European Monitoring Centre
for Drugs and Drug Addiction

SELECTED ISSUE 2009

DRUG OFFENCES: SENTENCING AND OTHER OUTCOMES

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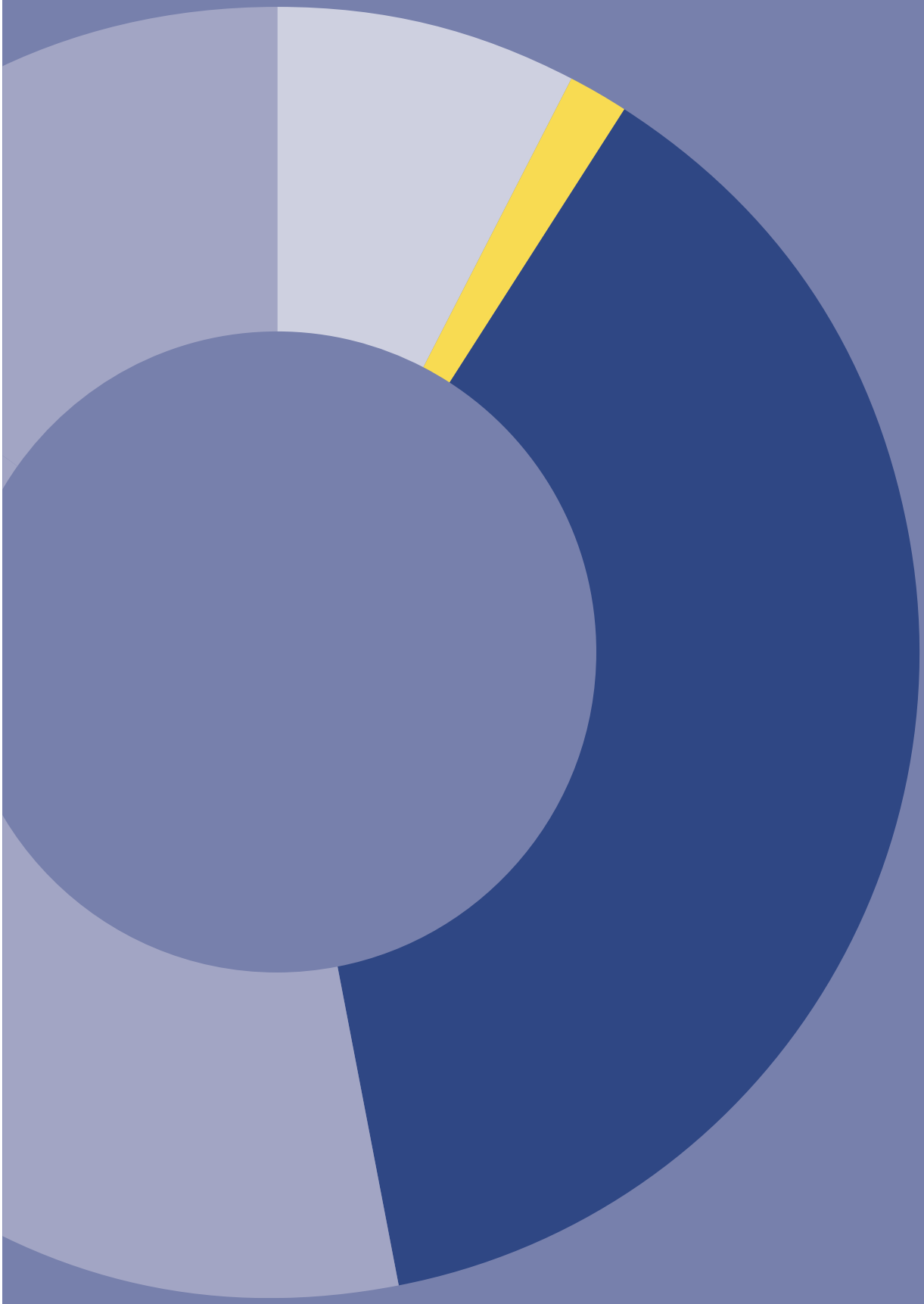

Introductory note and acknowledgments

Three in-depth reviews of topical interest are published as 'Selected issues' each year. These reports are based on information provided to the EMCDDA by the EU Member States and candidate countries and Norway (participating in the work of the EMCDDA since 2001) as part of the national reporting process.

The three issues selected for 2009 are:

- Drug offences: sentencing and other outcomes;
- Polydrug use: patterns and responses;
- Trends in injecting drug use.

All 'Selected issues' (in English) and summaries (in 23 languages) are available on the EMCDDA website: http://www.emcdda.europa.eu/publications/selected-issues

The EMCDDA would like to thank the following for their help in producing this 'Selected issue':

- the heads of Reitox national focal points and their staff;
- the services within each Member State that collected the raw data;
- the members of the Management Board and the Scientific Committee of the EMCDDA;
- contributors to the Reitox academy on sentencing statistics held in June 2008.
- the Office for Official Publications of the European Communities;
- Magenta Publishing.

Reitox national focal points

Reitox is the European information network on drugs and drug addiction. The network is comprised of national focal points in the EU Member States, Norway, the candidate countries and at the European Commission. Under the responsibility of their governments, the focal points are the national authorities providing drug information to the EMCDDA.

The contact details of the national focal points may be found at:
http://www.emcdda.europa.eu/about/partners/reitox-network

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Drug offences: sentencing and other outcomes

Introduction

When comparing drug policies of countries in the European Union, the level of penalties set out in the national laws is a common feature in the discussion. Member States' drug control laws may provide for sanctions for the offences of drug use or personal possession that range from no sanction at all, to life imprisonment, while maximum penalties for supply or trafficking offences range from one year to life in prison. Individual countries may penalise use itself, or only possession for personal use; similarly, they may define 'supply' and 'trafficking' differently ([1]). Countries also differ in how they draw the line between personal use and supply offences. Based on an analysis of their laws, countries may be simplistically labelled as 'liberal' or 'repressive', both value-loaded terms. However, these assertions are meaningless when the sentences handed out for drug law offences are largely unknown.

Until now, observers such as the EMCDDA have been able to analyse and comment on drug laws as such, but have been unable to describe and comment on their implementation, except through expert opinions or an analysis of the statistics on law enforcement actions. What actually happens to offenders through the criminal justice system — or administrative offences system — of each country is not apparent from the laws. The maximum sentences set out in the laws are rarely given, limiting the practical value of comparing them across countries. Statistics on sentences and other outcomes could give a far more accurate picture of the implementation of a country's drug laws and policies, and a more realistic representation of similarities and differences in the day-to-day functioning of countries' criminal justice systems, than the text of laws or the number of 'drug law offences' ([2]) registered by police. We know how many people enter a country's criminal justice system each year for drug law offences, but how do they exit from it? And were these exits the ones that the legislators intended?

The objective of this 'Selected issue' is, therefore, to indicate what is the most likely outcome for an offender after being stopped by police for a drug law offence of use or personal possession, or supply or trafficking, based on the most recent year's statistics. Will they go to prison — and if so, for how long? Will they be fined — and if so, how much? Or will the prosecutor, or even the police, discontinue the case? How does the sentence, or other outcome (warning, discontinuance of the case), vary according to the drug involved? And how likely is it that addicts will be directed to treatment? In short, how is a country's drug policy, as established by its laws to limit and sanction unauthorised possession or supply, implemented by its criminal justice system?

Sketching out the European picture

Information on the drug laws of EU Member States and statistics on drug law offences have been collected and published by the EMCDDA for over ten years. Since 1995, Member States have been reporting the numbers of drug law offences and the stage at which an offence for possession or trafficking is first registered by the police or prosecutor. Since 1997, the EMCDDA has given a descriptive picture of the different Member States' drug laws and their maximum penalties for possession and trafficking offences. The European legal database on drugs (ELDD) has comparative tables describing the maximum penalties for drug possession generally, personal possession of cannabis specifically, and drug trafficking ([3]).

