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LEGISLATION AND REGULATIONS
ON DRUG TRAFFICKING IN
THE EU MEMBER STATES

I. CURRENT LEGISLATION

Question 1. Regulations applicable

GERMANY	<ul style="list-style-type: none">- Dangerous Drugs Act (<i>Betäubungsmittelgesetz - BtMG</i>) (including the third Act of 28 March 2000 amending the Dangerous Drugs Act).
AUSTRIA	<ul style="list-style-type: none">- Narcotics Act (<i>Suchtmittelgesetz - SMG</i>);- Regulations:<ul style="list-style-type: none">. Narcotic Substances Regulation;. Psychotropic Substances Regulation;. Precursor Regulation;. Narcotics Threshold Quantity Regulation;. Psychotropic Substances Threshold Quantity Regulation.
BELGIUM	<ul style="list-style-type: none">- Toxic, stupifying, narcotic, disinfectant or antiseptic substances (trafficking) Act of 24 February 1921 (as amended by Acts of 9 July 1975 and 14 July 1994);- Royal Decrees implementing the Act:<ul style="list-style-type: none">. Royal Decree of 31 December 1930 on trafficking in stupifying and narcotic substances;. Royal Decree of 22 January 1998 regulating certain psychotropic substances;. Royal Decree of 26 October 1993 laying down measures to prevent the diversion of certain substances for the illegal manufacture of narcotics or psychotropic substances.
DENMARK	<ul style="list-style-type: none">- Narcotics Act (No 391, 21 July 1969).- Implementing orders:<ul style="list-style-type: none">. Order concerning narcotics (No 698, 31 August 1993);. Amending Order (No 116, 31 January 1997).- Sections 191 and 191a of the Criminal Code

SPAIN	<p>- General Act 10/1995 of 23 November 1995 adopting the Criminal Code (Sections 368 to 378 stipulate the offences concerning the cultivation, possession, distribution and dealing in narcotic and psychotropic substances and the penalties for such offences, without prejudice to the provisions in the Code relating to mitigating circumstances, receiving stolen goods and other related offences, and road traffic offences.</p>
FINLAND	<p>- Narcotics Act No 1289 of 17 December 1993 (control of narcotics and substances used in the manufacture of narcotics) and Narcotics Decree No 1603 of 30 December 1993 on manufacturing licences, import authorisations, etc.). The term "narcotics" covers substances stipulated by the 1961 Single Convention and those stipulated by the 1971 Convention</p> <p>- Chapter 50 of the Criminal Code (drugs offences) (17 December 1993/1304).</p>
FRANCE	<p>- Sections 222-34 et seq of the Criminal Code (Chapter on drug trafficking).</p> <p>- Articles 38, 38-4, 215, 215 bis, 414, 419 et 426 of the Customs Code.</p>
GREECE	<p>- Drug trafficking (prevention) Act No 1729/1987 (see in particular Section 5 of the Act).</p>
IRELAND	<p>- Misuse of Drugs Acts, 1977 and 1994, and (Declarations) Orders.</p> <p>- Legislation on drug trafficking and other drugs offences: -Criminal Justice Acts, 1994 and 1999 -Criminal Justice (Drug trafficking) Act, 1996</p>
ITALY	<p>- Presidential Decree of 9 October 1990 (D.P.R. No 309): Act consolidating the Drugs and psychotropic substances Act and the Drug addiction (prevention, treatment and rehabilitation) Act.</p>
LUXEMBOURG	<p>- Medicinal substances (sale) and drug addiction Act of 19 February 1973 (as amended by the Acts of 23 February 1977, 16 June 1989, 7 July 1989 and 17 March 1992).</p> <p>- Grand Ducal Regulations <ul style="list-style-type: none"> . Regulation of 4 March 1974 on certain toxic substances; . Regulation of 20 March 1974 on certain psychotropic substances; . Regulation of 26 March 1974 laying down the list of narcotics; . Regulation of 8 May 1993 on dealing in narcotics and psychotropic substances; . Regulation of 2 February 1995 on the manufacture and marketing of certain substances used for the illicit manufacture of narcotics and psychotropic substances; . Regulation of 6 February 1997 on the substances referred to in schedules III and IV of the Vienna Convention on psychotropic substances of 21 February 1971. </p>

NETHERLANDS	<ul style="list-style-type: none"> - Opium Act (Opiumwet) amended on 20 April 1999 and Abuse of Chemical Substances (prevention) Act (Wet Voorkoming Misbruik Chemicaliën). - Instructions on the investigation of drug crime and guidelines for prosecution: in the process of amendment.
PORTUGAL	<ul style="list-style-type: none"> - Decree Law No 15/93 of 22 January 1993 (as amended by Law No 45/96). A Council of Ministers Resolution (No 46/99 of 26 May 1999) provides for a working group to be set up to revise the "Drugs Act". - Controlled substances are classified in 6 schedules, including tranquilisers and precursors. Schedule I is divided into the following sub-groups: Opiates; Coca and derivatives, cannabis and derivatives.
UNITED KINGDOM	<ul style="list-style-type: none"> - Sections 3, 4 and 5 of the Misuse of Drugs Act, 1971 (provisions relating to controlled substances and lists of such substances). - Sections 50, 68 and 170 of the Customs and Excise Management Act, 1979. -Drug Trafficking Act 1994.
SWEDEN	<ul style="list-style-type: none"> - Drugs Act (1968:64): as amended in 2000: many new provisions came into force on 1 January 2001 [Act (2000:1228)], - Narcotics Control Act (1992:860): -Section 8 of the Narcotics (Penalties) Act defines narcotics as any medicinal products or goods injurious to health with narcotic or euphoric properties or products which can easily be transformed into products with such properties and which: <ul style="list-style-type: none"> - on such grounds are subject to control under an international agreement - have been declared by the Government to be considered as narcotics in accordance with the Act. -The provisions relating to penalties for illicit importing and exporting of drugs and illicit possession in certain cases are contained in the Smuggling Act (2000:1225).

Question 2. How does your national legislation define trafficking in drugs or psychotropic substances?

GERMANY	<ul style="list-style-type: none"> - not defined in legislation as a specific offence. - trafficking (<i>Handeltreiben</i>) is, however, covered by the Act. It can be interpreted very broadly as it covers all forms of activity which aim to move drugs towards end users. Under the BtMG trafficking ("<i>Handeltreiben</i>") means any act by which illicit substances are brought to final consumers (manufacture, possession, supply, encouragement, etc.) (see sections 29 et seq of the Narcotics Act). In addition, the "illegal importation" of drugs is considered a separate offence.
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AUSTRIA	<p>- not defined in legislation;</p> <p>- offences under the SMG are acquisition, possession, production, import, export, supplying, procurement for others of narcotic and psychotropic substances. These concepts, together with that of unlawful distribution, are defined in the Act.</p>
BELGIUM	<p>- not defined in legislation.</p> <p>- There is no reference to trafficking as such. The Act and the implementing decrees specify certain offences: import and export, manufacture, possession, sale or offer for sale, supply, acquisition against payment or free of charge without authorisation from the Ministry of Public Health (see implementing decrees). The Act lays down penalties for offences against the Royal Decrees and against the Act itself (facilitating the use by others, encouragement, etc.). The Act lays down basic penalties and heavier penalties where there are aggravating circumstances.</p> <p>N.B. The term <i>travaux forcés</i> which is found in the 1921 Act on trafficking in narcotic substances was replaced by the term <i>réclusion</i> by an Act dated 10 July 1996.</p>
DENMARK	<p>- not defined in legislation.</p> <p>- the Act prohibits the import, export, sale, purchase, supply, reception, production, processing and possession of the substances listed in the implementing orders (see Sections 1 and 2 of the Act) unless authorised by the Minister of the Interior.</p> <p>- Section 191 of the Criminal Code supplements the Narcotics Act, providing for heavier penalties where there are aggravating circumstances connected with offences under the Act (supply to a large number of persons; supply of a large quantity of a particularly dangerous substance, etc.)</p>
SPAIN	<p>- not defined in legislation;</p> <p>- on the basis of the Supreme Court's established precedents, drug trafficking is to be understood as including any form of distribution, promotion or facilitation of illicit consumption, regardless of any profit made or the financial objectives pursued.</p> <p>This covers growing, selling or possession which might assist or facilitate illegal consumption. Acts which are authorised, those performed with a view to personal use and those not objectively and/or subjectively capable of increasing consumption are not punishable.</p>

FINLAND	<p>-not defined in legislation;</p> <p>- The Narcotics Act places a general ban on trading, importing, exporting and transporting drugs, other than for medical and scientific purposes, or to promote the study or prevention of offences against drugs legislation. The Act covers both narcotics and psychotropic substances</p> <p>- Drugs offences are covered by the Criminal Code (Chapter 50: production, sale, etc. (Section 1); serious offence: large quantity, substantial financial profit, etc.(Section 2); preparing an offence against the drugs legislation (Section 3), etc.).</p>
FRANCE	<p>- not defined in legislation;</p> <p>- penalties for trafficking are heavy (heavier than for most offences in this category - <i>délits</i>) The new Criminal Code, which came into force in 1994, takes over most of the provisions of the 1970 act originally included in the public health code, with the exception of those concerning drug use. It is an offence under the provisions of the Criminal Code dealing with drug trafficking to be leader of a group involved in the unlawful import, export, transport, possession ... of drugs and also to be involved in any of these activities. The penalties are laid down in Sections 222-34 to 222-51 of the Criminal Code. It is for the Court hearing each case to decide whether a trafficking offence has been committed and whether there are any aggravating circumstances.</p>
GREECE	<p>- not defined in legislation.</p> <p>- offences (transport, sale, production, etc.) are specified in Section 5 of the Drug trafficking (prevention) Act No 1729/1987 (as amended by Act No 2161/1993). The Courts consider that there is trafficking when one of the offences referred to in Section 5 is committed with the aim of sale for profit or disposal in any way.</p>
IRELAND	<p>- not defined in legislation as a specific offence;</p> <p>- but drug trafficking is defined in Section 3(1) of the Criminal Justice Act, 1994 which stipulates that trafficking is to be understood as any act by which a person commits or is involved in one of the offences (production or supply, transport or storage, import or export; etc.) and committed in breach of the Misuse of Drugs Act referred to in Section 3(1);</p> <p>- offences of the same nature as drug trafficking offences are also defined in Section 3(1). Drug trafficking offences are acts prohibited by other provisions of the Misuse of Drugs Act, including the new offence connected with possession of drugs worth IEP 10 000 or more with a view to sale or supply to others (offence brought in by the Criminal Justice Act, 1999).</p>

ITALY	<p>- not defined in legislation.</p> <p>- offences are all acts by which a person produces, manufactures, sells, imports, exports, ... supplies for whatever purpose or illicitly possesses narcotics or psychotropic substances (see Section 73, DPR No 309).</p>
LUXEMBOURG	<p>- not defined in legislation.</p> <p>- under Section 8 of the Act of 19 February 1973, offences are committed by any person who (a) unlawfully grows, produces, manufactures, extracts, prepares, imports, exports, sells or offers for sale or in any other manner offers or puts into circulation one or more of the substances referred to in Section 7; (b) with a view to use by others, unlawfully transports, sends, holds or acquires for payment or free of charge one or more of such substances or who acts as dealer or intermediary; (i) manufactures, transports, distributes or holds equipment, material or substances referred to in Section 7, knowing that they were to be used or were used in the unlawful cultivation, production or manufacture of such substances.</p>
NETHERLANDS	<p>- not defined in legislation.</p> <p>- offences are specified in Sections 2 and 3 of the Opiumwet; the offences which may be considered illegal trafficking are: import and export, preparation, sale, delivery or transport, possession, manufacture, etc. of narcotics or psychotropic substances without properly issued ministerial authorisation. The penalties are stipulated in Sections 10 to 13 of the Opiumwet.</p>
PORTUGAL	<p>- no definition in legislation in connection with a specific offence;</p> <p>- but Section 21 of Decree Law No 15/93, under the heading Trafficking and other illicit activities, provides for a number of offences (cultivation, production, distribution, purchase, disposal, supply to others, import, export or illicit possession of narcotics or psychotropic substances, in cases other than provided for in Section 40). The explanation of the terms used in Section 21(1) is given in Section 1(2) of Decree No 61/94. Offences concerning precursors are specified in Section 22. Section 25 concerns "less serious trafficking" (given the means used, the procedures or the circumstances, etc.).</p>
UNITED KINGDOM	<p>- not defined in legislation as a specific offence</p> <p>- but the Drug Trafficking Act 1994 defines drug trafficking as any production or supply, transport, import or export, etc. covered by the Misuse of Drugs Act 1971 and the Criminal Justice (International Cooperation) Act 1990. - drug trafficking offences are also similar offences punishable by other provisions of the Misuse of Drugs Act 1971, the Customs and Excise Management Act 1979 or the Criminal Justice (International Cooperation) Act 1990</p>

SWEDEN	<p>- not defined in legislation;</p> <p>- Section 1 of the Narcotics (Penalties) Act defines offences as unlawful supply, manufacture, transport, offering for sale, etc. in connection with narcotics. The term narcotics covers both narcotics and psychotropic substances within the meaning of the United Nations Conventions (Section 8 of the Narcotics Act). Section 2 of the Narcotics Control Act provides that trade in such products may be authorised for medical, scientific or other socially useful purposes. The penalties for all forms of illicit dealing are mainly laid down in the Narcotics (Penalties) Act and the penalties for illegal importing and exporting are contained in the Smuggled Goods Act.</p>
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Question 3. Do the definitions of offences of various forms of drug trafficking currently take account of the following parameters as regards the actual facts constituting the offence:

- quantity of narcotic or psychotropic substances dealt;
- type of narcotic or psychotropic substances dealt;
- nature and extent of the accused's involvement;
- involvement of a gang, organised as to object or purpose;
- involvement of a conspiracy, organised as to object or purpose.

