



Council of the
European Union

Brussels, 1 March 2018
(OR. en)

6441/18

CORDROGUE 21
SAN 71
RELEX 185

NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	WK 13479/2017 REV 3
Subject:	Draft Council conclusions on promoting the use of alternatives to coercive sanctions for drug using offenders

Delegations will find in annex the draft Council conclusions on the above-mentioned subject, as endorsed at the HDG meeting on 1 March 2018.

**Draft Council conclusions on promoting the use of alternatives to coercive sanctions
for drug using offenders**

The Council of the European Union and the Member States of the European Union,

RECOGNISING that the use of illicit drugs and drug addiction is a public health concern requiring adequate and effective person-centred health and social response in order to enhance public health and public safety of individuals, families and communities across Europe;

REITERATING the respect for human dignity, liberty, democracy, equality, solidarity, the rule of law and human rights as well as fundamental freedoms of every individual in the development and implementation of the European Union drug policy;

RECALLING that the European Union aims to contribute to the reduction in drug demand and drug supply within the European Union through an integrated, balanced and evidence-based drug policy;

HIGHLIGHTING that the three United Nations drug control conventions invite the States to provide, within national legal frameworks and in compliance with applicable international law, and where appropriate, as an alternative to conviction or punishment, measures of treatment, education, after-care, rehabilitation and social reintegration to drug users who have committed offences enumerated in these conventions;

RECALLING that the high-level statements and resolutions of the United Nations emphasise a clear need for further action, including the necessity to identify and develop cost-effective and evidence-based alternative approaches and to consider in relevant cases a full implementation of such measures through collaboration and cooperation between law enforcement authorities, criminal justice, public health, social and education systems, and health and social service providers, as well as to collect and share data, research and best practices on implementation of respective measures;

ACKNOWLEDGING that measures provided to drug using offenders as an alternative to conviction or punishment, including imprisonment, are an evidence-based and fundamental support to people who need assistance due to their drug use or addiction;

REITERATING the principle of continuity of care throughout the criminal justice proceedings as well as the principle of proportionality in national policies, also as regards offences committed by drug using offenders;

ACKNOWLEDGING that alternatives to imprisonment for drug using offenders might reduce repeat offending rates and relieve financial and administrative burden and social costs, while also increasing social inclusion;

CONSIDERING that there is a need to continue the efforts to ensure that alternative measures are upheld in global drug policy;

NOTING that the Commission's report of 2016 on "Study on alternatives to coercive sanctions as response to drug law offences and drug-related crimes"¹ concluded that all Member States have at least one alternative measure to coercive sanctions in place and some have multiple, and that generally the available alternatives relate to treatment. While also RECALLING that the study highlighted practical and administrative barriers to the use of alternatives to coercive sanctions that exist across Member States and that the data required to evaluate and improve alternative measures, particularly in relation to completion rates and the needs of those receiving them, is limited;

REFERRING to the European Union Drugs Strategy 2013-2020² and European Union Action Plan on Drugs 2017-2020³, which encourage Members States to provide and apply, where appropriate and in accordance with their Member States legal frameworks, alternatives to coercive sanctions for drug using offenders, such as education, suspension of sentence with treatment, suspension of investigation or prosecution, rehabilitation and recovery and aftercare and social reintegration;

¹ Study on alternatives to coercive sanctions as response to drug law offences and drug-related crimes, May 2016, RAND Europe for the European Commission

² OJ C 402, 29.12.2012, p. 1-10

³ OJ C 215, 5.7.2017, p. 21-58

NOTING that alternatives to coercive sanctions can be applied for a range of offences, such as offences committed due to the drug use, that in many Member States drug consumption and/or drug possession for personal use do not constitute a criminal offence and that Member States may impose such measures as a matter of right in any relevant cases involving drug-using offenders according to the law of the Member State concerned;

NOTING that due to diverse legal frameworks and needs, the adoption and implementation of alternative measures to coercive sanctions should be tailored by the Member States according to the realities and to their national legal frameworks;

RECALLING that the implementation of such measures should be accompanied by further studies on the EU level with a view of providing reliable and comparable data on their application;

ACKNOWLEDGING that the term "alternatives to coercive sanctions" could, according to the national legislation of the Member States, also refer to alternatives that are used instead of or in addition alongside the traditional criminal justice measures for drug-using offenders;

RECOGNISING that it is within the competence of Member States to develop and adopt national criminal justice policies and criminal laws on the definition of drug offences and sanctions according to Article 83 TFEU, while RECALLING that according to Article 168 TFEU, the European Union shall complement the Member States' action in reducing drugs-related health damage, including information and prevention;

THE COUNCIL

1. STRESSES the need for the Member States to provide and apply where appropriate and in accordance with their legal frameworks alternative measures to coercive sanctions for drug using offenders in order to prevent crime, reduce recidivism and enhance the efficiency and effectiveness of the criminal justice system, while also looking at a possible reduction of health related harms and minimisation of social risks.
2. ENCOURAGES the Member States where appropriate and within their national legislation to provide and further promote the availability, effective implementation, monitoring and evaluation of measures provided as an alternative to coercive sanctions for drug using offenders, such as education, (suspension of sentence with) treatment, suspension of investigation or prosecution, rehabilitation and recovery, aftercare and social reintegration.
3. RECALLS that these measures may be implemented in different stages of proceedings of offences committed by drug using offenders including pre-trial referral, where appropriate, and in accordance with national legislation.
4. INVITES the Member States to examine within national policies existing data on implementation of these measures, and sharing it with relevant European and national reporting authorities and monitoring systems.
5. INVITES the Member States to raise awareness, for example through training, on availability and effective use of these measures and to support cooperation and collaboration among national policy makers, law enforcement, criminal justice, public health, social and education professionals and, where appropriate, persons providing support to drug-using offenders.
6. CALLS upon the Member States, the European Union institutions, agencies and bodies to strengthen international cooperation by promoting and sharing good practices with non-EU countries on the use of measures provided as an alternative to coercive sanctions and evidence on the effectiveness of these measures.

7. INVITES the EMCDDA to continue to monitor the measures and to exchange information and best practices on implementation, development of these measures, their effectiveness and cost-effectiveness, and also INVITES the Commission to support this work.

8. RECALLS the Commission's obligation for an overall evaluation of the implementation of the EU Drugs Strategy (2013-2020) and the EU Action Plan on Drugs 2017-2020, which, *inter alia*, has to take into account the findings on the issue of alternatives to coercive sanctions.