An EMCDDA study of expert opinions on the implementation of drug laws in Europe, published in 2002, concluded that, in

([1]) For simplicity, the two sets of terms are used interchangeably throughout this report, as explained further in the section 'Sentencing users and traffickers: problems of separation', p. 9.

([2]) These may be known as police stops or arrests in individual countries, but across Europe data on drug law offences might be recorded at different stages; see 'Drug law offences: methods and definitions' in the 2009 statistical bulletin (http://www.emcdda.europa.eu/stats09/dlo/methods).

([3]) See 'Overviews of legal topics' (http://eldd.emcdda.europa.eu/html.cfm/index5036EN.html).

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the absence of aggravating circumstances, people charged with personal use offences were very unlikely to go to prison. In all countries, the criminal justice system sought to stop short of giving these offenders a prison sentence, whether at the police, prosecutor, or court stage (EMCDDA, 2002a).

The problems in comparing data on criminal justice outcomes from EU Member States were revealed in another report published in 2002 (EMCDDA, 2002b). The study described the information systems and available data in 13 Member States, including prosecution statistics and conviction statistics. The information systems of individual countries differed considerably in the variables recorded, definitions used, national data sources and reporting periods.

Following these studies, the EMCDDA continued to record the breakdown of stages in criminal justice systems for pan-European illustrations in the same way, as set out in Figure 1.

More recently, in line with increasing national support for providing addicts (and even users) with treatment rather than giving them prison sentences or other forms of punishment, the EMCDDA has monitored the use of therapeutic 'alternatives to prison' ([4]). An exercise carried out with the help of the Member States in 2006 revealed that very few of the 24 countries taking part were able to supply any statistics on the use of alternatives to prison, and just over half were only able to give expert estimates ([5]). Addressing this gap in our knowledge is one of the aims of this 'Selected issue'.

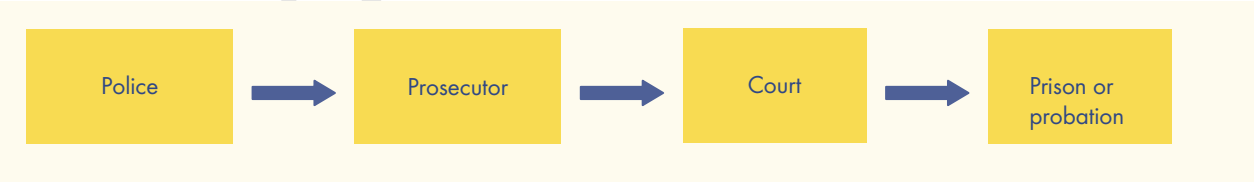
Data collection methods used in this study

For this study, the national focal points were requested to answer a set of questions about the possible sentencing and other outcome options available in their country, the data collection systems, the data collected, and the results available. Where applicable, each question was to be answered for two offence types — personal use (use or personal possession), and supply (production, dealing or trafficking). Focal points were asked to apply the same definitions they use for their regular submission of data on drug law offences to the EMCDDA.

The options available were outlined for the three stages of the criminal justice system (police, prosecutor and court). Information about the data collection systems would describe their coverage, the reporting periods, the statistical units used (e.g. offence, offender, case, sentence), the ways of recording multiple offences and multiple sanctions, and any interlinking between the systems at the different stages. In terms of data collected, there were questions on how cases were recorded that might have been closed before sentencing, for example after voluntary treatment, and it was asked whether or not the principal drug, type of outcome and size of outcome were recorded. Finally, the outcomes for each offence type were requested, categorised by the available options (e.g. numbers of those receiving prison sentences, fines, case closed, treatment orders).

Data on sentencing and other outcomes were reported from 26 countries, in varying degrees of detail. In the United Kingdom, data were reported separately by the three different legal systems of England and Wales, Scotland, and Northern Ireland. No information on results was submitted by Greece, Spain, Malta or Slovenia.

Figure 1: Institutional organisation of criminal justice systems



([4]) For a review of the various alternatives established in national laws see 'Treatment as an alternative to prosecution or imprisonment for adults' (http://eldd.emcdda.europa.eu/html.cfm/index13223EN.html).

([5]) 'Report of the final evaluation of the EU drugs action plan 2005–08' pp 103–4 (http://ec.europa.eu/justice_home/fsj/drugs/docs/sec_2008_2456_en.pdf).

Information on drug law offences and outcomes

Criminal justice systems show considerable variation across Europe, and this must be borne in mind when reading this report. In particular, the ability to make cross-national comparisons is limited by differences between countries in the legal concepts, the definitions and terminology, the data collection systems, and the statistical units and counting rules. A detailed explanation of how each country defines, records and collects data is given in the online annex to this report ([6]).

As well as limiting the comparability of data between countries, national practices may also make it impossible for direct links to be made between statistics on drug law offences and statistics on sentencing. For example, it may not be possible to calculate how many offences proceeded to sentencing. The EMCDDA receives figures for police entries into the criminal justice system (drug law offences), but not those for the various exits from it. Cases progress from the police through the prosecutors to the courts, and may be dropped at any of these stages. In principle, one could subtract the number of cases submitted to prosecutors from the number of police registrations to calculate the number of cases closed by police (e.g. those cases considered insignificant or dropped due to no evidence). But, on closer inspection, this approach would meet several obstacles. First, the time periods rarely interlink — an offender ([7]) might not be sentenced until one or even two years after being arrested. Secondly, a conviction may be for an offence other than the original charge, depending on evidence found during the investigation. Finally, as noted above, different recording units may be involved.

Despite these limitations, the information provided by the Member States enables us, for the first time, to describe quantitatively the main outcomes of charges for illegal personal use or supply of drugs. While there are considerable differences in the details of the national criminal justice systems, whether in the design of the laws or the functioning of the systems, the data provided are sufficient to give indicative answers to most, though not all, of the questions asked at the outset.

This report summarises the key issues, making comparisons between individual countries and examining patterns and differences between groups of countries. Detailed findings by country are set out in the online annex.

Sentencing users and traffickers: problems of separation

In a framework decision adopted in 2004, the European Council effectively established a common definition of supply or trafficking offences in the European Union ([8]). Article 2(1)(a) of the document describes crimes linked to trafficking as 'the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of drugs'. There is no distinction in motive (profit or otherwise), but Article 2(2) excludes conduct committed 'by its perpetrators exclusively for their own personal consumption'. In this report, the former will be referred to as 'supply' or 'trafficking' offences, and the latter will be referred to as 'personal use' or 'personal possession' offences; each pair of labels will be used interchangeably unless otherwise stated.

The definitions used in national data systems vary between countries, and different terminologies may be applied to similar concepts. Not all countries provided a clear breakdown of offences into those for personal use and those for supply. Sentences may be recorded according to the section or article of law that had been breached. Many countries do not have a specific section related to supply, or one for personal use; a drug law offence may only be for 'possession or sale' of a drug, and thus not specifically related to the intention or action of the offender. Similarly, quantity is often a criterion for the presumption of personal use or supply, but some countries have specific offences of 'personal possession of large quantities'. While such countries submit statistics for drug law offences according to these two distinct categories of personal use and supply, it is not clear on what basis they make the distinction. Other ambiguities may also exist in the data. For example, it is not always clear whether trafficking offences are purely offences of sale and transfer of drugs, or if they include other offences such as precursor offences or incitation to drug use.

Some 17 countries reported sentencing results and other outcomes separated into personal use and supply offences.

([6]) Online annex available at http://www.emcdda.europa.eu/publications/selected-issues/sentencing.
([7]) The term 'offenders' is used here to include all individuals who are the subject of sentencing and other outcome statistics. As a result, it may include some individuals who are acquitted. The national reports variously refer to suspects, accused, charged or indicted defendants, criminals, and convicts.
([8]) Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (Official Journal L 335, 11/11/2004 P. 8–11).

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Italy and Turkey did not report any sentencing results for supply offences, while Estonia and Romania did not report results for personal use offences. In Belgium and Ireland, results were only available for all drug offenders, with no way of identifying or estimating the intention of the offender, despite fairly clear distinctions in the laws. In other countries, sentences may be filed by the section of law that had been breached, and thus offences are not distinguished by the intention or action of the offender. This is the case at least in Bulgaria, Germany, France, Sweden, Finland, and Norway, though some countries nevertheless reported separate figures for the two offence types.

