to punishment for problem drug users may be applied to individuals being dealt with for drug offences or in response to other types of offences that may be associated with drug use, such as acquisitive offences committed to obtain money for drugs, or offences committed

under the influence of drugs. The main focus of these interventions is to encourage engagement in treatment. Here we consider the main alternatives that are utilised at the different stages of the justice process from arrest to sentencing.

### Measures available to police

Arrest referral is a partnership initiative between police and local drug services that uses the point of arrest within custody suites at police stations as an opportunity for an independent drugs worker to assess drug users and refer them to drug treatment services if appropriate (Hunter, 2005). It has been established in the United Kingdom (England and Wales) at a national level since 2002, where it is not an alternative to prosecution or due process but a technique for engaging with users. A report on the UK system observed that arrest referral could be delivered using three models, based on information (providing leaflets), proactivity (involving specialist workers in the police stations), and coercion (cautioning an arrestee to seek advice from a drugs worker) (Sondhi et al., 2002).

In the United Kingdom, arrest referral was later incorporated into the Drug interventions programme, which involved criminal justice and drug treatment providers working together with other services to provide a tailored solution for adults — particularly those who misuse Class A drugs — who commit crime to fund their drug misuse. Its principal focus was to reduce drug-related crime by engaging with problematic drug users and moving them into appropriate treatment and support (Home Office, 2011). The Drug interventions programme was introduced in high crime areas and involved combining arrest referral with drug testing on charge — and since 2005, drug testing on arrest. Under the programme, offenders over 18 in police custody could be tested for heroin or cocaine/crack if they were arrested for a trigger offence (offences such as burglary and theft that have been shown to be associated with problem drug use) or for an offence where a police officer of inspector rank or above suspects that use of drugs was a causal or contributory factor. There is a sanction for failure to be tested or to attend assessments. While national funding for the Drug interventions programme has been discontinued since April 2013, many police force areas still operate a drug intervention initiative following drug testing on arrest. Most areas also continue to fund criminal justice intervention teams to proactively engage drug-misusing offenders following arrest (including areas without drug-testing initiatives).

In Ireland, arrest referral for juveniles was piloted in Dublin in 2003. A new scheme was piloted for adults in 2012.

Arrest referral was also piloted in Malta in 2005, though this had a low take-up. The scheme has recently been redrafted as

'Arrest referral scheme and extra-judicial body for the processing of first time offenders for drug offences — possession for personal use'. As this is for first offenders with no previous convictions, it will be discussed in the section below for non-problem users.

Police in Portugal refer drug users, problematic or not, to the national network of commissions for the dissuasion of drug abuse (see 'Ministry of Health in charge: the Portuguese model').

### Measures available to prosecutors

Suspension of proceedings by the prosecutor may occur prior to a decision to deliver a punishment or to pass the case to the court for trial. In some countries, the mechanisms of suspending proceedings against problem drug users can be applied only for offences of use or possession of drugs for personal use. This is the case in France (Public Health Code, Article L3423-1), Luxembourg (Law of 19 February 1973, Article 23), and Romania (Law 143/2000, Article 19). This would probably also describe the non-criminal procedures in Italy, where someone committing the administrative offence of drug use will be interviewed by the drug addiction operating unit of the local prefecture and may be sent to treatment, and in Spain, where the administrative sanction for drug use can be suspended if the offender applies to a treatment service as agreed (Ley Organica 1/92, Article 25).

By contrast, other countries offer alternatives to problem drug users even if they have committed other offences that might be connected with drug use. They are established in the main drug control laws in Belgium (AR 1930, Article 26), Greece (Law 3459/2006, Article 31) and Austria (SMG, s. 35). They are established in more general criminal laws in Latvia (Criminal Code, Article 58.1) and the Netherlands (Code of Criminal Procedure, Article 80).

There is a variation of this approach in Poland, where the initiative to seek treatment is with the offender, rather than by instruction of the prosecutor. Article 72 of the main drug control law in Poland gives prosecutors the right to suspend proceedings against a problem drug user for any offence punishable by up to five years in prison, if the offender enters a relevant treatment or prevention programme in a healthcare centre.

### Measures available to courts

Suspension of proceedings by the court before passing judgement (and, usually, conviction) is a mechanism available in many European countries. Normally with the consent of the offender, the court may require attendance at treatment

(Belgium, Czech Republic, Denmark, France, Luxembourg, Austria), or the offender may opt for treatment (Hungary, Poland). In the Czech Republic, this is according to a section of the Code of Criminal Procedure (s. 307–308) for any offence punishable by up to five years' imprisonment. In Denmark, it is by a section of the Criminal Code (ss. 56–57), and there is no limit to eligibility in terms of offences. The mechanisms in Belgium, France, Luxembourg and Austria (ss. 35 and 37 SMG) have been outlined above and are applicable to the court as well as the prosecutor. In Hungary, section 180 of the Criminal Code, among those defining drug offences, states that no punishment shall be applied for drug addicts possessing a small quantity for personal use, provided the offender can produce before sentencing a document certifying participation in treatment or a preventative-consulting service. A comparable mechanism, described above for prosecutors, is also available to the court in Poland under Article 73 of the main drug control law.

Suspension of punitive sentences by court is possible only after the conviction has been declared; a punishment may be declared but then it will not be carried out provided the offender successfully undergoes a rehabilitative course. This option is available in the Czech Republic, Estonia, Spain, France, Germany, Latvia, Luxembourg, the Netherlands, Austria, Slovakia and in some countries' drug courts (see 'Drug courts in Europe'). A general article of the Penal Code provides conditional waiver of punishment for less serious offences if the offender consents to certain conditions including addiction treatment, psychological counselling or abstinence from drug or alcohol use in the Czech Republic (s. 48), and abstinence from drugs in the Netherlands (Article 14). In Estonia, the Penal Code allows substitution of a prison sentence of six months to two years by treatment if the original offence was caused by addiction (s. 692), while in Latvia, the Penal Code offers suspension of sentence (s. 55) and release from sentence (s. 59). In Spain, a Penitentiary Regulation of 1996 allows for voluntary treatment in institutions outside prisons (Article 182), which in practice often results in the offender agreeing to be sent to a therapeutic community, with freedom restricted accordingly. In Germany, the main drug control law (BtMG s. 35) allows the judge to defer execution of a sentence of up to two years' imprisonment for addicts who undergo addiction treatment. In Luxembourg, again under the main drug law, the court may order treatment or rehabilitation as a protective measure and suspend the punitive sentence. In Austria, under s. 39 of the main drug law, it is mandatory (since 2008) for the court to suspend execution of the sentence for an addict who has been given a sentence of up to three years' imprisonment for minor supply offences, if the offender is addicted and the treatment appears to have a chance of success. In Slovakia, protective treatment can be imposed by a court in a case of 'conditional suspension of sentence of imprisonment with a probation supervision', following s. 51 of the Criminal Code.

