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LESSONS LEARNED ON GLOBAL AND LOCAL SCALES WHEN IMPLEMENTING ALTERNATIVES TO PRISON FOR DRUG ADDICTS

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Recipients • Destinataires Meeting of experts

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“Assistance to Drug Users in EU Prison, with special focus on Harm Reduction” - 2001 EMCDDA study

The idea behind the EMCDDA’s holding of this meeting was to bring together experts who, either through their direct relation with the implementation of local initiatives for alternatives to prison, or through their experience in analysing alternatives from a comparative international perspective, could contribute ideas to help outline the principal obstacles to putting these alternatives into effect and the measures that need to be taken in order to overcome these obstacles.

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1. INTRODUCTION

Recent years have seen the development of a series of measures aimed at deferring, replacing or obviating the need for prison sentences. Although these initiatives have not been specifically created to cover the needs of drug users, they facilitate the referral of offenders from the criminal justice system to the health system.

This report has been compiled from a detailed analysis of the proceedings of a seminar held at the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) in December 2002. This was a two-day session attended by a group of leading experts in providing drug addicts with alternatives to prison detention who discussed key elements for the success and failure of some local initiatives carried out in the European Union and North America. The debate included a number of interesting presentations of the lessons learned in this field.

2. MEETING METHODOLOGY

The meeting included a micro-observation of the alternatives to prison detention in order to determine key elements for success. The aim of this observation was to highlight potential obstacles to the adoption of these measures and to investigate ways of bypassing them. This exercise forms part of a process that, in the medium term, seeks to identify criteria for evaluating the measures discussed with a view to them potentially becoming generally accepted. It also seeks to illustrate the peculiarities of the European initiatives, which currently remain far behind North American initiatives in terms of the production of scientific evidence, due to the greater emphasis placed upon such research in North America.

The debate focused on the description of was the typical sequence of events associated with an offender passing through the legal system, beginning at the moment of arrest and culminating in imprisonment. Analysis was broken down into several stages: arrest; preventive detention-release on bail; and imprisonment-conditional discharge. The advantage of this approach - in which we dedicated the same time to the different physical contexts: police station, preventive detention, court, and prison - was that it helped to identify the key factors. This facilitated matters when the time came to bring together the invited experts for the discussion phase. Factors that had a key bearing upon success and failure were analysed at each of the selected stages.

The contributions of the different participants were recorded and subsequently transcribed. The present report is based on this material and aims to present the most important questions discussed. It is structured in accordance with the sections into which the working seminar was divided: phase 1: “from police arrest to court”; phase 2:” in court”; and phase3: “ in prison”.

3. CONCEPTUAL FRAMEWORK

3.1. Premises

As drug users place major demands upon the main public services: the health service, drug treatment services, the police, law courts, and prisons, it seems relevant to highlight the key elements required to ensure a productive collaboration between these different public sector services.

The role of the criminal justice system is to punish those who behave in ways that are unacceptable to society. Laws express the ‘social conscience’ and proscribe determined forms of conduct. They act as deterrents, by publicly declaring what is, and what is not, accepted in a given society. This deterrent role has its greatest impact upon what we might call ‘normal’ individuals or ‘average citizens’. It is less effective in the case of members of sub-cultures for which these rules do not have the same value, and in which they are unknowingly or deliberately flouted. When punishment is applied, it loses its ‘protective’ effect: its application sets in motion a series of effects, not all necessarily positive. The most difficult area for criminal justice policy is that in which the criminal justice system is called upon to apply its punishments. Yet this is also where the most successful results may be achieved.

The cause-effect relationship between addiction and delinquency is hitherto unproven, but the relationship between treatment for drug-addiction and crime is. Curing addiction, or replacing illegal drugs with others that are legal –such as substitutes - has a positive effect upon drug users who engage in criminal activity in order to finance their consumption of illegal drugs: it helps them to reduce or even abandon their criminal activity.

Providing drug addicts with appropriate treatment instead of sending them to prison would be a key factor in reducing the general crime rate.

3.2. Definition

3.2.1. Action

The alternatives to prison essentially involve:

Replacing, deferring, or obviating the prison sentence. In addition, social and health care related measures could be provided.

3.2.2.Objectives

Alternatives to prison are generally designed to reduce the individual’s criminal activity by treating his/her addiction, and can be supplemented with other legal, social and health care measures.

