European Monitoring Centre
for Drugs and Drug Addiction

Cannabis legislation in Europe

An overview

Legal notice

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Introduction

Cannabis is the drug most often mentioned in reports of drug law offences in Europe. In 2014, the drug accounted for 57 % of an overall estimate of 1.6 million offences (EMCDDA, 2016). Cannabis is also Europe's most commonly used illicit drug. It is estimated that at least one in every eight young adults (aged 15–34 years) used cannabis in the last year across the European Union. At the national level, these rates range from less than 1 % to over 20 % of young adults. The most recent data suggest that 1 % of the adult population (aged 15–64 years) of the European Union and Norway, or about 3 million individuals, are smoking cannabis on a daily or near-daily basis. The trends in use also vary between countries. In surveys since around 2005, Germany, Spain and the United Kingdom have shown decreasing or stable trends in reported use, while upward trends can be observed in Bulgaria, France and three of the Nordic countries (Denmark, Finland and Sweden).

A renewed debate about the laws prohibiting or permitting cannabis use and supply around the world has been fuelled by the legalisation of supply and use of cannabis for 'recreational' purposes in some US states and Uruguay since 2012. Proposals to legalise the drug have raised concerns they may lead to increases in cannabis use and related harms, and questions about the ways in which cannabis for non-medical purposes could be regulated to mitigate these concerns. In the European Union, a system of limited distribution has evolved in the Netherlands since the 1970s, and this has seen further developments in the last few years. The advantages and disadvantages of these regulated systems are being closely observed. The model of 'cannabis social clubs' has been increasingly mentioned in drug policy debates. Its advocates argue that the decision to not prosecute individuals for cannabis use in some countries can also be applied to registered groups of individuals, in order to permit a closed system of cannabis production and distribution. At present, the model is rejected by national authorities in Europe.

Throughout Europe there is media and public discourse on the issue of changing cannabis laws. However, national administrations are concerned about the public health impact of cannabis use and generally oppose the decriminalisation or legalisation of cannabis for recreational use. Nonetheless, cannabis laws and the medical and scientific research that informs policy-making can be regarded as entering a period of change, the direction of which is still unclear.

It is with this background in mind that the EMCDDA has decided to produce this report. Incorporating and building on earlier EMCDDA work (see Resources, page 30), the present study outlines the legislation relating to cannabis around the European Union (with a focus on 'recreational' use, rather than production and use for medical or industrial purposes). Written for a broad audience, the report aims to give brief answers to some of the more frequently asked questions raised in the discussions about cannabis legislation. These have been grouped into four parts:

1. What is cannabis and what are countries' obligations to control it?

2. What do the laws and associated guidelines say?

3. What happens to cannabis offenders in practice?

4. Where is cannabis legislation going?

Cannabis control in Europe: at a glance

International law obliges control of cannabis plants and products. There may be permissions for medical and industrial use.

Cannabis-based medicines may have EU or national authorisation. No country officially authorises cannabis smoking for medical purposes.

There is little harmonisation among EU Member States in the laws penalising unauthorised cannabis use or supply. Some countries legally treat cannabis like other drugs; in others, penalties vary according to the drug or offence involved.

The penalties available for cannabis supply vary considerably, but only comparing maximum penalties in the laws gives a misleading picture.

Evidence suggests that police tend to register cannabis use offences, rather than overlooking them as 'minor'. In a few countries there can be a rehabilitative response such as counselling or treatment.

Some terms often used for policy comparison need to be clearly defined, complicating comparisons; the terms 'decriminalisation' and 'personal use' have varied interpretations. While all countries in Europe treat possession for personal use as an offence, over one third of countries do not allow prison as a penalty in certain circumstances; of the remainder, many have lower-level guidance advising against prison for that offence.

All countries' laws punish drivers adversely influenced by cannabis; some punish those found with traces in the body. The use of saliva test kits at the roadside is increasing, but in most countries a blood sample is required for actual prosecution.

Since 2000, the trend is to reduce the maximum penalty for use-related offences. The best available evidence does not show a clear or consistent effect of penalty changes on use rates.

Discussions of policy change include lowering penalties. There have been several proposals for full legalisation presented to parliaments in the last few years, usually by opposition parties, but most have already been rejected. No national government in Europe is in favour of legalisation.

Part 1
What is cannabis and what are countries' obligations to control it?

Part 1 sets out to clarify the definition of cannabis. In this time of increasing debate about the legal status of cannabis, this is crucial to understanding some of the provocative declarations that 'cannabis is legal' or 'has been legalised' in a particular country. This section examines what sort of cannabis is controlled, noting the different plant varieties, the parts of the plant, including the seeds, and the relevance of cannabis potency. It outlines how using parts of the cannabis plant for medical and industrial purposes is permitted under European or national legislation. The section then focuses on the use of cannabis for recreational purposes. It outlines how the EU countries are bound to control cannabis following their obligations under United Nations drug control treaties. It describes the extent of those controls and the corresponding room for manoeuvre open to countries which choose to vary their legislation within those international obligations.

What sort of cannabis is controlled?

The cannabis plant is usually legally controlled when it is capable of producing a useable amount of the psychoactive substance delta-9-tetrahydrocannabinol (THC), but some countries control all strains, even those where the THC content is negligible. The plant has been grown for several hundred years for fibre, oil, medicines and drugs. Since 1961, international law has defined the cannabis plant as 'any plant of the genus *Cannabis*', to cover the species *Cannabis indica* and *Cannabis sativa* and any variety discovered in the future (United Nations, 1961). The roots and seeds have no THC, dried stem material will typically contain 0.3 % or less, and the lower leaves less than 1 %. However, in the female flowers, and the resin-producing trichomes (plant hairs) that grow among them, THC concentration can reach 20 % or more. In the European recreational cannabis market, the flowers may be sold still coated with the resin ('herbal cannabis'), or the resin may be extracted and sold by itself ('cannabis resin'). By 2015, the mean potency of samples analysed around Europe had risen by 90 % for resin and 80 % for herb compared with 2006 values. In 2015, the estimated national mean potency of cannabis resin samples in the EU Member States ranged from 4 % to 28 % THC, while that of herb samples ranged from 3 % to 22 %.

The international treaties require that the entire plant is controlled under national drug laws, although in European countries there may be exceptions for plants which have a THC content not exceeding 0.2 %, if grown for fibre. National control is not obligatory for cannabis seeds, although they are specified as subject to the drug control laws in Cyprus and Portugal. In other countries, supply of cannabis seeds for cultivation is often covered by a more general offence of 'facilitating drug production' or something similar.

Cannabis products: terminology

Cannabis products are used for medicinal and industrial purposes, as well as for intoxication. At least four US states and one EU Member State now have two separate distribution systems for intoxicating cannabis running in parallel, besides any industrial use of the non-psychoactive parts of the plant. Clarity is needed when discussing the laws involved.

Cannabis products that are used for medicinal purposes — whether the psychoactive THC or the non-psychoactive cannabidiol (CBD) — are generally referred to as 'medical cannabis'. Cannabis products used in manufacturing are commonly referred to as 'industrial hemp'. Cannabis products used for non-medical intoxication have been variously referred to as non-medical cannabis, retail cannabis and recreational cannabis. The term 'non-medical' cannabis does not make clear that it may not be for industrial purposes, while 'retail' refers to the form of distribution, rather than the motive for use such as 'medical' and 'industrial'. Therefore, this report uses the term 'recreational' for the psychoactive cannabis products intended for non-medical intoxication.

Is medical cannabis legal?

International law does not prevent cannabis, or cannabis-based products, being used as a medicine to treat defined

TABLE 1
Authorised cannabis-based medicines in Europe at a glance

Brand name	Description	Indications	Form
Sativex (Nabiximols)	Extract of cannabis (oil) THC and CBD	Multiple sclerosis	Sublingual spray
Marinol (Dronabinol)	Synthetic delta-9-THC	Cancer treatment, AIDS, multiple sclerosis	Gelatin capsule
Cesamet (Nabilone)	Synthetic cannabinoid similar to THC	Cancer treatment	Capsule
Bedrocan	Dried flower tips (sometimes powdered), five different strains available	Various	Plant material

indications. According to the UN conventions, the drugs under international control should be limited to 'medical and scientific purposes'. Article 28 of the 1961 Convention describes a system of controls required if a country decides to permit the cultivation of cannabis that is not for industrial or horticultural purposes, while the 1971 Convention controls THC.

In European countries, authorised medicines may include THC in capsules, cannabis extract as a mouth spray, and dried cannabis flowers for vaporising or making 'tea' (see Table 1).

By contrast, no country authorises the smoking of cannabis for medical purposes. There are two main reasons for this. First, there are many strains of cannabis plants, and each variety has the capacity to produce a range of chemicals. The range and concentration of chemicals may also vary within one plant, for example depending on light levels during growth or maturity at harvest. If these factors are not strictly controlled, it is very difficult for a prescriber and pharmacist to judge the content and thus the delivery of the particular chemicals needed for the patient. Second, inhaling smoke from burning plant material is not a healthy method of delivery of those chemicals to the bloodstream, as the patient will also inhale harmful tars and particles. When the required chemicals are not psychoactive, such as CBD, it is also very difficult for the user to measure the dose correctly.

A medicine based on cannabis extract has been approved by the European Medicines Agency, and at the time of writing four EU countries have specific legal processes governing the distribution and use of medical cannabis.

Cannabis extract is the main active substance in a medical product commercialised around Europe under the brand name 'Sativex', which contains equal quantities of THC and CBD. This medical product, which is sprayed under the tongue, has been approved by the European Medicines Agency only to treat symptoms of multiple sclerosis. It is currently authorised as a medicine in 18 European countries ([1]). In some of these countries, national health insurance systems will reimburse the cost under certain conditions, such as prior approval or prescription by specialists.