Specialised drug courts may be used as a mechanism for administering this sort of approach (see 'Drug courts in Europe').

Sentencing to rehabilitative measures is possible following court conviction in France, Croatia, Sweden, the United Kingdom and Norway. In France, the mechanism described above for the prosecutor in the Public Health Code, Article L.3425-1, is also available as a sentence, and in the United Kingdom the court may sentence a dependent offender, or one with a propensity to misuse drugs, to a drug rehabilitation requirement (usually additional to a community order). In Croatia, under the Law on Combating Drugs Abuse (Article 10), an offender who is addicted to drugs or is an experimental drug user will be given a measure of obligatory treatment in a medical or social care institution, lasting from three months up to one year, while the Criminal Code urges the court to use treatment measures for appropriate cases when a prison sentence of up to six months is prescribed. In Sweden and Norway, offenders may be sentenced to probation according to the Penal Code, and some requirements of the probation order may be to attend a drug treatment course.

Treatment without consent is often a judicial option for offences committed under intoxication, and may be used to impose 'protective' measures, protecting either the individual or the general population. These mechanisms are available in many countries in Europe (Bulgaria, Czech Republic, Denmark, Germany, Spain, Croatia, Lithuania, Netherlands, Slovakia, Sweden). They may have a historical perspective, coming from a viewpoint of addiction as a mental illness that would lead to institutionalisation; though in Spain for example it is regulated in the Civil Code and applies to any person whose physical condition could be a risk to the general population. While outside the prison system and staffed predominantly by health professionals with a rehabilitative aim, they will normally be in closed treatment structures and thus subject to application of the right to liberty in the European Convention of Human Rights. Such systems remain controversial; in less developed countries they may effectively be compulsory detention systems, with little efficacy in treating addiction and scant regard for human rights (Hall et al., 2012). In at least some of the EU countries listed above, they seem to be used very rarely: in the Czech Republic, 3 % of drug law offenders in 2010; Lithuania, five of 1 346 offenders in 2010; in the Netherlands, the Institution for Prolific Offenders has about 400 addicted offenders attending each month. The UNODC has clarified that treatment without consent should be used to treat an acute medical or security

## Drug courts in Europe

A drug court is a specialised court that deals with criminal offenders who have drug addiction and dependency problems (USGAO, 2011), a concept first developed in the United States in the late 1980s. Underlying the model is the belief that problems associated with drug-related offending behaviour may require social or therapeutic rather than legal solutions (Kerr et al., 2011). The courts are distinct from normal courts in that they tend to incorporate multi-agency partnerships, with the criminal law judiciary aiming to play more of a health management than deterrent or retributive role, in partnership with a team of correctional, health and welfare professionals. The courts generally do not carry out trials to determine guilt or innocence; many drug courts require the offender to plead guilty to the drug-related offence before he or she is allowed to enter the drug court programme, so offenders enter at the sentencing stage (though the Glasgow Drug Court in Scotland can accept cases referred from police custody). The court then supervises the offender going through a treatment programme; given the guilty plea, the court uses the threat of custodial sentencing to encourage participation in and completion of the treatment programme.

In Europe, drug courts have been established as local pilot projects in Dublin, Ireland in 2001; in Glasgow and Fife, Scotland in 2001/2; in Leeds and West London, England in 2005, followed by Barnsley, Bristol, Salford in 2009, together with Cardiff, Wales; in Oslo and Bergen, Norway; and in Ghent, Belgium in 2008.

Aside from the partnerships, shared features of these include continuity of the judiciary throughout the programme (one of five judges in Norway), limitations on the seriousness of the offender eligible (non-violent in Ireland and Scotland), and the aim to avoid prison. Drug courts in Europe are not for first-time offenders, but will require the offender to have some form of serious drug misuse and related criminal behaviour. As pilots, the courts are limited to offenders residing in a certain catchment area. In the Norwegian model, for legal reasons, there is less involvement of the court in the programme (the judge is not part of the team and there will be no pre-court meetings), though it is the court that takes the decisions regarding offender progress or sanctioning. All these projects have been subject to evaluation, following which the decision has been taken to continue the pilots.



## Ministry of Health in charge: the Portuguese model

The Portuguese Drug Strategy of 1999 proposed a change in direction to an approach based on 'humanism and pragmatism', removing the threat of criminal punishment to encourage the most problematic addicts into treatment. This involved decriminalisation of use-related offences, making them administrative offences, and establishing 'commissions for the dissuasion of drug abuse' (CDT) in each of Portugal's 18 districts to deal with the offenders. Distinct from drug courts, the CDTs are under the auspices of the Ministry of Health, and are multidisciplinary panels composed of a lawyer, a doctor and a social worker who meet the offender around a table, rather than a judge in a courtroom. All drug users stopped by the police will be sent to a CDT, whether they appear to be experimental users or dependent ones. No guilty plea is required and there is no threat of prison; sanctioning by fine, the maximum possible punishment, is an available option for non-addicts but the institutional philosophy means it is not the main objective in this phase. Based on the case assessment by a small team of practitioners who will have similar professional backgrounds to the members, the CDT hears the offender and rules on the offence, aiming to treat any addiction and rehabilitate the person using the most appropriate interventions. The CDT is authorised to suspend the proceedings or the execution of a punitive sentence as it considers appropriate.

emergency, and should cease once the acute emergency has been avoided; long-term residential treatment without consent is a form of incarceration (UNODC, 2010).

### Rehabilitative options for other (non-problem) drug users

Some countries have options for alternatives to punishment available to non-problem users (though the majority appear to opt for policies of decriminalisation or depenalisation, either with non-criminal punishments or simply closing the case as minor). According to the legal frameworks, users without any diagnosis of addiction, who commit minor drugs possession offences, may be eligible for diversion to some form of counselling or rehabilitation course (France, Croatia, Italy, Latvia, Luxembourg, Portugal). These are sometimes considered as indicated prevention measures. As mentioned earlier, it is not known to what extent a warning by a police