In many of the cases where offences are simply defined by severity, an approximate distinction between possession and supply offences can be made by assuming that the lowest level of severity indicates a personal use offence; thus in Finland and Sweden, the 'user/petty' offence might be considered as personal use offences, and the 'standard' and 'aggravated' drug offences might all be considered as supply offences. Nevertheless, pan-European results can be skewed by the differences between national threshold quantities that might appear in the law or prosecution guidelines. For example, in Portugal if an offender is found with up to ten doses of a substance and there is no evidence that they intend to sell, the case would be directed to the non-criminal procedure for users. In contrast, an offender found with more than two user doses of heroin, amphetamine or cocaine in Norway would probably be convicted of a 'standard' drug offence rather than a 'user offence', and thus would be interpreted as a 'supplier' in this report — thereby lowering the overall average sentence for 'suppliers'.

Whether the statistics could be separated out or not, the varying nature of offences included in the data recording systems of different countries means that comparisons between exact numbers have limited validity. For example, attempts, preparation, conspiracy and participation in a crime are counted as consummated crimes in Sweden; the same country includes 'economic crime' in its list of drug crimes, as does the Netherlands. The Netherlands also includes offences against the Law against Abuse of Chemicals in its drug crimes. In France, the import and export of drugs was specifically reported as an offence included in the trafficking statistics, whereas in the United Kingdom the available information regarding similar customs offences was not integrated with that of other supply offences as it was only available by class of drug. Precursor offences were included in the figures submitted by Lithuania, Hungary, Romania and Bulgaria. These were the countries that specifically reported such differences, but it is likely that many others have similar issues to be considered.

In summary, many countries did find a way to separate outcomes into personal use offences and supply offences. However, problems arise when statistics based on these solutions are analysed together at the European level. Countries differ in the cut-off quantities used to distinguish personal use and supply. They may also differ in the types of supply offences that they include in their data; for example, not all countries include precursor offences. Nonetheless, it is still possible to draw a meaningful distinction between countries using the data collected.

Discontinuance of legal action: a common outcome?

It is clear from earlier research (EMCDDA, 2002a) that dismissal of the case, formally or informally, by the police or prosecutors is a likely early outcome for a drug law offender, primarily for personal use offences. A crude comparison of personal use drug law offences with the outcomes reported in the following year (to allow for time to process the case) illustrates the scale of the outcomes that are unaccounted for in official statistics.

Data from six countries comparing drug law offences reported in 2005 against outcomes the following year shows that, even if exact numbers are unattainable (e.g. due to differences in statistical units and time delays), the proportion of unaccounted-for outcomes can range from 25 % to 90 %, depending on the stage in the criminal justice system where the outcomes are measured. Thus, in Italy, 40 456 personal use drug law offences were reported in 2005, which translated into 27 352 interviews carried out by prosecutors in the following year; about 68 % of the reported drug law offences. In Denmark, 16 764 drug law offences were reported in 2005, while 12 552 decisions (including no charge, withdrawal, acquittal) were subsequently recorded; 75 % of the drug law offences reported in 2005. In France, 101 047 drug law offences were declared, and figures available for the Paris region suggested that the national prosecutors dealt with about 45 000 cases, or about 45 %. In Poland, 41 055 drug law offences were reported, whereas 12 853 penalties were imposed by courts for these offences, 31 % of the total. In Germany, 194 444 drug law offences were reported, and 36 774 adults were accused in court (19 %). Finally, in Cyprus, 385 personal use drug law offences were reported in 2005, and later 42 convictions to imprisonment were registered, only 11 % of the first figure. The nature of the data means that ratios of such crude comparisons are always likely to stay well below 100 %, but these ratios indicate that outcomes are not known or are unrecorded for a significant proportion of drug offenders.

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The power to record or dismiss certain offences is based on the principle of legality in some countries, whereas in others it operates on the principle of opportunity (discretion). This will account at least partly for the differences between countries in the proportions of cases dropped at police or prosecutor level. Whichever system is followed, each country's police and prosecutors may well have guidelines for dropping or pursuing cases aimed at making the best use of resources.

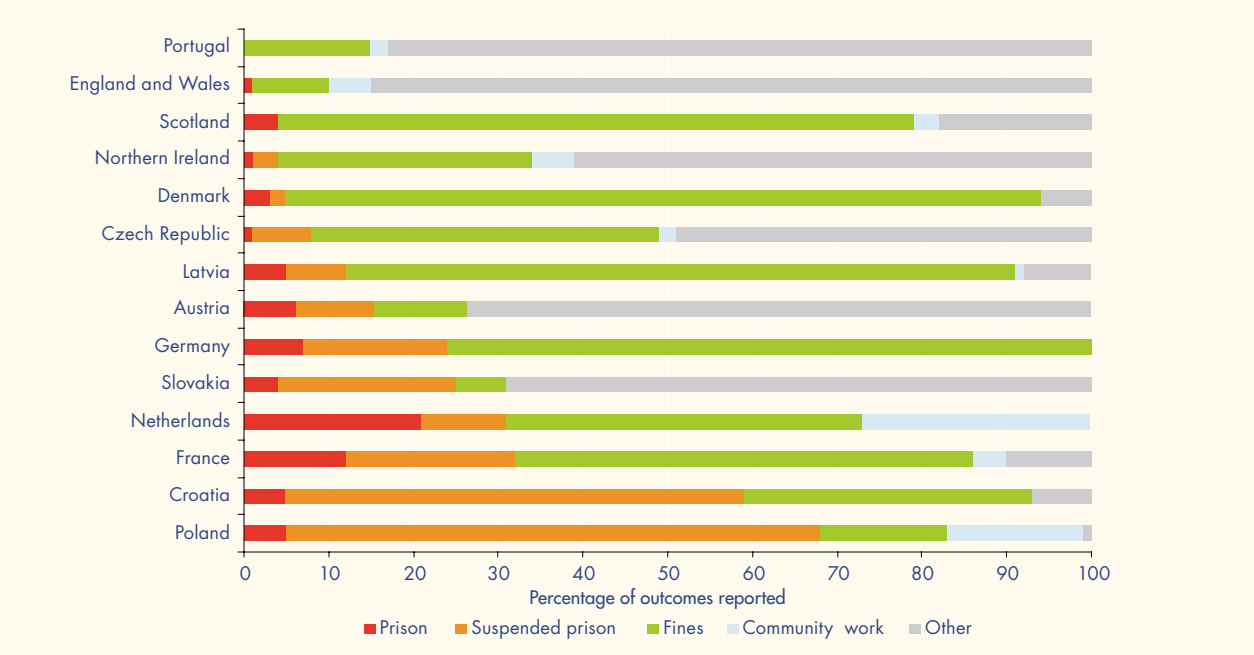
Therefore, in order to identify the most likely outcome of a drug law offence, particularly a personal use offence, it is important to establish not only the number and types of sentences given but also the number of cases disposed of by the police and prosecutors. In the reports submitted, 12 countries were able to supply substantial data on this latter number, while some indication of these numbers was available from a further five countries (France, Luxembourg, Finland, Sweden, United Kingdom). Eight countries (Bulgaria, Ireland, Cyprus, Lithuania, Netherlands, Poland, Croatia, Turkey) did not give any indication of the number of such 'minor' outcomes. In Belgium, data was reported for the various reasons given for filing cases (for no further action) by the prosecutors. In some countries a national average may be of limited value as there may be different regional policies for non-prosecution within a country.