Since 2001, the Office of Medicinal Cannabis (OMC) has been the Netherlands government agency with a monopoly on supplying medical cannabis to pharmacies and general practitioners in accordance with the terms of the 1961 UN Convention. Producers are licenced by the Dutch government and must sell all produce to the OMC, which then distributes it to pharmacies. The OMC offers varieties of medical cannabis, with different levels of THC (ranging from less than 1 % to approximately 22 %) and CBD (ranging from less than 1 % to approximately 9 %). These products cater for different patient needs at a cost of about EUR 45 for 5 grams. These may be prescribed for relief of symptoms arising from multiple sclerosis, HIV/AIDS, cancer, long-term neurogenic pain, and tics associated with Tourette's syndrome. Smoking is not recommended by the manufacturer, and the preferred methods of use include inhalation from a vaporiser and infusion in tea. In theory any doctor may prescribe medical cannabis, but in practice only a limited number do so. As of March 2015, about 1 200 patients get their medical cannabis, with a prescription from their doctor, through the pharmacy. There is no reimbursement from the national healthcare system, but there may be some partial reimbursement by supplementary health insurance.

In the Czech Republic, the State Agency for Medical Cannabis was established as a special department of the State Institute of Drug Control. It set rules for e-prescription, pharmacies and so forth, but a special register only started operating in November 2014. Use of medical cannabis products is only possible in line with the Ministerial Notice of 2013, and the prescription should

([1]) Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden, United Kingdom.

state the mode of use and THC level (up to 21 %). Initially patient limits were 30 grams per month, but these were raised to 180 grams per month in October 2015. Currently only 16 specially qualified doctors, such as oncologists and psychologists, are authorised to prescribe cannabis, and only 26 pharmacies can dispense it. Patients must be aged over 18 years. The first domestic harvest was distributed to pharmacies in March 2016, with the final price to the patient being about EUR 3.70/gram (the average price of illicit cannabis in the Czech Republic was about EUR 7.40/gram in 2014).

In Italy, the Ministry of Health is the coordinating body for medical cannabis. From November 2015, the ministry can issue permits for cultivation, production, possession and use, and herbal cannabis may be prescribed with a non-repeatable prescription; the use of cannabis is only for symptomatic treatment supporting standard treatments, where results cannot be achieved with traditional treatments. Eligible conditions are primarily spasticity, chronic pain, nausea from chemotherapy or HIV treatments, loss of appetite from cancer or AIDS, glaucoma, and Gilles de la Tourette syndrome. Licensed farmers deliver the cannabis to the ministry, which then allocates it for production. The pharmacist buys the active substance from the ministry with vouchers, and prepares magistral ([1]) preparations accordingly. Doctors should prescribe the most appropriate genetic strain, dispensing amount and consumption method (vaporising or infusion in hot water only) for each patient.

In Croatia, new regulations entered into force in October 2015 that amended the Ordinance on classifying, prescribing and dispensing medicines, to allow the use of cannabis for medical purposes. Following the recommendation of certain neurology, infectious diseases or cancer specialists, medicines containing THC, dronabinol or nabilone can be prescribed, on non-repeatable prescription, by physicians working in general and family practice, health protection of preschool children and women's healthcare. These medicines may be prescribed to relieve the symptoms of multiple sclerosis, cancer, epilepsy and AIDS. They may be in various forms such as teas, ointments and other extracts including galenical preparations; smoking or vaping herbal cannabis is not permitted. The prescription should state the amount of THC in a single dose, the number of individual doses, drug form, dosage and method of use, also if applicable, the type of herbal drugs and herbal preparation which will make the main composition. Medicines containing THC can be prescribed in the quantity necessary for treatment up to 30 days. The total amount of prescribed THC in 30 days of treatment must not be greater than 7.5 grams. As at January 2017, no domestic cannabis was being grown for this purpose, but medicines were being imported.

([1]) Magistral preparation: any medicinal product prepared in a pharmacy in accordance with a medical prescription for an individual patient.

Is industrial cannabis legal?

In the European Union, it is legal to cultivate and supply cannabis plants for hemp fibre if they have low levels of THC. The granting of payments under the Common Agricultural Policy is conditional upon the use of certified seeds of specified hemp varieties; only varieties with a THC content not exceeding 0.2 % may be used (EU Regulation 1307/2013). Payments are therefore granted only for areas sown with varieties of hemp offering certain guarantees with regard to their psychotropic content. There is a procedure for the determination of hemp varieties and the verification of their tetrahydrocannabinol content. Imports of hemp are also subject to certain conditions to ensure the above-mentioned THC limit is respected (EU Regulation 1308/2013). According to the European Court of Justice, case C-207/08 (Babanov), the cultivation of hemp fulfilling the strict conditions above by farmers respecting all the other conditions established by the EU legislation cannot be prohibited in any Member State, if this prohibition conflicts with provisions of EU law or undermines the aims and objectives of these provisions. New countries joining the European Union, in which it was illegal to grow any cannabis plant under the narcotic control law, have sometimes needed to change their law in order to permit this exception.

From this point on, unless stated otherwise, this report will only discuss laws applying to cannabis used for recreational purposes.

Why should countries control cannabis — and to what extent?

To understand today's cannabis control laws, we need to look at the history of international drug law, which binds signatory countries. Cannabis was first placed under international control by the Second Opium Convention of 1925 (League of Nations, 1925). In Article 1, cannabis was referred to as 'Indian hemp', which covered only the dried or fruiting tops of the pistillate (female) plant, because these were considered to be particularly rich in the 'pharmaceutically strong active resin'. The 1925

Convention banned the export of cannabis resin to countries that prohibited its use (Article 11(a)) and required domestic controls, such as penalties for unauthorised possession, of cannabis extract and tincture (Articles 4,7). The convention established that any breaches of national laws should be punished by 'adequate' penalties (Article 28).

The international drug control system has evolved since then, and currently three United Nations conventions describe the basic framework for controlling the production, trade and possession of over 240 psychoactive substances (most of which have a recognised medical use). These treaties, which have been signed by all EU Member States, classify narcotic drugs and psychotropic substances according to their danger to health, risk of abuse and therapeutic value.

The 1961 Convention (United Nations, 1961) classifies narcotic drugs in four schedules. Its 1971 counterpart (United Nations, 1971) places psychotropic substances in another four schedules. Some substances are listed twice in the 1961 Convention. Cannabis and heroin (as well as 15 other substances) for instance are placed by the 1961 Convention in Schedule I, as substances whose properties give rise to dependence and which present a serious risk of abuse. They are also included in Schedule IV, among the most dangerous substances, by virtue of the risks of abuse, their particularly harmful characteristics and their extremely limited medical or therapeutic value. This 'twofold' classification appears to have been intended by legislators to stress the threat to public health posed by these substances, but it also has the consequence of limiting their possible use for medical purposes. However, since its inclusion in the 1925 Convention, cannabis resin has never been reviewed by the committee of health experts appointed to determine which substances should be internationally controlled. For this reason its classification has always been controversial (Danenberg et al., 2013). Latest evidence can be found in the WHO's updated publication on 'The health and social effects of nonmedical cannabis use' (WHO, 2015).

The United Nations conventions provide that the use of all drugs (under control) must be limited to medical and scientific purposes. The conventions specify that unauthorised actions, such as possession, acquisition, distribution or offering for sale and so on, must be punishable offences, and that serious offences should be punished by the deprivation of liberty. The 1961 and 1971 Conventions largely set out terms and mechanisms for (international) trade, so it was debatable how much they required punishment of possession only for personal use. However, the UN Convention of 1988 (United Nations, 1988) specifically requested countries 'subject to constitutional principles and basic concepts' of countries' legal systems, to establish 'as a criminal offence [...] the possession, purchase or cultivation of drugs [...] for personal consumption'. Given the first part of this requirement, the different national interpretations of 'a criminal offence', and the possibility to provide for alternatives to conviction or punishment, there has been a wide variety in responses across Europe.

The conventions do not specify that drug use itself should be a punishable offence, although each country can establish simple drug use as a specific offence if it chooses to do so. In addition, the conventions make no link between the type of drug and the penalties established in national law. The schedules affect the procedures for legal trade of drugs, but countries are not bound to use them or other distinctions to vary penalties for offences. The 1988 Convention also requested countries to take appropriate measures to prevent illicit cannabis cultivation and to eradicate cannabis plants on their territory (Article 14).

Is there a harmonised EU law on cannabis?

There is no harmonised EU law on cannabis use. The criminal or administrative response to drug use offences is the responsibility of EU Member States, not of the European Union. According to Article 168 of the Treaty on the Functioning of the European Union (TFEU), 'The Union shall complement the Member States' action in reducing drugs-related health damage, including information and prevention.'

There is some EU law affecting cannabis trafficking offences. With regard to drug trafficking, the European Union does have legislative competence to 'establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension', which specifically includes illicit drug trafficking (Article 83, TFEU). Based on this, a 2004 EU Framework Decision (2004/757/JHA) laid down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit trafficking in drugs and precursors, to allow a common approach at EU level to the fight against trafficking. Possession for personal consumption was specifically excluded from this framework decision. Member States were obliged to take measures necessary to ensure that the offences were punishable by 'effective, proportionate and dissuasive' criminal penalties. Besides this general obligation,

minimum and maximum levels of sanctions were provided for (Article 4). Aggravating circumstances include offences involving 'those drugs which cause the most harm to health' (Article 4 (2)(b)), but the definition of these drugs was left to Member States. For this and other reasons, the framework decision had little effect on national legislation (European Commission, 2009).

The Council Resolution on cannabis of July 2004 (Council of the European Union, 2004) encouraged Member States to take measures against cultivation and trafficking of cannabis within the Union, and to consider taking measures against internet sites providing information on cultivation.

There is also European legislation on industrial and medical cannabis products as outlined on pages 6–8.

Part 2
What do the laws and associated guidelines say?

