Prosecution of drug-related offences

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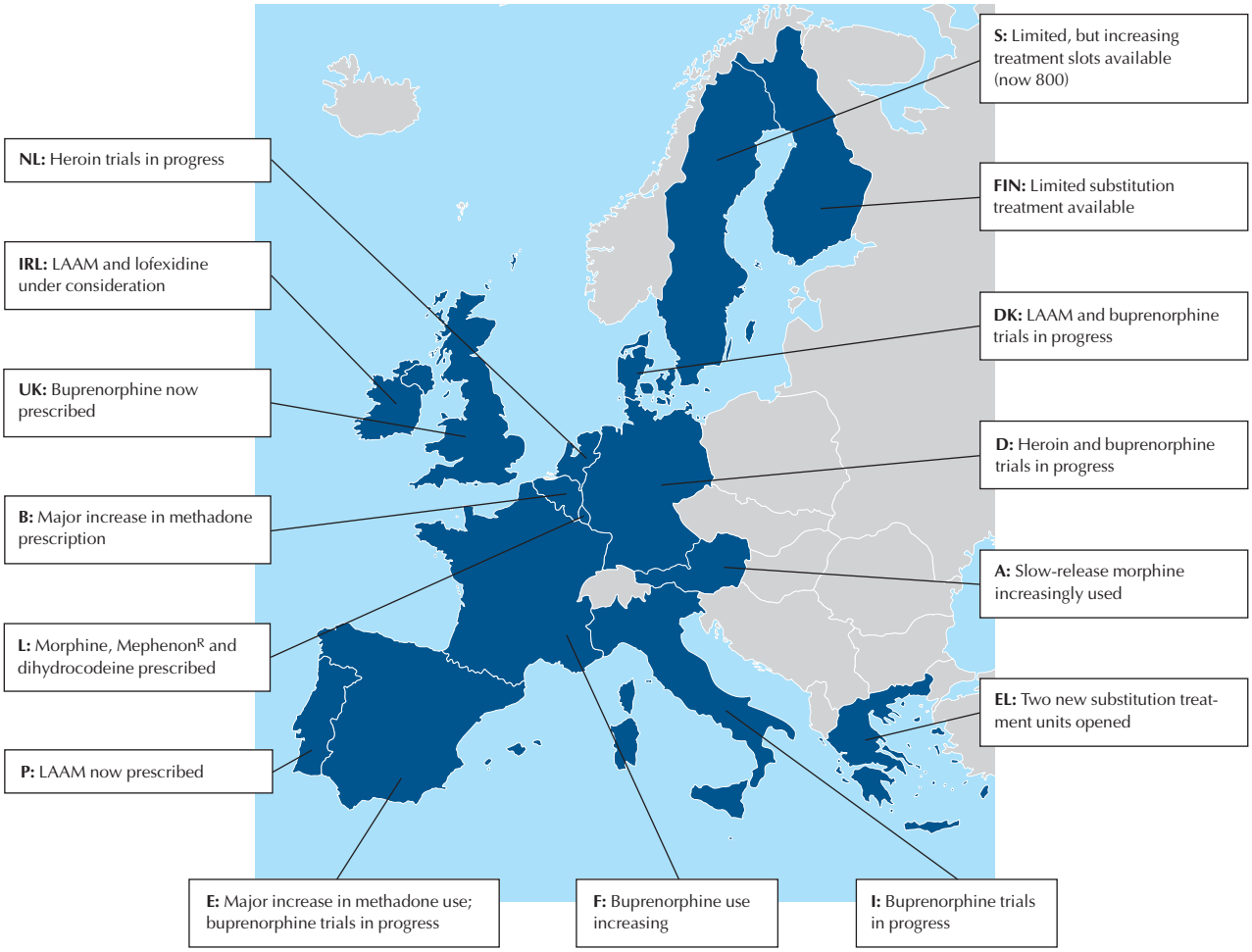
An overview of substitution treatment in the European Union



tion treatment in the past five years, most Member States still report a lack of quality control, monitoring and assessment of individual programmes.

Prosecution of drug-related offences

Possession of heroin

In 11 EU Member States, the judicial authorities prosecuting the possession of small quantities of heroin or similar drugs must assess whether the substance is for personal use or not. Possession solely for personal use is considered less serious than possession for other purposes and the average sentence varies from administrative sanctions — such as confiscation of a driving licence or passport — to a fine or a custodial sentence for up to 12 months.