Penalties received by drug law offenders

Sentence type

The types of sentence (e.g. prison, fine, community work) actually given to drug offenders were reported separately for personal use or for supply offences by 13 of the 26 countries. While few gave exhaustive reports of every type of sanction used, it was clear that most countries usually used warnings, fines, suspended prison sentences and immediate prison sentences; in Cyprus, only the types of the prison sentences were reported. Several countries reported data on community work as a sanction for drug law offenders. However, the countries differed in the variety of orders reported as community work, which could also include a number of treatment orders or limitations of liberty. Belgium, Italy and Turkey gave no data for types of sentence actually used. Bulgaria, Ireland, Lithuania, Luxembourg, Hungary, Romania and Sweden reported the types of sentence proportioned among all drug offenders, but were

Figure 2: Outcomes reported for drug use and personal possession offences



Note: Countries are ordered by proportion of immediate and suspended prison sentences given.
Sources: Reitox national reports (2008).

not able to give separate proportions for personal use and for supply offences. Estonia and Luxembourg provided expert estimates of the proportions rather than reports of actual statistics.

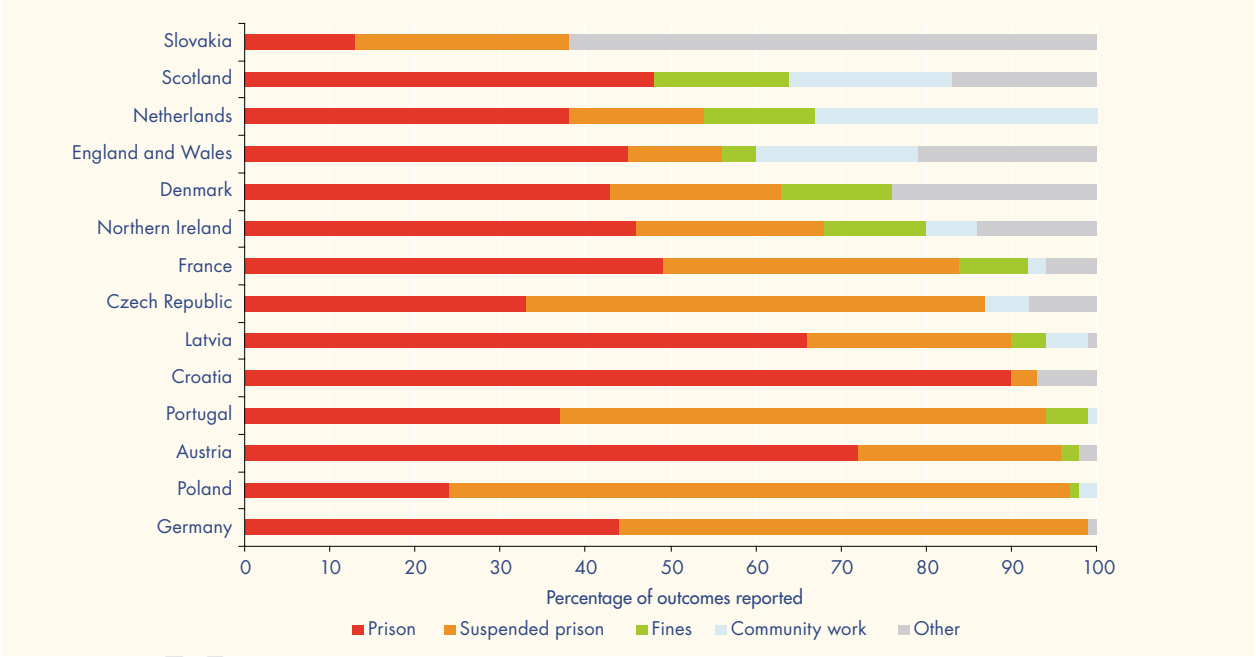
For personal use offences, six countries were most likely to issue a fine (Czech Republic, Denmark, Germany, France, Latvia, Netherlands), two were most likely to issue a suspended prison sentence (Poland, Croatia) and five reported warnings or suspended processes as the predominant outcomes (Italy, Austria, Portugal, Slovakia, United Kingdom) (Figure 2). Only three countries (the Netherlands, Poland, United Kingdom) reported any significant use of community work orders for personal use offences — in most reports of outcomes, this type of sanction appears extremely rarely.

For supply offences, the pattern of outcomes was more homogenous. A prison sentence was given more often than any other sanction except in Slovakia, where cases were more frequently closed by an agreement on guilt and punishment. In the Czech Republic, Germany, Portugal and Slovakia most prison sentences were suspended. Two Member States (Netherlands, United Kingdom) gave community work orders to more than 10 % of those convicted of supply offences (Figure 3).

Among those countries that did not make a clear distinction between users and suppliers in their data, most reported that fines were used frequently (Ireland, Luxembourg, Hungary, Sweden). However, suspended prison sentences were predominant in Bulgaria and Romania.

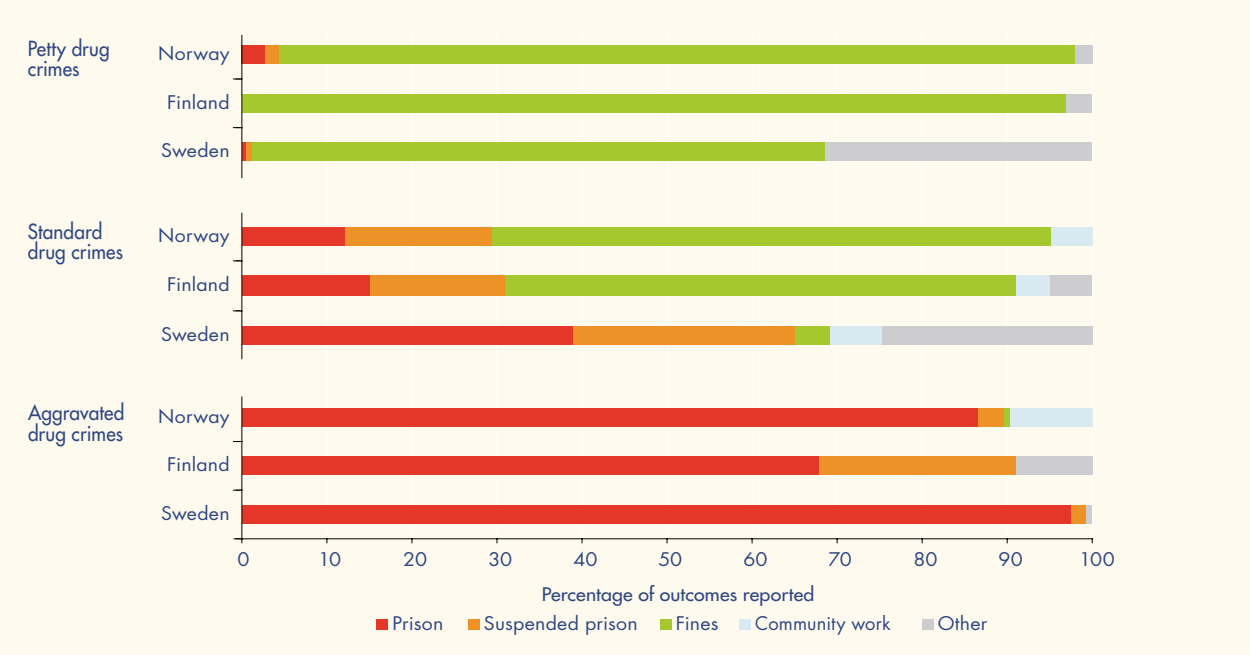
The potential for comparing sentencing statistics to identify nuances between countries can be illustrated by examining three of these countries that structure their drug laws in broadly similar ways. Finland, Sweden and Norway report on three categories of drug law offence, defined by the seriousness of the crime. These three countries also have similar drug consumption patterns and cultural backgrounds. While petty drug crimes are predominantly punished by fines in all three countries, and aggravated drug crimes by prison, some differences are apparent (Figure 4). For example, Finland reported the smallest proportion of petty drug offenders receiving prison sentences (0.1 %), while Sweden made greater use of immediate prison sentences for more serious offences, and Norway made more use of community work orders.

Figure 3: Outcomes reported for drug supply offences



Note: Countries are ordered by proportion of immediate and suspended prison sentences given.
Sources: Reitox national reports (2008).