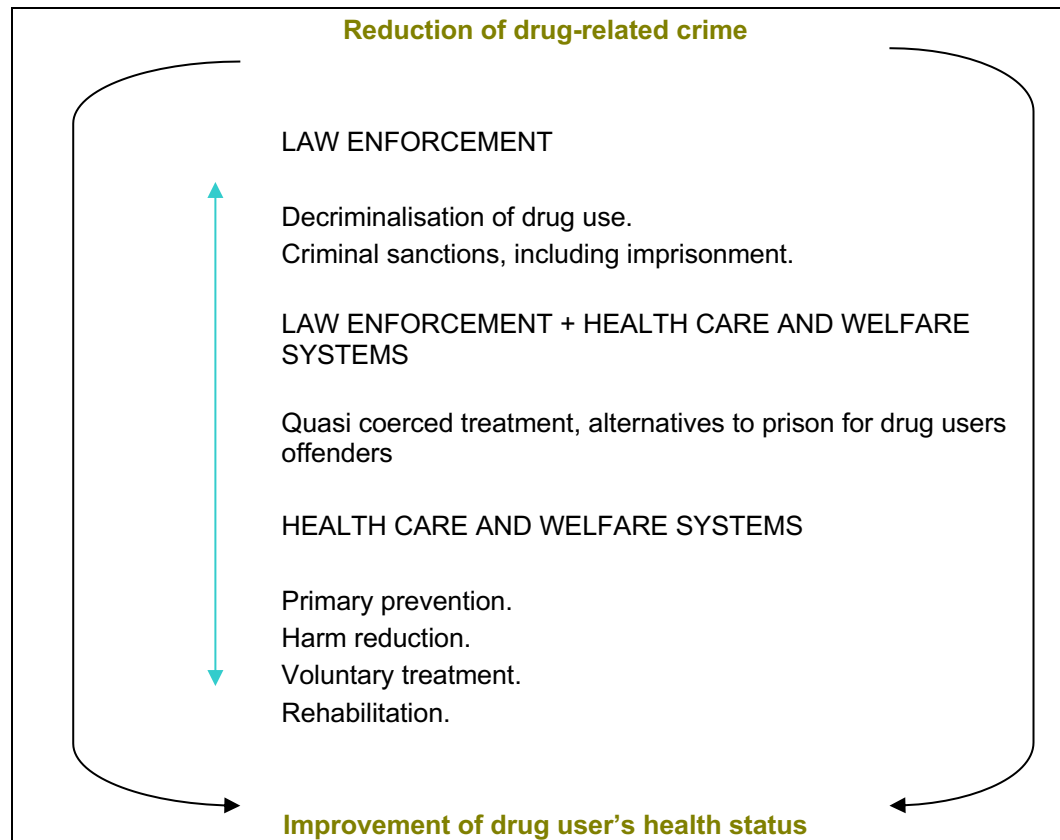


Figure 1.

The prevention of drug-related crime and improvement of health conditions are the two main objectives explicitly identified by the criminal justice and health care systems. Figure 1 illustrates how the measures implemented within both systems have - to a greater or lesser extent – helped to achieve these two objectives, which are complementary rather than divergent. Thus, the risk factors for criminal behaviour are also risk factors for health problems. Factors such as difficulties in accessing education, health, accommodation and employment are associated with late criminal behaviour and health problems.

3.2.3. Target population where results seems more significant

By studying the effect of alternatives to prison in different drug users populations highly problematic drug users could shed some light on the potential impact of these measures for reducing drug-related crime. Results seems to be particularly positive in the case of chronic addicts which are enrolled or successfully completed in drug addiction treatment, been treatment a key component of the alternative measure.

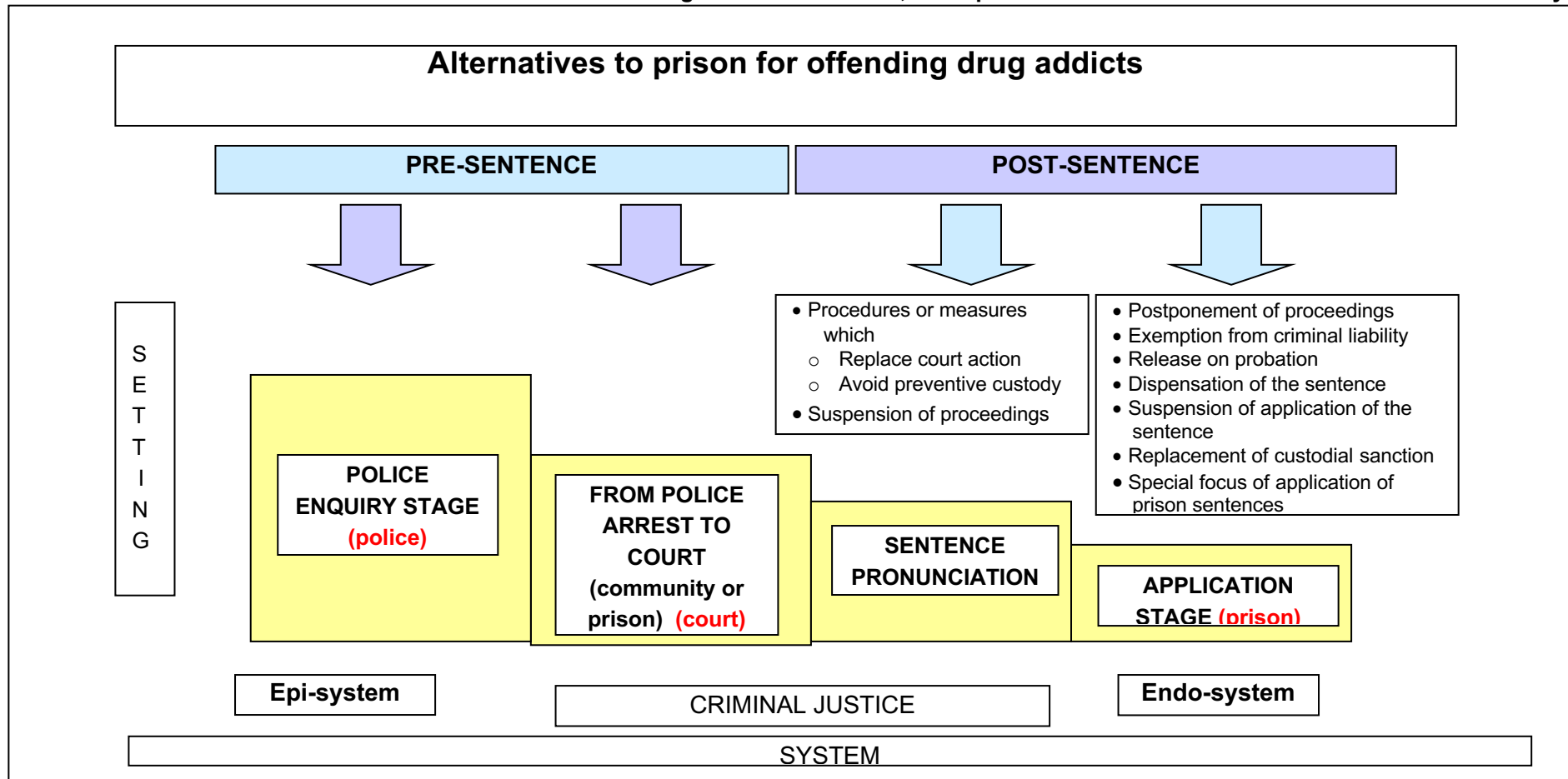
These are individuals who,

- **Present signs of chronic addiction.**
- **Frequently commit petty property-related crimes.**
- **Have a high probability of being, or have already been, sent to prison.**

3.3. Classification

3.3.1. According to the moment of referral to the alternative measure: “before sentencing” or “after sentencing”

The following diagram shows a conceptual framework of alternatives to prison for offender drug users. The more superficial contact with the system appears at the moment of the arrest. More the person progress from this first contact with the system to the moment of imprisonment more is inserted in the criminal justice system and more efforts are needed to find an alternative to incarceration. The momentums “before” and “after” sentencing are responsible for substantial differences in the application of alternative measures. Most of the efforts made to transfer addicts from the criminal justice system to care and treatment services have centred on the phase before the passing of sentence.