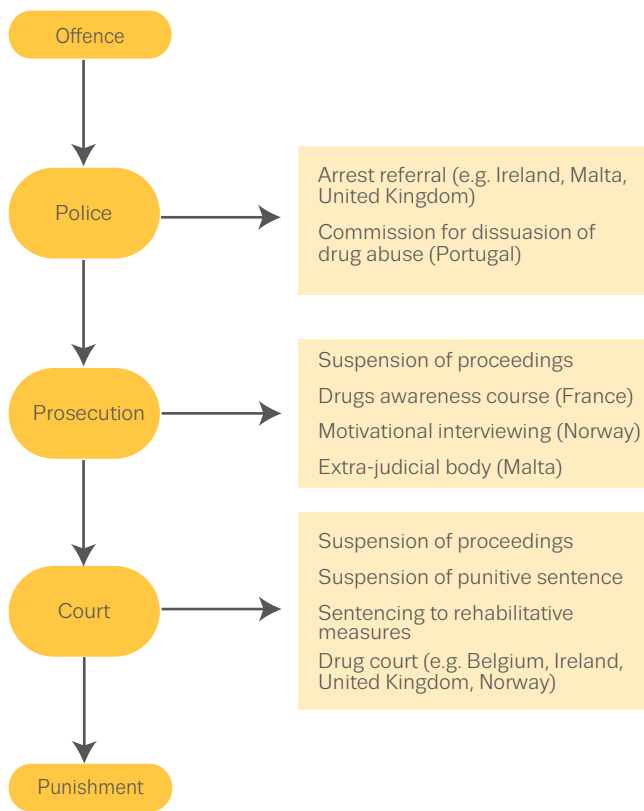
officer or prosecutor may be considered a deterrent or as counselling.

Users in Italy will be interviewed by the prefecture and then may be sent to a local public drug addiction services unit to complete a rehabilitation programme. In Croatia, Latvia and Luxembourg, the mechanisms described above for problematic users also apply to 'users'. In France, a 'drugs awareness course' was established as an option in 2007 to ensure that the criminal justice system, most commonly the prosecutor, has a constructive and proportionate response to occasional, non-problem users, when the previous response may have been to simply dismiss minor cases or give a criminal conviction. The offender has to pay the cost of the course, which is usually around EUR 250 euros but cannot be more than EUR 450. This may thus be interpreted as a combination of measures, with both rehabilitative and punitive effects.

Variations of the Portuguese model (see 'Ministry of Health in charge; the Portuguese model') for non-problem users are under discussion in Scandinavia and Malta. In June 2011, the Stoltenberg Commission in Norway recommended that persons arrested for minor drug offences be offered motivational interviews or a more long-term intervention programme with the aim of rehabilitation, as a special condition in a conditional waiver of prosecution or conviction, based partly on the Portuguese model. In Malta, the newly-redrafted arrest referral scheme is to work in partnership with an 'extra-judicial body', consisting of a chair and two experts in the field of drug use. First offenders (with no criminal record) arrested for possession of a small amount of drugs for personal use are to be offered the option to attend the extra-judicial body and follow its directions; while this is done, the prosecution is suspended. In July 2014, a white paper was published on this (Times of Malta, 2014), resulting in the Drug Dependence (Treatment not Imprisonment) Bill. Motivational interviewing has also been implemented for young offenders in Finland; a multi-professional reprimand involving the guardian, a representative of the social welfare authorities and the police, in which the offender's life situation is examined, is considered a more effective sanction than a fine.

In other countries, prevention and education responses primarily designed for juveniles may also be used for young adults. In Germany, the programme 'Early intervention in first-offence drug consumers — FreD' is mainly aimed at 14- to 18-year-olds, but individuals up to age 25 are eligible. Such local prevention measures are used as a possibility to intervene without starting criminal proceedings right away. This programme has been promoted in several European countries under the title 'FreD goes Net', with results regularly reported by Cyprus. In Luxembourg, minors and young adults who have come into conflict with the law for drug-related offences may be referred to a youth solidarity team (Project

FIGURE 1  
Rehabilitative or educative alternatives at different stages of the criminal justice process, with country examples



IMPULS), financed by the Ministry of Health; annual statistics show that about 18 % of the 300–400 referrals each year are aged 18 or over. The team may be considered a crisis situation manager who report progress back to the requesting authority.

These mechanisms may be represented schematically in Figure 1.

In summary, outlining the various factors set out in the legal stipulations and accompanying guidelines reveals a wide variety of non-punitive measures around Europe. In part, these differences in design may stem from differences in the legal and judicial contexts and also in the drug situations between countries, which may influence the legislators' objectives.

## Coverage, implementation and common issues

### Coverage

While the previous section showed that many countries have legal provision for alternatives or additions to punishment, the extent to which they are used is unclear. A 2007 progress

review of the EU Drugs Action Plan 2005–08 stated 'quantitative data on the use and effectiveness of alternatives to prison are generally not available', and a 2009 report on sentencing and other outcome statistics observed 'it is strange that referrals to treatment through the legal system are barely visible in the data provided' (EMCDDA, 2009). However, some data sources indicate that the alternatives are being used: EMCDDA treatment demand data showed that, across Europe, 20 % of the 147 000 new clients reported to have entered outpatient treatment in 2010 (and 7.5 % of the nearly 9 000 new clients entering inpatient treatment) were referred from courts, probation services or police. These numbers will not always be matched by those in judicially supervised treatment, as it is known that some (but usually an unknown proportion) are referred less formally, without any judicial intention to monitor the outcome. Thus it appears that, across Europe, a considerable number of offenders are diverted from the criminal justice system, with little monitoring of this approach.

In the absence of a comprehensive picture of coverage across Europe, this report will provide instead some illustrations of the extent to which alternatives to punishment are being used in some countries, before describing some of the issues that impact on their implementation.

In Portugal, in 2012, 82 % of CDT rulings suspended the process temporarily, 15 % were punitive rulings and 3 % found the defendant innocent. These primarily involved cannabis offences, though cocaine is becoming more visible in the statistics. The numbers of offences involving heroin were lower than in previous years. In recent years, around 60–65 % of suspensions are for users considered non-addicted, while 15–20 % are suspended due to the user agreeing to undergo treatment. Punitive rulings are usually non-monetary, ordering the offender to report periodically to a chosen location.