Part 2 discusses the legislative texts of Member States. It includes parliamentary and government laws, ministerial decrees, directives to national prosecutors and guidance to national police forces. In some cases, national sentencing guidelines and constitutional court decisions also shape the legal framework on cannabis. It examines how countries may use different penalty levels to distinguish between different drugs, or not, usually aiming to send a message about relative harms of the substances (popularly known as 'soft' and 'hard' drugs). It shows how the criminalisation of consumption rather than just possession can be significant, because it can lead to arrest following a positive drug test for cannabis. The section illustrates the complexity of trying to define 'decriminalisation' across the many different legal systems of the European countries. This part also looks at the quantitative limits used to define different offences in terms of weight of cannabis or number of plants, and the ways in which these limits can be interpreted, including the implications that some offences will not be punished. Finally, there is a description of the wide ranges of penalties for cannabis supply across Europe and an introduction to the ways in which countries' laws address safety concerns arising from cannabis use by road users.

Is cannabis legally the same as other drugs?

European countries may be divided into two groups in terms of the penalties imposed for cannabis offences (see Figure 1). In the first group, cannabis is treated differently from other drugs under the law, typically because penalty levels are applied according to the amount of harm that use of the drug may cause. In the second group, penalties under the law are the same for all drugs including cannabis, but instructions to police or prosecutors, and judicial discretion in practice, distinguishes between substances on the basis of relative harm, resource prioritisation or for other reasons. These distinctions may apply to offences related to use, supply or both.

In the first group of countries, lists or classes of drugs established in, or directly linked to, laws are used to determine different legal degrees of severity of penalty in definition and prosecution of offences. Cannabis is often included among those drugs that do not incur the maximum legal response. For example, in Cyprus, Italy, the Netherlands, Portugal and the United Kingdom, legal penalties for offences relating to the use and supply of the class of drugs including cannabis are less severe than those for offences related to other substances. Strikingly, no other substance listed in Schedule IV of the 1961 Convention (which lists substances particularly liable to abuse and to cause ill-effects) attracts lower penalties in this way. By contrast, in Bulgaria and Romania, cannabis is listed as a substance that carries a higher degree of risk than drugs in other categories, and the penalty for supply is more severe. For (minor) use-related offences involving cannabis, penalties are set lower than those for other drugs in Belgium, the Czech Republic, Ireland, Luxembourg and Malta. For drug supply offences in Denmark, Finland and Spain, the law prescribes a higher penalty for drugs referred to as more dangerous or harmful. Prosecution and sentencing directives, and

FIGURE 1

Penalties in law for drug offences in the European Union, Norway and Turkey

reports of jurisprudence, suggest that this does not include cannabis. Other countries treat use or supply of all drugs equally under the law.

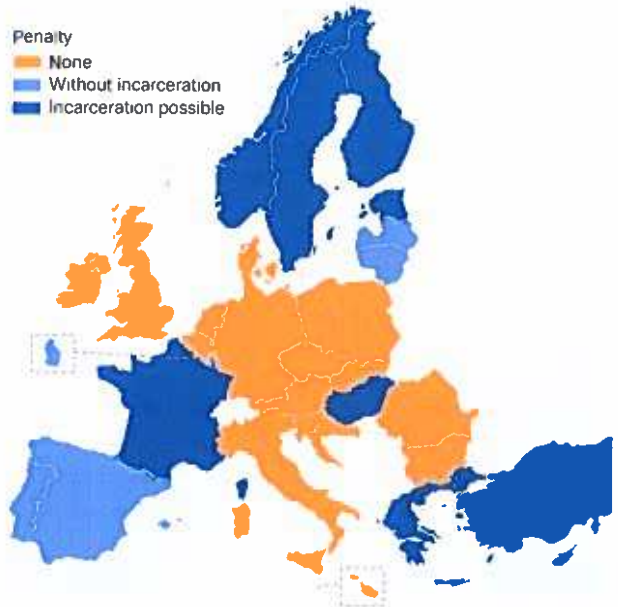
Will a positive drug test for cannabis lead to arrest?

A positive drug test might lead to arrest if drug use (not merely possession for personal use) is a punishable offence under national law. Such an offence is not required by the UN conventions, which are primarily aimed at limiting drug supply. The 1988 Convention extended this to possession of drugs for personal use, when there is still a risk that the drug could be passed to another person. This risk disappears once the drug has been consumed. Nevertheless, several countries specify consumption as an offence, whether as a signal of society's disapproval of drug use or as a practical measure to give police certain powers to investigate a crime or apprehend a user (see Figure 2). Consumption of cannabis is a serious offence, punishable with a prison sentence in Cyprus, France, Finland, Greece, Hungary, Norway and Sweden. It is an offence punishable by a fine or other minor penalty in Estonia, Latvia, Lithuania and Portugal, also in Spain if the consumption is in a public place. In all these countries, a positive drug test could theoretically lead to police action, but the law is implemented in different ways in different countries. In Estonia and Sweden for example, the law is used to enforce public order in cases of public intoxication; in Sweden it is also used to give the police power to apprehend drug users and direct them to treatment. In other countries, a drug test in a public place, and subsequent arrest, is only likely if the person is driving a vehicle, which is more a road safety policy than a drug control policy (see 'Is it illegal to drive with cannabis in the body?', page 16, for more details). More specific situations, such as safety-critical situations (e.g. operating machinery) or specific locations (e.g. prisons or military premises), may be addressed by other laws in different countries.

Can you be imprisoned for possession of a small amount of cannabis?

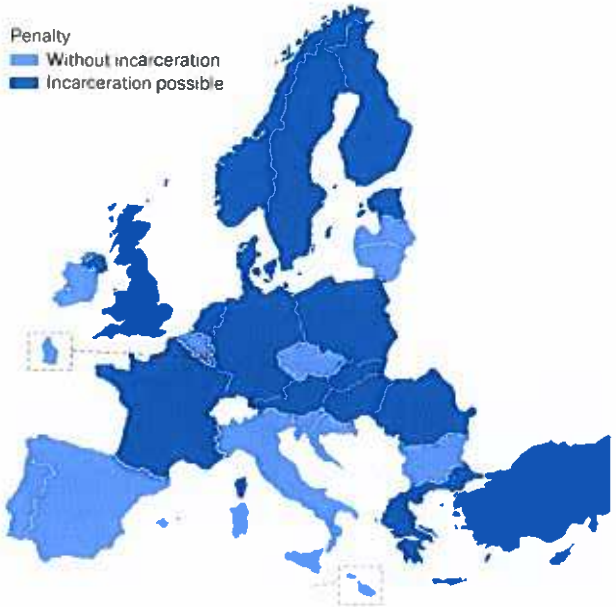
The unauthorised possession of cannabis for personal use is subject to a range of sanctions in the laws of EU countries, but not all of these include prison sentences as an option. Overall, there has been a general trend across Europe to reduce the likelihood of imprisonment for this offence since around 2000.

FIGURE 2
Penalties in law for consumption of cannabis in the European Union, Norway and Turkey



NB: In Spain consumption is penalised when the offence is committed in a public place.

FIGURE 3
Penalties in law: possibility of incarceration for possession of cannabis for personal use (minor offence)



NB: In Spain possession is penalised when the offence is committed in a public place.

In some countries, in the absence of aggravating circumstances, the law does not allow imprisonment in the case of possession of small quantities of cannabis for personal use only (see Figure 3). In Bulgaria, Croatia, the Czech Republic, Italy, Malta, Portugal, Slovenia and Spain, this approach is applied to all drugs, while in Belgium, Ireland and Luxembourg, it only applies to cannabis. The non-custodial punishment is usually a monetary fine. Definitions of what constitutes a 'small amount', 'aggravating circumstances', 'minor possession' and so on vary considerably between countries. In Belgium, while a prison sentence is theoretically possible for minor cannabis possession, police are instructed to give the lowest prosecution priority to non-problematic cases and to record the case locally but not centrally. In Austria, police report minor drug possession (for personal use) directly to the health authority and not to the judicial authorities in order to enable a faster health response and to allow public prosecutors to concentrate on more serious offences. In Estonia, the law for use or personal possession of any drug includes the punishment of 'administrative arrest' (detention in police cells) for up to 30 days; similar provisions were recently removed from the Latvian and Lithuanian laws. Apart from these conditions, and for supply of any small amount, prison sentences are still possible.

In other European countries, a prison sentence is possible according to the law, but in several of these, police or prosecutors are directed to use non-custodial penalties or powers of dismissal for minor 'personal use' offences. These countries include Denmark, France, Germany, the Netherlands and the United Kingdom.

In Denmark, the first response to personal possession should be a fine. In Germany, following a decision of the Constitutional Court in 1994, prosecutors will close a case that is considered to be minor according to certain criteria. These vary between federal states but typically relate to amounts of cannabis less than 6 grams. The Dutch Opium Act Directive instructs police to give the lowest investigation priority to possession of less than 5 grams of cannabis, with seizure on discovery the only action taken. In the United Kingdom, police guidelines instruct officers to give a warning for a first offence and a fine for a second.

Where is personal cannabis possession decriminalised?

To answer this question, it is necessary to define decriminalisation. In common use, decriminalisation denotes a move away from prohibition enforced by criminal sanctions. Other terms used to describe reductions in sanctions are depenalisation and legalisation, but these three terms may be used discretely or interchangeably, leading to inconsistent descriptions of countries' laws. While operative definitions are possible (see below), other factors further complicate the issue. First, there is no agreed objective test for decriminalisation. This means that two experts could disagree on a classification of a country depending on the criteria they used (e.g. the status of the law that describes the offence, the severity of punishment prescribed, or whether an entry is subsequently made on the offender's criminal record that is visible to employers). Second, although the popular terms used above may be applied in respect of the country's laws, the implementation of those laws may differ in practice because of directives to police or prosecutors. Third, when considered literally, the terms 'decriminalisation', 'depenalisation' and 'legalisation' describe a movement from one legal status to another. This makes the terms inaccurate when applied to countries where the law never established that an offence was criminal.