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Figure 2

The following factors play a key role in making the “before” and “after” sentencing two differentiate momentums in the continuum arrest-imprisonment:

- The stigmatising effect of the sentence.
- The reluctance of public treatment systems to admit those who have been convicted.
- Paradoxically, the interest of private treatment systems to provide follow up treatment for those whose treatment is financed by the legal system.
- Changes in the motivation of individuals to follow a course of treatment (external pressure increases when trying to avoid a prison sentence).
- Changes in the willingness of individuals to follow the course of treatment (before sentencing greater willingness is shown).

3.3.2. According to the type of measure applied

The following table presents a classification of a series of measures applied by the legal system. They do not, per se, constitute alternatives to prison, though they can help to attenuate the punitive component of the legal system and, as such, act as mechanisms that tend to minimise the possibilities of a prison sentence being passed. It should also be mentioned at this point that the decriminalisation of the consumption of certain substances - principally cannabis - has given rise to an increase in the application of such measures by the criminal justice systems.

Enumeration of punitive and rehabilitative measures targeting drug users offenders

	CRIMINAL JUSTICE SYSTEM + SOCIO-WELFARE SYSTEM	CRIMINAL JUSTICE SYSTEM + LABOUR SYSTEM	CRIMINAL JUSTICE SYSTEM + HEALTH SYSTEM
Punitive function	<ul style="list-style-type: none"> • Discharge • Confiscation of licence • Fine • Prison 		
Rehabilitative function	<ul style="list-style-type: none"> • Supervised housing • Works in favour of the community • Mediation 	<ul style="list-style-type: none"> • Vocational training • Job placement 	<ul style="list-style-type: none"> • Therapeutic advice • Medically assisted addiction treatment • Drug free treatment

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Table 1

4. WHAT WORKS? – LESSONS LEARNED ON A GLOBAL SCALE

4.1. Interest in combining the sanctioning capacity of the legal system with the capacity of the treatment system to rehabilitate offenders

The need to understand the implications of sending someone to prison from a scientific perspective is well known. The impact of prison on drug use, criminal conduct, family cohesion and the use of the health services were all key aspects for evaluation.

High public expense of the prison system

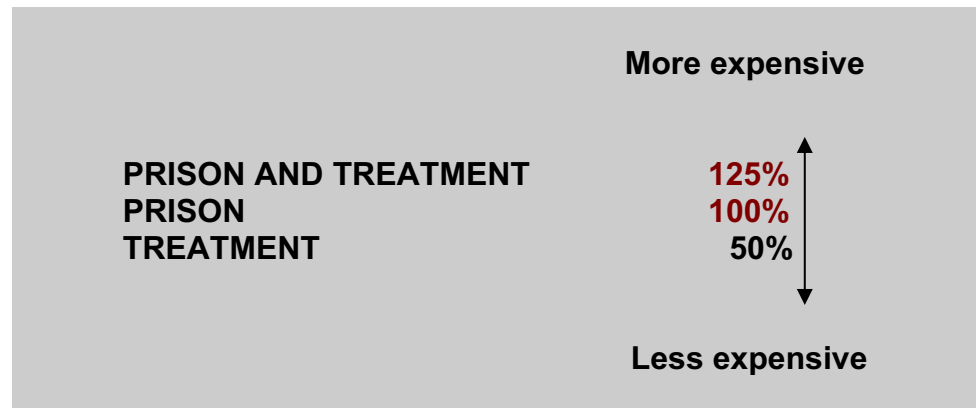


Figure 3

This chart simplifies details provided by the experts who participated in the seminar. There are no substantial differences between the situations in North America and Europe, e.g. in Milan keeping someone in prison costs EUR 200 a day, or EUR 75 000 /year. In North America it is calculated that keeping someone in prison costs between USD 50 000 and 75 000/year. In Norway, however, the cost of treatment, at least in its initial phases, exceeds that of prison (Pathfinder project). The higher cost of the prison plus treatment option is basically due to the costs associated with contracting professionals who are specialists in addiction: these must be added to the normal operating costs of the prison.

Appropriateness of combining treatment and punitive elements: quality as a key consideration



Figure 4

There is evidence that they're advantages of combining treatment with appropriate measures taken within the legal system: particularly the use of conditional liberty. Few addicts benefit from an exclusively correctional approach and that it is possible to combine treatment with punishment in ways that provide improved results.

Imprisonment alone does not offer lasting solutions to criminality

Any form of treatment can be combined with punitive measures. That implies the need for coordination of criminal justice/health and social services-

Key elements:

Treatment + (freedom from) punishment + community + quality + duration

4.2. Inconsistencies in legal, social and health care measures

A study carried out in 1999 by Deusto University, which was commissioned by the EMCDDA, provided information about the degree of centralisation-decentralisation of decision making with respect to alternatives to prison in various European Union states. Legislative decisions in the field of criminal justice are taken at national level in all European Union states except Germany and Spain. Decisions relating to legislative and regulatory powers concerning the health and social service systems are generally taken centrally, whereas executive powers tends to lie in the hands of the respective regional authorities. It seems evident that the need to coordinate decision making and the action taken between two systems with such substantial differences in their respective degrees of decentralisation makes it more difficult to develop coherent policies for dealing with drug offenders.

EU Member States. Alternatives to prison. Role of the legislative, regulatory and executive powers at different territorial levels.