In Italy, in 2012, 13 660 offenders were interviewed by drug addiction operating units after committing the administrative offence of possessing drugs for personal use. However, legal changes in 2006 appear to have had significant effects on how they are dealt with. Before the change, the offender could start a rehabilitation programme as an alternative to the administrative penalty, but under Law 49/2006 the administrative penalty is applied and completed before any offer of a rehabilitation programme, reducing the incentive to take this option. For this reason, the numbers opting for rehabilitation have fallen from over 10 000 per year before the change to less than 300 in 2012. Also in 2012, proceedings against 1 559 offenders were closed following successful completion of prescribed treatment programmes. In contrast, a different law, also introduced in 2006 (Law 241, the Collective Clemency Bill), applied to the criminal justice system. This law reduced sentencing and accelerated the possibility of benefiting from alternative measures. The

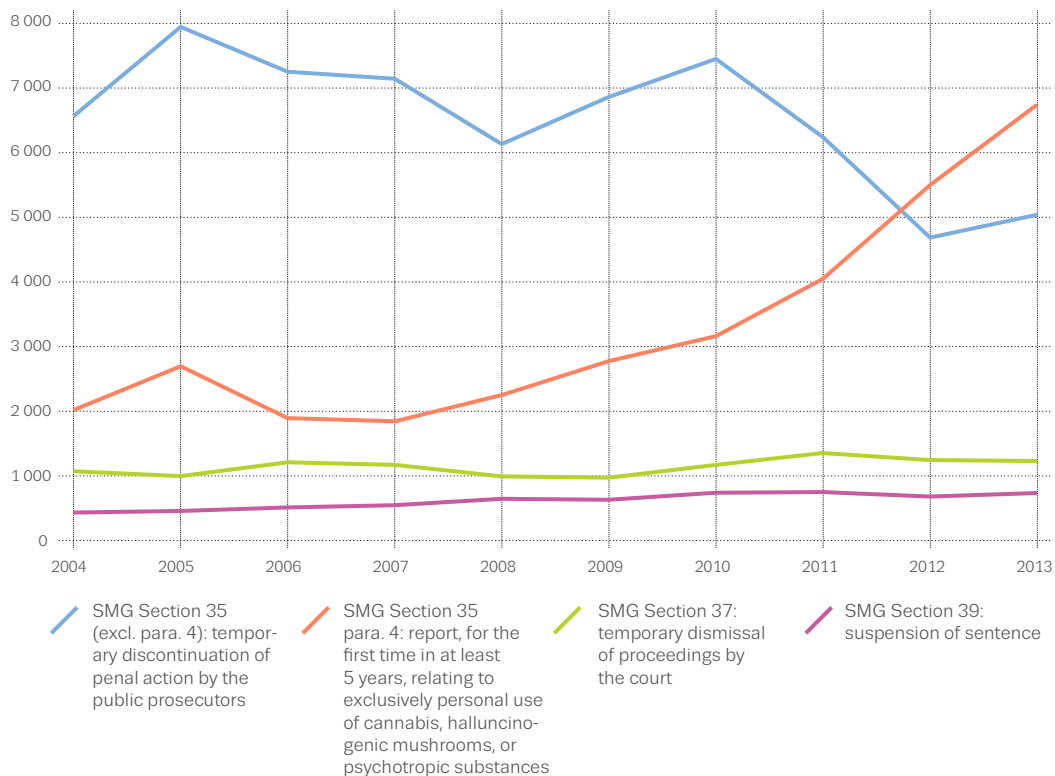
number who have benefited has steadily increased since 2007; in 2012, some 2 518 drug addicts were put on probation or released into the care of social services.

In Austria, most prosecutor and court decisions regarding drug possession offences are clearly recorded, allowing for the analysis of trends in the use of the alternatives to punishment (see Figure 2). Between 2004 and 2013, there has been a considerable increase in temporary discontinuations of penal action by the public prosecutors in cases involving exclusively personal use of cannabis, hallucinogenic mushrooms, or substances classed as psychotropic, and where there were no similar reports against the offender in the last five years (SMG Section 35 para. 4). There are now more of these than other cases of temporary discontinuation of penal action under SMG Section 35 (excl. para. 4) since 2012, possibly influenced by the rise in cannabis-related reports to the police. Overall, in 2013, 86 % of diversion offers were initiated by the public prosecutors. The same period has also seen a general rise in suspension of sentence under the principle of treatment instead of punishment (SMG Section 39), which is usually for opioid problems.

In the United Kingdom, interventions vary by constituent countries. The Drug interventions programme (until 2013) was the main method of engaging drug-using offenders with treatment services in England and Wales outside the prison system, delivering tailored combinations of rehabilitative and punitive measures; similar local initiatives still exist but it is now down to local areas to take decisions on the approach best suited to meet their local need. In England, around 88 000 individuals were helped into drug treatment (including non-structured treatment) and recovery services in 2011/12; treatment data show 8 881 adults entering structured treatment from arrest referral or through the Drug interventions programme. In Wales, there were 3 907 referrals to the Drug interventions programme. The drug rehabilitation requirement within a community order or suspended sentence of imprisonment involves treatment, regular testing and court reviews of progress, and is subject to rigorous enforcement. In 2012, 13 283 drug rehabilitation requirements were commenced, 9 284 as part of a community order and 3 999 as part of a suspended sentence order. The number of drug rehabilitation requirement commencements has fallen around 20 % from 2009, partly due to police initiatives which divert offenders at charge and partly due to a change in focus from

FIGURE 2

**Development of statutory alternatives to punishment applied in Austria from 2004 to 2013**



NB: Until 2007, SMG (Narcotic Substances Act) Section 35 data refer to temporary waiving of reports by the public prosecutors. The data on Sections 35 and 37 were obtained from the public prosecutors and the courts.

Source: Austrian Federal Ministry of Health.

commencement to completion targets. To put these numbers in perspective, 2012 saw about 70 000 cannabis warnings, 15 000 penalty notices for disorder and 39 000 cautions issued by the police for drug offences, and another 21 000 fines issued by the magistrates' courts. In Scotland, in 2011/12, 158 probation orders commenced with a condition of drug treatment/education, and 557 drug treatment and testing orders were made.

## Implementation issues

Although any particular measure may be made available to the judiciary in the legislation, there is no guarantee that it will be widely used, or that it will be implemented and perform as originally designed. Monitoring a policy intervention to assess performance is particularly important — and challenging. This can be complicated by the fact that responsibility may lie within two spheres of public administration, in this case the health and justice sectors, which have traditionally differing views as to priorities and solutions. This section addresses some of the more common findings and issues.

## Support for legislation

A few countries have had difficulty implementing their legal provisions on rehabilitative measures, in some cases because of difficulties relating to perceptions of leniency to criminals. In Cyprus, the law 57 of 1992 on 'the care and treatment of addicts' remained unimplemented in 2013, due in part to what have been referred to as 'anachronistic and non-viable stipulations'. In Romania, the possibility of referral of a drug user to treatment with eventual suspension of the proceedings, established by the drug control law of 2004, was dependent on a new Criminal Code that was only passed in 2009, and a new Criminal Procedural Code that was not yet passed in 2012; the new Criminal Code of February 2014 finally removed the need for the Criminal Procedural Code. Initial support in Norway for a similar system to the Portuguese model, proposed by the Stoltenberg Commission, has weakened as the decriminalisation aspect has been considered too controversial to implement. In Finland, the Prosecutor General published guidelines in 2006 encouraging prosecutors to waive charges for drug users who have sought treatment (notably accepting that treatment, and thus waiver, may be required several times to break an addiction). However, it is reported that drug users usually receive fines rather than waivers, and the available statistics show that barely 8 % of those waivers were the result of referral to treatment. In Malta, an arrest referral scheme was piloted in 2005, but in the first five months, out of 212 people arrested for possession, only 15 were referred to drug agencies by the police and the scheme fell into disuse. There is now a proposal to restart it, taking some cues from the Portuguese model by diversion to

an extra-judicial body, but at present eligibility is strictly limited to first offenders with no criminal record.