GERMANY	<p>- quantity: yes. The minimum sentence is increased on a scale set out in Sections 29 et seq.: dealing in "substantial quantities", illicit imports in "substantial quantities", etc.</p> <p>- type of drugs: no. The courts take this into account.</p> <p>- role and involvement of the accused: yes. The scale of penalties varies according to whether the accused is dealing for profit, or insights a person under 18 to commit offences under the Drugs Act, or has acted recklessly and caused death by supplying drugs, etc.</p> <p>- involvement of an organised gang: yes. This particularly concerns somebody acting as member of a gang (sections 30 and 30a).</p>
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<p>AUSTRIA</p>	<ul style="list-style-type: none"> - quantity: yes. "Quantity thresholds" distinguish the minor offence (prison sentence of up to three years) from the serious offence (prison sentences can range up to a maximum of five years, from one to ten years, from one to fifteen years, or from ten to twenty years depending on the offence). For minor offences the SMG offers the possibility of the charge being suspended for a probationary period. - type of drugs: no. The SMG applies to all drugs. However, specific penalties are applied for psychotropic substances and precursors. - role of the accused: yes. <ul style="list-style-type: none"> - For small quantities of drugs, a heavier penalty will be applied (Section 27 SMG) if: <ul style="list-style-type: none"> . the offence encourages consumption by a minor; . the offence is committed for gain; . the offence is committed as a member of a gang (at least three persons regularly committing offences). - Where large quantities of drugs are involved, increased penalties will be applied depending on the role played by the accused (Sections 28, 21(3), (4) or (5) SMG). - involvement of an organised gang or conspiracy: yes. <ul style="list-style-type: none"> - member of a gang (see above - Section 27(2) SMG) - (maximum penalty three years)). - as member of a gang, produce import, export or deal in a "larger quantity of drugs" (Section 28(3) SMG): prison sentence of one to ten years; for repeat offences (section 28(4.1) SMG): prison sentence of one to fifteen years. - conspiracy involving a larger number of persons producing, importing, exporting or dealing in a "larger quantity of drugs" (Section 28(4) SMG): one to fifteen years; conspiracy implies a meeting of at least ten people for the purpose of drug trafficking.
<p>BELGIUM</p>	<ul style="list-style-type: none"> - quantity: no. But the judicial authorities take this into account in deciding whether to prosecute and in sentencing. - type of drugs: no. But the joint guideline laid down on 8 May 1998 by the Minister of Justice and the public prosecutors makes a distinction between cannabis-based products and other substances. By virtue of the principle of discretion in prosecuting, persons in possession of small quantities of cannabis for their own use are rarely prosecuted. Courts also take into account the type of products when sentencing. The government is also planning to make a distinction by law or regulation between cannabis-based products and other drugs. - trafficking as part of a conspiracy: <ul style="list-style-type: none"> - aggravating circumstance (prison sentence of ten to fifteen years): if there is a conspiracy with drugs trafficking as the main or accessory activity. - aggravating circumstance (prison sentence of fifteen to twenty years): if the accused is the leader of a conspiracy of which a drugs offence is the principal or accessory activity. <p>There are other aggravating circumstances: if the offence involves a minor; if drugs use by other persons leads to permanent disability or death. A scale of penalties is laid down by the act.</p>

DENMARK	<p>- quantity: yes. If drugs are supplied to a large number of persons in particular, prison sentences can be up to six years, and if large quantities of particularly dangerous or harmful substances are supplied, the sentence can be up to ten years (Section 191 of the Criminal Code).</p> <p>- type of drugs: yes. According to case-law, Section 191 of the Criminal Code applies if the offence involves at least 25 gr of heroin or cocaine, around 50 gr of amphetamines or ecstasy or at least 10 kg of hashish. If the offence concerns smaller quantities, only the Euphoric Substances Act is applied (fines and/or prison sentences up to two years). In sentencing, the repeated sale of a particularly dangerous or harmful substance will be regarded as an aggravating circumstances (Section 3(2) of the Act).</p> <p>- the other parameters listed can all be aggravating circumstances determining the sentence.</p>
SPAIN	<p>-yes, the various parameters are taken into account under the Criminal Code.</p> <p>-Section 368 makes a distinction between drugs which constitute a serious risk for health and drugs which do not constitute such a risk. Penalties are heavier for offences involving substances in the first category.</p> <p>-Section 369 provides for heavier penalties where "manifestly large quantities" are involved or if the offender belongs to an organisation set up for the purpose of distributing substances or if the offender is involved in "organised criminal activities" and has a position of authority in such an organisation or makes improper use of his office, profession or position.</p> <p>-Section 370 lays down the maximum penalties which may be imposed under the Criminal Code in cases where the accused is the leader, the head or the key figure in the organisation.</p>
FINLAND	<p>- quantity and type: The Narcotics Act does not distinguish between cannabis and other drugs. But under the Criminal Code, an offence is "aggravated" if it involves a particularly dangerous narcotic and if the activity in general can be considered aggravated. A very dangerous narcotic, as defined by the Criminal Code, is a narcotic which may cause death by overdose or seriously damage health.</p> <p>- role of the offender: In addition to what is prohibited by Section 1, there are also penalties under the Criminal Code (Sections 2, 3 and 4) for persons who endanger the life or health of others, for those who make preparations for offences, for those who incite others to commit offences, etc.</p> <p>-involvement in an organised gang: it is considered an aggravating circumstance if the person committing an offence under the drugs legislation does so on a large scale and as a member of an organised gang.</p>

FRANCE	<p>- quantity: no.</p> <p>- type: no.</p> <p>But the courts take this into account in deciding whether to prosecute and in sentencing.</p> <p>- role of the offender: yes. Leading or organising a gang: Section 222-34 of the Criminal Code (life imprisonment and FRF 50 million fine).</p> <p>- involvement in an organised gang: yes. The penalties for the illicit production or manufacture and the illicit import or export are thirty years' imprisonment and FRF 50 million fine when the offences are committed by an organised gang (Section 222-35 and 222-36 of the Criminal Code) (see also the first two subparagraphs of Section 132-23 on the period of imprisonment).</p> <p>- involvement in a conspiracy to deal in drugs: yes (conspiracy, under Section 450-1 of the Criminal Code, means involvement in any organised group or arrangement intended to prepare one or more offences punishable by ten years' imprisonment).</p>
GREECE	<p>- quantity: no.</p> <p>- type: no.</p> <p>- role: persons who organise, finance, lead or supervise in any way whatsoever one of the activities referred to in Section 5 or who give instructions or orders in connection with these activities are liable to the penalties laid down in that section.</p> <p>- as regards the last two parameters: there are no specific criminal law provisions concerning drug trafficking by an organised association. Section 187 of the Criminal Code cannot be applied. It is therefore the basic criminal law provisions of Section 5 of Act No 1729/1987 which have to be applied or, depending on the offence, Section 6 or Section 8 (see the reply to question 8 as regards penalties).</p>
IRELAND	<p>- quantity: yes. Different provisions apply depending on the quantity or value of drugs found in the possession of an individual (Criminal Justice Act, 1999). Possession for sale or supply of drugs with a market value of IEP 10 000 or more is punishable by at least 10 years' imprisonment (subject to the circumstances discussed in the reply to question 5).</p> <p>- type: yes. There are five scheduled substances referred to by the Misuse of Drugs Act. Schedule 5 substances are subject to the lowest level of control. Cannabis belongs to the schedule 1 substances which involve the strictest controls. The Act provides different penalties for possession of cannabis for personal use or possession of another drug, but criminal law makes no distinction between types of narcotic or psychotropic substance where possession of these drugs is for the purpose of sale or distribution.</p> <p>- role of the offender: yes. Possession of drugs for the purposes of sale carries heavier penalties (life imprisonment). The court enjoys a great deal of discretion; when the Act lays down a minimum prison sentence, the court may still impose a lighter sentence taking account of "circumstances".</p>

ITALY	<p>- quantity: yes. Large quantities are a specific aggravating circumstance provided for by Section 80. Penalties for the minor offences referred to in Section 73 may be raised by half to two thirds, depending on the circumstances.</p> <p>- type: yes. Separate penalties are applied depending on whether the offence involves Schedule 1 and 3 substances (referred to as hard drugs in the reply) or Schedule 2 and 4 substances (referred to as soft drugs in practice). See Section 73 D.P.R. n°309.</p> <p>- role of the offender: yes. In the event of sale to minors, sales in certain establishments, involvement in a group of three persons.</p> <p>- involvement in an organised gang: yes. See Section 74 (three or more persons who conspire: at least 20 years" imprisonment for persons leading, establishing directing...; persons involved in a conspiracy: at least 10 years' imprisonment; this penalty is aggravated if the number of persons involved in the conspiracy is at least ten; if the conspirators are armed, penalties are increased in accordance with Section 74(4)).</p>
LUXEMBOURG	<p>- quantity: no.</p> <p>- type: no. While there are no differences between substances as regards penalties for production, sale, import and export, etc., it has been proposed that no prison sentences should be imposed for the use and/or transport of cannabis and cannabis-based substances for personal or group use (bill before Parliament).</p> <p>- role of the accused: this is taken into account where the accused is the offender, accomplice or instigator. Section 8(d) to (g) classifies as specific offences the act of facilitating for others the use or the encouragement to use the substances referred to in Section 7, the fraudulent procurement of such substances, etc.</p> <p>- the involvement of an organised gang or a conspiracy in trafficking is taken into account for application of Section 10 of the Act (the offences referred to in Sections 8 and 8-1 shall be punished by imprisonment for a term of between 15 and 20 years and a fine of 50 000 to 50 000 000 francs if they constitute acts of participation in the principal or subsidiary activities of an association or organisation) and Section 11 (conspiracies and associations to commit the offences referred to in Article 8(a) and (b) shall be punished in the same way as an accomplished offence).</p>

NETHERLANDS	<p>- quantity: yes, but only in terms of the penalty to be imposed (the fine is higher if the value of the substances - and hence the quantity - is above a certain limit (Section 13)).</p> <p>- type: yes. The substances covered are contained in two lists. List I covers all substances referred to in the schedules annexed to the single convention with the exception of hemp, and the substances in Schedules I and II of the 1971 Convention; List II comprises hemp and the customary solid compounds of hemp resin and vegetable elements of hemp and Schedules III and IV of the 1971 Convention. All acts concerning List I products are also prohibited when they concern List II products. For the latter, Section 3 of the Act also prohibits cultivation (this is not relevant for List I products since they are not grown in the Netherlands).</p> <p>-role of the accused: yes. The Act takes into account the role of the accused and the extent of involvement. The general provisions of the Criminal Code on forms of involvement (complicity, co-perpetration, incitement) and attempted involvement also apply to offences under the Opium Act. The Act itself also contains a provision relating to acts in preparation for an offence under the Opium Act (Section 10a).</p> <p>- involvement in an organised gang: yes. Under Section 140 of the Criminal Code, leadership or participation in a conspiracy is an offence. This applies to drug offences.</p>
PORTUGAL	<p>- quantity and type of drugs: yes. The acts which constitute trafficking are specified in Section 21 of Decree Law No 15/93 and in Section 22 as regards precursors. Penalties vary according to whether the offence concerns plants, substances or preparations in Schedules I to III of the rules or substances in Schedule IV (tranquillisers and analgesics), or precursors. The penalties are increased where there are aggravating circumstances (see Section 24), in particular where substances have been distributed to a large number of people; conversely, if the illicit nature of the offence committed is "considerably diminished", in view of the quantity and quality of the plants and substances, the trafficking is considered to be less serious (Section 25).</p> <p>- the role of the accused in the trafficking and the involvement of an organised gang or a conspiracy constitute, in the cases specified in Section 24, aggravating circumstances, in particular if:</p> <ul style="list-style-type: none"> - the offender is involved in other illegal activities, organised on an international scale or aided by the offence; - the offender acted as member of a gang committing the offences specified in Sections 21 and 22, with the aid of at least one other member of that gang.

UNITED KINGDOM	<p>-no; although the different penalties are imposed depending on the type of drug, the various parameters are not taken into account for the definition of offences.</p> <p>They are, however, taken into account in practice by the police, the prosecuting authorities and the courts in deciding how to deal with any particular case. Where appropriate, courts take into account sentencing guidelines issued by higher courts (see the replies to questions 5 and 8).</p> <p>- as regards the type of drug, the reply to question 5 (*) states that the laws and regulations do lay down a scale of penalties depending on the harmfulness of the substances. The maximum penalties vary according to whether the trafficking involves Class A, Class B or Class C drugs (see the details in the table in the reply to question 8).</p> <p>(*) contrary to what is stated in the reply to question 3.</p>
SWEDEN	<p>- yes, all the parameters are taken into account in the provisions for dealing with the various infringements. The courts have wide discretion. Depending on whether the offence is considered to be basic, not serious or serious, the penalty will be different (see the provisions mentioned in the reply to question 8).</p>

Question 4. Are all sales(1) of drugs or psychotropic substances considered to be drugs trafficking?

Yes/no.

If no:

- what distinctions are made and what penalties are laid down?
- if applicable, define the concepts of "sale" and "trafficking".

(1) *This study deals with illegal or illicit trafficking in the sense that trade, sales, supply, import, export etc. are done without legal or regulatory authorisation. We will not cite the national legal or regulatory provisions which, in accordance with the international conventions of 1961 and 1971, authorise trade for medical or scientific purposes, or authorise the possession of drugs or psychotropic substances on medical prescription.*

AUSTRIA	- yes.
BELGIUM	- yes.
DENMARK	- yes.
SPAIN	- yes.
FINLAND	- yes.
FRANCE	- yes.
GREECE	- yes.
IRELAND	- yes.
ITALY	- yes.
LUXEMBOURG	- yes.
NETHERLANDS	- yes, in principle (Sections 2 and 3 of the Opium Act: "the drugs ... may not be ... sold, delivered ..."). However, in practice, the circumstances and the facts must indicate that trafficking (a crime for which there is no specific provision) has taken place. Thus, the occasional sale of a small quantity will not, in principle, be regarded as trafficking (see the table on the answer to question 6).
PORTUGAL	- yes (Section 21 of Decree-Law No 15/93: "who, without authorisation ... distribute, purchase, transfer ... substances").
UNITED KINGDOM	- yes.
SWEDEN	- yes.

Question 5. If a drug-user sells drugs, is he considered for legal purposes to be a trafficker in the same way as any other person selling drugs?

If yes:

- what penalties can be imposed on him?

- what distinctions, if any, are established by administrative circulars or instructions and/or by the courts?

If no:

- what distinctions are provided for by the legislation and what penalties or measures can be ordered against him?

- does the legislation provide for the concept of "sale for personal use" and is there a specific penalty for this offence?

GERMANY	<p>-yes, in principle. However, in practice, drug addicts who sell drugs get lighter penalties for drug dealing if they have engaged in trafficking only in order to cover their own requirements (concept of "sale for personal consumption") or in a state linked to their addiction. Furthermore, drug addicts given custodial sentences of a maximum of two years can, in the conditions provided for by Section 35 BtMG, obtain a suspension of the sentence if the offence was committed as a result of drug addiction and if they undergo treatment to cure the addiction. Furthermore, if the accused is suspected of having committed an offence because of his drug addiction and a custodial sentence of more than two years cannot be envisaged, the public prosecutor can provisionally suspend prosecution if the accused undergoes treatment (see Section 37 of the Narcotics Act). Finally, specific provisions cover those who possess, import, export, etc. for personal use (but who do not sell).</p>
AUSTRIA	<p>- no, drug addicts who sell drugs are not treated in the same way as other dealers. The penalties provided for are as follows:</p> <ul style="list-style-type: none"> - a drug addict who commits an offence under Section 27(1) of the Narcotics Act to obtain drugs or to acquire the means to acquire them for his own use is subject to lighter penalties (maximum of 6 months' imprisonment or fine of up to 360 times the daily unit rate). - a drug addict who, in the same circumstances (as a member of a gang or for profit) acquires a large quantity of drugs with a view to selling them faces imprisonment, not for the normal term of 1 to 10 years, but for a maximum of 3 years.

