

Brussels, 24 November 2022
(OR. en)

11829/5/22
REV 5

LIMITE

CORDROGUE 63
SAN 486
COHOM 144

NOTE

From:	Presidency
To:	Horizontal Working Party on Drugs
Subject:	Draft Council conclusions on human rights-based approach in drug policies

Introduction

The EU Drugs Strategy for the period 2021-2025¹ and the EU Drugs Action Plan 2021-2025² are grounded in principles of upholding the human rights, respecting human dignity, liberty, democracy, equality, solidarity and the rule of law whilst promoting these principles internationally and strengthening multilateralism and EU leadership. The EU Drugs Strategy and Action Plan take an evidence-based, integrated, balanced and multidisciplinary approach and aim to promote and safeguard coherence between health, social and justice responses.

These Council conclusions on human rights-based approach in drug policies aim to support an effective implementation of the EU Drugs Strategy 2021-2025 with respect to human rights, particularly its strategic priorities 6, 7, 8 and 9, and its Action Plan 2021-2025, particularly its actions 39, 49, 56, 65, 68, and 69.

The revised text is the outcome of discussions at the HDG on 23-24 November 2022. The changes **compared to the REV3 version of the text, which was distributed before the meeting,** are indicated as follows: the additions are marked in bold underline and the deletions in strikethrough.

¹ EU Drugs Strategy (2021-2025) (OJ C 102I of 24.3.2021, p. 1)

² EU Drugs Action Plan (2021-2025) (OJ C272 of 8.7.2021, p. 2)

**Draft Council conclusions on human rights-based approach
in drug policies**

The Council of the European Union

RECALLING that the EU Drugs Strategy aims to protect and improve the well-being of society and the individual, protect and promote public health, offer a high level of security and well-being for the general public and increase health literacy³; that it is based on international law, including the International drug control conventions that form the international legal framework of the global drug control regime, as well as international human rights law;

RECALLING the EU's commitment in the EU Drugs Strategy to strengthening international cooperation with third countries, regions, international and regional organisations, and at multilateral level, to pursue the approach and objectives of the Strategy, including in the field of development, and to enhance the role of the EU as a global broker for a people-centred and human rights-oriented drug policy;

RECALLING that the EU Drugs Strategy aims to contribute to the reduction of drug demand and drug supply, and to addressing drug-related harm with an evidence-based, integrated, multidisciplinary, and balanced approach incorporating a gender equality and health equity perspective⁴;

RECALLING the “Outcome Document of the 2016 UN General Assembly Special Session on the world drug problem”, which recommends promoting well-being of society as a whole through the elaboration of effective scientific evidence-based prevention strategies tailored to the needs of individuals, families and communities as part of comprehensive and balanced national drug policies, based on a non-discriminatory basis⁵;

³ Aim, foundations and approach of the EU Drugs Strategy 2021-2025

⁴ EU Drugs Strategy, Introduction, paragraph 8 and paragraph 2

⁵ Outcome Document of the 2016 UN General Assembly Special Session on the world drug problem, Prevention of drug abuse, paragraph e)

RECALLING the United Nations Human Rights Council Resolution 37/42⁶ of 23 March 2018 on the Contribution to the implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights, which recognises the value of comprehensive and balanced policy interventions, including those in the field of the promotion of sustainable and viable livelihoods;

RECALLING that human rights are universal, unalienable, indivisible, interdependent and interrelated, including in the context of drug policy, development assistance, health care and criminal justice;

RECALLING the Council conclusions on alternative development, which welcome the leading role of the EU and its Member States in the alignment of alternative development with related development-centred drug policy interventions as well as overarching development strategies and sectoral policies, such as the promotion of human rights in drug policy; poverty alleviation; rural development and food security; access to land and land rights; environmental protection and climate change; peaceful settlement of armed conflict and security; the promotion of the rule of law and good governance; and the promotion of gender equality⁷;

RECALLING that coherent, effective and efficient implementation of measures should both ensure a high level of human health protection, social stability and security, and contribute to awareness raising. Any potential unintended negative consequences associated with the implementation of the actions should be minimised, human rights should be upheld and sustainable development promoted⁸;

⁶ https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/37/42

⁷ EU Council conclusions on Alternative Development: ‘Towards a new understanding of alternative development and related development-centred drug policy interventions – Contributing to the implementation of UNGASS 2016 and the UN Sustainable Development Goals’, 14338/18

⁸ EU Drugs Strategy, Introduction, paragraph 3

UNDERLINING that State Parties to the UN Convention on the Rights of the Child have undertaken to take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the use of drugs, and to prevent the use of children in the production and trafficking of such substances⁹;

RECOGNISING that the stigmatisation linked to drug use and drug-use disorders needs to be addressed, especially as this stigma may have detrimental effect on the mental and physical health of people who use drugs, particularly of those in vulnerable and marginalised situations, and could also act as a barrier to seeking support¹⁰;