This latter criterion effectively made the provision of treatment as an alternative unusable in Poland. Since 1997, under Article 72 of the main drug control law, the prosecutor could suspend proceedings for an offender with no previous convictions who enters treatment. No official figures are kept, but a study in 2008, looking at 300 cases over three years and interviewing prosecutors, users and prisoners, concluded that this option was rarely implemented. While 95 offenders were diagnosed as problematic users, and 47 declared willingness to enter treatment, only 9 had no previous convictions, and ultimately not one of the 300 cases was suspended based on Article 72 (Serednicki, 2009 cited in the 2011 Reitox national report). As a result, this requirement of no previous convictions was abolished in 2011, and the prosecutor and judge are now obliged to collect information on the offender's drug use, rather than simply having the option to do so as previously.

## Assessment of eligibility

The examination of countries' legislations above shows that rehabilitative measures for drug-using offenders via the criminal justice system exist in a wide range of formats but with different criteria for eligibility. As a first step in implementation, there is already variation between European countries when it comes to establishing the diagnosis of addiction. An informal questioning of the ELDD's legal correspondent network in 2011 revealed that in eight of the 17 countries answering, such diagnosis was made by court-appointed experts or specialist court staff (Czech Republic, Spain, Croatia, Poland, Portugal, Slovakia, Sweden, Norway). In contrast, in five countries it was made either in a treatment centre (Estonia, Latvia, Romania) or in a hospital (Hungary, Turkey). The offender could be examined by a panel of three or more experts in five countries (Estonia, Latvia, Luxembourg, Portugal, Romania), by a pair of experts in the Czech Republic and Slovakia, and by a single expert in the remaining countries (Belgium, Spain, Hungary, Austria, Poland, Sweden, Norway). These experts may be general practitioners, psychiatrists, psychologists, social workers or other addiction experts; in Luxembourg and Portugal a jurist is a member of the panel. Assessments may be single-step or multi-step, with a rapid screening later followed by a more in-depth examination and tests, and may last from one hour to several, with the exceptional possibility of longer-term monitoring in a medical institution for up to two months (Slovakia). A more detailed assessment of these processes might determine whether or not they also include elements of assessment of motivation and treatment need.

The EU's research project on 'quasi-compulsory treatment' looked in more detail at the process and effects of treatment

options stemming from a judicial response to an offence in six European countries (2). The project found that entry to such programmes could be analysed in terms of three interactive processes ('opportunity, eligibility and diagnostic'), which ultimately influence the quality of the placement and hence the outcomes (Soulet and Ouveray, 2006). The eligibility process, in terms of how the offender fits the administrative criteria of eligibility (e.g. addict or not, type of offence committed, severity of offence committed) has been touched on in the descriptions of the mechanisms above. One of the main criteria for the eligibility of an offender will be their level of drug dependence or other problematic drug use. It will be for the judiciary, following specialist advice, to decide the eligibility of each offender. This decision could impact on the final outcome, where offenders directed to more appropriate interventions are more likely to 'succeed'. The opportunity process lies partly with the offender and partly with a professional, who may each decide whether or not they consider the offender 'ready' to seriously engage with a treatment process at that time. While this 'readiness' has sometimes been expressed in terms of 'motivation', the Quasi-compulsory treatment (QCT) Europe project and the Multi-site adult drug court evaluation (MADCE) in the United States both questioned the concept of 'motivation'; MADCE found that 'the construct of motivation may not necessarily be a good predictor of who will ultimately succeed in drug court' (Rossman et al., 2011), while QCT Europe reported that 'The concept of motivation was replaced with what emerged as the more pertinent concepts of commitment and commitment-enabling conditions' (Soulet and Ouveray, 2006). Finally, the diagnostic process aims to match treatment needs and treatment offers, considering not only types of treatment and implications for life situation, but also constraints on availability of particular options, such as waiting lists and funding restrictions.

### Matching offenders and needs

The 2009–12 EU Action Plan on Drugs (EUAP) objective of enhancing the effectiveness of treatment and rehabilitation translated into a number of actions, one of which included the further development of 'effective alternatives to prison for drug-using offenders'. This objective of effectiveness encouraged a better match between offender need and the intervention available, in order to achieve higher success rates. The QCT Europe project found that the three interactive processes described above (opportunity, eligibility and diagnostic) often reveal problems in coordination between systems, and between client needs and treatment offers. 'An assessment of needs and the selection of appropriate services is a focal point in the collaboration between key actors, but this crucial step is not always appreciated to a

sufficient extent. This coordination does not depend solely on collaboration between the treatment and justice systems, but is dependent on broader systems, such as welfare and healthcare funding, for its success. For a variety of reasons, best fit between client needs and treatment offers are not always guaranteed' (Soulet and Ouveray, 2006). This was illustrated by the observation from Sweden that 'some municipalities categorically denied all forms of treatment in spite of the fact that the Swedish Prisons and Probation Service financed the major part of treatment. Clinics offering medically assisted treatment also commonly refused to accept patients from the prisons and probation service, referring to the fact that they already had long lines of addicts outside the correctional treatment system in acute need of treatment'.

This mismatch of client needs and treatment offers may also occur when the rehabilitative options are limited. For example, in 2002 it was reported that, in Austria, public health officers would prescribe obligatory health-related measures to cannabis users, leading to capacity and resource problems in the drug help centres which would hinder their core tasks. Monitoring or evaluation of programmes that include such mismatched options may indicate poorer than expected results, masking any evidence of effectiveness for those groups for which the programme is more suitable; options need to be appropriate to those to whom they are being applied. Some countries are taking steps to remedy this by offering a wider range of responses. For example, in France drugs awareness courses were introduced for minor cannabis offenders, as a more suitable alternative to the 'therapeutic injunction' designed years before for heroin users. Yet this new measure has also suffered implementation issues. An evaluation carried out by the French Monitoring Centre for Drugs and Drug Addiction (OFDT) in 2012 found that the use of the courses had been modest to date; about 4 500 courses were awarded annually, while over 120 000 people had been stopped for cannabis offences in 2010 (Obradovic, 2012). There was little consistent application of these nationwide, both in terms of the number of courses awarded and the costs charged to the users.