SYSTEM	GOVERNMENT	COUNTRIES															
		AU	BE	DK	FIN	FR	GE	GR	IR	I	LUX	ND	PT	SP	SW	UK	
CRIMINAL JUSTICE	CENTRAL	•♦	•♦	•♦	•♦	•♦	•♦	•♦	•♦	•♦	•♦	•♦	•♦	•♦	•♦	•♦	
	CENTRAL + REGIONAL						♦							♦			
	REGIONAL+ LOCAL											♦					
PUBLIC HEALTH	CENTRAL	•			•	•			•		•		•♦			•♦	
	CENTRAL + REGIONAL		•♦	♦			•		♦	•♦		•		•	•		
	REGIONAL +LOCAL	♦															
SOCIAL SECURITY	CENTRAL	•			•	•		•	•		•		•			•	
	REGIONAL + LOCAL	♦	♦	♦	♦	♦	•♦	♦		•♦	♦	•♦	♦	•	♦		
	CENTRAL + REGIONAL + LOCAL		•	•											•		

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Table 2

Legislative and regulatory powers • Executive powers ♦

In 2001, in a seminar organised by the European Network of Drug Services in Prisons in Hamburg and attended by experts from 17 European countries, the discussion focused on the obstacles that had been found in implementing alternatives to prison for drug addicts. It was concluded that:

Lack of political support

- Most of the initiatives emerge from below without any political channelling.
- Lack of resources
- The lack of availability of places for treatment. The scarcity of resources to facilitate social reintegration at the end of the treatment.
- Insufficient duration of the treatment, which is generally short.

Lack of information

- The lacunae in professional training.
- Most of the evaluations were made at the moment of arrest, not going on to monitoring the situation through the successive stages of the judicial process.
- The alternatives were predominantly accessible to adult males and heroin addicts.
- Lack of acceptance that the relapse is the norm.
- The same diagnostic proofs are not applied for those who follow the alternatives to prison as for those individuals imprisoned.

Lack of coordination

- The discordance between the aims governing the justice system and those of the treatment system, security and the improvement of health conditions, respectively.
- The scarcity of funds for coordination between the legal-social-health programmes.
- The need to increase collaboration between professionals of justice and of treatment.

- In 1999 the **United Nations Office for Crime Prevention** organised a meeting to discuss the lessons learned in special courts dealing with drugs. Was noted the importance of a multidisciplinary approach, the continuous action and individual monitoring of the cases, the consistency of the legal-social-health interventions, the training of professionals in the combination of treatment and punitive measures and the need of a broad range of treatment offers.

5. WHAT WORKS? LESSONS LEARNED ON A LOCAL SCALE BY PILOT PROJECTS

The main focus of debate held during the meeting was the typical sequence of events associated with an offender passing through the legal system, beginning at the moment of arrest, following by the moment of been sentenced by a court and culminating in imprisonment. The observation was broken down into the different physical contexts: police station, preventive detention, court, and prison - as it helped to focus the discussion in order to identify the key factors. Factors that had a key bearing upon success and failure were analysed at each of the selected stages/settings.

5.1. From police arrest to court (Pre-sentence stage)

Obstacles:

In the Netherlands, the referral to treatment centres of cases of addiction by the criminal justice system began to be developed in the police stations. It initially seemed to be an effective measure, but in time it became clear that it was not working. There was a high rate of abandonment. The speed of referral was hindered by difficulties in finding treatment centres adapted to the needs of the individuals in question. There was not a sufficient range of offer. In short, in police stations referral from the criminal justice system to the treatment system proved very difficult.

Solutions:

In cases of multiple criminal behaviour:

In the Netherlands it was found that the optimum place for detection in cases of multiple criminality was the police station. It is crucial to identify this group of cases in order to apply differential measures that specifically target this group. The police can play a key role.

Longer periods of retention in the criminal justice system proved most appropriate when compared with derivations to the treatment system carrying out at the moment of arrest. In the Netherlands, they opted for another method: monitoring the individual for longer periods and monitoring his/her progress through the different stages of the criminal justice system. Extending the period of monitoring an individual from arrest until coming into contact with the court meant that, on the one hand, the individual was much better prepared to follow a given treatment and, on the other, meant that a wider range of treatments was available. In fact, it made the mechanisms more flexible in matching the needs of the individual with the treatment offered, and vice versa.

In less serious cases of delinquency:

In the Netherlands an early exit from the criminal justice system proved pertinent, both from the police station stage and from that of investigation of the case.

In Montreal one experience showed how the police were already referring drug addicts who had committed crimes to a treatment centre in cases of addiction. The individual was monitored from the police station, which he/she was required to report back to. When his/her case came to trial he/she was absolved by the Public Prosecutor.

“Assistance to Drug Users in EU Prison, with special focus on Harm Reduction” - 2001 EMCDDA study

Key ingredients:

- Cooperation (police-treatment services-courts)
- Quality of resources (qualified staff, effective interventions)
- Differential diagnosis of cases of addiction. A key capacity of the police is that of discriminating between crime and addiction. s.

Most countries put the emphasis on the pre-sentence stage when applying alternative measures. At this point offenders are either in detention or are released on bail. In situations before sentencing, treatment is administered on a voluntary basis.

	North America	Europe
Description		
	- The voluntary nature of the treatment makes it possible for it to be generally applied and not limited to custody or internment - It is the lawyer who defends the case. He suggests to the individual to opt for treatment. Pursuing this alternative requires the agreement of all parties concerned. The trial phase is delayed as a consequence of starting the alternative measure.	In the pre-sentence situation, the drug addict has the possibility of being conditionally referred for treatment while the case is going through the court. Once the programme has finished either a conditional sentence will be delivered, or no sentence will be given.
Lessons learned		
Advantages	- The offender does not receive a criminal record, and is made aware of this fact. A criminal record is a true obstacle for the future. - This option is presented as being less problematical, as cases referred in prison can only follow in-prison treatment, as there are no other treatment options once a prison sentence has been delivered.	As we have seen in the case of the Netherlands, retention for longer periods in the criminal justice system (the situation of pre-sentence or post-sentence) in cases of multiple criminal behaviour proved successful.
Obstacles	- One of the difficulties frequently encountered is the remoteness of the prisons. This makes access difficult for the experts in evaluation. - Another difficulty is communication in cases of preventive detention in order to clarify what the treatment involves.	
Solutions	- Evaluation is crucial. One solution implemented was collaboration with the probation officers, who normally frequent prisons to undertake evaluations. - The design of an intervention programme is suitable when it is carried out during the pre-sentence phase: this again makes it possible to take advantage of the period between detention and trial.	