<p>BELGIUM</p>	<p>- yes, in principle.</p> <p>The law does not provide for the concept of sale to finance personal consumption.</p> <p>A drug addict can, in principle, be subject to the same basic penalties as any trafficker (3 months' to 5 years' imprisonment and/or a fine) or a criminal penalty should there be aggravating circumstances (5 to 10 years, 10 to 15 years, or 15 to 20 years, depending on the case).</p> <p>However, the joint directive of 8 May 1998 of the Minister of Justice and the Public Prosecutors makes distinctions between the sale of small quantities to finance personal consumption and sale for the sole purpose of making a profit (in the latter case, there must be a criminal prosecution).</p> <p>The possession of cannabis for personal use remains an offence, though the directive recommends that the authorities give it the lowest prosecution priority (unless there is indication of trafficking, of the person being a problem user, of nuisance, etc.).</p> <p>A government memorandum outlines a new policy in this field, notably one that distinguishes between cannabis-based substances and other substances. The amendments proposed should relate essentially to users, and not to drug trafficking (the government memorandum is being submitted to Parliament in January 2001).</p> <p>-The case law also provides that drug addicts who have sold drugs may, if drug use remains the dominant aspect of the matter, benefit from Section 9 of the Act, which allows broader application of the suspension of the verdict and of the sentence for those who have used drugs in a group and those who have possessed or acquired drugs for their own personal use.</p>
<p>DENMARK</p>	<p>- yes.</p> <p>However, if the offence is committed in connection with the offender's own drug use, he is often deemed to have played a less important role, which has an impact on the sentence imposed.</p> <p>A drug addict can receive treatment while serving a sentence.</p> <p>A trial arrangement has also been introduced to allow treatment instead of a prison sentence of between 6 and 12 months (cf. question 7).</p>

<p>SPAIN</p>	<p>-yes, in principle. However, mitigating circumstances and the rules on exemption (the fact of being under the influence of drugs or suffering withdrawal symptoms) show that drug addicts are not treated in the same way under the law as any trafficker.</p> <p>The penalty will depend on the circumstances. These will determine the judge's decision as to whether partial or total exculpatory circumstances or the mitigating circumstances provided for by the law are present. Thus, if the person has acted completely under the influence of drugs or under the effect of withdrawal symptoms, no penalty but merely a safety measure will be imposed (for example, commitment of the offender to a rehabilitation centre). If there are mitigating circumstances and the offender has a serious drug addiction but there are no aggravating circumstances, only the lighter half of the range of penalties can be imposed. If there are two or more mitigating circumstances, or one which is beyond all possible doubt, the judge can impose penalties which are one or two degrees less severe than those stipulated by law. When there are neither mitigating circumstances nor aggravating circumstances, or where both are present, the courts will choose, on the scale of penalties, the one which is appropriate to the circumstances of the offender and the seriousness of the acts committed, giving the grounds for that choice in the judgment.</p> <p>As regards differential treatment (more lenient treatment towards trafficking by drug users), Section 21(2) of the Criminal Code should be mentioned, which treats as a mitigating circumstance the fact of acting as a result of serious addiction to the substances referred to in the law. It is possible for the courts to take into consideration a partial exculpatory circumstance (Section 21(1)) where not all the conditions for taking into account the exculpatory circumstance regulated by Section 20 are met (acting completely under the influence of alcohol or drugs, etc.).</p>
<p>FINLAND</p>	<p>-yes.</p> <p>However, it seems that Section 7 of Chapter 50 of the Criminal Code allows a prosecution to be dropped if the offender proves that he has undertaken to follow a course of treatment approved by the Ministry of Social Affairs and Health.</p>
<p>FRANCE</p>	<p>- yes.</p> <p>Criminal charges for drug-trafficking do not take into account whether or not the seller is a drug user.</p> <p>In principle, penalties are:</p> <ul style="list-style-type: none"> - 10 years' imprisonment and a FRF 50 000 000 fine (Section 222-37 of the Criminal Code, which punishes the transport, possession, supply, disposal, acquisition or illegal use of drugs). - 5 years' imprisonment and a FRF 500 000 fine in the case of illegal transfer or supply to a person for their personal use (Section 222-39 of the Criminal Code). <p>This covers small local transactions; the penalties in such cases allows them to be dealt with by the "immediate appearance" procedure.</p>

GREECE	<p>-no.</p> <p>As regards drug use, the law (Section 12(1) of Act No 1729/87) is aimed specifically at those who procure or possess drugs in quantities which are exclusively for their own needs and those who use or cultivate cannabis plants solely for their own exclusive use. This is punishable by a prison sentence. The circumstances are to be taken into account. The maximum amount of each drug deemed to cover the needs of a user, even an addict, are laid down by the Ministry of Health, Welfare and Social Security.</p> <p>If the acts referred to in Section 12(1) are committed by a person who has supplied a small quantity to others for their personal use, the prison sentence must be at least six months (Section 9(1) of Law No 2721/99). The sentence can be commuted to a fine and may be suspended in accordance with the provisions of the Criminal Code.</p>
IRELAND	<p>-yes, in principle.</p> <p>-The maximum penalty for a drug-trafficking offence is life imprisonment (Section 27 of the Misuse of Drugs Act, 1977, amended in 1984).</p> <p>-The Criminal Justice Act, 1999 provides for a new offence in the case of possession of drugs with a value of IEP 10 000 or more for the purpose of sale or supply. It provides for a mandatory minimum sentence of 10 years' imprisonment.</p> <p>When the court is imposing a sentence, it can inquire whether the person was a drug addict at the time of the offence and whether the addiction was a substantial factor leading to commission of the offence. Should this be the case, the court can list the sentence for review at a later date. When the review takes place, and having regard to any matters the court considers appropriate, the court may suspend the remainder of the sentence on any conditions it considers fit.</p> <p>The mandatory minimum sentence does not apply where the court is satisfied that there are exceptional and specific circumstances which would make it unjust to impose the minimum 10-year sentence. Factors to which the court may have regard include whether the person pleaded guilty, the stage at which such an intention was indicated and the circumstances surrounding the indication, and whether the person materially assisted the investigation of the offence.</p> <p>-Taking into account personal circumstances, age, type of drug involved and whether it is a first and minor offence, the court can transfer the case to the Probation and Welfare Service.</p> <p>A Drugs Courts pilot programme has now been developed where drug users who are on charges relating to minor drugs offences are referred for a programme of treatment and rehabilitation instead of a custodial sentence.</p>

ITALY	<p>-yes, if the quantity found in his possession is not for personal use.</p> <p>In this case, the penalties provided for are imprisonment and a fine (Section 73 of Presidential Decree No 309/90 on illegal production and trafficking).</p> <p>The penalties are specified more precisely in the answer to question 8 (a distinction is made between Schedule I and III substances on the one hand and Schedule II and IV substances on the other).</p> <p>-The law provides for administrative penalties (Section 75) against anyone who illegally acquires or possesses drugs or psychotropic substances for personal consumption (if the person refuses to follow, or interrupts, a treatment programme, criminal penalties under Section 76 apply).</p>
LUXEMBOURG	<p>- yes, no distinction is made in the Act.</p> <p>The penalties (for the basic offences: use in a group, transport with a view to use by others, selling drugs) are imprisonment from 1 to 5 years and/or a fine of LFR 5 000 to 50 000 000.</p> <p>(Aggravating circumstances and individual cases: see answer to question 8).</p> <p>-There are no administrative/legal circulars on this subject. The Public Prosecutor's Office decides whether to prosecute.</p>
NETHERLANDS	<p>-yes, there is no distinction in law. The maximum penalties given in the answer to question 8 therefore apply. But, as the answer to question 4 indicates, an occasional sale is not generally treated as trafficking.</p>
PORTUGAL	<p>-no, the Decree-Law (Section 26) expressly provides for the case of users who are also dealers. When an individual commits an offence as provided for in Section 21 (trafficking and other illicit activities) with the sole aim of obtaining plants, substances or preparations for personal use, they are subject to a penalty of up to three years' imprisonment or a fine in the case of plants or preparations contained in Schedules I to III, or a year's imprisonment or a fine in the case of substances contained in Schedule IV. All attempts are punishable. For these provisions to apply, the offender must possess no more than the amount necessary for average personal consumption for five days.</p>
UNITED KINGDOM	<p>-yes, the law does not make a distinction.</p> <p>It is for the courts to draw a distinction in the light of the circumstances.</p> <p>The penalties for drug-trafficking are indicated in the answer to question 8.</p> <p>The legal authorities can decide whether to prosecute a drug addict. In this case, the court takes into account the circumstances of the offence and the personality of the offender.</p> <p>Guidelines are set by the higher courts; this was done in the case of drug offences in <i>Regina v. Aramah</i>. In addition, an independent advisory body, the Sentencing and Advisory Panel, was established on 1 July 1999 to give objective, fully researched advice to the Court of Appeal. In May 2000, the Panel provided sentencing guidance on the importation and possession of opium.</p>

SWEDEN	<p>-yes.</p> <p>Other than minor offences, the normal penalty for drugs offences is prison. Minor drugs offences can incur fines; this might be the case with the sale of a negligible quantity of cannabis (0.1 gram). Even in other cases, the court can impose a non-custodial penalty provided that the crime is of a less serious nature and there are no earlier offences which would lead to the person being sent to prison. The non-custodial penalties are suspended sentences and probation. As drug users often have social problems, probation is often considered the most appropriate solution. In opting for probation, the court takes into account:</p> <ul style="list-style-type: none"> -a marked improvement in the defendant's personal or social situation which can be assumed to have been related to the offence; -if the defendant undergoes treatment for addiction or some other reason which can be assumed to have been related to the offence; -if the abuse of addictive substances or any other special condition requiring care or treatment has played a significant role in the commission of the offence and if the defendant is prepared to undergo appropriate treatment (a negotiated treatment plan can be adopted as an alternative to a sentence of up to two years in prison); -if the defendant agrees to probation being combined with a community service order and such an order is appropriate. <p>Contract treatment is a particular type of probation which can be imposed even in the case of quite serious drug offences. It presupposes that the defendant has agreed to undergo very thorough treatment. In passing judgment, the court must indicate how long the custodial sentence would be, and if the defendant does not keep up the contract treatment the prison sentence will be ordered.</p> <p>Probation lasts for three years from the day on which the penalty starts to run and it is normally combined with supervision on a day-to-day basis. This supervision is normally discontinued after one year of the probationary period.</p> <p>-Special penalties apply for young offenders, addicts and mentally disturbed offenders:</p> <ul style="list-style-type: none"> -for young offenders under 18, if the penalty cannot be limited to a fine, the court may, unless there is a particular reason for imprisonment, refer the matter to the social welfare authorities so that they can make the necessary arrangements. <p>Even in more serious cases, prison should be avoided; the court should hand down a youth custody sentence for a period ranging from 14 days to 4 years.</p> <ul style="list-style-type: none"> -if an offence is committed by someone under the influence of a serious mental disorder, and for which a fine alone cannot be imposed, the court can commit them to custodial psychiatric care.
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Question 6. Are there any criteria for distinguishing between possession for personal use and trafficking:

- in legislation?
- in an administrative circular or instruction?
- in case law?

GERMANY	<p>-Certain procedural rules (not the actual facts of the offence) in the BtMG (Dangerous Drugs Act), administrative circulars/instructions and the case law distinguish between possession of drugs for personal consumption and for trafficking.</p> <p>-Prosecution of cannabis users is rare; in general, the case is closed without being brought to court if certain limits are not exceeded (this quantity varies from 5 to 30 grammes depending on the Land, 10 grammes being the most common limit).</p>
AUSTRIA	<p>-There are no legal distinguishing criteria, but the Austrian Narcotics Act allows for therapy rather than prison sentences when this is more likely to be successful.</p> <p>-If it is established that a person has acquired a small quantity of drugs for his or her own consumption, the public prosecutor must provisionally defer the charge for a probationary period of two years.</p> <p>The Act also provides for charges to be dropped or for a court to suspend the sentence in appropriate cases in the light of medical treatment imposed on the drug addict (see answer to question 7 on this subject).</p> <p>-The courts thus take account of the personal use of drugs with a view to applying alternative therapeutic measures to the standard criminal penalty.</p>
BELGIUM	<p>-The Act distinguishes infringements of the provisions of the royal decrees (possession, sale, offer for sale, illegal acquisition) from the offence of use in a group and possession with a view to personal use, but does not specify the distinguishing criteria. It is for the judicial authorities to assess the distinctions to be made between the user and the dealer, in the light of the actual offence and the circumstances.</p> <p>-The Act provides for alternatives:</p> <p style="padding-left: 40px;">-to prosecution, in the case of an offence committed as a result of an addiction to alcohol or drugs (the mediation in criminal proceedings provided for by Section 216b of the Code of Criminal Procedure allows the public prosecutor to ask the offender to undergo medical treatment),</p> <p style="padding-left: 40px;">-or, possibly, to the standard penalty, by broad application of the rules on the suspension or deferment of a sentence (see answer to question 7).</p> <p>-The judicial authorities examine the facts of the case to decide whether or not a sale is involved (and whether there are any specific aggravating circumstances) or whether acquisition and possession of drugs for personal use is involved (in the latter case, the special arrangements for deferment and suspension can be applied).</p>

DENMARK	<p>-There are no legal criteria for distinction.</p> <p>-The courts must assess, on a case-by-case basis, whether possession is for personal use or for the purposes of trafficking (which is generally the case if the quantity possessed is large).</p> <p>-According to Circular No 144 of 15 July 1969, the possession of very small quantities of psychotropic substances with a view to personal use is to be dealt with by administering a police warning if such possession is a first offence. Repeat offences can also be dealt with by a warning, but in cases of serious reoffending and repeated possession of psychotropic substances other than hashish the circular recommends a fine.</p> <p>Section 191 of the Criminal Code is applied only in cases where drugs are supplied or an attempt is made to do so. Possession for personal use falls only under the Law on Psychotropic Substances.</p>
SPAIN	-yes, in case law.
FINLAND	<p>-yes, in case law. The law does not make a distinction in the case of illegal possession of drugs.</p> <p>The penalties imposed are lighter when the quantity in a person's possession is small enough to be deemed to have been in their possession only for personal use. If the quantities possessed exceed the limits that have become established in legal practice, it is considered that the drug was possessed with the intention of selling it and a heavier penalty is imposed.</p>
FRANCE	<p>-There are no distinguishing criteria in the law.</p> <p>-The courts take into account the quantity of drugs when deciding which offence is involved (trafficking [transport, possession, sale, disposal] within the meaning of Section 222-37 or sale [disposal by a user-dealer for personal consumption] within the meaning of Section 222-29) and setting the penalty.</p>
GREECE	<p>-yes, in legislation.</p> <p>See answer to question 5 (Section 12(1) of Law No 1729/87 indicates the criteria to be taken into account).</p>
IRELAND	<p>-yes, in legislation:</p> <p>-Section 3 of the Misuse of Drugs Act, 1977;</p> <p>-Section 15(1) and (2) of the same Act(*), and Section 4(1)(b) of the Misuse of Drugs Regulation, 1988.</p> <p>(*) possession of a drug for personal use means possession of a small quantity which, in the view of the court, is deemed to be for the immediate personal use of the possessor.</p> <p>All other unlawful possession comes within the definition of "trafficking".</p>

ITALY	<p>- in legislation: Section 75 covers the illegal acquisition or possession of drugs or psychotropic substances for "personal consumption". Anyone who holds a quantity not exceeding an average daily does is subject to administrative penalties (suspension of their driving licence, withdrawal of passport, etc.) and, in the case of foreigners, suspension of their tourist residence permit, for a period of 2 to 4 months or 1 to 3 months respectively depending on the circumstances.</p> <p>The prefect of the place where the act was committed applies the administrative penalty.</p>
LUXEMBOURG	<p>- legislation distinguishes between the offence of illegal use of drugs (Section 7) and the offence of selling or offering for sale (Section 8), but there is no legal criterion on which this distinction is made.</p> <p>-The public prosecutor decides whether or not to prosecute, and the courts set the penalties on the basis of the facts and the role of the defendant in the case.</p>
NETHERLANDS	<p>-the Opium Act provides that the offence can relate to a "small quantity for personal use" (Section 10(5); Section 10a(2) and Section 11(6)).</p> <p>- regarding the concept of "small quantity", the instructions of the public prosecutor provide that possession of a maximum of 30 grams of cannabis is not considered to be an offence (see also the answer to question 8); also, something that is clearly specific to Dutch policy is that the sale of cannabis in coffee shops is tolerated under certain conditions: a maximum of 5 grams per transaction, no sales to minors, no nuisance for neighbours, etc.</p>
PORTUGAL	<p>- Decree-Law No 15/93 specifies the acts of "trafficking and other illegal activities" (Section 21), the user-dealer (Section 26) and the consumer (Section 40).</p> <p>Users may not possess an amount exceeding that required for average personal use for a period of five days (Section 26).</p> <p>Evidence of whether trafficking took place is gathered by the investigators, and the circumstances of the case enable the court to decide whether or not trafficking has taken place. Furthermore, Council of Ministers Resolution No 46/99 approving the national drugs strategy contains, as a guide, several examples relating to the legal devices of the trafficker, the user-dealer and the consumer.</p>

<p>UNITED KINGDOM</p>	<p>-yes, legislation identifies the three separate offences of unlawful possession, unlawful possession with intent to supply and unlawful supply. The first is not a trafficking offence, the other two are.</p> <p>There are no other distinctions in the legislation except in relation to anabolic steroids, which are exempted from the controls on possession when possessed "in the form of a medicinal product by any person for administration to himself".</p> <p>-The penalty is determined on the basis of the guidelines by the Courts of Appeal laid down in the case law (cf. answer to question 5).</p>
<p>SWEDEN</p>	<p>-the legislation contains no criteria for distinguishing between these offences, and there is no administrative circular on the scope of criminal law.</p> <p>-Case law shows that the courts assume drug trafficking to have taken place where the defendant was in possession of a certain quantity of drugs.</p>

Question 7. Are medical and health-care alternatives to enforcement measures for drug users legally applicable to users who also deal in narcotics on a small scale, in particular where they deal in order to finance their own consumption?