In summary, key factors that appear important for implementation of rehabilitative measures through the criminal justice system are:

- the framing of the legal provisions, particularly those that affect who will be eligible;
- support from the criminal justice system, including the judiciary, and the public;
- the provision of a range of alternative rehabilitative provisions that will be appropriate for all the groups of offenders to which they will apply;
- adequate resourcing so that sufficient places will be available for all those eligible;

(2) England, Germany, Switzerland, Italy, Austria, Netherlands.

- good coordination and the cooperation of all those who will be involved in providing the alternative options; and
- monitoring the implementation and outcomes and making adjustments where necessary.

## Evaluation

### Evaluation: what do we know about what works?

Several rehabilitative options appear to be better in terms of efficiency, efficacy, or both, than punishment by itself, or at least less harmful, particularly where the punishment involves a prison sentence. However, obtaining clear scientific proof of this can be challenging and this is reflected in the comparatively small number of evaluations available (with the exception of drug courts). The evaluations themselves may have limitations that are not made clear, such as a pre/post evaluation having no comparison group, or accepting self-reported behaviour without objective verification. In turn, this makes it difficult for policymakers to assess whether a measure is successful, could be improved, or should be abandoned. With little basis to state with confidence 'what works', this section considers some of the issues that emerge from the studies that have been undertaken and highlights lessons for evaluation design, with the aim to encourage legislators and practitioners to work towards producing more robust evaluation results in future.

### Challenges in measuring success

The existence of multiple objectives may provide a challenge for evaluators to conclude whether or not a measure 'works' and adds to the difficulty of making comparisons between alternative approaches. Evaluations may use differing criteria to assess a variety of outcomes (drug-free or drug reduction, treatment completion or social reintegration, reducing reoffending or reducing drug use) over different time periods, and so can end up with ambiguous conclusions, depending on the priority given to different outcomes.

The potential for contradictory assessments is illustrated in the two perspectives that can frame renewed drug use by a drug-dependent offender; the judicial perspective of recidivism (signifying failure and suggesting a punitive response) and the medical perspective of relapse (signifying chronic disease and indicative of the need for more intensive support). In a survey carried out by the Council of Europe's Pompidou Group in 2008, the majority of countries answering had treatment standards or guidelines specifically drafted to implement a treatment programme under criminal justice supervision, and acknowledged the challenges in this field

(McSweeney, 2008). Setting such guidelines is a complex undertaking; for example, at what threshold should the supervising authority consider that a positive drug test or a new crime justifies termination of the alternative and reinstatement of the punitive procedure if progress is being made in other areas? An evaluation of pilot drug treatment and testing orders in Scotland concluded that 'the incidence of positive drug tests for opiates decreased with time and reported expenditure on drugs decreased from an average of GBP 490 per week pre-sentence to an average of GBP 57 per week after six months on an order' (Eley et al., 2002). Is such an outcome to be considered a success, given the massive reduction in expenditure, or a failure as the offender is still buying drugs? If an offender no longer tests positive for opioids, the disproportionate source of much individual and societal harm, but continues to test positive for cannabis, should they be encouraged or punished?

It has already been established that there may be hesitation in the use of alternatives to punishment generally. However, well-meaning emphasis on high entry rates for treatment to stimulate greater use of such measures can encourage inclusion of those unsuitable for the particular intervention offered. Unfortunately, this in turn lowers the rates of successful outcomes and thereby damages the reputation of rehabilitative solutions as a viable response to offences.

One of the most basic ways to evaluate effectiveness is by considering completion rates for programmes. A more advanced criterion for evaluation, though more challenging to implement, is to use reoffending rates and changes in drug use behaviours.

## Measures of effectiveness

### Completion rates

The mid-term evaluation of the EU Action Plan on Drugs in 2007, based on the structured questionnaires submitted to EMCDDA the previous year, found that percentage completion rates were available for some of the treatment 'alternative to prison' options in Ireland, Spain, Italy, the Netherlands, Austria and the United Kingdom. The majority of the other European countries had no information to answer this question, and few countries tracked all those who had been diverted to various treatment options. Thus the evaluation concluded that 'A wide variety of alternatives to prison for drug-using offenders already exists, however it [is] not yet possible to assess their use and/or effectiveness' (European Commission, 2007). Replies to a second round of questionnaires in 2009 showed little change.

Some other completion rates have been reported in the national focal point reports or the structured questionnaires. In Austria, in the context of the QCT Europe project in 2005, about 57 % of clients referred to treatment from the justice system completed the therapy. In Sweden, data from the criminal register show that about 75 % of those starting probation combined with treatment contracts follow through. In the United Kingdom, various alternatives are monitored. In England and Wales, 55 % of drug rehabilitation requirements (nearly 7 000 in number) were successfully completed in 2012/13. The completion rate has doubled since 2003. In Wales in 2009/10, 3 144 Drug interventions programme cases were closed; of these, 28 % of closures were due to treatment completion, 44 % due to client disengagement and 18 % were transferred to prison (10 % not reported). In Scotland, the proportion successfully completing drug treatment and testing orders increased from 40 % in 2008/09 to 54 % in 2011/12.

In Italy and Finland, some more limited figures were available. In Italy, during 2012, administrative proceedings against 1 559 persons were dismissed as a result of their having completed their prescribed treatment programmes. In Finland, in 2009 there were 137 cases of community service sentencing (a broad label that includes various interventions) for which the main crime was drug-related. The community service was successfully concluded in 114 cases and resented as unconditional in 23 cases. The national focal point reported that resentencing was as common in drug-related cases as with other crime types.

## Recidivism

Research into drug treatment and testing orders in England and Wales <sup>(3)</sup> suggested that offenders who completed orders had much lower reconviction rates (53 %) than those who did not (91 %), though it was not possible to attribute the difference entirely to the effect of the order (Hough et al., 2003). One study used data from the Home Office's Offenders Index to assess outcomes of those subject to drug treatment and testing orders in one area in England between 2000 and 2002 (Powell, 2011). Data showed that the mean number of convictions per offender decreased from 12.0 in the two years before the start of the order to 9.4 in the two years after the start of the order. Overall, 61 % of the offenders had fewer convictions in the two years after starting treatment compared with the same period before, 7 % showed no change and 33 % had more convictions in the two years after starting treatment (total 101 % due to rounding). In line with this, research into the subsequent Drug interventions programme, following a cohort of 7 727 offenders who tested

positive for drugs when charged, found that the volume of offending was 26 % lower overall in the six months post-intervention than the same period pre-intervention. Reoffending had fallen by 79 % for around half the cohort, but offending levels actually increased for about one quarter (Skodbo et al., 2007). Other impacts on recidivism are discussed in the drug court evaluations, below.