In simple terms the following distinctions should be noted:

- **Decriminalisation** refers to the removal of criminal status from a certain behaviour or action. This does not mean that the behaviour is legal, as drugs can be confiscated and non-criminal penalties may still be applied. In the drug debate, this term is usually used to describe laws related to personal possession or use rather than drug supply. Examples of countries which have decriminalised drug use or personal possession might include Luxembourg (only cannabis), Croatia, Portugal and Slovenia.

- **Depenalisation** refers to the introduction of the possibility or policy of closing a criminal case without imposing punishment, for example because the case is considered 'minor' or prosecution of it is 'not in the public interest'. Examples may include Austria, Germany and Poland.

- **Legalisation** refers to making an act lawful that was previously prohibited. In the context of the drug debate, this usually refers to removing all criminal and non-criminal sanctions, although regulations may limit the extent of the permission, as is the case for alcohol and tobacco. Penalties for breaching these regulations may be criminal or non-criminal. This term is generally used in the context of drug supply. Examples might include the systems in Uruguay and the US states of Alaska, Colorado, Oregon and Washington; in Europe, the

Dutch system of cannabis sale through coffeeshops is only the toleration of an unlawful act (see page 15).

The EMCDDA has published a short animation to explain the differences (EMCDDA, 2015b).

What's the limit to personal use?

Some EU countries establish quantity limits for personal possession, which means that a person found with more than this amount of a drug may be prosecuted for a more serious offence such as supply (e.g. Estonia, Lithuania, Netherlands, Slovakia). Other countries also establish quantity limits in their drug laws, but for other purposes. For example, a country may define the minimum quantity — often together with other criteria — for *criminal* prosecution for a personal possession offence, possession of an amount below that limit may lead to a non-criminal penalty (e.g. Belgium, Czech Republic) or the case may be suspended, diverted or closed (e.g. Austria, Germany). Quantity limits may be established at different legal levels (laws, guidelines), and they may be established for many drugs or for just a few. Weights may be specified as total weight of the seizure, or weight of THC within the herb or resin. In some cases, quantities are defined in terms of the number of 'doses', or by monetary value. In most countries, threshold quantities are understood as guidelines, with exceptions allowed if justified.

There is little consistency between countries in the limits they set. The quantities for similar offences differ between countries. For example, criminal prosecution for possession of cannabis resin will start with 0.25 grams in Lithuania but only at 6 grams in many German federal states. The relations between the threshold quantities for the different drugs also vary widely across countries. For a given offence, the established weight threshold of cannabis herb may be equal to that of resin (Belgium), or twenty times more (Lithuania). The weight threshold for cannabis may be three times (Cyprus) or ten times (Netherlands) that of heroin.

In some countries where the law specifies 'small' or 'large' quantities, no limits have been set out in legislation or in police or prosecutor guidelines. Instead, these terms are interpreted by expert opinion or judicial precedent. This is the case in countries such as Croatia, Greece, Poland and Slovenia.

Limits, like penalties, change, as countries seek to improve the functioning of their legislation. In 2004, Bulgaria removed its exemption for punishment for possession of only 'one dose' of drugs. In 2005, Italy introduced quantity limits for personal possession (500 mg of THC) in a law which was annulled (for unrelated reasons) in 2014. The United Kingdom introduced a presumptive quantity of supply in the law in 2005, but the clause was not enforced after a consultation found there were no amounts which were universally appropriate. In Austria, a criminal prosecution could be suspended for possession of a 'small quantity' until 2007, when the reference was removed because it was considered imprecise. In 2013, Greece removed its defined quantity limit for personal use that had been introduced just a few years earlier. Instead it allowed the judge to decide if an amount discovered was intended for 'personal use', based on a range of factors that included purity, quantity and the characteristics of the particular user.

Do countries take a different approach to growing cannabis for personal use?

A few countries define the exact quantity of cannabis plants that will lead to prosecution or punishment, while others take a more general approach. In Belgium, cultivation of not more than one plant should be a minor offence resulting in a fine, and in the Netherlands, cultivation of not more than five plants would normally not be formally prosecuted. In Cyprus, cultivation of three or more plants is presumed to be a supply offence. In Denmark, prosecution guidelines consider 100 grams of cannabis plants as the limit for possession for personal use. In the United Kingdom, the 2012 drug offences sentencing guideline proposes the starting point as a fine or community order for cultivation of nine plants. In Portugal, where drug use and personal possession offences were decriminalised in 2001, cultivation of any amount, even for personal use, remains a criminal offence. Similarly, the decriminalisation of personal possession offences in Croatia, from 2013, specifically excluded cultivation, meaning that owning one plant for personal use could be punished by a sentence of 6 months to 5 years imprisonment. In Finland, any cultivation is considered as a narcotics offence, which is more serious than an offence of unlawful narcotics use. By contrast, in Spain, since 2015 cultivation for personal use in places visible to the public is considered an administrative offence, only punishable by a fine.

In some countries, the lower priority given to prosecuting owners of one plant has been interpreted by some plant owners as permitting collective growing, known as cannabis social clubs (see page 15), although these clubs are not legally recognised by national governments.

Is it true that growing or buying cannabis is legal in some places?

In considering this question, readers are advised to bear in mind three points: (1) the key differences between legalisation, decriminalisation and depenalisation; (2) any limits to prosecution or penalties for personal cultivation, described above; and (3) that medical use of cannabis or cannabis extract may be legal, as described in Part 1.

Coffeeshops in the Netherlands

In the Netherlands, cultivation, supply and personal possession of cannabis are all criminal offences, punishable with prison sentences according to the law. However, a practice of tolerance, first set out in local guidelines in 1979, has evolved into the present-day concept of 'coffeeshops', that is, cannabis sales outlets licensed by the municipality. About two thirds of municipalities do not allow coffeeshops, and the number of coffeeshops across the country has decreased, from 846 in 1999 to 614 in 2013. The sale of small quantities of cannabis to adults (aged over 18) in coffeeshops is tolerated in an attempt to keep young adults who experiment with cannabis away from more dangerous drugs (a policy referred to as 'separation of the markets').

A coffeeshop may be closed down and the operator or owner prosecuted if he or she does not meet the Prosecutor General's criteria, which prohibit advertising, nuisance, sale to minors and sale of hard drugs or alcohol. A scheme to convert coffeeshops into closed clubs with registered members was trialled and then dropped in 2012. From January 2013, coffeeshops can only legally be used by residents of the Netherlands on production of an identity card or residence permit. Nevertheless, implementation and enforcement of this rule varies by municipality.

A proposal to limit coffeeshop sales to cannabis products with THC levels under 15 % remains pending while enforcement issues are addressed. No more than 5 grams may be sold to any person in any one transaction and the coffeeshop is not allowed to keep more than 500 grams of cannabis in stock. Yet wholesale cultivation and distribution of cannabis is not tolerated in the Netherlands, resulting in what is known as 'the back-door problem', that is, drugs may be 'legally' sold at the front door of the shop but cannot be legally supplied to the back door. Although there have been many proposals to resolve this inconsistency, to date no solution has been agreed. Alongside the coffeeshop system, police have the discretionary power to confiscate small amounts of cannabis or plants cultivated for personal use, but the owner will not be formally prosecuted if he or she hands them over voluntarily.

An evaluation of the Dutch drug policy in 2009 found that the coffeeshops were the main source of cannabis for users, the markets for soft and hard drugs remained separate, and adult cannabis use was relatively low compared with other European countries (WODC, 2009). However, underage use was high (whether due to coffeeshops, greater acceptance of use, or other factors), there was serious nuisance from drug tourism, and the sector had become increasingly commercialised and of interest to organised crime. The most recent legal developments described above took place partly in response to this evaluation.

Cannabis social clubs

Cannabis social clubs operate on the assumption that if one person will not be prosecuted for cultivating one cannabis plant in private for his or her own use, then 20 people should not be prosecuted for cultivating 20 plants together in private for their own use. Clearly this concept is not without problems. Establishing what constitutes 'shared' production, for example, is problematic, and it is unclear how these activities can be legally distinguished from supply offences. Across the European Union, drug supply offences themselves have varying legal definitions, but usually require the passing of drugs between persons and some quantity criteria may also apply.

In response, cannabis social clubs have tried to establish operating rules in order to avoid charges of trafficking, drug supply or encouraging drug use. For example, the advocacy group Encod has proposed that clubs should operate as a collective agreement, with a register of members, costs calculated to reflect expected individual consumption, and the amount produced per person limited and intended for immediate consumption (ENCOD, 2011). Clubs should be closed to the public, and new members should be existing cannabis users who are accepted only by invitation. This model, although promoted by activists in Belgium, France, Germany, Slovenia and Spain, is not tolerated by national authorities in any European country. This means that clubs cultivating cannabis are likely to be subject to legal sanctions should they be identified or, at least, are operating in a legal grey area.

It is difficult to know to what extent these social clubs exist in Europe, although they do appear to be rare. The city of

Utrecht in the Netherlands announced a project to develop such a club in 2011, but the project has not yet been implemented. Some clubs report that they are operating on a limited basis in some Spanish regions, taking advantage of the fact that, although production, supply and personal possession of cannabis in public are prohibited under Spanish law, possession in private spaces is not penalised. The legal position on shared consumption is more complicated, but in 2015 three judgements of the Supreme Court in Spain concluded that organised, institutionalised and persistent cultivation and distribution of cannabis among an association open to new members is considered to be drug trafficking.

What are the possible penalties for cannabis sale or trafficking?