GERMANY	<p>yes. Section 35 (deferment of sentence) and Section 37 (non-prosecution) of the Act (BtMG) can be applied.</p>
AUSTRIA	<ul style="list-style-type: none"> - in the case of acquisition and possession of a limited quantity for personal use the public prosecutor must defer the charges for a probationary period of two years; - in the case of an act considered to be trafficking (import, sale, etc., or, in the case of the acquisition, as a result of the offender's own drug addiction, of a large quantity of drugs for distribution, the public prosecutor may provisionally defer the charge for a probationary period of two years (Section 35(2) of the Narcotics Act) if the deferral appears no less likely than a conviction to deter the accused from committing further related offences; - the deferral must be preceded by inquiries about the accused (Drug Monitoring Department) and opinion from the regional (Bezirk) health authorities which can recommend treatment; the public prosecutor must then make the deferral dependent on the accused being prepared to undergo the treatment. If no new charges are brought and the measure or treatment is adhered to, the charge is dropped at the end of the probationary period. - if the person is charged solely with having acquired or possessing small quantities of cannabis or cannabis preparations for his own consumption, and has not been charged with a similar offence in the five years prior to the current charge, and there is no reason to believe that he requires medical treatment, the public prosecutor is not obliged to consult the regional health authorities (Section 35(4) of the Narcotics Act); - convicted addicts sentenced to a fine or imprisonment for no more than two years may have their sentences suspended for no more than two years, if they are prepared to undergo treatment. If a prison sentence not exceeding three years has been imposed, the court can grant a suspension for a period of no more than two years. If the measure is not adhered to, or if other drugs offences are committed, the suspension is revoked and the sentence must be served.

BELGIUM	<p>-yes, but the main element of the case, according to the case law, must be possession for personal use.</p> <p>-The conditions imposed by Sections 3 and 8 of the Act on stay, suspension and probation do not have to be fulfilled in the case of personal consumption or use in a group: the court can grant a stay or a suspension, even where there are previous convictions, to those people who have used drugs in a group or have illegally manufactured, acquired, or possessed the substances named in the law for their personal use. Section 9 of the Act of 9 July 1975, which supplemented and amended the Act of 24 February 1921, provides that "persons who have used substances in a group (...) or, for their personal use, have illegally manufactured, acquired or possessed such substances, may benefit from the provisions of the Act of 29 June 1964 on deferral, suspension or probation, even if they do not fulfil the conditions provided for (...) regarding any prior convictions they may have".</p> <p>Successive suspensions may, therefore, be granted.</p> <p>The courts take account of the circumstances of each case, and of whether or not the defendant is prepared to undertake or continue appropriate treatment.</p> <p>-As regards the possibility of mediation in criminal proceedings in the case of drug addiction, see the answer to question 6.</p>
DENMARK	<p>- a trial arrangement for treatment of drug addicts who have committed an offence has been put in place (decision by Parliament taken in 1995); drug addicts have the option of treatment instead of a prison term of between six and twelve months. The arrangement is due to be assessed at the end of 2000.</p> <p>- drug addicts, like other offenders requiring treatment, may be authorised to serve all or part of their sentence in a special institution which provides treatment (Section 49(2) of the Criminal Code).</p> <p>- drug addicts serving a prison sentence may be placed in a unit where treatment is provided.</p>
SPAIN	<p>-yes. See answer to question 5.</p>
FINLAND	<p>-yes. Section 7 of the chapter of the Criminal Code on infringements of drug legislation provides for the possibility of charges being dropped. This provision states that a prosecution (and penalties) can be dropped if the offender can prove that a course of treatment approved by the Ministry of Social Affairs and Health is to be undertaken. In practice, leniency in charges and sentences where a user has been involved in drug trafficking is not generally the rule.</p>

FRANCE	<p>- there are medical and health-care alternatives:</p> <ul style="list-style-type: none"> - when proceedings begin: the rehabilitation clause provided for by Section L.628-1 of the Public Health Code concerns only users; it allows them to escape prosecution by undergoing drug rehabilitation or submitting to medical surveillance; - at the sentencing stage: the court can take account of the addict's medical and social circumstances by passing, for example, a suspended sentence with probation. <p>- the instrument of the rehabilitation clause was relaunched in 1995 and an evaluation carried out in 1997 showed that practices across the country were fairly consistent; a circular from the <i>Garde de sceaux</i> of 17 June 1999 emphasises that the implementation of this instrument should ensure that the legal requirements of the measure dovetail with the need to preserve the potential care relationship between the offender and the doctor. The measure is targeted at heroin and other drug addicts using unlawful products in large quantities or repeatedly, in which case they require a socio-educational approach. The public prosecutor must be kept informed of the progress of the treatment by the health authorities (Sections L.355-16 and L.355-17 of the Public Health Code).</p>
GREECE	<p>-yes. See Section 14 of Law No 1729/87. This Section is entitled "Special treatment for drug users". It provides, notably, that an offender given a prison sentence who agrees to undergo a treatment programme can obtain a conditional remission of sentence if he adheres to the conditions imposed (see Section 14(2)).</p>

IRELAND	<p>-yes.</p> <p>The answer to question 5 gives details of the alternative penalties that can be decided on with regard to users (drug addicts). On this subject, it can be said that:</p> <p>-in practice, under the Probation and Welfare Schemes and the Juvenile Liaison Schemes, those found guilty of minor infringements, in particular young people, can, if they wish, receive treatment rather than being given a prison sentence or a fine.</p> <p>-in January 2001, a pilot Drug Court programme is being set up in a deprived area in the north of Dublin. The aim of this Drug Court is to set up, under its responsibility, a rehabilitation programme intended for anyone who has been found guilty of an offence relating to the possession of drugs for personal use or within the framework of trafficking on a limited scale or of a District Court offence, or who has pleaded guilty to an offence of this kind. The Drug Court passes judgement on people aged 17 and over. Following a pilot phase and an evaluation, it will be decided whether or not to extend the programme.</p>
ITALY	<p>-yes.</p>
LUXEMBOURG	<p>-yes.</p> <p>They apply only to the offence of personal use and transport, possession and acquisition for personal use. Use alone and transport for personal use are also less severely penalised than trafficking alone (for details see answer to question 5); they are punished by imprisonment from 3 months to 3 years and a fine from LUF 1 000 to 100 000.</p>

NETHERLANDS	<p>-yes. The authorities have a certain degree of coercion in relation to the implementation of the alternatives, but, in principle, it is the drug-using suspect himself who chooses, because experience shows that treatment offers little chance of success unless the person concerned is motivated to undergo it or cooperate in it.</p> <p>The alternatives may be implemented at various stages in the prosecution. Thus the pre-trial detention may be suspended in order to allow treatment. For those not in pre-trial detention, the proceedings can be delayed pending the result of treatment. When passing sentence, the judge can impose a penalty which will not be enforced provided the offender agrees to treatment. If the offender withdraws from treatment or otherwise fails to comply with the conditions applicable, a sentence will be passed or, if passed, will have to be served.</p> <p>An experimental scheme is currently in preparation: the compulsory placement of frequently reoffending drug-users in a special facility (SOV: <i>Strafrechtelijke Opvang van Verslaafden</i>); this scheme is to be viewed as a supplementary instrument for a relatively limited group of very active drug-using offenders who have refused other forms of help or have failed to benefit from it. The scheme will have a special status. Placement can be imposed, but participation in treatment may not be made compulsory.</p> <p>The programme is organised in phases (closed, semi-open, then open setting). After the court decides on compulsory placement, a long stay is envisaged (2 years maximum), with a treatment and training programme. Close involvement by the participating towns is planned. Five SOV establishments will be set up (the first being brought into service at the end of 2000), with a total of 350 places.</p> <p>It will be necessary to change the Criminal Code to make compulsory placement possible.</p>
PORTUGAL	<p>-The medical alternatives to enforcement measures are specified in Section 44 of Decree-Law No 15/93.</p> <p>-On the basis of paragraph 1 of Section 44, if the accused has been sentenced on the basis of Section 40 (drug use) or if he is deemed to be an addict, the court can suspend the penalty, provided that the conditions laid down are adhered to and treatment is undergone.</p> <p>-If, as suggested in the question, the problem is "functional delinquency" (directly linked to the addiction), the court can order the application of medical and health-care measures.</p>

<p>UNITED KINGDOM</p>	<p>Legal provisions allow the courts to order medical treatment ("drug treatment and testing order" [DTTO] - cf. Crime and Disorder Act 1998); the offender is supervised by a probation officer.</p> <p>The court subsequently interviews the offender to ascertain whether he or she is abiding by his or her commitments and can, depending on the case, maintain the treatment for a certain period, modify the order, or impose a prison sentence.</p> <p>The Government has also encouraged and funded administrative arrangements which should apply after arrest by the police. They enable social workers to intervene (usually by interview on police premises) to see if the offender is suitable to undergo treatment on a voluntary basis. It is the police who call in these drug addiction specialists ("arrest referral schemes").</p>
<p>SWEDEN</p>	<p>-yes, alternative measures can be ordered (cf. answer to question 5), even if the addict is given a prison sentence.</p> <p>-About 400 places in 15 prisons are reserved for motivated addicts. They are kept separate from other inmates. They take part in special programmes of activities. Regular urine samples are taken.</p> <p>All drug addicts committed to prison are assigned a contact person, who, together with the prisoner, draws up an individual treatment plan.</p> <p>The special drugs units run motivation programmes. Sometimes other prisoners can take part in these programmes. In 1999, about 1900 inmates took part in some kind of programme organised to combat drug abuse (programmes based on the Minnesota model and programmes based on cognitive methods).</p>

Question 8. What prison sentences or fines are provided for in the case of trafficking in drugs?

Do the following constitute aggravating circumstances?

- quantity of drugs or psychotropic substances dealt;
- type of drugs or psychotropic substances dealt;
- nature and extent of the accused's involvement;
- involvement of a gang, organised as to object or purpose;
- involvement of a conspiracy, organised as to object or purpose;

In appropriate cases, please specify the impact on the sentence.

Does your national legislation provide for other aggravating circumstances? If so, what are they?

GERMANY	<ul style="list-style-type: none"> - Basic drug offences: prison sentence of up to 5 years or fine; - Serious cases: prison sentence from a minimum of 1 year up to 15 years; - Crime: prison sentence, variable, minimum of 1, 2 or 5 years up to 15 years. Thus: <ul style="list-style-type: none"> -prison sentence ranging from a minimum of 1 year to a maximum of 15 years in the case of: <ul style="list-style-type: none"> -large quantity of drugs, or links with organised gangs; -professional dealing or endangering the health of a number of persons or sale of drugs by adults to persons under 18 years of age; -prison sentence from a minimum of 2 years up to 15 years: negligently causing death by selling drugs or by illegally importing drugs; -prison sentence from a minimum of 5 years up to 15 years: trafficking as a member of a gang which repeatedly does so, or carrying a firearm or other dangerous object while trafficking. <p>In all these cases the Act provides for a reduction in the sentence in less serious cases.</p>
AUSTRIA	<p>a) imprisonment for a term not exceeding six months or a fine up to 360 the daily unit rate: whoever commits one of the prohibited acts, either for profit or as a member of a gang, is himself a drug addict and commits the offence primarily to procure drugs for himself or to obtain the means of procuring them.</p> <p>b) imprisonment for a term not exceeding 2 years:</p> <ul style="list-style-type: none"> - whoever acquires or is in possession of large quantities of psychotropic substances with the intention of distributing the drugs; - whoever acquires or is in possession of a precursor substance, knowing that it is to be unlawfully used to produce a large quantity of a drug;

	<p>c) imprisonment for a term not exceeding 3 years: - whoever, by committing a prohibited act, enables a minor to use drugs, where the offender is an adult and more than two years older than the minor; - whoever commits a prohibited act for profit or as a member of a gang, unless he is a drug addict and commits the offence primarily to obtain drugs for his own consumption or the means to acquire them... (cf. a) ; - whoever acquires or is in possession of a large quantity of a narcotic substance with the intention of distributing it;</p> <p>d) imprisonment for a term not exceeding 5 years: whoever produces, imports, exports or distributes a large quantity of a narcotic or psychotropic substance or a precursor, knowing that it is to be unlawfully used to produce drugs in large quantities;</p> <p>e) imprisonment for a term of between 1 and 10 years: whoever commits an offence under point d) for profit or as a member of a gang, unless he is a drug addict and commits the offence primarily to obtain drugs for his own consumption or the means to acquire them;</p> <p>f) imprisonment for a term of between 1 and 15 years: whoever commits an offence under point d): - as a member of a gang and has a previous conviction for such an offence; - as a member of a large group of people who conspire to commit such unlawful acts, or - involving at least 25 times the threshold quantity;</p> <p>g) imprisonment for a term of between 10 and 20 years: whoever commits an offence under point c) and plays a leading role in an association of people who conspire to commit such unlawful acts.</p> <p><u>Quantity:</u> it can be seen that heavier sentences are imposed for larger quantities and quantities 25 times the threshold quantity.</p>
	<p><u>Type of substances:</u> it can be seen that the law makes no distinction.</p> <p><u>Role of the accused; involvement in a gang or a conspiracy:</u> the law takes account of these parameters (see above and the answer to question 3).</p> <p><u>Other parameters:</u> under the general provisions of the Austrian Criminal Code, aggravating circumstances (repeat offences or previous convictions, for example) - as well as attenuating circumstances - are to be taken into account. An adult who is convicted a second time for a related offence can be given a prison sentence longer than half of the maximum provided for by the law, provided that the total sentence does not exceed 20 years.</p>