Table 3

5.2. In court (Trial)

THE DRUGS COURTS

Drugs courts around the world

Objectives

There are special drugs courts in the USA, Brazil, Canada, Australia, the Bermudas and in some Caribbean countries. In Europe there are pilot projects in Scotland and Ireland.

The aim of a drugs court is to reduce criminality - particularly with respect to property petty crime - through treatment of addicts. Basically they act by delaying the sentence and involving traditionally non-therapeutic figures and roles in the process of addiction treatment. The idea is to prevent the offender from returning to the criminal justice system by virtue of treatments and the pressure that the system itself exerts in stimulating internal motivation, which can contribute to an improvement in the addiction. Drugs courts do not accelerate the process of justice; in fact, they slow it down. The aim is not to speed up the functioning of justice, as would be the case with the specific mechanisms that legal systems have sought in order to strengthen their operations in order to unload some of the criminal cases related with drugs (e.g. the “comissões de dissuasão” in Portugal).

The drugs court in Ireland

The drugs courts in Dublin, following the North American model, have been adapted to the Irish reality. The Irish initiative goes back to 1997. After a change of government it was decided to start up a pilot drugs court in a particularly problematic area of Dublin. The project will be evaluated and on the basis of the results it will be decided whether or not to continue with the initiative.

Access: One of the access criteria is to avoid a prison sentence not exceeding 12 months. The Defence lawyer or the Probation and Welfare officer can ask for a referral. An essential element of the program is participation in an education program. In Ireland, once referred to the drug court assessment is completed within 4 weeks. The specific program of the Drug Court is a program of three phases. It is the conditional liberty service which issues a report to determine whether the case should be heard in a drugs court. The judge generally accepts the report. A “district educational court” is also involved. Before proceeding with the hearing it will have been discussed with the lawyer. Lawyers in general are not adequately prepared to discuss clinical cases. However it is generally possible to come to an agreement to present a common line of action to the judge. The Department of Public Prosecution (DPP) is also

“Assistance to Drug Users in EU Prison, with special focus on Harm Reduction” - 2001 EMCDDA study

involved. In Ireland the lawyer is not present in court, the relationship is face to face with the judge. There is staff that guarantees the coordination of the treatment services with the drugs court. It is the health staff who decide on the treatment to be followed, not the judge, and it is the individual addict who decides whether he/she wants to go on a drug free programme or on a substitution one. In Ireland cases come to the drugs court within four weeks of arrest. This is not the case in Scotland, where they arrive the following day. One of the main obstacles encountered is that the offender does not know what his/her sentence will be before coming to the drugs court. Therefore he/she does not know what punitive measure will be replaced by the treatment.

Development: The specific programme of the drugs court is behaviourist six sessions intervention. . Routine analyses serve to control the use of any drug. If results are positive a more regular control is applied, such as visits to the court or the police station. This is taken more seriously if another crime is committed that is not related with the consumption of drugs. The most difficult cases have been those that include addiction also to alcohol. The information collected from the monitoring is: new use of drugs, criminal relapse. **Analysis of the essential differences between the American and Irish drugs courts.**

“Assistance to Drug Users in EU Prison, with special focus on Harm Reduction” - 2001 EMCDDA study

	North America	Ireland
Who decides on the type of treatment?	The legal system decides which cases must follow a treatment (always in custody).	The treatment specialists decide on the type of programme to follow, not the judge.
What is the main objective?	The main objective is to punish the offenders.	The main objective is the rehabilitation of the offender.
What is the most frequent mode of treatment?	The justice professionals, influenced by the victims and by public opinion in general, where 49% of the population prefer therapeutic communities as a form of treatment for addiction, and drug free programmes, send the cases to these programmes.	In the Irish case, most of those charged go onto a methadone replacement programme in the community.
Public or private treatment?	The drugs courts in North America buy the treatment in the private sector, which is financed by the insurance companies as is known, with a limit of 28 days.	The treatment is generally followed in a public service.
Who finances the treatment?	In the USA the court prefers the private sector, not the public, as the supplier of treatment. It is the public sector that finances this treatment, and particularly the criminal justice system.	The criminal justice system, the drugs court s himself. Pilot treatment is provided by Health authorities from existing resources.
What are the advantages?	Therapeutic communities as an alternative to prison can be advantageous from a cost-benefit viewpoint when compared with prison, although they seem not to have positive effects in rehabilitation. Contact is intensified between the criminal justice and treatment systems.	Evaluation: in progress
What are the obstacles?	The treatment centres prefer to take cases coming from the pre-sentence stage, as internal motivation to go for treatment occurs more frequently than in cases which arrive in order to avoid a prison sentence. Private services prefer to take people from the prosecution phase, as in that case it is the court or the prison that pays for the place.	The treatment services themselves do not accept that a person who has committed a crime should have preference in accessing a treatment programme.
What factors affect the results of treatment?	Studies of motivation in treatment have concluded that external pressure (e.g. that exercised by the judge in court in the presence of the police) can become an internal motivation if appropriately worked on by the therapist.	The true success of a treatment can only be assessed in the long term.

Table 5 Lessons learned

Perverse effects:

- The drugs courts add elements of control over the drug addict population. For this reason the optimum application must seek to reduce the number of sentences that impose imprisonment. Otherwise, paradoxically, the number of prison penalties is not reduced, but increased. One of the correcting elements in overcoming the obstacle of over-punishment that the attributes of drugs can involve is to limit referrals to these courts to cases really likely to receive a prison sentence.
- Applied to cases where the penalty of prison is not probable or even possible, as in the case of juveniles, they are not beneficial. The principle of the alternatives to prison is advantageous in the case of avoiding prison penalties, so that the treatment of juveniles by the drugs courts would not be advisable.
- Some people who are not drug addicts try to have their cases heard in a drugs court in order to receive a lighter penalty.
- In Canada it has been seen how it is the new young professionals in drug addiction treatment who tend to be most prepared to work in collaboration with the drugs courts. This leads to the following assertion: it is the less qualified professionals who, on account of their more limited training and lack of professional experience, tend to take on the more difficult addiction cases.