The maximum penalties for cannabis supply offences vary considerably between European countries in ways that can be difficult to describe simply. For example, the maximum penalties for minor cannabis supply offences range from 2 to 3 years in Denmark, Estonia, Finland, Norway, Spain and Sweden to life imprisonment in Cyprus, Ireland and Malta. However, the first group of countries have established a scale of offences with graduated punishments, within which an offence of aggravated supply may attract maximum sentences of 15 to 20 years in prison, while the second group of countries have one maximum sentence for any supply offence, but allow judicial discretion to play a wider role.

The penalty range allowed in countries' laws may depend on a variety of defined aggravating circumstances, not just the substance involved. This makes direct comparison between countries much more difficult. Analysis of legislation reveals that factors affecting the penalty imposed will often include the amount of drug involved, whether organised crime or gangs are involved, the motive (profit-seeking or other supply) and sometimes even the court in which the offender is tried (e.g. Ireland, Malta, United Kingdom). Analysis of prosecutor directives and sentencing guidelines reveals further nuances.

One way of comparing penalties set out in the laws is to combine offence sentence ranges with the quantity threshold data that are available from a few countries. Supplying amounts up to a few hundred grams of cannabis resin is punishable by prison sentences of several years in Hungary, Lithuania and Slovakia. In Hungary, for example, supply of more than 6 grams of THC (e.g. 60 grams of resin with a potency of 10 %) increases the range of the possible sentence from up to 2 years to between 2 and 8 years. However, penalties are increased in Austria, Denmark, Finland and Spain when amounts of the order of kilograms are involved. In Denmark, the Director of Public Prosecutions' notice, revised in 2008, states that the guide quantity is about 10 kilograms of resin or 15 kilograms of herb to bring a prosecution under the criminal code (with a penalty of up to 10 years in prison), rather than under the Act on Euphoriant Substances (with a penalty up to 2 years in prison).

At the other end of the scale is the concept of minor supply. Although some laws consider the (lack of) profit motive of the offender, there have been attempts to take account of group use, where the practice of sharing a cannabis cigarette amounts to an offence of supply, which may require a proportional response. Belgium removed 'drug use in a group' as a criminal offence in 2003. Malta, acknowledging that a minimum penalty of 6 months for supply was disproportionate in such cases, changed the law in 2006 to permit exclusion of that punishment for a first offence, if 'the offender intended to consume the drug on the spot with others'. In Hungary, a clause introduced to the drug control sections of the penal code in 2003 allowed suppliers to qualify for diversion to a treatment alternative to punishment, if the offence 'involves a small quantity offered or supplied to be consumed jointly'. The following year, however, the Constitutional Court struck down the clause, on the grounds that the word 'jointly' was too vague to form the basis of a criminal offence.

Is it illegal to drive with cannabis in the body?

A review of the available evidence has found that driving after cannabis intoxication and recent use of cannabis increased the risk of a car accident by 35 %, and the presence of a high level of THC in the blood may double the risk (a 100 % increase) (Rogeberg and Elvik, 2016). In all countries in Europe, it is illegal to drive when skills are reduced due to cannabis consumption, but the laws vary, both in their phrasing and in their interpretation. In some countries, it is illegal to drive 'under the influence', that is, while driving skills are adversely affected. In these countries, if the driver is able to pass cognitive or psychomotor tests, such as walking in a straight line, no driving offence has been committed, even if biological samples taken from the driver test positive for the presence of cannabis metabolites. In other countries, it is illegal to drive 'after the consumption' of drugs, with no

reference to effects on driving skills. In these countries, a positive urine test for cannabis metabolites, which could reflect cannabis consumption several days earlier, may lead to a drug-driving conviction in the absence of any visible effect on driving skills at the time of the test. These two examples suggest different policy emphases: on traffic safety and on illicit drug control, respectively. Yet the distinction is not always clear because, in practice, some experts report that 'under the influence' may be interpreted by prosecutors as including any trace of drugs in a biological sample.

Over the last 10 years, the matter has become more nuanced. Aided by advances in roadside screening technology, some countries have introduced laws that penalise drivers found with the presence of more than a defined amount of THC in their blood. The specified level may vary, from a low level that confirms the presence of the drug (Denmark, Spain, United Kingdom), to a level that is considered equivalent to the drink-driving limit (Norway). Roadside oral fluid screening devices are now being used in 15 countries ([3]).

As policymakers try to avoid condoning drivers with small amounts of illicit substances in their bodies, the binary classification of drugged driving as 'legal/illegal' is being replaced in several countries by graduated punishments, with a lower punishment for any detection of THC and a higher one for being clearly impaired (such as in Belgium, Germany, Finland, Spain, United Kingdom). There is also the possible combination of road safety and drug laws: when cannabis metabolites are detected in a driver at levels unlikely to impair driving, the driver can be charged with a drug use offence, rather than a road traffic offence (as reported in Finland and Norway).

([3]) Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Italy, Luxembourg, Norway, Poland, Portugal, Romania, Slovenia, Spain, United Kingdom.

Part 3
What happens to cannabis offenders in practice?

Analysing a country's legislation does not in itself reveal how laws are enforced. The laws will primarily be implemented by the police forces, which may have powers of discretion or be subject to local or national directives that prioritise their responses to different offences. Hence, if cannabis use or personal possession is a crime, it does not follow that every cannabis user found will be convicted. The rise in cannabis use in different countries in Europe has seen discussion of whether police should give cannabis use a lower priority in times of reduced resources, or an increased priority due to concomitant rise in harms. Police priorities may also be affected if recorded actions are used as a performance measurement of law enforcement effectiveness. Increases in the numbers of cannabis users in treatment may or may not be due to the increased use of treatment as an alternative to punishment. This section describes how the laws are implemented, how cannabis offenders enter the criminal justice system, usually on discovery by police or other law enforcement, and eventually how they leave it and how such cases are closed, whether by a police warning, diversion to treatment or counselling, or appearing in front of the prosecutor or the court with the possibility of different outcomes, most often a fine or, occasionally, a prison sentence.

How much do the police focus on cannabis users?

There are conflicting views on how much the police focus on cannabis users. One view suggests that the performance management approach of setting annual targets, which has spread across Europe during the last two decades, may have unintentionally encouraged law enforcement agencies to focus on cannabis use cases because they are simple to pursue, numerous and easy to 'solve'. Another view is that, particularly in times of stretched resources, the police may overlook 'minor' offences in order to concentrate on the more serious ones, and in some countries minor offences can include use or personal possession of cannabis. While these approaches may vary even from city to city and from month to month, we can discern a broad trend across Europe by examining police and other law enforcement actions through the number of drug law offences reported annually.

The EMCDDA collects routine data on drug law offences from EU Member States, Norway and Turkey. Broadly speaking, these are law enforcement reports of acts that breach drug laws, usually recorded regardless of any subsequent charge or penalty (EMCDDA, 2015a). It is estimated that around 1.5 million drug law offences are reported each year in the European Union. Of these, about 760 000 were related to cannabis in 2015, 609 000 of which were cannabis use-related offences (usually use or personal possession). Because some countries do not report recorded warnings or minor offences to the EMCDDA, these numbers almost certainly underestimate the true extent of drug law offences in Europe. An EU index of cannabis use-related offences, based on data provided by 18 Member States, shows this number has increased by 27 % between 2006 and 2015. Looking at individual countries, increases in cannabis use-related offences do not seem to be related to changes in the estimated rates of cannabis use. This may be because the number of drug law offence reports for cannabis use depends more on police activity than on the number of cannabis users in a country.

The increase in offences related to cannabis use suggests that, in general, police in Europe stop and record cannabis users, rather than overlook them — though there may still be other explanations for this increase, such as greater police attention towards drug users, or more open use. Nevertheless, because recording a cannabis user is only the first step in the justice system, we also need to ask how users eventually leave that system, usually with punishment or some form of treatment.

What is the most common punishment for cannabis use?

An EMCDDA study indicated that many countries give fines, warnings or community work orders for offences of use or possession of drugs for personal use, although some central and eastern European countries, such as Bulgaria,

Poland, Romania and Slovakia, were more likely to use suspended prison sentences (EMCDDA, 2009). Unfortunately, the drug involved was rarely identified in the data used in the study, and this continues to be the case in sentencing or other outcome data reported to the EMCDDA.

In the United Kingdom (England and Wales), there is a specific legal disposal for the possession or use of small amounts of cannabis (and, since 2014, khat) — police may give a verbal 'cannabis warning' which results in no further legal action. About 46 700 cannabis and khat warnings were given by police in the year ending March 2015, nearly double the number of all punishments issued in court for possession of class B/C drugs.

In other countries which collect data on outcomes of use or personal possession offences for drugs, bearing in mind the high proportions of drug law offences that involve cannabis, it can be reasonably assumed that the majority of outcomes recorded were for cannabis possession.

In Austria, a temporary suspension of prosecution is possible for minor drug offenders, and this is the outcome in over 12 000 cases recorded in 2015, as opposed to some 3 000 convictions for misdemeanour offences. In the Czech Republic, 2015 saw nearly 2 000 administrative proceedings (punishable by a fine) for possession of small amounts of drugs, compared with less than 400 criminal sentences for personal possession of amounts greater than small. In Portugal, anyone found by the police who is using or possessing a small amount of drugs is sent to a commission for dissuasion of drug addiction, which is tasked with identifying the reason for drug-taking and deciding on the most appropriate sanction to stop it. An occasional drug user coming before a commission for the second time is likely to be told to report periodically to a chosen location, or receive a fine of EUR 30–40, and proportionally more on further occasions.

Where and when are cannabis users treated rather than punished?

The majority of countries in Europe appear to opt for policies of decriminalisation or depenalisation of offences related to cannabis use, either by using non-criminal punishments or simply closing the case as minor. However, some countries have options for alternatives to punishment, diverting the users to a rehabilitative measure. In those countries, even users without any diagnosis of addiction, who commit minor drugs possession offences, may be eligible for diversion to a counselling or rehabilitation course (Croatia, France, Italy, Luxembourg, Latvia, Malta, Portugal).