BELGIUM	<p><u>Quantity and type of substances:</u> these parameters are not taken into account in determining the penalties provided for by law.</p> <p>The following are punishable: the import, export, manufacture, sale, offer for sale, supply or acquisition, against payment or free of charge, of stupefying, narcotic and psychotropic substances, without authorisation, with the exception of acquisition and possession on medical prescription; also: use of drugs in a group, facilitating use, inducement to use, etc.</p> <p>The basic penalties are: imprisonment for a term from 3 months to 5 years and/or a fine of BEF 1 000 to 100 000 (multiplied by 200).</p> <p><u>Role of the accused; involvement in a gang or a conspiracy:</u> the law lays down a scale of penalties depending on the seriousness of the aggravating circumstances involved. Apart from the involvement of the accused in trafficking, the consequences of the offence and the age of the "victims", the determination of aggravating circumstances also depends on:</p> <ul style="list-style-type: none"> - the age of the victim: <ul style="list-style-type: none"> - minor from 16 to 18 years of age: imprisonment from 5 to 10 years; - minor from 12 to 16 years: imprisonment from 10 to 15 years; - minor under the age of 12: imprisonment from 15 to 20 years. - the consequences of the offence: if the use of the drug has caused the victim: <ul style="list-style-type: none"> - an apparently incurable illness, permanent incapacity for work, complete loss of use of an organ or serious mutilation: imprisonment from 5 to 10 years; - death: imprisonment from 10 to 15 years. - the degree of involvement in trafficking: <ul style="list-style-type: none"> - if the offence constitutes involvement in the principal or subsidiary activities of an association: imprisonment for 10 to 15 years; - if the person has directed the principal or subsidiary activities of an association: imprisonment for 15 to 20 years. <p>The law also provides for supplementary penalties such as the closure of, or prohibition from running, an establishment in which the offences were committed, and the confiscation of objects which were used or intended to be used to commit the offence, even if they do not belong to the offender.</p> <p><u>Extenuating factors</u> (Section 6 of the Act):</p> <ul style="list-style-type: none"> -in the case of disclosure to the authorities before proceedings are instituted: exemption from or a reduction in the penalty; -in the case of disclosure after the initiation of proceedings: reduction in the sentence for an offender who reveals the identity of other suspects unknown until then (cf. answer to question 12). <p><u>Repeat offending:</u></p> <p>In the case of a re-offence within five years, the penalty imposed by the court may be doubled and criminal penalties increased in accordance with Section 54 of the Criminal Code.</p>
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DENMARK	<p>-The penalties which may be imposed are fines, mitigated imprisonment or a prison term of up to two years (Section 3(2) of Act No 391).</p> <p>If the offence falls under Section 191 of the Criminal Code, the maximum penalty is 10 years in prison.</p> <p>In very serious cases, the penalty provided for in Section 88 of the Criminal Code, which concerns combinations of offences, can be increased by up to half again (prison sentences can thus be anything up to 15 years).</p> <p>-According to the Act, the quantity and type of drugs supplied constitute aggravating circumstances. The other factors may constitute aggravating circumstances, but that depends on the court's judgement in individual cases (see also the answer to question 3).</p>
SPAIN	<p>-The length of prison sentences varies according to the extent to which the drug is harmful to health and whether or not there are aggravating or mitigating circumstances.</p> <p>-Fines vary depending on the value of the drugs (see the offences falling under Section 369, and those falling under Section 370).</p> <p>-In the offences falling under Section 369:</p> <ul style="list-style-type: none"> -drugs that cause serious harm to health: a prison sentence of between 9 years and a day and 13 years and six months, together with a fine of between one and four times the value of the drugs; -drugs that do not cause serious harm to health: a prison sentence of between 3 years and a day and 4 years and 6 months, together with a fine of between one and four times the value of the drugs; <p>-Offences falling under Section 370:</p> <ul style="list-style-type: none"> -drugs that cause serious harm to health: a prison sentence of between 13 years, 6 months and a day and 20 years and 3 months, together with a fine of between one and six times the value of the drugs; -drugs that do not cause serious harm to health: a prison sentence of between 4 years, 6 months and a day and 6 years and 9 months, together with a fine of between one and six times the value of the drugs; <p>-Where the offence is committed by someone who holds certain public functions or a position of authority, a teaching position, etc., a disqualification from holding that position can also be imposed (specific disqualification from a particular profession, or a general disqualification from holding public office, as appropriate).</p> <p>-Dissolution or suspension of an establishment or prohibition from engaging in activities which facilitated or concealed the offence can be imposed.</p> <p>-All cases require seizure of the drugs and confiscation of the property, effects and instruments used in committing the offence, as well as the profits acquired therefrom.</p> <p>-In drug trafficking offences, in addition to the specific aggravating circumstances already mentioned, those generally applicable to offences of all kinds and laid down in Section 22 of the Criminal Code may be taken into account, in which case the penalties are determined in accordance with the rules laid down in Section 66 of the Code.</p>

FINLAND	<p>-Serious offences are provided for in the drugs legislation in the various cases provided for in Section 2 of the the chapter on the Criminal Code on infringements of the drugs legislation (member of a group specially organised, drugs distributed to minors, etc.).</p> <p>Perpetrator of "serious offences" are given a prison sentence of between one and ten years.</p> <p>-If the perpetrator is convicted simultaneously of several drug trafficking offences, the maximum penalty is 13 years' imprisonment. The case law shows that prison sentences of over 10 years have been imposed (see also the answer to question 9).</p> <p>-The various parameters can be taken into account and may constitute aggravating circumstances so that the offence, taken as a whole, will be considered a serious offence.</p>
FRANCE	<p>-Type and quantity of drugs: no (see answer to question 3).</p> <p>-Nature of the accused's involvement; involvement in a gang or conspiracy: yes (see answer to question 3).</p> <p>Section 222-34 of the Criminal Code provides that running or organising a drug-trafficking gang whose aim is production, transport, disposal, etc. is punishable by life imprisonment and a fine of FRF 50 000 000. Section 222-35 of the Criminal Code punishes the illegal production or manufacture of drugs with twenty years' imprisonment and a fine of FRF 50 000 000, and 30 years' imprisonment and a fine of FRF 50 000 000 when these acts are committed by an "organised gang".</p> <p>-For drug users, the courts can add probation to the penalty.</p> <p>-Supplementary penalties (prohibition, confiscation, etc.) are provided for.</p> <p>-The prison sentence is reduced by half if, having notified the administrative or judicial authorities, the offender ceases the incriminating activities and, where appropriate, identifies the other offenders (Section 222-43 Criminal Code).</p> <p>- As regards customs offences involving drugs, they are dealt with by Section 414 of the Customs Code, which lays down a maximum prison sentence of 3 years, confiscation of the goods which are the subject of the fraud and the means of transport and equipment used in the fraud, and a fine of between one and two times the value of the goods.</p>

	<p>The penalties imposed for drug trafficking are referred to in:</p> <ul style="list-style-type: none"> -Section 5 of Act No 1729/87: basic offences: prison term of at least 10 years and a fine of between GRD 1 million and 100 million; -Section 6 (special cases): introducing drugs into a school or a sporting establishment for example; committing certain acts prohibited by Section 5 as a (...): imprisonment of at least fifteen years and a fine of between GRD 5 million and 150 million; -Section 8 (aggravating circumstances): whoever reoffends or who acts professionally or habitually or with the aim of causing minors to use drugs (etc.): life imprisonment and fine of between GRD 10 million and 200 million. <p>The involvement of the accused and the acts he has committed will determine whether Section 5 (basic offences) apply, or Section 6 and/or Section 8. There are no other specific provisions on the position and involvement of the accused.</p>
IRELAND	<p>Section 27 of the Misuse of Drugs Act, 1977, Section 6 of the Misuse of Drugs Act, 1984 and Part II of the Criminal Justice Act, 1999 govern drug trafficking at national level.</p> <p>The law makes no distinction between an organised gang and individuals involved in trafficking. However, the court takes the circumstances of each case (quantity of drugs, involvement in an organised gang, the role of the accused, etc.) into account when sentencing.</p> <p>The various parameters listed are thus the factors that the court takes into account.</p> <p>The general penalties for drug trafficking offences are the following:</p> <ul style="list-style-type: none"> a) in less serious cases, a fine of no more than IEP 1000 or, on assessment by the court, a prison sentence of no more than 12 months or a fine combined with a prison sentence; b) in more serious cases, a fine of an amount deemed appropriate by the court or, on the court's assessment, life imprisonment or imprisonment for a shorter period determined by the court, or a fine together with a prison sentence for a period less than life imprisonment. <p>As far as quantities are concerned, the law provides for a mandatory penalty of 10 years' imprisonment in the case of possession of drugs of a value of IEP 10 000 or more (apart from legal exceptions) (see Section 15(a) of the Misuse of Drugs Act, 1977 as amended by Section 4 of the Criminal Justice Act, 1999).</p>

<p>ITALY</p>	<p>-The different parameters are taken into account by the Act.</p> <p>-In the case of unlawful trafficking in drugs or psychotropic substances in Schedules I and III: imprisonment from 8 to 20 years and a fine of LIT 50 to 500 million; in the case of soft drugs (substances in Schedules II [cannabis and cannabis-based substances] and IV [substances in common therapeutic use with little risk of addiction]: imprisonment from 2 to 6 years and a fine of LIT 10 to 150 million.</p> <p>If the acts are minor, the penalties applicable are from one to six years' imprisonment and a fine of LIT 5 to 50 million (products in Schedules I or III) or from 6 months' to 4 years' imprisonment and a fine of LIT 2 to 20 million (substances listed in Schedules II or IV).</p> <p>The sentence is increased if the act is committed by three or more people.</p> <p>The sentence is reduced by half to two thirds for anyone who endeavours to ensure that the criminal activity does not have other consequences, including by helping the police (Section 73).</p> <p>Among the specific aggravating circumstances provided for by Section 80 are: sale to minors or transfers intended for minors; supplying or giving drugs with a view to obtaining sexual relations from drug addicts; etc. (penalties increased by between a third and a half), and trafficking in large quantities (penalties increased by from a half to two thirds depending on the case).</p> <p>-Trafficking combined with conspiracy: Section 74 provides for more severe penalties in the case of a conspiracy for illegally trafficking in drugs or psychotropic substances:</p> <ul style="list-style-type: none"> -if three or more people participate in the conspiracy, the person who promotes, forms, directs, organises or finances the association is liable to a penalty of no less than 20 years' imprisonment; -anyone participating in such an association is liable to imprisonment of no less than 10 years; -the sentence can be increased (if at least 10 people are involved; if they are armed; etc.) or reduced (helping the police, etc.) in accordance with the other paragraphs of Section 74.
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LUXEMBOURG	<p>-Simple or "basic" trafficking is punishable by penalties of imprisonment from 1 to 5 years and a fine of LUF 5 000 to 50 000 000 or one of these penalties alone (Section 8). A conspiracy or association to commit the crimes under Section 8a) [having unlawfully manufactured, imported, exported, sold, etc.] and b) [having unlawfully transported, possessed, acquired, etc. with a view to use by third parties] is punishable by the same penalty as offences of use.</p> <p>-Quantity and type: no legal criteria. However, a bill has been presented which would impose less severe penalties on use, and distinguish cannabis and its derivatives from other drugs; likewise, as far as the possession or transport of cannabis and its derivatives for personal use is concerned, only a fine would apply, and for other drugs, a fine and a reduced prison sentence (8 days to 6 months).</p> <p>-Role of the accused: it seems to us that this role is taken into account because, if the accused is part of a conspiracy, or sells to minors, or has knowingly dissimulated the aim or the product of the offence, he or she is punished on the basis of different provisions. The role of the accused is thus taken into account in that the Act refers to specific situations, such as the sale, distribution, offer for sale, "in a penitentiary institution, in an educational establishment, in a social services centre, ...": minimum term of imprisonment = 2 years, and minimum fine = LUF 10 000. Other aggravating circumstances (increased penalties) are as follows: -if the sale is to a minor or if the substances sold or given caused a third party an apparently incurable illness, a permanent incapacity to work, etc. (imprisonment from 5 to 10 years) (see Section 9 of the Act); -if the sale (the trafficking) resulted in the death of a user (imprisonment from 15 to 20 years); if the offence is committed against a minor and if use of the substances led to death (life imprisonment) (see Section 10 of the Act).</p> <p>-Trafficking in combination with conspiracy: imprisonment from 15 to 20 years and a fine from LUF 50 000 to 50 000 000 if the offences "constitute acts of participation in the principal or subsidiary activities of an association or organisation".</p> <p>-Reoffending within five years: terms of imprisonment may be doubled and penalties increased (see Section 12).</p> <p>-The Act also provides for: -confiscation (movable or immovable property acquired from the proceeds of the offence; vehicles, instruments or goods which served or were intended for use in committing the offences, etc.); -temporary or permanent ban on practising the profession, etc.</p>
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NETHERLANDS	<p>-As regards quantities:</p> <ul style="list-style-type: none"> -persons who commit the offences described in Section 10a(1) by virtue of bringing small quantities of drugs intended for personal use onto Dutch territory or removing them from that territory shall not be liable to punishment. -the penalties provided for anyone who deliberately infringes Section 3(1) B, C or D (sale, possession, manufacture of products on List II) does not apply if a quantity of no more than 30g is concerned. -above a certain limit of the value of the drugs possessed (and hence of their quantity), the court can impose a fine of NLG 100 000 maximum instead of 25 000, and a fine of NLG one million instead of 100 000. <p>-As regards the nature of the substances:</p> <ul style="list-style-type: none"> -acts falling within the definition of trafficking in List I substances are liable to a custodial sentence of 8 years maximum and a fine of NLG 100 000, but the import or export of these substances is punishable by imprisonment of 12 years maximum and a fine of NLG 100 000. For List II substances: custodial sentence of 4 years maximum and a fine of NLG 100 000, where dealing on a professional or commercial basis is involved, and otherwise a custodial sentence of 2 years maximum and a fine of NLG 25 000. For the import or export of these substances there is a maximum 4-year prison sentence and/or fine of maximum NLG 100 000. <p>-Involvement of the accused: for accomplices (not co-perpetrators) the maximum of the main penalty is reduced by one third.</p> <p>-Involvement of a gang: when an offence under the Opium Act is compounded by leadership or participation in a conspiracy (two offences under Section 140 of the Criminal Code), the accused can incur a single penalty up to a third higher than the highest maximum penalty legally available for the acts in question. Thus, in the case of import or export of List I substances together with participation in a conspiracy, the penalty is a maximum of 16 years' imprisonment, and in the case of trafficking, sale etc. of List II substances in combination with leadership of a conspiracy, a sentence of 12 years maximum can be imposed.</p> <p>-Other parameters: in addition to the concurrence of offences as stated above, reoffending is another example.</p>
PORTUGAL	<p>-Trafficking: basic penalty: imprisonment from 4 to 12 years. The parameters mentioned in the questionnaire may increase the penalty that will be applied in practice.</p> <p>-The minimum and maximum limits of penalties are increased by one third where there are aggravating circumstances, notably:</p> <ul style="list-style-type: none"> -the substances or preparations were supplied to or were intended for minors or to large numbers of people, etc.; -the offender obtained or sought to obtain significant profit; -the offender holds a certain position, or is a doctor, teacher, etc.;