RECOGNISING that the multifaceted nature of the drug phenomenon requires a comprehensive approach which incorporates a gender and age perspective and promotes both gender equality and non-discrimination of persons in vulnerable and marginalised situations¹¹;

RECALLING the need to maintain and improve the availability, accessibility and coverage of risk and harm reduction services, including ~~innovative~~ evidence-based ~~ones~~ **best practices**, guided by the minimum quality standards for drug demand reduction interventions in the EU Member States, in line with national legislation¹²;

REITERATING the principle of continuity of care throughout criminal justice proceedings, and the importance of offering persons with substance use disorders a broad range of voluntary and evidence-based drug services, including care, treatment, risk and harm reduction, based on informed consent and managed by health professionals, in line with national legislation¹³;

⁹ UN Convention on the Rights of the Child, article 33

¹⁰ EU Drugs Strategy, Strategic Priority 6.4

¹¹ UN system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration - Shared principles

¹² EU Drugs Strategy, Strategic Priorities 7.1 and, 7.2; Council Recommendation of 18 June 2003 on the prevention and reduction of health-related harm associated with drug dependence (2003/488/EC)

¹³ The principle of continuity of care is enshrined in the Council conclusions on alternatives to coercive sanctions for drug using offenders; the need for informed consent and involvement of health professionals appears in the International Guidelines, as well as the WGAD report on drug policies.

ACKNOWLEDGING that illicit drug trafficking pose a threat to the health, safety and quality of life of citizens of the EU, and to the legal economy, stability and security of the EU Member States;

ACKNOWLEDGING also the collaborative efforts of EU Member States and, according to their competences, the Commission and the relevant EU agencies to counter illicit drug trafficking and contain illicit drug markets;

RECALLING that the EU Drugs Strategy aims UNDERLINING the need to prevent drug-related crime with particular focus on the need to counter violence, trafficking, ~~limit~~ corruption and ~~address~~ the exploitation of people, particularly vulnerable groups, by addressing the underlying factors that lead to their involvement in illicit drug markets¹⁴;

RECALLING ~~that under international human rights law, the limitation of the right to liberty must be subject to the principles of~~ international human rights law, including the principles of legality, ~~necessity and proportionality~~ between criminal offences and penalties, and that the severity of penalties must be proportionate to the gravity of the offence;

RECALLING Council Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking;

~~EXPRESSING concern over~~ CONDEMNING the capital punishment, extrajudicial killings and arbitrary detention, including for drug-related offences in some countries in the world;

RECOGNISING that under the UN drug control conventions ~~allow States to~~ may consider alternative, non-custodial measures for persons accused of minor, non-violent drug-related offences, and may ~~to provide consistently with the three international drug control conventions and national law, and,~~ in accordance with national, constitutional, legal and administrative systems, alternatives or additional measures with regard to conviction or punishment ~~in cases of an appropriate nature~~¹⁵;

¹⁴ ~~EU Drugs Strategy, Strategic Priorities 1.2 and 1.3~~

¹⁵ 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Article 3(4c)

RECALLING the 2018 Council conclusions on alternatives to coercive sanctions for drug using offenders, which stresses the need for EU 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, 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 risks¹⁶;

ACKNOWLEDGING that, in line with the 2018 Council conclusions on alternatives to coercive sanctions for drug using offenders, the term “alternatives to coercive sanctions” could, according to national legislation of the EU Member States, also refer to alternatives that are used instead of or in addition alongside the traditional criminal justice measures for drug-using offenders;

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

NOTING also that due to the EU Member States diverse legal frameworks and needs, the adoption and implementation of alternative measures should be tailored by the EU Member States according to their realities and in accordance with national, European and international legislations;

ACKNOWLEDGING the current work of the European Commission, provided for by the EU Drugs Action Plan 2021-2025, to recommend scaling up the availability, effective implementation, monitoring and evaluation of measures provided as alternatives to coercive sanctions for drug-using offenders in accordance with the national legislation of the Member States;

¹⁶ Council conclusions on promoting the use of alternatives to coercive sanctions for drug using offenders. 2018, p. 5

RECALLING the Outcome Document of the 2016 UN General Assembly Special Session, which encourages the development and implementation, with due regard for national, constitutional, legal and administrative systems, of alternative or additional measures to conviction or punishment in cases of an appropriate nature, in accordance with the three international drug control conventions, as well as the promotion of proportionate responses¹⁷;

NOTING also that the UN system common position on drug policy acknowledges that the UN drug control conventions allow countries to design and implement national drug policies according to their priorities and needs, consistent with the principle of common and shared responsibility and applicable international law¹⁸;