Drug users in Italy are interviewed by the Prefecture and then may be sent to a local public drug addiction services unit to complete a rehabilitation programme. In Luxembourg, the prosecutor may suspend proceedings, in Latvia, the court may suspend a punitive sentence, on condition that the offender attends some form of treatment or counselling course. In Croatia, the court may sentence an offender to undergo rehabilitative measures. In Malta, the Drug Dependence (Treatment not Imprisonment) Act 2015 introduced a new system in which a second drug offence would lead to an assessment by a three-person panel that could make a treatment order.

In France, a 'drugs awareness course' was established in 2007 as an option to ensure that the criminal justice system and the prosecutor can make a constructive and proportionate response to occasional, non-problematic cannabis users rather than simply dismiss minor cases or give a criminal conviction. The offender has to pay the cost of the course, which currently averages EUR 160–230, but cannot be more than EUR 450. This may be interpreted as a response with both rehabilitative and punitive effects. However, this measure has not been widely implemented. An evaluation carried out by the French drugs observatory (OFDT) in 2012 found that the use of the courses had been rather modest; about 4 500 courses were awarded annually, while over 120 000 people had been stopped for cannabis offences in 2010 (Obradovic, 2012). This increased to 11 801 courses in 2013. There was little consistent application nationwide, both in terms of the number of courses awarded and the costs charged to the users.

In Portugal, in 2015, rulings of the dissuasion commissions regarding all drugs were to suspend the process in 5 953 cases, to issue punitive rulings in 1 608 cases, and to suspend the process with treatment in 809 cases. In recent years, around 60–65 % of suspensions were for users who were not considered to be addicted and 15–20 % were suspended when the user agreed to undergo treatment.

More information on where and when drug law offenders are sent to treatment is available from drug treatment demand data. Each year, European countries provide the EMCDDA with anonymised data on those entering specialised drug treatment. Overall in Europe, the number of cannabis users entering drug treatment for the first time in their life ('new treatment clients') has more than doubled between 2003 and 2014 [4]. Each year since 2009, among

[4] From 31 178 in 2003 to 67 444 across 23 European countries.

new treatment clients in Europe, cannabis has been the drug most often reported as the main reason for seeking help. There is no standardised scale that might indicate severity of cannabis use and related treatment need, but high frequency of use may be considered as a proxy. From data referring to 2014, more than one third (37 %) of new cannabis treatment clients reported that they used cannabis daily in the month before they entered treatment.

The practice of referring cannabis users from the criminal justice system to drug treatment differs markedly across Europe. In 2014, among countries with more than 100 new cannabis treatment clients, 5 % of such clients in the Netherlands were referred by courts, probation and police, while in Hungary the proportion was 84 %. As data are aggregated at European level, it is not possible to ascertain use frequency for this subgroup of referrals from criminal justice, but it is possible to compare the two datasets of frequency of use and source of referral for new cannabis treatment clients. This comparison shows diverse relationships between the two groups. In some of those countries, such as Finland, France, Italy and Portugal, the proportion of these clients who are daily users is similar to the proportion referred by the criminal justice system. However, in Ireland, the Netherlands and Turkey, a large proportion of new cannabis treatment clients are daily users, while the percentage of first-time cannabis clients referred by the criminal justice system is small. Conversely, in Croatia, Germany and Hungary, a relatively small proportion of new cannabis treatment clients are daily users, yet a much larger proportion has been referred by the criminal justice system. Therefore, across Europe, no consistent relationship can be discerned between the frequency of cannabis use among treatment entrants and the likelihood of referral into treatment by the criminal justice system.

Part 4
Where is cannabis legislation going?

Over the last 20 years, the trend in laws has been to reduce, even remove, prison penalties for minor cannabis possession offences, although in some countries penalties have increased. These penalty changes may apply specifically to cannabis offences or to minor offences involving any drug. The EMCDDA has analysed the available data on prevalence of use before and after each change, in order to draw possible lessons for policymakers. Researchers have also examined the effects of policy changes in France, the Netherlands and the United Kingdom on use.

All changes to date in Europe have been to adjust the size of the penalty; no country has removed all penalties or permitted the legal distribution of cannabis. Nevertheless, there are a number of minor indicators of interest in changing cannabis legislation — whether to decriminalise, or to legalise, recreational use of cannabis in various countries around Europe. Several examples are described here. (There are also discussions regarding medicinal and industrial use of cannabis but they are not analysed here.)

How and why have countries changed laws (or punishments) for possession of cannabis?

Since the EMCDDA began monitoring drug laws in the late 1990s, the general trend among countries has been to reduce the legal penalties for cannabis use-related offences, as summarised in Table 2. This statement, however, refers to the legislation and police or prosecutor directives only. In the absence of comparable national data on criminal justice system outcomes, it is not possible to comment on how these punishments are put into practice.

Changes have been made to laws on cannabis possession, or the penalties attached to them, for various reasons. These include ensuring that punishments are consistent, matching the severity of punishment to the health risks of different drugs and prioritising treatment over punishment.

In 2003, a Policy Note in Belgium set out a policy of standardising the punishment of cannabis users by introducing a minor fine. This was done because, previously, punishments were not applied uniformly as a result of vagueness in the law.

In 2004, the United Kingdom reclassified cannabis from class B to the lower class C. This change aimed to deliver a more effective message about the graded dangers of different drugs and to allow law enforcement to focus on 'class A' drugs that cause the most harm. However, in 2009, cannabis was again classified in class B as a precautionary measure in response to both the known and uncertain long-term health impacts of higher potency cannabis.

In 2006, Italy removed the legal distinction between two classes of illicit drugs, effectively raising the penalty for possession of cannabis for personal use. This was done to reaffirm that substance abuse is illegal and that all substances, regardless of their effects, are dangerous and

TABLE 2
Types of change in law for cannabis use-related offences

Form of change	Countries, year(s) of change
Reducing the maximum prison sentence	Finland (2001), United Kingdom (2004), Greece (2006, 2013), Czech Republic (2010)
Removing the prison sentences for minor offences (may include changing the status of the offence from criminal to non-criminal)	Portugal (2001), Luxembourg (2001), Belgium (2003), Slovenia (2005), Croatia (2013), Malta (2015)
Decreasing the non-prison penalty	Italy (2014)
Increasing the non-prison penalty	Denmark (2004), Italy (2006)
Increasing the prison penalty	United Kingdom (2009), Hungary (2013)
Facilitating closure of a minor case	Austria (2008, 2015), Poland (2011)

damaging. In February 2014, the Constitutional Court declared that amendment illegitimate (for unrelated reasons), and therefore a new amendment was passed. Penalties for minor personal use offences, such as suspension of the driving licence, are now 1–3 months for cannabis and other less dangerous drugs and 2–12 months for the more dangerous drugs. Penalties for larger-scale offences now include a lower sanction range (penalties reduced by between one third and one half) for substances with a lower health impact, such as cannabis.

In France, a new 'drugs awareness course' was introduced in 2007, which aimed to provide a measure by which the judiciary could send cannabis users to educational courses rather than the more intense treatment courses — or dismissal of the case — that had been the only non-punitive response before.

In other countries, changes in laws on cannabis were incidental to changes in laws targeting other drugs. This included the decriminalisation of all illicit drugs in Portugal in 2000, in response to the country's heroin problem, a 2005 change in Slovenia, which removed prison penalties for all types of minor offences (including drugs possession); a 2013 change in Croatia, which was motivated by considerations of proportionality in punishments; and a 2015 legal change in Malta, which aimed to rehabilitate persons suffering from drug dependence.

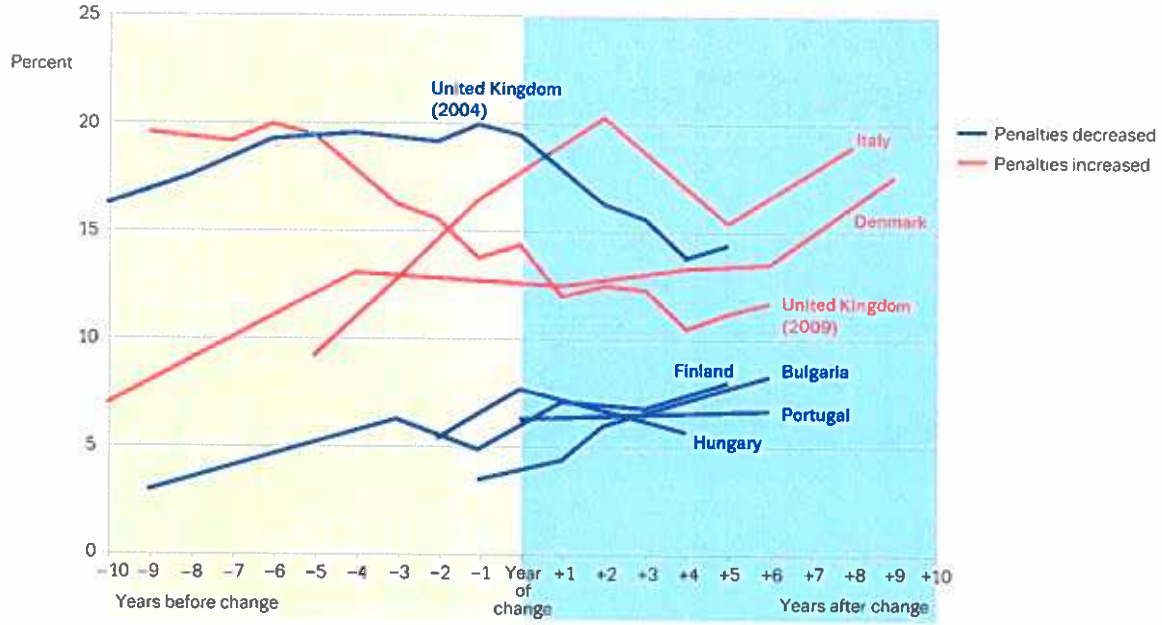
Do changes in laws affect levels of cannabis use?