	<p>-the offender takes part in other criminal activities organised at an international level, or facilitated by the commission of the offence;</p> <p>-the offender has made use in any way of the collaboration of minors or those with a mental handicap;</p> <p>-the substances were altered by handling or mixing, thereby increasing the danger to the life or bodily integrity of others (see Section 24 of Decree-Law No 15/93).</p> <p>-Dealer-users are less severely punished (see answer to question 5).</p>
UNITED KINGDOM	<p>-A distinction is made in the legislation on the basis of the type of drugs trafficked. A scale of penalties is provided for depending on how harmful the products are. Substances are divided into three classes: "Class A": the most dangerous drugs (notably heroin and cocaine); "Class B" (notably cannabis and amphetamines); "Class C" (the least dangerous).</p> <p>-The role of the offender is also taken into account: the most severe penalties are for the various forms of trafficking.</p> <p>The maximum penalties are as follows:</p> <p>-Class A substances:</p> <ul style="list-style-type: none"> - summary procedure: 6 months' imprisonment and/or mandatory fine (UKL 5 000); -accusatory procedure: life imprisonment and/or a fine set by the court; <p>-Class B substances:</p> <ul style="list-style-type: none"> -summary procedure: 6 months' imprisonment and/or mandatory fine; -accusatory procedure: imprisonment of maximum 14 years and/or a fine set by the court; <p>-Class C substances:</p> <ul style="list-style-type: none"> -summary procedure: maximum 3 months' imprisonment and/or fine of UKL 2 500; -accusatory procedure: maximum 5 years' imprisonment and/or a fine to be set. <p>In the case of a third-time charge of trafficking class A drugs, the prison sentence is at least 7 years, except where there are special circumstances accepted by the court (see Section 110 of the Powers of Criminal Courts (Sentencing) Act 2000).</p>

SWEDEN	<p>-The parameters listed can increase the penalty applicable. The court takes account of the facts of the case. Section 3 of the Narcotics Act, which came into force on 1 January 2001, provides that "where an offence pursuant to Section 1, first paragraph [the various acts of trafficking that are prohibited], is judged to be serious, it shall be punishable by imprisonment of not less than two years and not more than ten years". The second paragraph of Section 3 states that the court must evaluate the circumstances, and establish whether the facts are part of an activity pursued on a large scale or involved a large quantity of drugs. However, under the provisions of the Criminal Code on reoffending and repeated offences, sentences of up to 18 years' imprisonment can be imposed. This has actually occurred.</p> <p>-In practice, supplying drugs is seen as an aggravating circumstance, and supply to young people is viewed particularly seriously, as is supply to someone who is known to be a dealer. On the other hand, those who sell to finance their own use are treated more leniently.</p> <p>Other aggravating circumstances include obstructing police inquiries or selling drugs in prison.</p> <p>On the other hand, a certain tendency has been observed to view more leniently cases of selling or trafficking to finance their own drug use. On this subject, it can be noted that Section 2 of the Narcotics Act provides that if the offence (possession, sale, offer for sale, etc.) must be considered less serious, having regard to the nature and quantity of narcotics involved and other circumstances, it is punishable by a fine or imprisonment of not more than six months.</p> <p>-On confiscation of profits and the goods which were used to commit the offence: see Section 6 of the Narcotics Act.</p>
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Question 9. By way of a guide, what penalties are actually imposed in cases of the import, export and trafficking of drugs? (Please mention any categories included in your national legislation in the cases referred to above).

GERMANY	The prosecution statistics for 1998 show a total of 49 869 convictions under the BtMG (adults and juveniles).
AUSTRIA	Under the general criteria for determining penalties (see answer to question 8), the courts consider the specific and general offences provided for by the legislation when sentencing. Heavy sentences are imposed, including terms of imprisonment of about ten years.
BELGIUM	The penalties depend on the seriousness of the facts and the circumstances of each case. Those who are found guilty of very large-scale trafficking (for example, import or export of large quantities of drugs) are sentenced to 8, 9 or 10 years' imprisonment.
DENMARK	The courts rule on the penalty to be imposed in each case, in accordance with the Narcotics Act. The penalty is established according to the nature of the offence and on the basis of parameters such as the type of drug, the quantity, and the role played by the criminal in the offence, etc.
SPAIN	<p>-Import and export: a minor prison sentence (between 1 year and 9 months and 3 years), a fine (between two and four times the value of the drugs), seizure of the drugs and confiscation of the instruments used and profits acquired (Sections 3 and 5 of Framework Law 12/1995).</p> <p>-In the case of trafficking (without aggravating circumstances):</p> <ul style="list-style-type: none"> -drugs that cause serious harm to health: a prison sentence of between 3 years and a day and 9 years, together with a fine of between one and three times the value of the drugs; -drugs that do not cause serious harm to health: a prison sentence of between 1 year and 3 years, together with a fine of between one and two times the value of the drugs; -seizure of the drugs and confiscation of the instruments used in committing the offence and of the effects and profits derived therefrom; -where appropriate, closure of the establishment and a ban on its activities.

FINLAND	In past cases, sentences of over 10 years' imprisonment for drug trafficking have been handed down (up to 13 years maximum). On 5 September 2000, for instance, the Helsinki Drug Court sentenced the principal accused in a drug trafficking case (import of 1 kg of heroin, 27 kg of amphetamines and 50 kg of hashish), as the financial backer, to 12 years and 9 months' imprisonment, the second accused, who organised the smuggling, to 12 years, and the third, who had been the runner but who had assisted with the inquiries, to 8 years. The activities of the offenders were deemed to have been systematic and extensive, although they did not constitute an organised drugs ring.
FRANCE	No data available.
GREECE	The penalties laid down in Sections 5 (trafficking: at least 10 years' imprisonment), 6 (special cases: at least 15 years' imprisonment), and 8 (aggravating circumstances: life imprisonment) of Act No 1729/87 are imposed depending on the seriousness of the offence and the attitude of the offender, and on any aggravating circumstances.
IRELAND	The penalties vary depending on the circumstances of each case, and can range from a suspended sentence to 22 years' imprisonment. The import and export of drugs are included in drug trafficking offences.
ITALY	For substances in Schedule I (opiates, coca leaves, amphetamines) and in Schedule III (notably barbiturates): 8 to 20 years' imprisonment and a fine of between LIT 50 million and 500 million. For substances in Schedule II (cannabis) and in Schedule IV (substances in common therapeutic use): 2 to 6 years' imprisonment and a fine of between LIT 10 million and 150 million. <u>N.B.</u> These are the penalties laid down by law.
LUXEMBOURG	No statistics available.

<p>NETHERLANDS</p>	<p>In 1999, sentences were passed in 2 639 cases involving the import and export of and trafficking in hard drugs.</p> <table border="0"> <thead> <tr> <th data-bbox="507 331 738 360"><u>Number of cases</u></th> <th data-bbox="1026 331 1430 360"><u>Custodial sentences passed</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="600 389 647 416">957</td> <td data-bbox="1074 389 1273 416">1 to 6 months</td> </tr> <tr> <td data-bbox="600 418 647 445">467</td> <td data-bbox="1074 418 1289 445">6 to 12 months</td> </tr> <tr> <td data-bbox="600 448 647 474">897</td> <td data-bbox="1058 448 1289 474">12 to 36 months</td> </tr> <tr> <td data-bbox="600 477 647 504">318</td> <td data-bbox="1058 477 1350 504">more than 36 months</td> </tr> </tbody> </table> <p>In 1999, sentences were passed in a total of 170 cases involving the import and export of and trafficking in soft drugs.</p> <p>The number of cases and the duration of the custodial sentences are given below.</p> <table border="0"> <thead> <tr> <th data-bbox="507 707 738 736"><u>Number of cases</u></th> <th data-bbox="858 707 1259 736"><u>Custodial sentences passed</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="616 766 647 792">62</td> <td data-bbox="1074 766 1289 792">1 to 6 months</td> </tr> <tr> <td data-bbox="616 795 647 822">40</td> <td data-bbox="1074 795 1289 822">6 to 12 months</td> </tr> <tr> <td data-bbox="616 824 647 851">53</td> <td data-bbox="1058 824 1289 851">12 to 36 months</td> </tr> <tr> <td data-bbox="616 853 647 880">15</td> <td data-bbox="1058 853 1350 880">more than 36 months</td> </tr> </tbody> </table>	<u>Number of cases</u>	<u>Custodial sentences passed</u>	957	1 to 6 months	467	6 to 12 months	897	12 to 36 months	318	more than 36 months	<u>Number of cases</u>	<u>Custodial sentences passed</u>	62	1 to 6 months	40	6 to 12 months	53	12 to 36 months	15	more than 36 months												
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<p>PORTUGAL</p>	<p>The penalties in question are listed in Sections 21 (trafficking and other unlawful activities), 22 (precursors), 24 (aggravating circumstances: penalties increased by one third), 25 (less serious trafficking, depending on the circumstances) and 26 (dealer-user) of Decree-Law No 15/93.</p> <p>The answer gives no indication as to the penalties actually imposed in practice.</p>																																
<p>UNITED KINGDOM</p>	<p>As regards the prison sentences imposed in practice (including juveniles given a custodial sentence, and all forms of custody), the sentences imposed on 10 422 people convicted in 1997 were of the following durations:</p> <table border="0"> <tbody> <tr> <td data-bbox="507 1391 767 1417">-up to one month:</td> <td data-bbox="906 1391 1289 1417">14 % (of those concerned)</td> </tr> <tr> <td data-bbox="507 1420 815 1447">-from 1 to 3 months:</td> <td data-bbox="906 1420 970 1447">13 %</td> </tr> <tr> <td data-bbox="507 1449 815 1476">-from 3 to 6 months:</td> <td data-bbox="906 1449 970 1476">12 %</td> </tr> <tr> <td data-bbox="507 1478 890 1505">-from 6 months to 1 year:</td> <td data-bbox="906 1478 970 1505">15 %</td> </tr> <tr> <td data-bbox="507 1507 799 1534">-from 1 to 2 years:</td> <td data-bbox="906 1507 970 1534">15 %</td> </tr> <tr> <td data-bbox="507 1536 799 1563">-from 2 to 5 years:</td> <td data-bbox="906 1536 970 1563">22 %</td> </tr> <tr> <td data-bbox="507 1565 799 1592">-from 5 to 7 years:</td> <td data-bbox="906 1565 954 1592">3 %</td> </tr> <tr> <td data-bbox="507 1594 799 1621">-more than 7 years:</td> <td data-bbox="906 1594 954 1621">5 %</td> </tr> </tbody> </table> <p>For 1998, the figures are as follows:</p> <table border="0"> <tbody> <tr> <td data-bbox="507 1650 767 1677">-up to one month:</td> <td data-bbox="922 1650 1305 1677">18 % (of those concerned)</td> </tr> <tr> <td data-bbox="507 1680 815 1706">-from 1 to 3 months:</td> <td data-bbox="922 1680 986 1706">16 %</td> </tr> <tr> <td data-bbox="507 1709 815 1736">-from 3 to 6 months:</td> <td data-bbox="922 1709 986 1736">13 %</td> </tr> <tr> <td data-bbox="507 1738 890 1765">-from 6 months to 1 year:</td> <td data-bbox="922 1738 986 1765">15 %</td> </tr> <tr> <td data-bbox="507 1767 799 1794">-from 1 to 2 years:</td> <td data-bbox="922 1767 986 1794">14 %</td> </tr> <tr> <td data-bbox="507 1796 799 1823">-from 2 to 5 years:</td> <td data-bbox="922 1796 986 1823">19 %</td> </tr> <tr> <td data-bbox="507 1825 799 1852">-from 5 to 7 years:</td> <td data-bbox="922 1825 970 1852">2 %</td> </tr> <tr> <td data-bbox="507 1854 799 1881">-more than 7 years:</td> <td data-bbox="922 1854 970 1881">2 %</td> </tr> </tbody> </table> <p>In the leading case "John Uzu Aramah" (1982), the Court of Appeal deemed a sentence of 6 years' imprisonment for importing 59 kg of cannabis to be entirely appropriate.</p>	-up to one month:	14 % (of those concerned)	-from 1 to 3 months:	13 %	-from 3 to 6 months:	12 %	-from 6 months to 1 year:	15 %	-from 1 to 2 years:	15 %	-from 2 to 5 years:	22 %	-from 5 to 7 years:	3 %	-more than 7 years:	5 %	-up to one month:	18 % (of those concerned)	-from 1 to 3 months:	16 %	-from 3 to 6 months:	13 %	-from 6 months to 1 year:	15 %	-from 1 to 2 years:	14 %	-from 2 to 5 years:	19 %	-from 5 to 7 years:	2 %	-more than 7 years:	2 %
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SWEDEN	<p>-In the answer to question 8, it is shown that, in the most serious cases, penalties of up to 18 years' imprisonment have been imposed.</p> <p>-Furthermore, by way of example, the sale of 500 g of cannabis can lead to a prison sentence of between 10 months and one year, and the supply of 500 g of heroin may be punished by a prison sentence of 7 or 8 years.</p> <p>-The penalties for drugs offences range from fines (for minor offences) to 10 years' imprisonment (for serious offences). However, in cases of repeat or multiple offences, penalties of up to 18 years' imprisonment can be imposed under the provisions of the Criminal Code on increasing penalties.</p>
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Question 10. In the case of drug trafficking, what comments could be made about:

-the actual duration of prison sentences (what possibilities are there for remission and/or release on parole?);

-regional differences within the Member State in the way in which the relevant legislation is applied

GERMANY	-a prisoner can be released under certain circumstances after two thirds of the sentence has been served (Section 57 et seq. of the Criminal Code).
AUSTRIA	-The provisions of the Austrian Criminal Code allow for the possibility of parole (Section 46). Depending on the case, release on parole is possible after half the term has been served. These possibilities apply to offenders convicted under the Narcotics Act. -There are no regional differences in the application of the relevant legislation.
BELGIUM	-The Ministerial Circular of 29 February 2000 expressly states that prisoners serving a sentence for dealing, with the exception of dealing in order to finance their own consumption, may not be released temporarily for treatment. -For the rest, the legal rules on parole generally apply (Law on parole of 5 March 1998 and Law of 18 March 1998 establishing parole boards).
DENMARK	-the general rules on parole (Section 38 of the Criminal Code) apply. Prisoners are eligible for parole once they have served two thirds of their sentence (at least two months). In particular circumstances, the prisoner may be released after serving half the sentence. -remission of a sentence can also take the form of a pardon (Section 24 of the Constitution).
SPAIN	- the general rules governing decisions on parole apply (Section 90 of the Criminal Code); a prisoner can be released on parole subject to certain conditions (in particular, he must have served three quarters of his prison sentence). - there are no regional differences; the rules of criminal law are applied uniformly across the whole of Spain.
FINLAND	- prisoners are generally released on parole after serving two thirds of their sentence. First-time offenders may be released after serving half their sentence.