Figure 4: Outcomes reported for drug offences in three Scandinavian countries



Note: Countries are ordered by the total proportion of prison sentences given for aggravated drug offences.
Sources: Reitox national reports (2008).

The procedure of sentencing does not only consider the maximum penalty for the offence. For example, in Poland under the Penal Code a fine is not imposed for supplying a drug without gain if there is no guarantee the offender will be able to pay it; and in Portugal fines for use should not be given to addicts. These rules could lead to a particular group of offenders always receiving other sentences, which would have a corresponding impact on the overall statistics for that country. In Estonia, the court can substitute a sentence of up to two years' imprisonment with one of community work with supervision, if the sentenced person consents to it.

Many use-related offences — often the majority — do not reach court, as they are dealt with at an earlier stage. Nevertheless, a proportion of those who do reach court and are sentenced for use or personal possession go straight to prison. In eight of the nine countries for which the calculation can be made, only a small proportion of users judged in court were sent straight to prison (see Table 1) (⁹).

(⁹) Sweden reported that a small number of users received immediate prison sentences, but it was not possible to express this as a proportion of users tried in court.

Table 1: Proportion of those sentenced in court for personal use or possession offences receiving immediate prison sentences

Country	Receiving immediate prison sentence (%)
Czech Republic	12
Denmark (¹)	3
Germany	7
France	12
Latvia	>50
Poland (standard offence)	5
Poland (lesser offence)	2
Slovakia	12
United Kingdom	4
Norway (¹)	4

(¹) Data include those users sanctioned by the prosecutor (a significant number) as well as the court.
Source: Reitox national focal points.

Latvia is the exception, giving immediate prison sentences to more than half of the users reaching court.

At the other extreme, some aggravated narcotics offences are sanctioned by waiver of prosecution. It was explained in Finland, for example, that this would occur when the offender has already been sentenced to a considerable term of imprisonment for another offence.

In summary, the majority of countries would give fines (some warnings, some community work orders) for personal use offences, but in the central and Eastern European countries where possession was not an administrative offence, there was a clear preference for suspended prison sentences. Across much of Europe, immediate imprisonment was a possible outcome for personal use offences. Imprisonment was the most common reaction for supply offences, though this was suspended in a large number of cases.

Sentence size

Few countries were able to provide detailed information on the fines imposed. In the Czech Republic, administrative misdemeanours of personal possession resulted in fines totalling CZK 543 583 (about EUR 19 600) in 446 cases, giving an average fine of about EUR 44. In Latvia, the amounts fined under the Administrative Violations Code are not reported, but in court in 2007 two offenders were fined for criminal possession offences and four for trafficking offences in amounts of LVL 600–1 200 each (EUR 850–1 700). In Finland, the average fine imposed in 2006 for a user offence was 15 day-fines ([10]) in summary penal proceedings and 20 day-fines in district courts; for a narcotics offence, the average was 36 day-fines. In the Netherlands, the median size of prosecutor fines for Opium Act offences was EUR 250, and for court fines it was EUR 400. While a direct comparison of these numbers is possible, they are more realistically compared by taking into account differences between countries in average income and living costs.

Information on the length of prison sentences was available in 13 countries (Bulgaria, Denmark, Estonia, Ireland, France, Cyprus, Latvia, Netherlands, Poland, Romania, Sweden, Finland, United Kingdom), though it was not reported in directly comparable formats. About half of the countries reported average sentence length, while the other half indicated a variety of ranges from which averages have been calculated to allow comparison. There were differences in reports of average sentence for immediate imprisonment, average suspended prison sentence, or average sentence to imprisonment overall. Where ranges were reported, it appeared that the maximum sentence available was rarely, if ever, used in that reporting year.

Sentences linked to drug classification

In some countries, drugs are classified into different groups (classes, tables, lists) according to perceived levels of harm, and the maximum punishment for a drug offence may be set for each group. Further information on drug classifications in the countries can be found in the European legal database on drugs ([1]).

([1]) See the 'Topic overview' on classification (http://eldd.emcdda.europa.eu/html.cfm/index5622EN.html).

The average length of sentence for use or personal possession offences was just over one month for both suspended and immediate imprisonment in Denmark, while France reported an average period of immediate imprisonment of five months. The United Kingdom reported average sentences for possession offences in England and Wales of about three months for cannabis, five months for cocaine, seven months for ecstasy and 10 months for heroin, while possession offences in Northern Ireland received an average of seven months imprisonment for Class A drugs, two months for Class B and three months for Class C. Cyprus supplied data on individual cases that allowed calculations of mean sentences of 15 months for possession of Class B substances and 29 months for possession of Class A substances; while in Poland an estimation of the mean of grouped data for the different periods of immediate and suspended imprisonment gave averages of eight months for each.

For supply offences, Denmark reported that immediate and suspended prison sentences for minor sale under the Act on Euphoriant Substances averaged one to two months. Average suspended prison sentences handed down under the Penal Code were for six to seven months, but sentences of immediate imprisonment averaged 20 months for trafficking and 30 months for aggravated trafficking. In France, the average length of immediate prison sentences was reported as 10 months for user-dealers, 17 months for retail traffickers, and 28 months for import and export offences. In Finland in 2006, for both suspended and immediate imprisonment, the average length of prison sentence for a narcotics offence was four months. Aggravated narcotics offences in Finland received an

([10]) A fine based on the offender's income.

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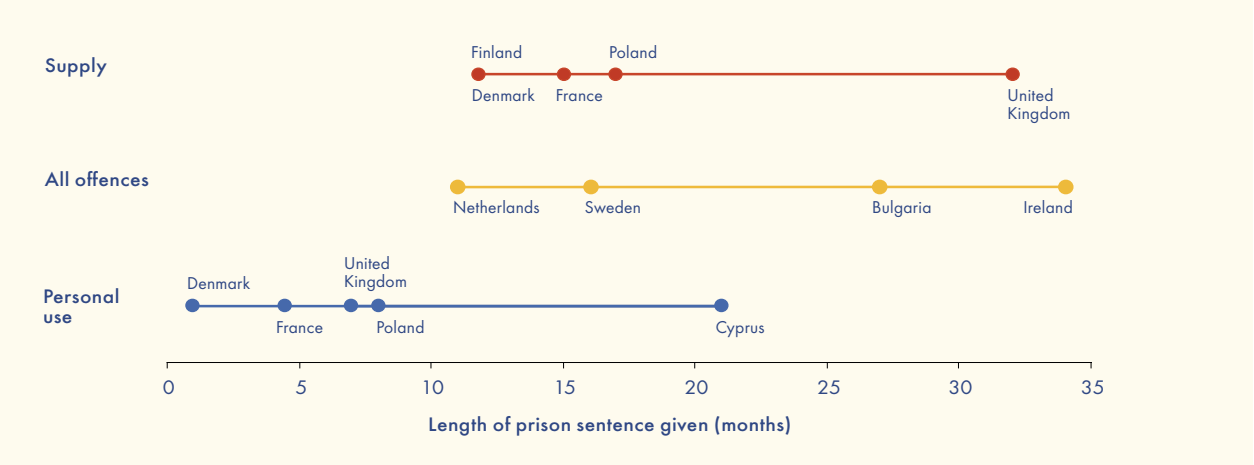
average of 15 months for suspended prison sentences and 38 months for immediate imprisonment. The United Kingdom reported that average sentences for trafficking offences (excluding import and export offences) in England and Wales were approximately 15 months for cannabis, 29 months for ecstasy, and 37 months for cocaine and heroin; and for Northern Ireland, average sentences were 31 months for Class A substances, 26 months for Class B, and 22 months for Class C. In Poland, an estimation of the mean of grouped data for offences of supply for gain gave averages of 22 months of immediate imprisonment and 16 months of suspended imprisonment. Finally, some illustrations of sentence length were given for Latvia: of 10 people charged with import or export, three were sentenced to immediate imprisonment ranging between two and four years. The majority of those charged with trafficking offences were sentenced to immediate imprisonment for between one and two years, while three people charged with small-scale trafficking received terms of imprisonment ranging between seven months and five years.