RECOGNISING the need to promote and encourage the active and meaningful participation and involvement of civil society, including non-governmental organisations, young persons, people who use drugs, persons in recovery, users of drug-related health and social services, the scientific community, academia and other experts, in the development and implementation of drug policies¹⁹;

~~RECALLING that in framing and implementing their drug policies, EU Member States and institutions must ensure that these policies are not influenced by commercial interests and provide the necessary mechanisms to address any conflicts of interest;~~

ACKNOWLEDGING the need to avoid any conflicts of interest in the framing and implementing of drug policies and to ensure that they are not unduly influenced [, for example, by undue commercial interests,] and that any conflicts of interest are addressed in accordance with national procedures in place;

¹⁷ Outcome Document of the 2016 UN General Assembly Special Session on the world drug problem, paragraphs 4(j) and 4(l)

¹⁸ United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration, 2018, p. 12; **CND resolution 62/8.**

¹⁹ Developed based on the EU Drugs Strategy 2021-2025, Strategic Priority 7.3

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, 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;

1. INVITES EU Member States to further support the development and implementation of evidence-based policies and interventions that put human rights at the centre of drug responses, whilst ~~addressing~~ **countering** crime and ensuring public safety and security, sustainable and viable livelihoods and the health of individuals, families and communities across the EU;
2. INVITES EU Member States to further promote drug policies that adhere to human rights, address discrimination, and reduce the stigma on people who use drugs, in order to ensure voluntary access to services, including prevention, **evidence-based life-skills programmes**, risk and harm reduction, early detection and intervention, counselling, treatment, rehabilitation, social reintegration and recovery of people who use drugs, as well as treatment of drug-related comorbidities, ~~and life skills programmes with demonstrated effectiveness~~;
3. ENCOURAGES EU Member States to further promote within their drug policies gender- and age- appropriate measures and measures reflecting the specific needs of children and young persons, women and persons in marginalised and vulnerable situations;
4. ENCOURAGES EU Member States to give special attention to protection of children's rights including protection of children from drug use and to the prevention of the exploitation of children in the illicit production and trafficking of drugs;
5. ENCOURAGES EU Member States to ensure that people in the criminal justice system, including those subjected to alternatives to coercive sanctions, have voluntary access to non-discriminatory and gender- and age- appropriate evidence-based drug services, based on their needs and informed consent;

6. ~~INVITES EU Member States, with due regard for national, constitutional, legal and administrative systems, with the aim to reduce the stigma and discrimination of people who use drugs, to promote and implement effective and proportionate criminal justice responses to drug offences related to personal use, and to allow appropriate alternatives to coercive sanctions for drug-using offenders drug offences related to personal use;~~
7. INVITES EU Member States, where appropriate, to support the active and meaningful participation and involvement of the scientific and expert community, the civil society, including non-governmental organisations, young persons, women, people who use drugs; ~~the scientific and expert community~~ in drug policies;
8. ENCOURAGES EU Member States and, according to their competences, the ~~Commission~~, and relevant EU bodies and agencies to strengthen international cooperation and mainstream the human rights-, evidence-based and balanced approach, including in ~~international cooperation and~~ development programmes on drug policies, promoting full compliance with international human rights law, including ~~commitment to~~ the principles of equality, ~~non-conditionality~~ and non-discrimination;
- 8a. ENCOURAGES EU Member States, relevant EU bodies and agencies to ensure that development-oriented drug policy measures, including alternative development, adhere to the principles of non-conditionality, non-discrimination, and proper sequencing, promote gender equality, and that ownership among target communities is ensured;**
9. ENCOURAGES EU Member States and, according to their competences, the ~~Commission~~ and relevant EU bodies and agencies to strongly oppose imposition of disproportionate and inhumane penalties for drug-related offences, such as the death penalty, extrajudicial killings and arbitrary detention;
10. ENCOURAGES EU Member States, where appropriate and in accordance with their national legislation and within the framework of the UN drug control conventions and EU law, to further explore evidence-based best practices and innovative ~~drug policy~~ approaches that ~~adhere to human rights and~~ reduce stigma and discrimination of people who use drugs;

11. INVITES EU Member States and, according to their competences, the Commission and the relevant EU agencies to collect and share information on the impact of the implementation of drug-related criminal justice responses and alternatives to coercive sanctions on people who use drugs, particularly those in marginalised and vulnerable situations;
 12. INVITES EU Member States, and, according to their competences, the Commission, the ~~EEAS and~~ relevant EU **bodies and** agencies to disseminate information and exchange best practices in the implementation and development of the human rights-based approach in drug policies **and approaches to reduce stigma and discrimination, including through the EU's external actions;**
 13. INVITES EU Member States, the Commission and relevant EU agencies to reflect, where appropriate, **in accordance with their respective competences** and with respect to available data, human rights issues when evaluating drug policies.
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