In practice, however, it may be impossible to define common criteria for prosecution — even within the same country — since the authorities must take into account such a broad range of factors, including the specific national drug laws, the status of the individual offender and where and when the offence occurred.

Some common elements can, however, be identified. In general, petty first-time offences — such as possession of very small quantities for personal use — lead to warnings, cautions and confiscation of the substance rather than more severe penalties. In Denmark, however, users possessing a single dose for their personal use may be allowed to keep it. In these cases confiscation is seen as counter-productive since a crime would probably have to be committed to pay for another dose.

Given its highly addictive nature, possession of heroin is likely to be a repeated offence, and recidivism is a major problem. In most Member States, recidivists face harsher prosecution measures, such as probation or custodial sentences, when the repeat offence involves 'considerable' quantities.

Possession of drugs such as heroin is still sentenced in markedly different ways in the EU. In Denmark, for example, a warning or fine may be imposed. In Greece,

possession of small amounts of cannabis may in some cases be more strictly punished than possession of small amounts of heroin on the grounds that as heroin is addictive, the user is in greater physical need than the cannabis user. In the Netherlands, possession of small amounts of 'hard' drugs for personal use is not normally prosecuted, while in Finland those using 'hard' drugs will be more often prosecuted than those using 'soft' drugs, but the legal practice varies among individual courts.

Property offences

In all Member States, offences committed against property to finance drug habits are serious crimes, and the fact that the offender is an addict has no independent influence. The sentence will, however, vary according to the circumstances of both the crime and the defendant.

Addicts who steal drugs from pharmacies or property from private homes to finance their drug use are most likely to be prosecuted. On conviction, they might receive a custodial sentence determined by the quantity of the property stolen and whether any violence — a major aggravating factor — was used. In Ireland, for example, possession of a syringe with intention to cause or threaten to cause injury or intimidation can lead to between 12 months and life imprisonment. Minor theft — such as shoplifting — or 'petty' theft — as defined by national law — incur milder sentences on condition that the defendant undergoes treatment for the addiction.

If a minor theft is committed by someone with no previous history of property crime and no severe addiction problems, the most likely response is a conditional sentence plus a fine, although prison is always an option. If, however, the offender has severe addiction problems and agrees to undergo treatment, the most likely response is probation, a suspended sentence and treatment.

Treatment as an alternative to punishment is a core principle in most Member States and forms the basis of Austria's national drug policy. Probation or suspended sentences are commonly applied and successful treatment closes the case. In Denmark, the results of an experiment conducted between 1995 and 1998 to treat instead of punishing addicted offenders are cautiously positive. Although many of the participants relapsed into drug use at least once, none reverted to crime during the experimental period. In Ireland, a pilot drug court programme will give courts the power to impose treatment on addicts and full responsibility for assessing their progress. Similarly, the 1998 UK Drug Treatment and Testing Order (DTTO) aims to reduce crime through court-oriented treatment and rehabilitation, which is mandated and monitored by the courts and supervised by the probation service. Even when a custodial sentence is imposed, a growing number of countries have increased treatment facilities in prisons.

Selling drugs

Selling drugs to acquire money to finance a drug habit is a common behaviour among users throughout Europe and is considered a serious offence in all countries, whatever the circumstances. However, the extent of the crime is taken into account when imposing penalties which vary among countries and range from fines to a limited period in custody to life imprisonment in the UK.

Despite the very diverse data available across Europe, several common factors can be identified that influence the penalty for selling drugs.

Quantity and customer

In most Member States, selling only small quantities of a drug is regarded as a mitigating circumstance compared to large-scale trafficking. In Greece, users who exchange small amounts of drugs amongst themselves proven to be exclusively for their personal use may receive a six-month prison sentence which can either be exchanged for a fine or suspended. Drug addicts involved in trafficking considerable quantities face up to eight years' imprisonment, whereas non-addicted offenders face life imprisonment. In Sweden, sentences vary from between two months and two years to up to three years depending on the quantity of the drug sold. Non-commercial supply is a mitigating factor in, for example, the UK.

Degree of addiction

In all Member States, the degree of the offender's addiction may influence whether or not treatment-related measures rather than punishment are imposed.