Only six countries provided data that allowed calculation of the average length of prison sentence for personal use or supply offences, and only four of these countries gave the data for both offences. For most countries, the average prison sentences for personal use offences were considerably less than a year, while those for supply offences were between one and two years (Figure 5); they are different, but not strikingly so. Figure 5 should be read together with Figures 2 and 3, which illustrate that prison sentences for personal use are rare, but they are the norm for supply offences.

Data on the average prison sentences of all (personal use and trafficking) offences combined were also available for some countries. In the Netherlands, the mean length of immediate prison sentences for all Opium Act offences was reported as about 11 months, and in Bulgaria the estimated mean of grouped data for prison sentences for all drug offences gave averages of 43 months of immediate imprisonment and 18 months of suspended imprisonment. In Ireland, the estimated mean of grouped data gave an average of 34 months for drugs offences. In Sweden, the average sentence length was 16 months. Estonia reported that the duration of sentenced imprisonment was predominantly less than three years, while in Romania it was reported that just over half of those convicted (of which 90 % were convicted of trafficking) received a sentence of 5 to 10 years.

As with fines, the criminal procedure code or sentencing guidelines may affect the figures, and hence any comparisons that are made. The numbers above do not refer to time actually served in prison, as different national rules on early release policies may mean, for example, that a stay of two years in prison may result from a sentence of two years' imprisonment in one country and a sentence of four

Figure 5: Average prison sentences for supply and personal use offences



Note: Average length of sentence weighted by the total number of cases in each category (either offence sub-type or substance class) for supply and personal use offences in the different countries. Countries that provided the average length of imprisonment for all supply and personal use offences combined are presented in the graph as 'all offences'. Imprisonment may be suspended, immediate or a combination.

Sources: Reitox national reports (2008).

years in another. Some countries do not permit immediate imprisonment if the sentence is short; in these cases, the prison sentence has to be suspended, or converted. For example, in Poland the penalty for the standard offence of possession is imprisonment for up to three years, but as the lowest possible penalty of deprivation of liberty in Poland is one month it means that the penalty range is from one month to three years. In the Czech Republic, the Criminal Code generally allows suspension of imprisonment in sentences of a maximum of two years. In Italy, minor trafficking crimes committed by addicts may sometimes be punished by community work if the judge is unable to grant a suspended prison sentence. By contrast in Denmark, for example, the average immediate prison sentence handed down under the Act on Euphoriant Substances was just over one month for possession, and about two months for sale offences.

Thus, while little information was available about the actual sizes of fines, the available figures for average prison sentences, even for serious offences, suggested that most supply offences were punished by not more than a few years in prison.

Use of long sentences

Long sentences are expected to act as a deterrent, and this is presumably the reasoning behind increases in the maximum prison sentences for drug trafficking offences in many European countries during the past decade. However, the data presented in this study shows that the use of long prison sentences is rare. This finding is supported by studies carried out in Member States. A 2003 study in Ireland found that the minimum sentence of 10 years' imprisonment for trafficking over EUR 12 700 of drugs had only been applied in three of 55 eligible cases between 1999 and 2001; the bulk of the sentences fell in the range six to eight years. The courts justified lower sentences by 'exceptional and specific circumstances' and by most defendants pleading guilty. These exceptional circumstances were further limited by a new law in 2007. In Poland, for the gross offence of supply for gain, 57 % of sentences were for suspended imprisonment, compared to 42 % for immediate imprisonment. As this offence is considered a felony (punishable by at least three years' imprisonment), courts must frequently resort to the option of extraordinary reduction of penalty in order to impose a penalty below the range of the Act. In England and Wales, the minimum sentence of seven years' imprisonment for a third offence of trafficking Class A drugs was only given seven times in 2006, when over 5 000 people were convicted for Class A drug supply offences ([11]).

Two examples stood out in relation to maximum sentences. In Denmark, the maximum sentences for standard and aggravated Penal Code offences were raised in 2004 from 6 to 10 years and from 10 to 16 years respectively. However, in 2007 the average sentences of immediate imprisonment under these offences were 20 and 30 months respectively. In the United Kingdom, cannabis underwent a high-profile reclassification from Class B to Class C in 2004 ([12]), with the maximum sentence for personal possession reduced from five to two years' imprisonment, and for supply maintained at 14 years. But in 2006, the average sentences of imprisonment for cannabis offences in England and Wales were about three months for possession (this was for 0.2 % of all cannabis possession outcomes) and 15 months for supply. No similar information was available for other countries that may have recently changed maximum sentences.

More generally, 21 of the 1 934 offenders convicted in Bulgaria, and 22 of the 530 offenders imprisoned in Ireland were sentenced to 10 years or more. In England and Wales, Ireland and Sweden there were no cases where the offender received the maximum sentence for supply in the reporting year. The picture of the drugs market that can be gleaned from the statistics presented here is very different from the one often depicted in high-profile cases in the media. The statistics may be reflecting the structure of the drugs market — not many 'Mr Bigs' exist in Europe. Alternatively, the findings could be reflecting shortcomings in the response measures — the 'Mr Bigs' are more difficult to catch and convict than those at the lower end of the supply chain. While research on this issue at a pan-European level is still in its infancy, both reflections are probably accurate, with the further complication that, when calculating averages, the few long sentences for such criminals will be lost among the minor sentences of many small-time and more visible local suppliers.

Sentencing and the drug involved

Information regarding the type of drug that led to the sentence — or, using the principal offence counting rule, the most serious type of drug — was not available for the

([11]) While information on recidivism is not available for the United Kingdom, data for Italy and Romania, where about 20 % of traffickers were recidivists, imply that there might have been more occasions when this sentence could have been given in the United Kingdom. See also 'Recidivism', p. 17.
([12]) In 2009, cannabis was reclassified back to Class B.

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majority of countries. It was only reported by six countries (Czech Republic, Cyprus, Netherlands, Portugal, Slovakia, United Kingdom), and of these, Cyprus, the Netherlands, and Northern Ireland within the United Kingdom ([13]) reported by class of drug only, rather than identifying the different drugs within the classes. In the Czech Republic, 97 % of sentences for trafficking heroin were prison sentences, compared to 88 % for trafficking pervitin (methamphetamine) and 68 % for trafficking cannabis. Details for average sentences in Cyprus for possession by class of drug, and in the United Kingdom for possession and trafficking by type of drug, are given above in the section on sentence size (p. 24). In the Netherlands, about 14 % of all immediate prison sentences concern 'hard' drug offences, whereas 2 % concern 'soft' drug offences. In Denmark, no information was available on the actual sentences given, but detailed prosecutors' guidelines that requested different sentences per type of drug were reported.

Portugal and Slovakia did not distinguish between the severity of the sentences but nevertheless provided a breakdown of the drugs involved in convictions or other outcomes. In Portugal, 64 % of the non-criminal rulings for users involved cannabis alone, 17 % heroin, 8 % cocaine; for trafficking in 2007, out of 1 420 convictions, 36 % were for cannabis alone, 16 % for cocaine, 14 % for heroin and 1 % for ecstasy. In Slovakia, cannabis products accounted for the majority (59 %) of convictions, with other significant drugs being heroin (17 %), pervitin (12 %) and other amphetamines (5 %).

The statistics available, though limited, show that the average sentences differed by type of drug, even in those countries where the drugs are viewed equally under the law (all drugs in the Czech Republic; ecstasy, cocaine and heroin in the United Kingdom). This suggests that judiciaries perceive differences in the levels of harm or seriousness associated with the various drugs other than any signalled by the legislation. In the absence of data on the average amount of substance involved in the offences, it is not possible to explore the relationship between quantity of drugs and the length of sentence handed out.