It is not easy to show whether or not changes in the laws had effects on levels of cannabis use, though it should also be remembered that the primary objectives of the changes were to address other issues, as mentioned above. However, impact evaluations are rarely carried out because of the difficulty of assessing what would have happened without the law changes. Incomplete knowledge of how the laws are put into practice may create a further complication.

A concern is often expressed that, while penalties for cannabis possession (and their consequences) may seem relatively severe, reducing penalties for cannabis use will send a signal to young people that cannabis use is somehow more acceptable and thereby increase rates of use. Conversely, when cannabis use increases, concerns are expressed that the penalties are too low and should be raised in order to discourage use. To examine the evidence behind these assumptions, the EMCDDA published a simple comparison of cannabis use rates in the years before and after legal changes in countries where the law had changed (EMCDDA, 2011a). As cannabis use is concentrated among the younger age groups, the analysis was performed using EMCDDA prevalence data for 15- to 34-year-olds, who had been asked if they had used cannabis in the last year.

FIGURE 4

Cannabis use before and after changes in legislation in selected countries: use in previous 12 months among young adults (age 15–34)



The legal impact hypothesis, in its simplest form, predicts that increased penalties will decrease drug use and reduced penalties will increase drug use. However, in the original analysis, and an updated version (Figure 4), no simple association can be found between legal changes and the prevalence of cannabis use.

In France, a study evaluated the effects of the introduction, in 2007, of drugs awareness courses that were aimed at occasional cannabis users (Obradovic, 2012). The evaluation, which surveyed 4 000 participants, found that the courses had a limited impact on their use of cannabis, partly because the courses were 'not sufficiently personalised'. One fifth of users stated they would not change their behaviour (except to avoid being caught again). Although two thirds said they would stop or reduce their cannabis use, most of these had already started to reconsider their drug use immediately after their arrest, before they attended the course. The courses were also ordered infrequently, with only about 4 500 per year, compared with over 100 000 incidents of police questioning cannabis users.

In the United Kingdom, a study analysed the police and criminal justice statistics before and after the reclassification of cannabis in 2004 and 2009 and the introduction of a new, informal 'cannabis warning' (Shiner, 2015). The use of formal police cautions for cannabis possession fell from nearly 40 000 to just over 20 000 per year, but the number of cannabis warnings rose to peak at about 100 000 in 2008. Police cautions for possession of other drugs also rose. Court convictions for possession dropped sharply in 2004–2006, but rose again to pre-2004 levels by 2010. Meanwhile cannabis use rates for young adults fell steadily from their peak in 2002. These results illustrate the complexity of relationships between the penalty levels in the law, the punishments actually given, and the use rates.

One legal change which does seem to have had an impact was the decision to restrict students' access to coffeeshops in the Dutch city of Maastricht, based on nationality: Dutch, German and Belgian citizens were permitted access, but others (including French and Luxembourgish) were not. Analysis of administrative panel data on over 54 000 course grades of local students enrolled at Maastricht University before and during the partial cannabis prohibition showed that the academic performance of students who were no longer legally permitted to buy cannabis increased substantially (Marie and Zölitz, 2015). Further analysis suggested that these performance gains were driven by improved understanding of material (cognitive ability) rather than changes in students' study effort (motivation).

Are national parliaments discussing decriminalisation or legalisation?

No national government in the European Union has expressed any support for the idea of legalisation of cannabis for recreational use, but there have been discussions about reducing penalties for cannabis use-related offences. Members of national parliaments who are usually not in government have also proposed draft laws for cannabis legalisation.

Entities within at least four governing administrations have questioned their countries' legal approach to penalising cannabis use-related offences, and considered the possibility of change.

In Belgium, in 2014, according to a report to the EMCDDA from the Reitox national focal point, an evaluation of the current cannabis policy was conducted by the General Drugs Policy Cell on the request of the Minister of Public Health in response to public and national and international debates about penalties for possession and use of cannabis. The evaluation concluded that the legal framework and guidelines for penalties on the possession of cannabis was complex, contained many technical flaws, and led to uncertainties for all involved. A clear, coherent and pragmatic legal framework was needed, but the legalisation of cannabis and its derivatives was incompatible with Belgium's commitments to the United Nations and European Union. A technical report on a future policy is now being finalised by the General Drugs Policy Cell and the Inter-Ministerial Conference on Drugs, which coordinates cooperation between the state and the different federal policy levels.

In Ireland, a debate developed on whether to follow the Portuguese model and decriminalise the possession of all drugs, not just cannabis. After a public consultation, the cross-parliamentary Justice, Defence, and Equality Committee and the then minister for the national drugs strategy declared they supported the proposal (O'Keeffe, 2015). The debate on this issue continues after a change in government.

In France, a parliamentary report on the evaluation of the fight against illicit drug use proposed to transform cannabis-use offences into third-class contraventions (punishable by a maximum fine of EUR 450) (Le Dain and Marcangeli, 2014). One of the two rapporteurs recommended legalising private cannabis use by adults and establishing a regulated supply of cannabis under the control of the state. In the framework of the draft law on health under discussion in 2015, the Senate approved an amendment to punish a first instance of drug use by

a third-class contravention. However, the government did not approve it, and in January 2016 the new health law was approved without this change.

In Italy, the 2014 Annual Report of the National Anti-Mafia Directorate concluded, after reviewing the national seizure and consumption statistics for cannabis, that it was neither feasible nor desirable, given resources required for other operations, to increase repressive actions, which were 'objectively inadequate' (Direzione Nazionale Antimafia, 2014). It invited lawmakers to reconsider existing policies for combating the sale and use of cannabis, and consider whether 'depenalisation' would better balance protecting the right to health of citizens against the use of law enforcement and criminal justice resources while reducing the criminal market.

National parliaments have also started to see detailed proposals for the legalisation of cannabis. These tend to be from political parties not in government, and so they are usually rejected. However, as these are proposals for fundamental change of the control system rather than simple adjustments, it may be useful to outline them in order to see the different control systems being put forward around Europe.

In Ireland, a private member's bill in 2013 proposed a system of licensed cultivation (commercial, home, social club), distribution and sale. Retail sale would be limited to one ounce (28 grams) per transaction, with the product in plain packaging, while advertising would be limited to adult magazines and websites. Taxation revenue would be fully ring-fenced to be invested in addiction services, medical research on cannabis and juvenile education on drug-use issues. The bill was defeated by 111 votes to 8 on 6 November 2013 (The Journal, 2013).

In Poland, draft legislation to amend the national drug law in order to permit cannabis clubs was presented to the parliament in 2013 as a bill from the party Ruch Palikota (Ruch Palikota, 2013). The draft was not taken further after the Legal Parliamentary Commission recognised that it was incompatible with international drug conventions and unconstitutional (the draft proposed responsibilities for the Ministry of Justice which were not delegated in line with constitutional requirements).

In Portugal, in June 2013, the national parliament debated a bill from the Left Bloc (Bloco de Esquerda), which aimed to legalise the cultivation of cannabis for personal use. It would permit possession of 30 days' doses (defined like the current 10-day limit for an administrative offence), cultivation of 10 plants (Lusa, 2013) and allow the creation of clubs for cannabis consumption, with a maximum of 300 members. The bill was put to a formal vote but was not approved and nor was an amended version of the bill in April 2015.

In France, in January 2014, the ecologist group presented a legislative draft to regulate the production of cannabis products that could be sold through tobacconists without advertising, for use in private but not public spaces. It prohibited sale to minors and sales by vending machines (France Info, 2015). After various hearings and amendments, the bill was rejected in April 2015.

In the Netherlands, a private member's bill was proposed on 26 February 2015 by two members of the political party D66. This draft law had two aims. The first was to give legal force to the existing coffeeshop tolerance criteria by embedding them into the Opium Act itself, rather than the accompanying Directive as at present; within this, the maximum stock level that is currently 500 grams could be changed by each municipality. The second aim was to create a regulated system of cultivation and supply for the sale of cannabis in coffeeshops, to counter the organised crime that currently occupies this role and the associated dangers of illegal cultivation such as nuisance and fire. Professional growers would be licensed and responsible for product quality and packaging.

In Germany, a draft cannabis control act was presented to the German Bundestag by the parliamentary group of Bundnis90/Greens in March 2015 and referred to the relevant committees for consultation. It would legalise possession of 30 grams of cannabis (herb or resin) or three female plants and licence growers and specialist sales outlets. The product would be taxed at EUR 4/gram for herb, EUR 5 for resin and EUR 6 for oils. In May 2015 two members of parliament, from the (governing) conservative party CDU and the (in opposition) Green Party, published a position paper proposing the legalisation of cannabis in order to gain EUR 2 billion in taxes instead of spending EUR 2 billion on prosecuting cannabis users (Mayer-Ruth, 2015; Waters, 2015). As yet, no legal changes have been made.

In Italy, on 24 November 2015, 221 members of parliament presented a draft law (PDL n.3447) to legalise cannabis cultivation and sale which received cross-party support. The bill proposed a state monopoly on cultivation and sale while allowing registered citizens to grow five female plants. Citizens would be permitted to carry 5 grams of cannabis product or possess 15 grams in a private home. It also allowed non-profit cannabis growers' clubs with a maximum of 50 members (thus 250 plants). As at January 2017, following examination by the Joint Parliamentary Commission on Justice and Social Affairs, the bill was being examined in several parliamentary commissions where many amendments were tabled.

In Norway, in 2015, the Green Party came out in favour of legalisation of cannabis, with strict regulation, to protect the consumers and the community generally (MDG, 2015).