Nature of the substance

At judicial level, a distinction is made between the more dangerous and addictive drugs, such as heroin, and the less harmful and less addictive drugs, such as cannabis. In Greece, the police, in practice, have established priorities targeting drug trafficking according to the dangers associated with specific substances. Heroin is considered the most dangerous and is prosecuted the most severely followed by cocaine, synthetic drugs and cannabis. In Luxembourg, the current modification of the drug law involves re-scaling sentencing to reflect the dangers posed by different substances.

Recidivism

Repeat offences can incur progressively heavier sentences in almost all Member States. In Denmark, repeated selling of very dangerous drugs can lead to up to six years' imprisonment. If 'considerable' quantities are

involved, the sentence can be increased to a maximum of 10 years. In Luxembourg, sentences for selling any type of drug range from one to five years' imprisonment and/or a fine. For recidivists, these sentences can be doubled within the five years following the first offence. Since selling drugs is the most common way addicts finance their addiction, followed by minor thefts or burglaries, addicts are most likely to be recidivists. Yet even though such repeat offences are motivated by physical dependence, the response is more likely to be a heavy custodial sentence than treatment.

In the EU in general, although judicial authorities may see possession of small quantities of a drug for personal consumption as a mitigating circumstance, the line between possession and trafficking appears to be blurred. While distinct sentences for the two offences are applicable, no adequate parameters have yet been established to distinguish clearly between them and the same offence could result in different outcomes. While measures such as treatment as an alternative to prison are available in all Member States, the efficacy of their application has not yet been assessed at EU level.

Problems facing women drug users and their children

Women-specific drug issues have not, to date, been systematically examined by EU drug-information systems. However, most Member States do address the needs of drug-dependent women through specialised programmes, although their extent and focus vary.

Drug use among women

Overall, men use illicit drugs more than women. However, differences in drug use between men and women are complex and depend upon the specific substance used and the user's age, social group, educational level and geographical location. While boys tend to use cannabis more than girls, the difference is small or non-existent between the ages of 15 and 16. By 20 to 24, however, there is more male than female use. Gender differences in last-12-months prevalence and use of specific drugs are even more marked.

Earlier experimental drug use by girls than boys is generally the result of girls having older boyfriends who may encourage them to try drugs. As girls grow older, further gender-related differences in drug-use patterns appear and strengthen.

Although overall, drug use is more common among men than women, legal, cultural, educational and geographical factors account for increased prevalence among women. Gender variations in use are more marked where strong legal sanctions exist, as well as among early school leavers and rural populations. Differences are less evident where there is widespread acceptance, and use, of drugs such as cannabis. In Greece in 1998, drug (primarily cannabis) use was higher among men than women. Use by women, however, was six times higher than in 1984, whereas use by men increased less than threefold.

In direct contrast to illegal drugs, use of medicines such as benzodiazepines is more common among women than men and the difference increases with age. Compared with illegal drugs, the relatively low social stigma associated with licit and illicit use of medicines is notable, although the health consequences of regular use are considerable.

The number of women prisoners in Europe is steadily rising. In Spain, female prisoners have almost tripled during the past 10 years. Although a smaller proportion of convicted drug offenders are female, data from Ireland and the UK reveal significant levels of problem drug use among women on entry to prison, mainly involving heroin, methadone and benzodiazepines. Treatment facilities in women's prisons vary and guidelines for treating benzodiazepine dependence to prevent the dangers of sudden withdrawal do not appear to be as well developed as guidelines for treating opiate dependence.

Mortality directly related to illicit drug use appears to be lower among women than men, even allowing for gender differences in prevalence (on average, women account for only 20 % of drug-related deaths). Higher mortality in males can only be satisfactorily explained by studying the contextual and qualitative factors surrounding drug-related deaths.

Infectious diseases

Anecdotal reports from Germany, France, Ireland and the UK suggest that there is some concern that HIV and hepatitis B infection are increasing among some female drug users. Although no hard data exist to support this concern, it has been suggested that it is the result of riskier injecting behaviour by women, or of unprotected sex.

Female drug users commit less property crimes than men and more often support their drug habits through the sex industry — sex work is an established source of income for up to 60 % of drug-using women. Rising HIV infection among European women and their new-born babies led to routine screening programmes for HIV and, in some cases, hepatitis B and C, in antenatal services in Germany, France, Ireland and the UK in the 1980s and 1990s. The potential of women to spread infectious