Obstacles encountered in setting up the drugs court in Dublin:

- There was resistance from the community, whose opinion is significant in the case of drug addicts, and the inclination was to distance the offenders from the community. Notwithstanding this, the needs posed, above all by the mothers of the addicts, who asked to remain close to their children (a quarter of the cases heard by the drugs court in Dublin were in this situation), supported its being set in motion. For this reason intense work was carried out with citizens' associations. The judge and team met the community groups and allayed their fears particularly of offending addicts having more immediate access to treatment than non-offending addicts.
- The main difficulty in the drugs court is the availability of sufficient treatment places in the field of its jurisdiction.

Lessons learned:

- There is an advantage that treatment is court supervised..
- One of the key elements to take into account when determining whether or not to set up a drugs court in a specific community is the capacity of the services specialised in drug addiction treatment to cover drug users needs. When this capacity is acceptable, interest in the drugs courts declines. The great advantage that the drugs courts have produced in the United States and Canada has been this population's improved access to the health and care services, which they enter via the criminal justice system. This situation is radically different in Europe. Thus when this advantage disappears, Brochu suggests taking extreme precautions in considering the negative effects. Essentially this implies an increase in controls and,

consequently, the creation of conditions for new repressive actions by the criminal justice systems.

- One of the advantages of the drugs courts is the training of judges and other personnel to be able to determine the seriousness and characteristics of the addiction and the resources existing in the community to deal with these cases. In the case of ordinary courts some judges can err in confusing a simple user of cannabis with another who injects heroin, to give just one example.
- In comparing a drugs court with a normal court, the personnel and judges may not be up-to-date with the phenomena of addiction. The judge in a drugs court is trained, knows the resources, is prepared to consider each case on its own merits. The problem with the drugs court is that, at least in some jurisdictions, people were shocked to find that the pre-sentence situation was better.
- Drugs courts would be particularly useful in communities in which:
 - There are no specialised resources available for the treatment of drug addiction, as such courts can bring out the need for them and to a degree can force an increase in this type of offer.
 - There is a substantial lack of coordination between the partners, the ministry of justice, the treatment centres for drug addicts and the social services.
 - There is the possibility of carrying out an adequate selection of cases to be accepted by these mechanisms. Brochu's clearly defined principle was: only cases, which would have ended up in prison if they had not begun to be heard in a drugs court.

Viability in Europe

Obstacles to the development of drugs courts in European Union States

- In The European Union 13 countries have a civil law system and only two(Ireland, UK) have a system based on common law. This is a fundamental difference in determining the viability of a drugs court. The common law system is characterised by the discretionary power of the judge. In civil law systems, the judge himself must respect the law; this is what is called the principle of legality. In the latter case the viability of a drugs court is considerably reduced. In the whole world, only one country with a civil law system has created drugs courts: Brazil.
- It is not viable to set up drugs courts within ordinary courts, due to the inherent need to increase resources and to multiply mechanisms.
- One of the difficulties in setting up drugs courts may be the resistance of judges to repeatedly having to deal with drug addicts.
- The difficulties that judges find in having to be trained and evaluated. Training implies a degree of specialisation to which the corporate body of judges, which is generalist by definition, would tend to oppose.

Measures which could be applied in general courts

- Information to judges on drug addiction and that would allow one person to evaluate the state of the case. Probation officers could assume the functions of the judge in a drugs court.

- Analysis of the existing possibilities of applying alternative measures to prison when dealing with drug addicts.
- Training
- Legal cooperation
- Meetings between the two bodies (courts and drug treatment centres)

Promoting direct access to the offender, de-mythifying the generally held perception of offending drug addicts.

Ordinary courts and alternatives to prison: the experience of GAVO (Utrecht) and “The cure is worth the effort” (Milan)

The “Gavo” programme forms part of the Dutch drugs policy, which has two main objectives: improving the living conditions of the drug addict population and reducing public damage. The Ministry of Justice has a central role to play. If living conditions are improved for the drug addict population there are fewer possibilities that they will commit serious crimes. Although it is the accused who chooses between treatment and going to prison, account must be taken of the presence of the coercive element exercised by the prospect of avoiding punishment: the prison penalty. Since 1 April 2002 it has been possible for a judge to oblige an addict to follow a treatment programme. This programme began as an attempt at collaboration between the DPP, the police and the treatment centre. The programme is based on the cooperation of the police and the DPP, and on the treatment centre in the community. The minister is in charge of seeking the treatment best suited to the case. He proposes it to the court. In many cases the first objective is to stabilise the living conditions of the individual concerned. This suspends the legal process on condition that the subject agrees to undergo treatment. Together with the judge, the idea is to put definite pressure upon the individual. Relapse is accepted as a normal risk factor. Having accepted the potential relapse, the cases are followed up for a long time. The principal aim of the programme is to encourage offenders to follow a treatment instead of going to prison (or immediately after getting out). The aim is to prevent a return to crime and to establish a new lifestyle. The treatment is finished when the person is referred back to the judge and the DPP. It can also be terminated if the person abandons or does not agree to accept the rules of the game. In the long term the programme seems to provide good results in the reduction of criminal conduct. It is calculated that there is a reduction in crime of some 75%. Good cooperation between the treatment services, the DPP and the police is essential.

“The cure is worth the effort” is a programme currently in use in Milan. The programme will be set-up also in Rome, Palermo and Catania. This alternative is offered at the same time as the sentence. This requires close collaboration between the court and the treatment services. Prison is generally replaced by treatment followed in a therapeutic community. Legal advice is crucial. On occasions the moment of arrest can be a turning point which leads to a radical change in the life of the drug addict. Individuals with sentences are sent to the therapeutic community on the same day, without going to prison. The speed of response is based on maintaining good contacts with courts and with the network of therapeutic communities. Should an offender fail to be admitted to a given community, due to refusal to accept its rules, he/she is transferred to another. In Italy it was the therapeutic units that led to the impulse for the alternatives. The prisons, and especially the educators – a professional group currently in extinction in Italy - played a key role. For those arrested, it is the public service that is responsible for providing assistance. At the point of being sentenced responsibility for financing treatment shifts from the health system to the criminal justice system.