## Impact on drug use

Only France has reported a study evaluating the outcome of the measure on drug use behaviour. The 2012 evaluation of drugs awareness courses, questioning 4 000 participants, found that the courses had a limited impact on cannabis use behaviours, partly as they were 'not sufficiently personalised'. One-fifth of users stated they would not change their behaviour (except to avoid being caught again), and although two-thirds said they would stop or reduce consumption, the majority of those had started to reconsider their behaviour immediately following arrest, before the course started (Obradovic, 2012).

## Evaluations of drug courts

Drug courts are considered separately here as these have been the subject of a number of evaluation studies. The completion rates for drug courts in Europe, given below, appear quite low, with consequent high-level criticisms of their value for money. An example of this is the statement in 2009 by the Secretary General of the Department of Justice to the Public Accounts Committee of the Irish parliament: 'I am disappointed with its low output ... the production level of the court does not justify extending the model elsewhere. It is not working and we must go back to the drawing board' (Rabbitte, 2009). Yet recent detailed process evaluations of the drug courts in Belgium, Ireland and the United Kingdom suggest that completion rates may not be the best outcome indicators.

In Ireland, the drug treatment court was evaluated in May 2010 (Department of Justice, Equality and Law Reform, 2010). Over eight years, 374 offenders were referred to the drug treatment court, of whom 174 (47 %) were found to be unsuitable for the programme during the assessment phase, and only 29 participants (14 %) graduated from the programme. Nevertheless, participation was seen to have had a positive effect on participants' behaviour, significantly reducing offending, even if they ultimately failed to complete the programme (Ward, 2011).

Key statistics and stakeholder views of the two drug courts in Scotland were collected in 2009 (Community Justice Services Division of the Scottish Government, 2010). In the period 2004–08, around 50 % (Glasgow) and 75 % (Fife) of

<sup>(3)</sup> In England and Wales, the drug treatment and testing order was replaced by the drug rehabilitation requirement for offences committed after April 2005.

assessments resulted in drug court orders, of which 53 % (Glasgow) and 38 % (Fife) were successfully completed. Costs were higher than drug treatment and testing orders, while reconviction rates were similar. Yet the sample size (470) was far smaller than that required to show a statistically significant difference, and the review concluded that the target group of offenders was extremely challenging, with many living chaotic lives, and the success of the drug court order should be judged accordingly. There was overwhelming support for the courts among the stakeholders. Despite this, the Scottish Government announced that the Fife court was 'not viable' and funding would stop in March 2014, with the Sheriff Principal preferring drug treatment and testing orders for efficiency (Robertson, 2013).

In 2010, a final process evaluation of the six pilot dedicated drug court sites in England and Wales found that staff and offenders viewed the courts as a useful initiative aimed at reducing re-offending and drug use (Kerr et al., 2011). The evaluation was mainly qualitative; while it considered the data of 1 501 offenders over two years, there were concerns that the data quality limited the robustness of the quantitative findings. The continuity of the judiciary between sentencing and review was seen as a key element, as was the existence of a dedicated coordinator. Nevertheless, the ability of the dedicated drug court to reduce recidivism was heavily dependent on treatment quality and other issues in offenders' lives.

In Belgium, a quantitative analysis of 280 cases evaluated the drug court in Ghent positively (De Keulenaer and Thomaes, 2010, cited in the 2011 Reitox national report). Of the 280 cases, 148 (53 %) started treatment. At the time of the project evaluation, 91 persons had finished treatment (of which 41 cases were closed successfully) and 57 persons were still in treatment. Commitment to the treatment programme resulted in less severe sentences at court. A qualitative evaluation showed that those involved were generally positive about the project, though there was still room for improvement (De Ruyver et al., 2010, cited in the 2011 Reitox national report).

Most drug courts are in the United States, and four notable evaluations of them were published in 2011–12 with different headline assessments as to 'success' or 'failure', but sharing some similar conclusions. A systematic review of 154 studies (146 from the United States) published by the Campbell Collaboration concluded that adult, but not juvenile, drug courts have a substantial effect on recidivism (mean 12 % fall) (Mitchell et al., 2012). In contrast, a Drug Policy Alliance paper (2011) found that drug courts were an expensive way of dealing with low-level offenders, but they excluded those who would be more likely to benefit from the process. The importance of considering the nature of the offenders targeted also comes through in other studies; the five-year Multi-site adult drug court evaluation, funded by the US Department of Justice which gives grant assistance to drug

courts, observed that more frequent drug users showed a more marked reduction in use, and offenders with violent histories showed a greater reduction in crime (Rossman et al., 2011). The net impact of cost savings was 'driven by a reduction in the most serious offending by relatively few individuals, not by a widespread reduction of serious offending'. It therefore recommended consideration of including violent offenders with substance use issues — the same offenders who would normally receive punitive rather than rehabilitative sentencing. Nevertheless, a review by the US Government Accountability Office (GAO) found that the Bureau of Justice Assistance had still not documented standard or comparable methods to determine that the drug court measures were successful (USGAO, 2011). Finally, a 2011 study of those entering state prison in 2004 or jail in 2002 found that very few would have been eligible for diversion through state drug courts, questioning their value as a measure to reduce incarceration (Pollack et al., 2011).

In summary, evaluation studies highlight that clarity about the objectives of the intervention is important, as is ensuring that interventions are targeted to the appropriate groups of offenders. Measures of recidivism and behavioural change will deliver important quantitative results, while parallel qualitative evaluation can be instrumental in highlighting the key areas to focus on for policy improvement.

## Conclusions

Forty years ago, the international drug control legal framework established the rehabilitative options of treating, educating or reintegrating drug users as alternatives or additions to conviction or punishment; in contrast, the commonly used expression 'alternatives to prison' has no basis in the UN drug conventions and more narrowly focuses on the setting rather than the aim of the response. Returning the focus to the original policy, which is echoed in the EU Drugs Strategy (2013–20), this paper has tried to outline the main rehabilitative measures in use across Europe today and to set out the main issues in their design, implementation and evaluation, to assist policymakers and practitioners in the future.

Alternatives or additions to punishment are established in the laws of many countries in Europe, with a particular focus on problem drug users. These measures, however, are available to varying degrees and although evaluations may suggest positive results, they are not conclusive. Such success depends partly on the degree to which they are accurately targeted to specific objectives and specific users. The policy arguments in favour of them seem to have developed along two lines — reducing harms to the individual and society by problem drug users, and addressing structural burdens on the



justice system by non-problem users — and it is important to keep the distinction between these in mind to avoid confusion. Unfortunately, it is not always clear that this distinction, or prioritisation, has been made in the design and implementation of the different measures.