Recidivism

Recidivism may also be a factor in sentencing that is rarely visible, yet very relevant when considering the chronic nature of drug addiction. In some countries, the exact number of recidivists was given, and even if the impact on the sentence was not clear these figures indicate the size of the phenomenon (though it should be noted that the cut-off period of recidivism — last year, last five years, lifetime — is usually not given). For personal use offences, 6 % of the individuals sanctioned for use or possession in Portugal in 2007 were referred twice to the 'commissions for the dissuasion of drug abuse'. For supply offences, Italy reported that approximately 23 % of those convicted of drug trafficking offences had been previously convicted, with a visible tendency to commit crimes of a similar nature to those previous convictions. In Romania, 17 % of those convicted of drug offences in 2007 were repeat offenders, almost all for trafficking offences. Two other countries gave more general statistics. In Germany, 61 % of those convicted for offences committed against the Narcotics Act in 2006 had already been sentenced at least once before, and more than half of these, 37 % of those convicted, had been sentenced at least three times before. In the Netherlands, no figures were given for those convicted, but for those registered by the police for Opium Act offences in 2007, some 58 % were repeat offenders and 16 % had a criminal record of more than 10 previous offences.

Directing users to treatment

Across Europe, treatment alternatives to imprisonment have received increasing political support in the last 10 to 15 years, in line with the growing view that drug users, particularly dependent users, are not criminals but are instead sick individuals in need of treatment or counselling. The previous EU drugs action plan (2005–08) asked for expanded use of treatment solutions, and for efforts to be made to increase their effectiveness. Data from the EMCDDA treatment demand indicator show that 25 % of the almost 144 000 new clients reported to have entered outpatient treatment in 2007 were referred from courts, probation services or police ([14]). Even if there may be some distinction between formal referrals and informal voluntary attendance that took place as a result of a 'brush with the law', information to corroborate this from the criminal justice system is lacking in most countries. Data on the number of treatment orders handed down, and prosecutions suspended or closed due to 'successful' treatment ([15]), were not available for 14 of the 26 countries providing information on sentencing.

([13]) Also England and Wales, when reporting customs offences.
([14]) See Table TDI-16 in the 2009 statistical bulletin.
([15]) Successful in this sense is a legal definition rather than a medical one; cases will be closed as decided by the prosecutor or judge, rather than in accordance with any strictly medical definition.

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Six countries could give substantial amounts of data about those diverted to treatment. Croatia reported the exact number of cases where charges were withdrawn due to the offender entering treatment, and Italy and Turkey even reported the numbers of offenders who had successfully completed treatment. In France, 2 290 court-ordered treatments were issued to drug users in 2007. In Italy in 2007, some 2 384 people (about 9 % of those coming before the prosecutor) were invited to report to drug addiction services for treatment, while proceedings against 4 453 were dismissed on the conclusion of such treatment. In Portugal, 19 % of non-criminal rulings were suspended on condition of treatment. Croatia reported that obligatory treatment accompanied sanctions for 3 % of those convicted (76 people), but six times as many (18 %, or 446 people) had existing charges withdrawn due to entering treatment. In Turkey, 13 720 measures of treatment with probation were ordered in 2007, while 1 164 people successfully completed treatment followed by a minimum of one year's probation and counselling. In 2007 in Norway, 42 059 days were served in institutions for treatment or care by 457 people, under a provision for alternative serving of unconditional prison sentences. In the same year, in a trial scheme for a drug programme under court control in two cities, 56 assessments were carried out, of which 28 were found to be suitable for the programme.

An additional six countries were able to give limited information, using reported figures or estimates, usually regarding court orders rather than voluntary treatment. In Sweden 4 % of those convicted for a standard drug offence received sentences of probation combined with treatment, while in Germany 1 % of those convicted for drug offences were sentenced to detoxification units (the majority of those placed in detoxification were convicted of trafficking offences; addict users would have been filtered out earlier). Of 323 people referred to the Irish Drug Treatment Court since its launch in 2001, almost half were found to be ineligible, but 22 had successfully graduated from it by the end of 2008. Lithuania recorded that one person was given an obligatory medical measure, though other treatment orders may have been classed generally as 'restriction of liberty'. In the Czech Republic, the Probation and Mediation database was searched for drug offences; of 137 cases where the client was addicted to drugs, 43 had had treatment imposed. Luxembourg gave an estimate from the prosecutors' office that 2 % of cases resulted in treatment orders.

However, 14 of the 26 countries gave no information about available treatment outcomes. Some appeared not to address the issue, while others gave reasons for the lack of information; either that a case that was suspended (and then dropped) due to treatment would not have the reason for suspension recorded, or that the reason recorded would be a general one, within which treatment would be indistinguishable. For example, a case may be closed as 'warning with conditions' and some conditions may be to attend treatment; or treatment obligations may be within a sentence of 'community work'.

Conclusions

Across Europe, the three most common ways of punishing a person for a drug possession offence are warning, fine and suspended prison sentence. With the exception of a few countries, community work orders are very rarely used to sanction this offence. Those convicted of supply offences are likely to receive a prison sentence, though many of these are suspended prison sentences, and few receive the long sentences that are often brought up in the public debate. However, there are considerable gaps in the information available. A substantial proportion of offenders will have their cases discontinued at some stage in the criminal justice system, though it is often not clear how this happens. Even if possession for personal use is not always a criminal offence, drug trafficking is, and relevant court statistics should be available in all countries rather than only the four-fifths that submitted them for this report.

The differences in penalties for personal use and supply offences, which were obvious in the majority of countries, may perhaps reflect differences between countries about how strongly they draw the line between users as individuals needing treatment or counselling, and traffickers as criminals. Examining absolute numbers can give an impression of the proportion of users who are processed through to a court sentence, and in many countries these figures reflect the same division. An individual country's criminal justice system recognises some people as sick, and thus tries to divert them to treatment, while it follows one of its primary aims of deterrence and channels others towards punishment.

While it is widely felt that users should not go to prison for offences against drug laws, some still do: usually a few percent of those who appear before a court. Further research would be needed to understand why; whether these are addicts who have no money for a fine, whether they are in breach of probation, whether they are recidivists for whom treatment has not been successful. Considering the few recidivism statistics given for drug law offences — up to 60 % overall, and around 20 % for supply offences — it becomes clear why at least some users receive immediate prison sentences. Another possibility in some countries is that these sentences are exposed by the counting rules. They

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could be given for a more serious offence (for example, possession of a firearm) that cannot be seen from the statistics.

There are national variations in common choices of penalty. Some countries' judiciaries prefer to give suspended imprisonment sentences to users, while others usually issue monetary fines. Community work, in its many forms including treatment orders or limitations of liberty, is rarely used as a punishment for drug offenders — with the exceptions of Ireland, Hungary, the Netherlands, Poland and the United Kingdom. There are different attitudes in the Member States towards the use of short, immediate prison sentences. For example, prosecutors in Denmark request a few days in prison for first offenders guilty of sale, while other countries such as the Czech Republic and Poland do not permit such short sentences. Different attitudes to fines are also apparent. In Finland, if an offender cannot pay a fine it can be converted into a prison sentence, while Denmark and Portugal have guidelines that discourage or prohibit giving fines to heroin addicts. The reason why these types of sanctions vary in use is beyond the scope of this report, but may be explored by criminological research.

The sentences given for supply offences seem to be short in comparison to the maximum sentences available under law. However, there is little to suggest that the judiciary is generally lenient when sentencing major cases. It appears more likely that the findings of this report provide further evidence for the hypotheses that in Europe 'drug barons' or 'kingpins' are few, and more difficult to convict than smaller, more visible dealers. It seems that for each 'Mr Big' convicted there are many 'Mr Mediocres'.

Based on the limited information available, the type and size of the sentence is clearly affected by the type of drug involved in the offence, even in those countries where all drugs are viewed equally under the law. This suggests that the judiciaries perceive differences in the levels of harm or seriousness associated with the various drugs.

Given that there is unanimous political support for treatment rather than punishment ([16]), it is strange that referrals to treatment through the legal system are barely visible in the data provided. According to the EMCDDA treatment demand indicator, 25 % of the new clients who entered outpatient treatment in 2007 were referred from courts, probation services or police. Yet, such numbers are generally unaccounted for in the criminal justice statistics. While it is likely that they may sometimes be hidden in statistics for 'conditions or obligations' that accompany a warning, or even community work orders in one or two countries, it appears that there is little national will to record them within these systems. The result is that most countries are unable to determine the size of a high-profile group of offenders who avoid any punishment for what is usually a criminal offence. Crucially for policy planning purposes, it will be impossible to calculate the success rates for treatment interventions if the total number of people entering treatment is not counted — there will be no 'increased effectiveness' this way.