5.3. In prison (Post-sentence)

As in the earlier phases, the alternative measures to which there is access once in prison are directed at individuals who repeatedly commit petty crimes. At the same time, and in the same way, the main objective is to reduce the rate of petty crimes. Nevertheless they present two principal yet different characteristics:

- Generally the alternative treatment takes place in the situation of confinement
- Taking these cases out of the prisons can improve the climate in the prison.

Norway	North America	The Netherlands
Target population: High-risk criminals, responsible for the majority of petty crimes.		
<ul style="list-style-type: none"> • The number of drug addicts registered in the country’s prisons increased in the 1990s. • Recent policy in Norway has favoured the introduction of reforms in the prison system. • In recent years the number of places available in alternative measures has doubled. • Treatment places are more expensive than prison, particularly in the initial phases. • There is a need to know the cost-benefit relationship of such measures so that the public can understand why they should be financed through taxation. • Health personnel play a decisive role in promoting these measures. • One of the key criteria for access is to have severe problems of addiction: good conduct is not a pre-requisite. • At least some of the more problematic individuals in prison can benefit from these programmes. 	<ul style="list-style-type: none"> • In North America there is no possibility of accessing treatment from prison, the only option at this phase is to follow treatment inside the prison. • There is the possibility of treatment for those who leave prison on bail. In Canada, a probation committee is responsible for deciding who should have access to treatment. • Access difficulties are greater for longer (over 10 years) than shorter sentences. • The characteristics of the crime constitute the key reference criteria when deciding between different alternatives. Need for treatment is subordinated to these criteria. 	<ul style="list-style-type: none"> • A therapeutic community has been recently set up inside a prison. This is a pioneering initiative in a country in which treatment for addiction is not traditionally offered from prison. This new initiative seeks to improve the rate of retention in treatment.

Table 6

The Pathfinder project in Oslo:

Obstacles& Challenges:

- Difficulties in identifying cases with rehabilitation potential within prison.
- Development of links between prisons and health services in the community.
- Identification of financial resources by prison officers that could be used to treat these offenders. In the initial phases treatment is more expensive than prison. This represents an obstacle in the promotion of alternatives from the prison phase.
- Offenders with long sentences have difficulties in getting the judge to authorise early release from prison to follow treatment.
- A longer duration of the period of imprisonment offers less possibility of the individual being rehabilitated. Survival behaviour developed in confinement is highly unsuited to conditions of liberty.
- In cases of very short sentences the problem is that the period of confinement is insufficient for the offender to follow an equally long treatment with any prospect of success.
- Difficulties in identifying and using adequate instruments of evaluation and assessment.

Solutions:

- The period of conditional liberty can be used to carry out an evaluation of the case.
- Individual drug addicts are more motivated to follow a treatment at the start of a sentence.
- The possibility of obtaining secondary benefits associated with the treatment, such as being closer to family and obtaining other privileges, act as external motivation factors. One study shows that over a period of two years no significant differences were found between the results of treatment applied to those who sought privileges and those who showed internal motivation to abandon their drug consumption.
- The development of elements in the programmes aimed at modifying survival conduct: habits developed in prison are often highly disadvantageous in situations of liberty.
- One of the advantages that alternative measures can bring for the prison establishment itself is the reduction of violence and – as a consequence - an improvement in the general atmosphere within the prison itself.
- Prison governors are a key group for promoting alternatives to prison, from inside the prison itself.
- The attitude of prison personnel is crucial in promoting alternatives to prison from inside the prison itself.
- it is appropriate to carry out an evaluation by the users and not only by the professionals.

6. KEY FACTORS FOR ACCESSING THE ALTERNATIVES

FROM THE COURT			FROM THE PRISON
The Netherlands	North America	Ireland	Norway
<ul style="list-style-type: none"> • The accent is put on the reduction of crime and not on punishment per se. • A key factor is the alternative plan that treatment experts propose to the judge. • The key question is to find a programme adapted to the needs of the individual. This is the best argument to convince the judge. • Existence of a certified centre. • Motivation of the individual. • Motivation of the therapist. • The consent of the public service. • The confidence of the judge in the coordinator of the treatment. • The rapport between the judge and the lawyer. • The judge’s previous experience. 	<ul style="list-style-type: none"> • The accent is put on punishment per se and not on crime reduction. • The characteristics of the offender and the crime are determinant. • Criminal conduct must always be punished. With more serious criminal conduct there are fewer possibilities of alternatives. • Age is a key factor. • The family and work situation. • The willingness of the detained party to follow treatment. 	<ul style="list-style-type: none"> • The circumstances related with the crime. • The judge’s discretion. • The consent of the respondent. • Agreement between the judge, lawyer and DPP as to the suitability of treatment. • The rapport between the judge and the lawyer plays a principal role. 	<ul style="list-style-type: none"> • In prison the role of the prison governor is fundamental. The health personnel, inspector and security personnel are all involved.

Table 7

Conclusions

Firstly, a combination of factors that facilitate access to possible alternatives:

- The age element seems a key point. The younger the offender, the more possibilities there are.
- The individual’s agreement to follow treatment and the existence of an offer by a certified centre prepared to accept the case.
- The confidence that the judge places in each type of treatment.
- The credibility of the professionals entrusted with following up the cases in the alternative measure.

Other secondary factors commonly found in this comparative analysis:

- Factors linked with the crime committed.
- The judge’s discretion.
- Consent of the respondent.

7. CONCLUSIONS

The dual problem presented by drug addicts: illness and criminality, has brought with it a paradoxical mode of intervention in public policies regarding drugs. This has given place to a breakdown of the cost-effectiveness ratio.

Alternatives need to bring together characteristics that are acceptable to legal personnel: above all the judges and the Public Prosecutors. In choosing the most appropriate moment to refer an individual from the criminal justice system to the treatment system and the social-health system, the treatment specialist plays a key role. He/she is also important in determining which programme is best adapted to the individual offender’s needs. This role must be respected by legal professionals if good results are to be obtained from the alternative programme.