In Slovenia, at the beginning of 2016, the Social Democratic party, a member of the governing coalition, proposed two variants of a draft law on cannabis. In the first variant, personal cannabis cultivation and collective cultivation (social clubs) would be permitted under licence, in the second variant these would not be permitted, and cannabis cultivation would only be allowed by licensed producers. Retail would only be through pharmacies, and the limits to recreational cannabis would be possession of 10 grams of products per day of up to 20 % THC (limits for medical cannabis would be higher).

How much support is there for legalisation of cannabis around Europe?

There are few comparable surveys that indicate whether there is any interest in legalisation of cannabis across the European Union. Two possible indicators, the Eurobarometer opinion surveys of young people and the citizens' initiative aimed at the European Commission, suggested that there was little support for Europe-wide legalisation. Within countries, non-parliamentary expressions of support have been seen in citizens' initiatives that ask national governments to change and local or regional initiatives.

The opinions of young Europeans on a wide range of topics are sampled regularly by the 'Flash Eurobarometer' (FEB) poll. On the three occasions the survey has asked a small sample of 15- to 24-year-olds in each country around Europe their opinion on whether cannabis sale should be banned or regulated, it has found that the majority of this young age group support the ban. However, the size of the majority has been falling over time, from 67 % in 2008 (FEB 233), to 59 % in 2011 (FEB 330) and 53 % in 2014 (FEB 401) (European Commission, 2014).

A citizens' petition to the European Commission was initiated via the European Citizens' Initiative register in 2013 to request a common European policy on regulated cannabis production, sale and use. It only received approximately 173 000 signatures, rather than the one million required for further consideration, before it was closed in 2015.

Several national parliamentary or government websites in Europe provide for citizens to start petitions; if a petition receives enough signatures by a certain deadline, the legislature is required to consider it officially and respond. Citizens' petitions on cannabis laws are summarised in Table 3.

TABLE 3
Citizen petitions in the European Union to change cannabis laws

Country	Change desired	Petitioners	Year considered	Outcome
Slovenia	Legalise home growing of cannabis for medical and personal use	11 000	2014	Government moved THC from Group I to Group II in the law
Latvia (The Baltic Times, 2015)	Remove all penalties for growing, possessing and carrying small amounts of cannabis and use in private	10 000+	2015	Rejected by parliament
European Commission	A common European policy on regulated cannabis production, sale and use	173 000	2015	Insufficient petitioners; closed
Austria (Parliament of Austrian Republic, 2015)	Legalise growing and producing cannabis for personal use, purchase/possession of small quantities for persons aged over 16	32 000	2015	Amendment to Narcotic Substances Act asks police to report non-problematic users to health authorities, not judicial authorities (1)
United Kingdom (Petitions: UK Government and Parliament, 2015)	Legalise production, sale and use of cannabis	235 000	2015	Parliament rejected
Estonia (ERR, 2015)	Legalise recreational use of cannabis	5000	2016	Discussed in Parliament Legal Affairs Committee; ongoing

(1) Reportedly this was quite likely even without the petition

Although most of these petitions achieved the level of support required for further consideration, no government has yet agreed to make the proposed legislative change.

On 18 March 2016, a draft law on legal regulation of cannabis and derivatives production, consumption and trade was presented in Italy as a 'popular initiative' (Pini, 2016). Within the 6-month deadline, 57 500 signatures were collected (more than the requirement of 50 000), and so they were presented to the Chamber of Deputies on 11 November 2016. By January 2017, the text had not yet been included in a parliamentary session. It provides, among other things, freedom of individual self-cultivation or associated production in 'cannabis social clubs', the widest possible access to medical cannabis, an annual report to the parliament, the total 'depenalisation' of personal use of all substances, and the release of prisoners held for conduct not criminally punishable.

There have also been expressions of interest in changing cannabis legislation at a regional or city level, as these examples from four different countries show.

In Spain, in 2012, the Basque Parliament discussed possible solutions to the growing activity of cannabis social clubs. In 2014, the city of San Sebastian in the Basque country passed regulations that would limit the clubs' opening hours and proximity to schools (Fanals, 2014), and the Catalan city of Girona passed a Special Urbanism Plan on the clubs in April 2015. In December 2014, the Parliament of Navarra also passed legislation to regulate cannabis social clubs. However, the Spanish government considered that these regulations and laws exceed the city and regional powers, and the Spanish Constitutional Court ordered their suspension in March 2015.

In Denmark, the Copenhagen city council has repeatedly made proposals to run a pilot project on the legal production, distribution and possession of cannabis, in order to take the cannabis business away from organised crime and reduce access to minors (CPH Post, 2013). These requests have been refused by the Danish ministers of justice and health because of the likelihood of increased harm to public health. The latest rejection was in March 2014 (The Local, 2016).

Similarly, in Germany, the Kreuzberg-Friedrichshain district of Berlin submitted plans for four licensed 'specialist cannabis shops' in June 2015. These were rejected in October 2015 by the Federal Institute of Pharmaceuticals (BfArM) (The Local, 2015).

In the Netherlands, in May 2015, the lower house of parliament voted by a narrow majority against any form of regulating cannabis cultivation. In November 2015, a commission of the Union of Municipalities (VNG) published a report calling on the government to regulate small-scale, localised cannabis cultivation in order to take the cannabis business away from organised crime (DutchNews, 2015). At the annual general meeting of the VNG, almost 90 % of the municipalities present voted in favour of a proposal to urge the national government to start experiments regarding the legal regulation of cannabis cultivation and sale.

In addition to these societal, political or local calls for change, there have also been some proposals from the more intellectual spheres, such as the conservative journal Minerva (linked to the think-tank Civita) in Norway (Minerva, 2011) and 'Terra Nova' in France (Ben Lakhdar et al., 2014). In Belgium, some professors have argued for a critical evaluation of the country's cannabis policy (KU Leuven, 2013), while others have advocated for regulation at European and global level, arguing that no single country can successfully act in isolation (Fijnaut and De Ruyver, 2015). In Germany, 120 law professors also argued that cannabis should be legalised in order to stop mass criminalisation, to run better prevention campaigns and to regulate the quality of the product for users' safety (Bleiker, 2014).

None of the initiatives listed above has yet resulted in any EU country significantly changing its laws on cannabis. There remain vocal sections of administrations and the general population in several countries that are pressing for, at the very least, a reduction in punishment for cannabis use-related offences.

Conclusion

This overview of the different approaches to cannabis legislation in Europe has surveyed the complexities and the similarities of the laws across the Member States of the European Union, Norway and Turkey.

It is not easy to discern a common approach to the legislation surrounding cannabis across these countries. Many countries differentiate the legislation and penalties around cannabis sale and use, but in different ways. Several countries treat all illicit drugs the same in the laws, others define cannabis offences as a less serious legal matter, and a few prescribe more severe penalties for cannabis offences.

In some European countries, data suggest a tendency for police to formally register cannabis users, rather than overlook them due to prioritisation of other offences. Despite differences in formal legal sanctions, in most EU countries the actual penalties for possession and use (and often supply) of cannabis are often less severe than those for other illicit substances. Where countries have sought to divert cannabis users into treatment, it is not evident that this approach has received widespread support, with legislative initiatives being designed and implemented with varying degrees of enthusiasm. It is not clear how much this is based on a desire to prioritise a punitive approach or a lack of confidence in the effectiveness of more rehabilitative responses.

Over the last 20 years, at least 15 European countries have made changes to their legislation affecting penalties for cannabis users, though there has been little rigorous scientific evaluation of these. It is unclear whether increasing or reducing legal penalties for cannabis use offences has had a clear or consistent effect on levels of cannabis use in any of these countries. The practical application of the legislation may be varied according to directives or discretion, and effects may also vary according to the users' perception of the penalties that they could receive. Use rates may be affected by other factors, such as anti-smoking policies, and other environmental prevention strategies may also be playing a role.

Attempts to develop systems where supply of recreational cannabis is not punished, such as coffeeshops in the Netherlands and cannabis social clubs, have made little progress. There are fewer coffeeshops in the Netherlands than there were 15 years ago, and they are more tightly controlled. Despite interest in cannabis social clubs in a number of European countries, none has yet achieved even a 'semi-legal' status in which its operation is tolerated but not condoned. In a more global context, European countries have not sought to legalise recreational cannabis in the way that is happening in Uruguay and an increasing number of US states. The few countries that have developed systems to legally produce and distribute cannabis for medical purposes ensure they are strictly regulated. No country permits the supply or possession of medical cannabis without a doctor's prescription and the cannabis that is provided for medical use is cultivated under government supervision.

This overview is published at a time of mounting public debate about cannabis policy. On the one hand, advocates for change claim that cannabis is less harmful than other drugs. They point to legalisation of recreational cannabis in several US states and Uruguay, and upcoming legalisation in Canada. On the other hand, European statistics show the increasing potency of illicit cannabis and the increasing number of people seeking treatment for their cannabis use. Academics and others question the rationale for individual countries' legal approaches to cannabis and advocate a scientific evaluation of the impact of current legislation. Matters are further complicated, as several advocates and commentators conflate medical and recreational cannabis. However, while there are vocal requests to change national and even local policies towards recreational use of cannabis, there is little evidence that these proposals receive majority public support.

During this time of debate and evolution of the legislative situation around Europe and beyond, the EMCDDA will continue to monitor developments in cannabis use and cannabis control. When discussions take place among policymakers, it is hoped that this brief picture of the laws of cannabis use and supply around Europe will provide an objective and reliable basis for future policy decisions.

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At a time of increased debate on the laws controlling the use of cannabis in the European Union, this report answers some of the questions most often asked about cannabis legislation. Using a question and answer format, basic definitions and the obligations of countries under international law are set out in a section on 'What is cannabis and what are countries' obligations to control it?' Two following sections examine the links and disparities between the content of the laws and their guidelines on the one hand and the actual implementation of the laws on the other. The final question and answer section considers whether changes in law have affected cannabis use and how much public support for legal change exists, as it looks at the future direction of cannabis legislation in Europe.

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