FRANCE	<p>- the standard legal provisions apply as far as parole, partial freedom, remission etc. is concerned.</p> <p>- no data are available on any regional disparities in the penalties handed down.</p>
GREECE	<p>- the general provisions also apply to drug trafficking (parole, etc.).</p> <p>- drugs legislation is applied in a uniform manner throughout Greece.</p>
IRELAND	<p>-the general rules on serving prison sentences apply; foreign offenders can, in principle, be repatriated to their country to serve their sentence.</p> <p>-the law is applied in a uniform fashion across the country.</p>
ITALY	<p>-no answer on the actual duration of sentences;</p> <p>-there are no regional differences within the State in the application of the law on this subject.</p>
LUXEMBOURG	<p>-no comments available.</p>
NETHERLANDS	<p>-the judicial system does not provide for the possibility of reducing the sentence passed other than by a pardon, which can only be granted in individual cases.</p> <p>However, there is legal provision for a system of early release under which, with the exception of sentences of less than 12 months, the offender serves two thirds of the sentence imposed.</p> <p>-there are no regional differences; the instructions which apply to the investigation and prosecution of offences and the guidelines for sentencing, drawn up by the Public Prosecution Service, apply nationally.</p>
PORTUGAL	<p>-as regards the actual duration of prison sentences, parole plays a key role. The general rules of Sections 61 and 62 of the Criminal Code apply (Section 61 provides that the offender can be released after half the sentence has been served (minimum six months) and under certain conditions, and that for prison sentences of over five years for offences against the person or causing danger to the public, parole can only be granted after two thirds of the sentence has been served).</p> <p>-the legislation is applied uniformly.</p>

<p>UNITED KINGDOM</p>	<p>-Life sentence prisoners are eligible for release on a life licence on the expiry of their "tariff" (the minimum period which must be served in prison). For a minimum of four years following release on licence, they are subject to supervision by the Probation Service.</p> <p>-Prisoners who have received a determinate sentence are eligible to apply for parole after serving half their sentence. All prisoners are released automatically after serving two thirds of their sentence. Prisoners who reoffend may be returned to custody to serve the unexpired part of their sentence.</p>
<p>SWEDEN</p>	<p>-When determining the sentence, the court must take account not only of the seriousness of the offence itself, but also of the factors set out below. If they are present, and if there are particular reasons for doing so, the court may impose a more lenient sentence than that laid down for the offence, and if it is obviously unreasonable to impose a penalty, the court may hand down a remission of sentence:</p> <ol style="list-style-type: none"> 1. if the offender has suffered serious physical injury as a result of the offence; 2. if the offender attempts, to the best of his ability, to prevent, remedy or limit the harmful consequences of the offence; 3. if the offender gives himself up of his own free will; 4. if the offender would suffer hardship if ordered to leave the country; <p>(...)</p> <ol style="list-style-type: none"> 8. if there is any other circumstance which requires that the offender should receive a lesser sentence than the standard penalty for the crime would warrant. <p>-People who serve a prison sentence of a given length are normally released on parole after completing two thirds of their sentence. Parole is not granted for prison sentences imposed in conjunction with probation or as an alternative to a fine. Parole can be revoked at the request of the prisoner or on grounds of bad behaviour.</p>

Question 11. Is the confiscation of illegal profits and dishonestly acquired benefits obtained from drug trafficking:

- specific to the combating of drug trafficking,
- applicable to the combating of organised crime in general

(Reply in detail, indicating the penalties provided for)

-As regards the confiscation of dishonestly acquired benefits obtained from drug trafficking, describe the provisions, if any, for:

- confiscating property held abroad,
- confiscating property belonging to third parties and legal persons.

GERMANY	<p>-the general rules governing the confiscation and recovery of the proceeds of crime apply (Sections 73 et seq. of the Criminal Code (StGB) and Section 111b of the Code of Criminal Procedure (StPO)).</p> <p>-however, the provisions are more severe for drugs offences in that assets discovered in the offender's possession can be confiscated, even if a specific offence cannot be ascertained, as long as it has been established that they are obtained from drugs offences (Section 73d StGB).</p> <p>-assets abroad can also be confiscated.</p> <p>-if the offender has acted on behalf of a third party, in particular a legal person, the assets of this third party can also be confiscated, including where the assets belong to the third party or where they have been given in exchange for an offence or in the knowledge of the circumstances of the offence.</p>
AUSTRIA	<p>-Sections 20, 20a and 20b of the Criminal Code (Depending on the case, payment of a sum of money fixed by the court on the basis of the duration of the illegal activities; or payment of a sum equal to the illegal profits, including by the legal successors if the offender dies or by the body incorporated which has obtained direct profits from the offence).</p> <p>-Section 144a of the Code of Criminal Procedure (Procedures for injunctions in order to freeze sums of money or prevent the sale of assets, etc., and to ensure that the provisions penalising the procurement of unfair profits are properly carried out).</p>

<p>BELGIUM</p>	<p>-the general rules on seizure and confiscation apply; in particular:</p> <p>-the court may decide on the confiscation of the material benefits deriving directly from the offence, assets and securities that have replaced the benefits, income from the invested benefits; if these items cannot be found in the offender's assets, a sum of money equivalent to them will be confiscated;</p> <p>-confiscation can also be ordered if these items are outside Belgian territory.</p> <p>-a specific provision of the law on drug trafficking may also be applied: the judge may order the confiscation of vehicles, devices, instruments or goods which were used for or were intended for committing the offences or which were the object of those offences, even if they do not belong to the offender.</p> <p>-furthermore, money-laundering or participation in money-laundering activity is punishable by Section 505 of the Criminal Code: this is directed particularly at those who possess, keep or manage the illegal material benefits and those who convert or transfer these items with a view to hiding or disguising their illegal origin (imprisonment from 15 days to 5 years and/or a fine of BEF 26 to BEF 100 000 (multiplied by 200), in addition to the confiscation of the goods in question, even if they belong to a third party, for example a body corporate, subject to the law invoked by the third party).</p>
<p>DENMARK</p>	<p>-the proceeds from an offence or an equivalent amount can be confiscated (Section 75(1) of the Criminal Code); the confiscation can be enforced on the person (natural or legal) to whom the proceeds of the crime devolve.</p> <p>-the assets of a person found guilty of a criminal act can be confiscated in part or in full, if the criminal act was such as to yield significant proceeds, and if the maximum sentence for the offence in question is six years' imprisonment or more (Section 76a of the Criminal Code, frequently applied in drug trafficking cases). Under certain conditions, assets may also be confiscated from the spouse or partner of the person concerned, or from a legal person over which the person concerned has a decisive influence. The burden of proof is reversed: in order to avoid confiscation, the party concerned is required to provide evidence that the assets in question were acquired legally with lawfully acquired resources.</p> <p>-assets can be seized abroad (if necessary, at the initiative of the police - Section 806(3) of the Criminal Code); the court will decide if the conditions for a seizure laid down in Danish law have been met. The decision is sent to the appropriate authorities abroad with a request for execution. The same applies with a decision on confiscation by a Danish court.</p>

SPAIN	<p>- the provisions for combating illegal drug trafficking include specific rules on the confiscation of property, effects and profits (Section 374 of the Criminal Code); these rules coexist with the general rules applicable to other offences (Section 27).</p> <p>- the judicial authorities are authorised to seize property from the earliest stages of the police investigations (Section 374(2) of the Criminal Code).</p>
FINLAND	<p>- the general rules on confiscating the proceeds of crime apply (Criminal Code, Chapter 2, Section 16); confiscation is discretionary; the amount to be confiscated is assessed in the light of the overall extent of the criminal activity; the proceeds may be confiscated from the perpetrator or from the person for whose benefit or on whose behalf he was operating, including a legal person.</p> <p>- a confiscation order issued in Finland can be enforced in another country if the item or asset to be confiscated is located in that country or the person convicted has in that country assets seizable by a confiscation order; the sentence must be final and the foreign country must have requested or agreed to its being enforced (uniform legislation between the Nordic countries - Finland, Sweden, Denmark, Norway and Iceland - provides that a confiscation order issued in one country can, if necessary, be enforced in one of the other countries on request).</p>
FRANCE	<p>- the confiscation of illegal profits is a measure applicable to combating crime in general, not just drug trafficking (Section 132-21 of the Criminal Code).</p> <p>- nevertheless, Section 222-49 of the Criminal Code lays down the following specific provisions on drug trafficking:</p> <ul style="list-style-type: none"> - the equipment, facilities and any goods used, either directly or indirectly, for committing the crime, and any proceeds from the crime, must be confiscated, whoever they belong to and wherever they are located, once it is established that the owner must have been aware of the origin of the goods or their fraudulent use; - in certain cases (unlawful production or manufacture of drugs, import or export, investment, concealment or conversion of the proceeds of one of these offences), confiscation of all or part of the offender's assets may also be ordered. <p>These provisions apply to both natural and legal persons, and the seizure of goods may not be thwarted either by the goods being located abroad or by unjustified claims to ownership by third parties.</p>

GREECE	<p>- illegally acquired profits and benefits obtained from drug trafficking are used to combat the drug problem (Section 27 of Act No 1729/87).</p> <p>- with regard to the seizure and confiscation of illegal profits from drug trafficking, the Act provides for:</p> <ul style="list-style-type: none"> - seizure of property abroad, (Section 8(i), Section 2(4) of Act No 2331/95 on the prevention and suppression of money laundering and Section 5 of the UN Convention, ratified by Act No 1990/91), confiscation (acquisition by the state) or restitution to the victim, as appropriate; - as regards the seizure of property belonging to third parties and legal persons (Section 2(6) of Act No 2331/95 on property that is the product of criminal activity); where this property cannot be restored to its owner, it is confiscated at the time of the verdict of guilt.
IRELAND	<p>-The Criminal Justice Act, 1994 contains provisions permitting the confiscation of the benefits of drug trafficking (Section 4) as well as of other criminal activity (Section 9). Section 4 permits a court, following a conviction for a drug trafficking offence, to make a confiscation order where the court determines that the person has benefited from drug trafficking. The court also determines the amount to be recovered and for this purpose may assume that any property (including money) which was transferred to him in the previous six years was received as a reward in connection with drug trafficking. The term "drug trafficking" also includes such activities as producing, supplying, transporting, storing, importing or exporting controlled drugs as well as the offence of money laundering under Section 31.</p> <p>-A legal person on behalf of whom the offender acted or who connived with the offence may also be punished.</p> <p>-Property abroad may be confiscated if there is an agreement between the countries in question. Section 46 of the 1994 Act allows the Government to designate countries where confiscation orders may be made, in accordance with the law of the state.</p> <p>-The Proceeds of Crime Act, 1996 makes provision to prohibit people from disposing of the proceeds of crime and to freeze the property for a period of seven years. An order to this effect can also be presented to the judicial authorities in another country to freeze property located there.</p>

ITALY	<p>Confiscation:</p> <ul style="list-style-type: none"> - specific penalties: yes - penalties applicable to the combating of organised crime: yes <p>Confiscation of unlawful benefits:</p> <ul style="list-style-type: none"> - Italian legislation does not provide for the confiscation of assets located abroad. However, Section 5(4) of the 1988 Vienna Convention provides for the possibility of submitting a request to the authorities of the country in which the property in question is situated to issue a confiscation order. - property belonging to legal persons can be confiscated unless the owners have nothing to do with the criminal activity.
LUXEMBOURG	<p>Specific provisions in the 1973 Act provide that:</p> <ul style="list-style-type: none"> -in the case of drug trafficking (in the cases provided for in Sections 7 to 10), the confiscation of the jointly or individually owned movable or immovable property of the convicted person acquired from the proceeds of the offence or the value of which corresponds to such proceeds (Section 8(2)); -in the same cases, the confiscation of prohibited substances and goods referred to in Section 8(2) will be ordered even in the event of acquittal, exemption from punishment, extinction or limitation of action and even if the substances or goods are not the property of the offender (...). The confiscation of vehicles, aircraft, apparatus, instruments or goods which served or were intended for use in committing the offences may be ordered even if they are not the property of the offender (...) (Section 18).
NETHERLANDS	<p>-There is provision for the confiscation of illegal profits and unlawfully acquired benefits; this may apply to any offence liable to a fifth category fine (NLG 100 000) and having led to a criminal financial investigation into the person in question. The offender may be required to pay a sum of money to the State corresponding to the surrender of unlawfully acquired benefits. Deprivation of these benefits is also possible in the case of a conviction (Section 36e of the Criminal Code).</p> <p>-As regards confiscation, the State in question is requested to confiscate the illegal proceeds of drug trafficking located abroad, in accordance with the applicable convention.</p> <p>Seizure and confiscation apply to natural and legal persons.</p> <p>Items in the possession of third parties may not be confiscated with a view to deprivation of dishonestly acquired benefits unless the third party himself is under suspicion of having committed a criminal act, e.g. money-laundering. In view of the problem of front organisations, the possibility is currently being examined of a legal provision which would enable coercive measures to be taken against third parties on grounds of bad faith even without any suspicion.</p>

PORTUGAL	<p>-Objects, rights and benefits deriving directly from criminal activities, or the goods into which these rights and benefits have been transformed or converted, are confiscated and become State property (they are thus "lost" to those who commit the offences described in Decree-Law No 15/93). If it is not possible to confiscate the objects, rights or benefits, the "loss" is replaced by payment to the State of the corresponding amount.</p> <p>The Criminal Code (Book I, Title I, Chapter VII) governs the loss of instruments, products and profits deriving from criminal activities. And this is also what is provided by Decree-Law No 15/93, in Sections 35 (confiscation of objects), 36 (confiscation of assets or rights related to the offence), 36-A (protection of the rights of third parties acting in good faith), 37 (property that has been transformed, converted or combined), 38 (profits and other benefits) and 39 (titles [distribution] of property declared to have become the property of the State).</p> <p>-The Decree-Law provides expressly for international cooperation in accordance with the 1988 Vienna Convention. Furthermore, Law No 144/99 of 31 August 1999 (Law on Judicial Cooperation in Criminal Matters) covers "mutual judicial assistance in criminal matters", and applications for arrests to be made outside the national territory are provided for by Sections 145(2)(c) and 151(b).</p>
UNITED KINGDOM	<p>-the legislation provides for the confiscation of the proceeds of all serious offences, including those committed by organised gangs (Criminal Justice Act 1988 and Prevention of Terrorism Act 1989).</p> <p>-provisions and procedures relating more specifically to the confiscation of the proceeds from drug trafficking are laid down in the Drug Trafficking Act 1994.</p> <p>-When the Crown Court issues a confiscation order, it sets the prison sentence which will be imposed on the offender in the case of default of payment. The penalties applicable are specified in Section 31(3A) of the Power of the Criminal Court Act 1993. For example, the maximum penalty for a default of payment in respect of an amount over GBP 1 million is currently 10 years.</p> <p>-in order for property to be confiscated abroad, the other country must be designated for that purpose by a UK Order in Council under the Drug Trafficking Act 1994. The other country must have signed a bilateral agreement with the United Kingdom or have ratified an international confiscation instrument, usually the 1988 Vienna Convention. The United Kingdom has designated 136 signatories of the Convention and signed 24 bilateral agreements.</p> <p>-if the property confiscated belongs to legal or other persons who are involved in drug trafficking without being the organisers of that trafficking, these people are not to be deemed third parties who are victims to whom the goods should be restituted in accordance with the generally applicable rules. The procedures on confiscation of the proceeds of drug trafficking apply.</p>

SWEDEN	<p>-Section 6 of the Drugs Act (1968:64) contains specific rules on confiscation in connection with drug crime. The drugs and the profits from the drugs offences are confiscated, as is any remuneration for drugs offences, or property used in committing the drugs offence, and property which was involved in an offence.</p> <p>-The Act (2000:562) on international assistance in criminal matters contains provisions allowing the public prosecutor to seek judicial assistance in connection with confiscation of assets in foreign countries.</p> <p>-Confiscation can be used to secure enforcement and protect evidence, generally if there is suspicion of wrongdoing on the part of a particular person. Confiscation can therefore be undertaken against suspects and non-suspects, who may also be a legal person, if there are reasons to suppose that property is important for the investigation of a crime, or has been taken from someone as a result of the crime, or can be confiscated as a result of a crime (without prejudice to the rules on protection of documents covered by professional secrecy).</p>
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Question 12. Does the relevant national legislation provide for measures to facilitate or promote investigations into drug-dealing gangs?