This envisages the need to act in a grey area that has never previously been reached by the treatment or corrective services. However, “early intervention” has proved effective, although it is more difficult to show its efficacy from a rigorously scientific perspective. This is because evaluation shows most results where there is most damage. This is the perverse effect of the evaluation technique.

The drugs courts add elements of control over the drug addict population. For this reason the optimum application must seek to reduce the number of sentences that impose imprisonment. Otherwise, paradoxically, the number of prison penalties is not reduced, but increased. One of the correcting elements in overcoming the obstacle of over-punishment that the attributes of drugs can involve is to limit referrals to these courts to cases really likely to receive a prison sentence.

Applied to cases where the penalty of prison is not probable or even possible, as in the case of juveniles, they are not beneficial. The principle of the alternatives to prison is advantageous in the case of avoiding prison penalties, so that the treatment of juveniles by the drugs courts would not be advisable. Some people who are not drug addicts try to have their cases heard in a drugs court in order to receive a lighter penalty.

In Canada it has been seen how it is the new young professionals in drug addiction treatment who tend to be most prepared to work in collaboration with the drugs courts. This leads to the following assertion: it is the less qualified professionals who, on account of their more limited training and lack of professional experience, tend to take on the more difficult addiction cases.

Lessons learned

Perverse effects:

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- Applied to cases where the penalty of prison is not probable or even possible, as in the case of juveniles, they are not beneficial. The principle of the alternatives to prison is advantageous in the case of avoiding prison penalties, so that the treatment of juveniles by the drugs courts would not be advisable.
- Some people who are not drug addicts try to have their cases heard in a drugs court in order to receive a lighter penalty.
- In Canada it has been seen how it is the new young professionals in drug addiction treatment who tend to be most prepared to work in collaboration with the drugs courts. This leads to the following assertion: it is the less qualified professionals who, on account of their more limited training and lack of professional experience, tend to take on the more difficult addiction cases.

Obstacles encountered in setting up the drugs court in Dublin:

- There was resistance from the community, whose opinion is significant in the case of drug addicts, and the inclination was to distance the offenders from the community. Notwithstanding this, the needs posed, above all by the mothers of the addicts, who asked to remain close to their children (a quarter of the cases heard by the drugs court in Dublin were in this situation), supported its being set in motion. For this reason intense work was carried out with citizens' associations.
- The main difficulty in the drugs court is the availability of sufficient treatment places in the field of its jurisdiction.
- Difficulty in persuading therapists of the motivation of these people. Especially as the therapists were not paid for it. They prefer cases where there is a family that can apply pressure. Those who are still integrated into a family or work system.
- The long time needed to prepare the evaluation report, an average of eight hours. This means that reports cannot be produced for every case, which reduces the number of people who choose an alternative.

Lessons learned:

- One of the key elements to take into account when determining whether or not to set up a drugs court in a specific community is the capacity of the services specialised in drug addiction treatment to cover drug users needs. When this capacity is acceptable, interest in the drugs courts declines.

- The great advantage that the drugs courts have produced in the United States and Canada has been this population’s improved access to the health and care services, which they enter via the criminal justice system. This situation is radically different in Europe. Thus when this advantage disappears, Brochu suggests taking extreme precautions in considering the negative effects. Essentially this implies an increase in controls and, consequently, the creation of conditions for new repressive actions by the criminal justice systems.
- One of the advantages of the drugs courts is the training of judges and other personnel to be able to determine the seriousness and characteristics of the addiction and the resources existing in the community to deal with these cases. In the case of ordinary courts some judges can err in confusing a simple user of cannabis with another who injects heroin, to give just one example.
- In comparing a drugs court with a normal court, the personnel and judges may not be up-to-date with the phenomena of addiction. The judge in a drugs court is trained, knows the resources, is prepared to consider each case on its own merits. The problem with the drugs court is that, at least in some jurisdictions, people were shocked to find that the pre-sentence situation was better.
- Drugs courts would be particularly useful in communities in which:
 - There are no specialised resources available for the treatment of drug addiction, as such courts can bring out the need for them and to a degree can force an increase in this type of offer.
 - There is a substantial lack of coordination between the partners, the ministry of justice, the treatment centres for drug addicts and the social services.
 - There is the possibility of carrying out an adequate selection of cases to be accepted by these mechanisms. Brochu’s clearly defined principle was: only cases that would have ended up in prison if they had not begun to be heard in a drugs court.

Viability in Europe

Obstacles to the development of drugs courts in European Union States

- In The European Union 13 countries have a civil law system and only two(Ireland, UK) have a system based on common law. This is a fundamental difference in determining the viability of a drugs court. The common law system is characterised by the discretionary power of the judge. In civil law systems, the judge himself must respect the law; this is what is called the principle of legality. In the latter case the viability of a drugs court is considerably reduced. In the whole world, only one country with a civil law system has created drugs courts: Brazil.
- It is not viable to set up drugs courts within ordinary courts, due to the inherent need to increase resources and to multiply mechanisms.
- One of the difficulties in setting up drugs courts may be the resistance of judges to repeatedly having to deal with drug addicts.
- The difficulties that judges find in having to be trained and evaluated. Training implies a degree of specialisation to which the corporate body of judges, which is generalist by definition, would tend to oppose.

Measures which could be applied in general courts

- Information to judges on drug addiction and that would allow one person to evaluate the state of the case. Probation officers could assume the functions of the judge in a drugs court.
- Analysis of the existing possibilities of applying alternative measures to prison when dealing with drug addicts.
- Training
- Legal cooperation
- Meetings between the two bodies (courts and drug treatment centres)
- Promoting direct access to the offender, de-mythifying the generally held perception of offending drug addicts.

8. HOW TO GO ON FROM HERE?

The next EMCDDA meeting will discuss the development of a qualitative questionnaire that will make it possible to examine in greater depth the key aspects of success and failure identified at this meeting. The next meeting will be held in Lisbon on 23rd and 24th October 2003. The Reitox focal points will be invited to take part and it is hoped to further develop collaboration between EMCDDA and ENDSP, ONDCP, the Pompidou Group and the Montreal International Centre for Comparative Criminology.