Towards a better understanding of the outcomes of drug law offences in Europe

This report is a first step towards describing an important aspect of the drug control systems within the European Union — the outcome of each process. This information is needed to advance the discussion on the role of the criminal justice system in controlling and deterring drug use beyond the limitations of information largely restricted to an account of national laws. Individual countries have already collected data on drug sentencing and some have used them to inform or evaluate legal frameworks or policies, but this is the first time such an effort has been made EU-wide. This contributes to an overall study of the drug situations and responses in 30 countries, with their diverse cultures and legal systems, in which individual changes in countries can be laid over the overall European trend in the search for a correlation between policies and usage patterns. Such a study could help to eliminate European trends from national statistics, to give a stronger national correlation between law and prevalence and assist in finding the one that could really have an impact on the other. Furthermore, at least 15 countries specifically reported that their separate databases should be more linked in future.

There is an increasing trend in Member States to monitor and evaluate aspects of drug policies, and this trend has been mirrored at EU level. The EMCDDA started by monitoring the laws and their enforcement, followed a few years later with a qualitative description of sentencing practice in each country, progressing to the current consideration of published national statistics on the subject. Evaluation of a policy should focus as much as possible on these realities, and such evaluation is crucial to be able to better advise policy and policy development.

([16]) All Member States signed the EU action plans on drugs 2005–08 and 2009–12, which asked for such solutions to be used more often, and for efforts to increase their effectiveness.

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In signing the EU action plan on drugs 2009–12, EU Member States undertook to 'ensure the ongoing evaluation of drug policy' (under Objective 24), and to 'evaluate and fine-tune national drug policies on a regular or ongoing basis' (Action 70). This would imply, as has been the case previously, an impact evaluation that considers new policy measures and any subsequent change in the country's drugs situation. However, a process evaluation using sentencing and other outcome statistics, to understand how (and, perhaps, if) the legal change has been implemented would be a relatively simple but vital step in the overall exercise. It would allow countries to understand how users are actually leaving the criminal justice system, and to consider whether these exit routes are the most efficient and effective way to deal with those users. For example, countries may until now have been unaware of the proportions that appear to be leaking from the system rather than being purposefully removed from it.

In this way, we will be able to understand more about the implementation of drug control laws and policies across Europe, in countries that are often superficially labelled as 'liberal' or 'repressive'.

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Annex

The data sources submitted were extensive. For police data, information came from the Czech Republic's National Drug Headquarters, the Latvian and Slovak Ministries of Interior, and the British Ministry of Justice. Sources for data from prosecutors came from 13 countries. Court statistics were submitted by 20 countries.

Many databases were unique to one stage of the criminal justice system, such as the Czech National Drug Headquarters (police), various prosecutors' office databases and court databases or statistics. Others held results from combinations of stages, such as the police and courts in Latvia, and prosecutors and courts. The main sources of the statistics submitted were the Ministry of Justice, a general national statistical office and sometimes the Ministry of Interior or the Ministry of Health. In Sweden, the statistics were submitted by a special body for criminal statistics, the National Council for Crime Prevention. Ireland and Cyprus submitted data from the Prisons Service, and the Czech Republic some analysis from the Probation and Mediation Service.

However, the detailed information about the data and sources also revealed many significant differences between them. While in a first pan-European report on such complex issues there will be many limitations in trying to compare statistics that are almost incomparable, three common groups of limitations were identified from the data submitted, which are based on the differences between: definitions and terminology; data collection systems; and statistical units and their counting rules.

These three groups, and the complexities that lie within them, must be borne in mind by the reader in order to avoid jumping to conclusions using simplistic comparisons.

Definitions and terminology

Offenders under the age of 18 are not usually included in drug law statistics (see *Young people and drugs — a legal overview*, in ELDD 'Legal reports'), and consequently the data in this report refer almost exclusively to adults. However, in some countries such as Bulgaria, the Czech Republic and Romania, minors were included in the statistics reported. By contrast, in Germany some young adults (aged 18–20, even up to age 25) will be given special treatment in the Juvenile Law courts, and are not represented in the data analysed here.

Data collection systems

The different data collection systems usually record data by calendar year, but they are not always exhaustive across a type of punishment. In many of the reports submitted, only the most common outcomes were available — acquittal, no further action, compulsory treatment, fine, community work, suspended prison sentence, immediate prison sentence. In some cases, it was stated that only these were available from the national data collection systems, and in other cases the details were available but not submitted. The possible range could be illustrated by this extensive list of options reported from Ireland:

> *The gardaí [police] have the options of confiscation and informal warning, caution, juvenile diversion, arrest referral or prosecuting in the District Court … The court has a range of options at its disposal including community service orders, entering into recognisance, detention, suspended detention, dismissal, fines, imprisonment, suspended imprisonment, peace bond, contributing to the poor box, probation, acquittal, intensive community supervision and supervision during deferment of penalty. Cases can also be adjourned, permanently stayed, struck out, withdrawn or taken into consideration.*

(Ireland Reitox national report, 2008)

There remains a possible conceptual distinction between outcomes linked to the progress of criminal procedures (such as offences remaining unsolved, missing evidence and dismissal of prosecution) and the description of the sanctions system. A review of the criminal sanctions system would only take account of cases in which guilt has been determined for the individual concerned. Nevertheless, any attempt to find the most likely outcome in a country should consider all options.

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Within each country, national databases of police, prosecutor, court, and prison or probation are usually not all linked. This may be for historical reasons (the independent conception and development of the systems), for operational reasons (databases are designed for different purposes for each service, such as crime investigation for the police and prison infrastructure management for the prisons), for data security and privacy concerns, for geopolitical reasons (the United Kingdom has three different criminal legal systems). In Luxembourg the reason given is that, although certain links exist between the legislative and executive branches, the judiciary is completely independent. In France, there is not yet a central database of the prosecution service (though results were available from a pilot system that covers 25 % of the cases in the country), while in Germany the database is only of closed procedures; the national link of public prosecution services to register preliminary proceedings was only established in 2007 (and the data for court decisions were only available for the old West German federal states, plus all Berlin). In Latvia, work started in 2004 to link the various Ministry of Interior information subsystems, but they are not yet sufficiently integrated to allow all possible types of data extraction.

Statistical units used, and their counting rules

The statistical units recorded vary between countries. Some countries record offences, some record cases (which may involve multiple offenders), others record individuals (who may have committed multiple offences) and others record sentences or sanctions (whereby one offender may have received multiple sanctions). Different units are often used in the same country; it is common for prosecutors to record cases while courts record sentences or sanctions.

The full picture of outcomes will only be understood if the counting rules are explained. Among those systems recording offences, some record all offences reported to them, while others record only the main offences — i.e. in the case of several offences committed by the same person, only the most serious offence (usually the one that attracts the highest penalty) is recorded. This would be relevant when, for example, a house search revealed a person to be in possession of drugs, weapons and stolen goods. Among systems recording individuals, some record a number of individuals being reported during the year, while others record only a number of different individuals reported during the year. In the former case, an individual reported twice during the same year will be counted twice, while in the latter case he would be only counted once in the statistics. In addition to these, when considering the breakdown of data by drug, here, too, some countries report all drugs mentioned in a case, while others record only the main drug (defined according to different criteria in different countries). When discussing the sanctions given, most were recorded according to the principal sanction criteria (e.g. some of those convicted who were categorised as receiving a prison sentence were also sentenced to pay a fine that would not be recorded, and those whose prison sentence was partially suspended would simply be recorded as serving an immediate sentence); though some countries recorded all sanctions, so a sentence of imprisonment with a fine would appear as two sanctions. Finally, a number of cases may not be closed, or may be under appeal — some submitted data from sentences given at courts of first instance, others only after appeals had closed.

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