A number of challenges were encountered in conducting this work. Most fundamentally, the search question asked at the time of the different EMCDDA and other transnational data collections usually referred to treatment-oriented alternatives to prison, as that was the expression commonly used, and so some mechanisms may not have been included. Secondly, it is a constantly changing area, with countries introducing new and amended provisions on a regular basis. Thirdly, most of these provisions have not been the subject of formal evaluations and certainly not randomised controlled trials, so assessments of effectiveness are difficult. Finally, the opportunities for diversion into alternatives to punishment differ between judicial systems, and so programmes are unlikely to be directly transferable. However, it is still possible to identify broad conclusions and ideas that may be helpful to those considering introducing these approaches.

When considering the design of these measures, examination of the different options around Europe reveals a range of factors that may be useful to analyse the individual measures and to indicate the strength of policy priority in a country as a whole. Taken individually, each factor (see Table 1) broadly affects the number, and sometimes the type, of offender who may *enter* a programme. Yet the factors are also inter-dependent; certain combinations of factors will affect the number who may *complete* a programme successfully, for example when the offender is matched with the most appropriate type of measure. Therefore, for each measure, combinations of factors should be checked for coherence. Finally, in designing a package of measures for any particular

country, one may also consider the comprehensiveness of the different types of measures in addressing the different profiles of offenders found in that country — and this may again be the product of some of the factors listed. Taken together, the coherence of individual measures, and the comprehensiveness of coverage by different measures, may be indicative of the strength of a country's general policy orientation towards rehabilitative responses to drug-using offenders.

One problem identified in this paper is that large numbers of drug users are being diverted from the criminal justice system without any systematic follow-up or review of the effectiveness of the measures. In addition, where evaluations have occurred in European countries, such as with the drug courts, they have produced ambivalent results. Some problems may stem from a lack of clarity regarding the primary objective for many measures (whether it is to reduce incarceration while maintaining punishment, to address addiction, to reduce drug-related crime, or to reduce pressure on the justice system by non-problem users). Consequently there is a risk of loss of credibility for such rehabilitative measures, which may result in loss of political support and funding. There remains a need for monitoring and evaluation to better assess the effectiveness of such approaches as well as a need for improved documentation and recording practices in order to find out how often the measure was used. If many schemes are neither monitored nor evaluated, opportunities to learn lessons and make future improvements are being lost.

While it is widely agreed that the general deterrent of punishment has little effect on consumption levels of illicit drugs, drug use, together with its associated problems, continues to be considered by many as a criminal justice issue with a concern about moving too far away from punitive

TABLE 1  
Design factors for rehabilitative responses to offenders

| Factor                     | Range or options to consider  |
|----------------------------|---|
| Legal system               | Limited to judges within the criminal law system; or outside it, such as in the civil or administrative systems   |
| Direction to judiciary     | Optional or obligatory for the judiciary  |
| Geographical availability  | Availability ranging from few locations to nationwide   |
| Stage of legal procedure   | Ranging from prior to arrest to time of sentencing  |
| Offender diagnosis         | Availability ranging from a limited group of offenders (e.g. addicts, occasional cannabis users) to a very broad group of 'drug users'  |
| Offence                    | Applicability ranging from only for drug use/personal possession offences to any offence linked with drug use or minor trafficking  |
| Exclusion criteria         | Design may provide for multiple exclusions (e.g. possession of more than a small quantity, prior criminal record, recidivists) or may exclude only those accused of very serious offences |
| Response available         | Ranges from addiction treatment alone, to choices of treatment, education, aftercare and rehabilitation   |
| Treatment setting          | Ranges from a secure facility to any appropriate setting, including outpatient facilities   |
| Number of places available | Ranges from very few to unlimited   |
| Cost                       | May be borne by the offender or by the state  |

sentencing. This is visible, for example, in the prolonged discussions prior to implementing the law in Cyprus, the relatively high cost charged to offenders participating in the drugs awareness course in France, and the move in Italy to only offer a rehabilitation programme after the sanction has been completed. It is often assumed that greater deviation from general deterrent approaches will 'send the wrong message': that drug use is acceptable. To protect against this, rehabilitative measures may be accompanied by strict eligibility and procedural conditions (such as the Polish law that required drug addicts to have no previous convictions) and a cut-off level where only those diagnosed as sufficiently 'sick' are treated, while those who are not sick should be punished. The frustration at official caution towards moving away from punishment was expressed succinctly by Judge Jo Ann Ferdinand, Presiding Judge of the Brooklyn Treatment Court, New York, who stated 'This drug court is only allowed to continue because we constantly collect and submit statistics on recidivism rates, drug use rates, and cost-benefit calculations. Yet when I was just locking offenders up, nobody asked me for any of those' (personal communication, June 2015).

Some difficulties in implementing the measures appear to stem from the attempt at compromise between the two aims of treatment and punishment, which can pervade the entire policy cycle, from design, through implementation, to evaluation. As stated by the QCT Europe project, 'success would thus depend in being able to [confront] the essential contradictions that the care–control dichotomy presents'. One solution to this dichotomy may be to slide the focus firmly across to treatment and education, minimising punishment — an option suggested in the wording to the UN conventions since 1971, and recently reiterated by the INCB (United Nations, 2008) and UNODC (2009).

It is in this vein that the model implemented in Portugal, where the whole administration addressing drug users is under the healthcare sphere, with several rehabilitative measures available, has been described as a consistent and coherent policy (EMCDDA, 2011b). This approach has been functioning since 2001. There has been no major increase in drug problems that can be attributed to the new system (Hughes and Stevens, 2010), and there is no political will to return to the previous system. In 2013, the former Executive Director of UNODC, Antonio Maria Costa, said when interviewed about the Portuguese system, 'I applaud the fact that finally we recognise that drug addicts are not criminals ... I see drug policy, on the use side, as a health problem, period' (Costa, 2013). In addition, as described earlier, a number of other countries appear to be moving towards the gradual implementation of similar systems, recognising that first contact with the non-problem user is an opportunity for (indicated) prevention in order to address future levels of problem drug use.

In summary, few countries in Europe have chosen to adopt widespread rehabilitative approaches, with most opting for simpler policies of decriminalisation or depenalisation — alternatives to prison, but not alternatives to punishment. The policies that are adopted are often carried out without robust monitoring or evaluation, despite the fact that investment in these could show dividends in the long run by providing information that can be used to improve the efficiency and effectiveness of the programme. But even if the resulting evidence is not strong, the key to success seems to be having a range of interventions available that can be matched appropriately to the needs of individuals with different types and levels of drug problems.

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