In particular, are there legal rules applicable to those who actively turn King's evidence, with possible implications for sentencing:

1. Exemption from punishment

2. Reduced penalties

GERMANY	<p>-procedural provisions allow the court to order, under certain conditions, confidential investigations and specific methods of investigation: monitoring telephone communications (Section 100a of the Code of Criminal Procedure); undercover agents, i.e. acting under a false identity (Section 100a et seq. of the Code of Criminal Procedure); technical equipment to intercept and record private conversations inside and outside the home (Section 100c of the Code of Criminal Procedure).</p> <p>- there is no legal provision for the use of "trusted collaborators" who work together with the police forces, but the principle is accepted in case law.</p> <p>There is also no legal provision for the purchase of drug samples, but this is done in practice by undercover agents or "trusted collaborators".</p> <p>-Section 31 of the Dangerous Drugs Act allows a court to reduce or even refrain from imposing a penalty where the offender:</p> <ul style="list-style-type: none">-voluntarily provides information to assist the investigations into the offence, above and beyond his part in it, or-voluntarily, and in good time, provides information to the authorities to prevent serious drugs offences from being committed.
AUSTRIA	<p>-if it is necessary to protect a third party from a serious danger to his physical well-being, life, health, etc.: the examining judge or the court may allow a witness not to answer questions (Section 166a of the Austrian Code of Criminal Procedure).</p> <p>-Section 41a of the Criminal Code provides for the special mitigation of sentences where offenders cooperate with the police; the informant must reveal what he knows of the structure, hierarchy and any offences committed or agreed by the criminal group, thereby playing a key role in uncovering and breaking up the gang or in the arrest of the leading figures involved (the sentencing court can reduce the penalties to well below the minimum limits laid down in the Criminal Code, but no concessions may be granted on the basis of a prior agreement).</p>

BELGIUM	<p>-Section 6 of the Drug Trafficking Law provides, under certain conditions, for exemption from or reduction of the penalty:</p> <p>-suspects are exempt from penalties for minor offences if, prior to any proceedings, they have revealed to the authorities the identity of the suspected offenders, or, if their identity is not known, the existence of such offences. In the same cases, criminal penalties are reduced to imprisonment for six months to two years and/or a fine of BEF 50 to 200 (multiplied by 200);</p> <p>-penalties for minor offences are reduced to imprisonment for 8 days to 3 months and/or a fine of BEF 26 to 100 (multiplied by 200) for offenders who, after proceedings have been initiated, have disclosed to the authorities the identity of previously unknown suspects.</p>
DENMARK	<p>-investigatory measures (in accordance with the Law on Administration of Justice);</p> <p>-as regards King's evidence:</p> <p>-an attempted crime is not punishable if the offender decides of his own accord not to commit the crime, though not if the crime was prevented by chance or by an outside element (Section 22 of the Criminal Code);</p> <p>-the penalty can be reduced if the offender has, of his own free will, prevented the damage which his action would otherwise have caused, or if he has repaired the damage or made efforts to do so. The penalty can also be reduced where offenders give themselves up and make a full confession (Section 84 of the Criminal Code).</p>
SPAIN	<p>- the legislation provides for measures aiming to facilitate and promote investigations into drug trafficking rings.</p> <p>- there is no provision for exemption, but Section 376 of the Criminal Code authorises the courts to impose penalties that are one or two degrees lighter than those stipulated by law for offences involving trafficking or drugs or drug precursors.</p>
FINLAND	<p>- Finnish legislation does not contain any provision for controlled supply, but this procedure is used and its use is based on the rules on mutual judicial assistance at international level.</p> <p>- the legislation does not contain any provisions on exemption from punishment, but the penalty may be reduced, at the discretion of the court on a case-by-case basis, where the offender actively assists in tracking down offenders or providing evidence of the offences.</p>

FRANCE	<p>- Section 706-32 of the Code of Criminal Procedure and Section 67a of the Customs Code allows investigators to carry out monitored supplies within national territory under the supervision of the relevant judicial authorities.</p> <p>- Section 450-2 of the Criminal Code provides that any member of a criminal gang or conspiracy is exempted from penalties if, before criminal proceedings begin, they reveal the gang or the conspiracy to the relevant authorities and identify the other participants.</p> <p>- the maximum sentence handed down may be reduced by half if the admissions of the person turning King's evidence put a stop to the criminal activities (Section 222-43 of the Criminal Code - specific provision on drug trafficking).</p>
GREECE	<p>- King's evidence is provided for in both Section 84(2)(d) of the Criminal Code and Section 24 of Act No 1729/87. The latter section provides that criminal proceedings can be suspended in respect of a person who has imported, bought, sold, distributed or possessed drugs subject to various conditions, in particular if he has contributed on his own initiative to the discovery and breaking up of a gang involved in drug trafficking or the discovery and arrest of a major drug dealer.</p>
IRELAND	<p>Section 3 of Part II of the Criminal Justice Act, 1999 establishes a new offence related to the possession of drugs with a value of at least IRL 10 000 with a view to selling or distributing them. Section 5 provides for a minimum mandatory penalty of 10 years' imprisonment for such an offence. This minimum penalty does not apply when the court considers that, because of exceptional, specific circumstances, it would be unjust to impose it. In its assessment of the case, the court can take the following factors into account: whether or not the person has pleaded guilty, the point at which his intention became clear and the circumstances in which this occurred, and whether he has made an effective contribution to the investigation into the crime.</p> <p>As a general rule, it is for the Director of Public Prosecutions (DPP) to decide how to deal with suspects who turn King's evidence. They can be exempted from any penalty or be charged with lesser offences.</p> <p>A Witness Security programme has also been set up to prevent criminals from intimidating those who help the authorities to bring them to justice.</p>
ITALY	<p>-yes, simulated purchase of drugs, delay of arrest + monitored supplies and undercover agents;</p> <p>-King's evidence: yes, pursuant to Section 73(7) of Presidential Decree No 309/90, the penalties provided for in cases of unlawful production and trafficking of drugs and conspiring for the purposes of such trafficking are reduced by between a half and two thirds for those who endeavour to prevent the criminal activity from having further consequences, including by helping the police or the judicial authority to remove from the conspiracy resources enabling it to commit crimes.</p>

LUXEMBOURG	<p>-yes, Section 31 of the 1973 Act (as amended) provides that:</p> <p>persons committing offences under Sections 7, 8(c) and (h) who, prior to any legal proceedings, reveal to the authorities the identity of those committing offences against Sections 8(a), (b), (d), (f), (g), 9, 10 and 11 or, if their identity is not known, the fact that such offences have been committed, shall be exempt from imprisonment or a fine.</p> <p>In the same cases the prison sentences (...) are reduced (...) in respect of offenders who, once legal proceedings have started, reveal to the authorities the identity of offenders not known until then.</p> <p>Persons who have participated in conspiracies to commit offences under Section 11 are also exempt from punishment if, prior to legal proceedings, they have revealed to the authorities the existence of the gang and the names of the leaders or subordinates.</p>
NETHERLANDS	<p>-the Code of Criminal Procedure provides powers for the use of special investigation methods, such as observation, infiltration, telecommunications tapping and listening with the aid of hidden microphones. These powers can be applied in the investigation of criminal activities which constitute a serious threat to law and order. If drug-trafficking takes place within the framework of organised crime, the Code of Criminal Procedure also authorises these special investigation powers for the investigation of the organised gang within which the criminal acts are plotted or committed. Such an investigation need not be limited to the solving of offences already committed; the planning of offences can also be investigated.</p> <p>-a bill presented to Parliament specifies in what cases and by what procedures the Public Prosecution Service can reduce sentences. The main effect of the bill is that it would become possible for the Public Prosecution Service to reduce sentencing by a maximum of one third of the penalty which could originally be demanded in the case of a suspect who is prepared to give evidence incriminating another suspect in a criminal case. The aim of the bill is to facilitate the collection of detailed evidence under supervision by the judge without undermining the rights of the defence. The focus is the amassing of evidence in serious criminal cases, including those involving conspiracies for drug trafficking. Any person stating willingness to testify against another in a criminal case may, in return, be offered, not immunity from prosecution, but only a reduction in sentence.</p>
PORTUGAL	<p>-The legislation does not include provisions which facilitate investigations into drug dealing gangs.</p> <p>-Nor are there any legal rules that take into account those who turn King's evidence, with possible implications for sentencing.</p>

UNITED KINGDOM	-there is no statutory framework covering those who actively turn King's evidence. However, current Government policy affords the police and prosecution discretion in certain circumstances to take into account assistance to the authorities in bringing criminals to justice when deciding whether the person providing this assistance should face criminal charges. Similarly, current policy affords the courts discretion to take account of this aspect when sentencing.
SWEDEN	-see answer to question 10: if the defendant gives himself up of his own free will, the court can award a remission of penalty or reduce the sentence. In general, punishment is not influenced to any great extent.

II. PLANS AND PROPOSALS

1. Are there any plans and proposals currently before Parliament for the reform and/or amendment of the legislation on trafficking in drugs and psychotropic substances?

What are the proposed new offences, if any, and what are the legislative intentions?

GERMANY	- no answer on this subject.
AUSTRIA	- no
BELGIUM	<p>- The joint directive of 8 May 1998 of the Minister of Justice and the Public Prosecutors on prosecuting cases of possession and selling of illegal drugs is currently being assessed and amended (see also the following answer - to question 2).</p> <p>- Belgian policy with regard to drugs and drug addiction is the subject of broad debate, particularly the review by the Federal Parliament of the Act proper, but also in the Regional Governments with regard to their own powers. A new overall plan should be adopted (planned for 2000, but still under discussion at the beginning of 2001).</p> <p>- In principle, the current debates and the reforms envisaged are not about combating drug trafficking, but mainly about users (particularly of cannabis). However, legislation is being put forward on how to more effectively combat organised crime.</p>
DENMARK	<p>-no.</p> <p>But the field is subject to constant assessment with a view to possible measures in the future.</p>
SPAIN	- no.

FINLAND	<p>- The Ministry of Justice is currently working on a change in the law which would make the use of drugs or the possession of small quantities of a narcotic substance for personal use, or trafficking for personal use, a specific offence. It would make it possible to impose a fine or prison term of 6 months maximum for drug use or possession.</p> <p>- There is also a government bill currently before Parliament that would lay down penalties for involvement in the activities of a criminal organisation. It would be an offence to be involved in the activities of a criminal organisation whose objective was the commission of serious drugs offences (including drug trafficking). This amendment would give effect in Finland to the Joint Action adopted by the EU Council in December 1998 on making it a criminal offence to participate in a criminal organisation.</p> <p>- An amendment of the legislation on confiscation is now before the Finnish Parliament. The new provisions concern the confiscation of illegal profits and will now apply also to drug trafficking offences. The Government proposes that the proceeds of a crime should always be declared forfeit, unless these proceeds are small. In the case of certain serious offences, and particularly drug trafficking or the financing of drugs offences, the person found guilty and his next-of-kin may have all their assets declared forfeit to the State, unless they demonstrate that the assets were acquired legally. This means that the burden of proof is reversed as regards the unlawful origin of the assets.</p> <p>- An amendment to the Police Act is also envisaged in order to allow specific interventions in serious drugs offences (undercover operations, fake transactions, etc.).</p>
FRANCE	<p>- no. However, the Chancellery will have to look at the impact of the transposal of the Convention on Mutual Legal Assistance of 29 May 2000 into national law.</p>
GREECE	<p>- not currently.</p>
IRELAND	<p>- there are currently no plans or proposals before Parliament. Broadly speaking the legislation is new. If any corrections need to be made they can be adopted by way of an Annual Criminal Justice (Amendment) Act.</p>
ITALY	<p>- Measures to amend the administrative sanctions provided in cases of personal use are being studied;</p> <p>- Sections 97 and 98 of Presidential Decree No 309/90 on controlled supplies and undercover agents are also being amended.</p>

LUXEMBOURG	<p>Yes, a bill is currently before Parliament. Its aim is to increase the number of staff employed by Customs and Excise who are empowered to work in investigations concerning offences connected with drug use and trafficking and also to extend their means of action in this area.</p> <p>With a view to preventing deaths connected with drug use, the bill also exempts users from fines and prison sentences and reduces them where a drug dealer immediately calls for medical assistance to save an addict whose life is in danger following the intake of drugs.</p> <p>Lastly, in order to encourage information on networks of drug traffickers, the bill extends the favourable provisions for informers in section 31 of the 1973 Act to enable drug users who reveal to the authorities the identity of offenders connected with the production or trafficking of drugs to benefit from a reduction in their sentence. The same will apply for those guilty of offences connected with production and trafficking on condition that they make important revelations on the criminal network before legal proceedings begin. Lastly, in the same cases, the bill provides for a reduction in the prison sentence or fine if such information is provided only after legal proceedings have been instituted.</p>
NETHERLANDS	<ul style="list-style-type: none"> - There is a bill aiming to facilitate the collection of evidence; it proposes rules for the making of statements and for reductions in sentences for those who have helped the authorities (see answer to question 12). - New rules are being drafted concerning care facilities for criminal drug-users (see answer to question 7).
PORTUGAL	<p>-Parliament is examining a bill aimed at decriminalising drug use and prohibiting it as merely an administrative offence, while in parallel stepping up medical and health-care measures. Council of Ministers Resolution No 46/99 states that Section 40 of Decree-Law No 15/93 must be amended. This resolution states that the national anti-drugs strategy opts for the decriminalisation of drug use in order to respect fundamental humanist principles based on the principle of subsidiarity of criminal law and the principle of proportionality. The judicial system must be mobilised for the fight against illicit drug-trafficking and money-laundering. However, neither the protection of public health, nor the safeguarding of consumers' health, makes it necessary to criminalise drug use. These goals can be reached by an administrative prohibition on drug use and by policies on prevention and risk limitation.</p>
UNITED KINGDOM	- no answer on this subject.
SWEDEN	- no.

2. Is there currently a national plan for combating trafficking which could lead either to a reform of the legislation or to a change of practice in the control and combating of drug trafficking?

GERMANY	- no answer on this subject.
AUSTRIA	- no.
BELGIUM	-See point 1 above. The revision of the directive of 8 May 1998 could have an impact on prosecution policy, particularly as far as small-scale, local trafficking and, in particular, the sale of cannabis is concerned. The recent policy document from the federal government stated that a new binding directive should implement a policy on drugs integrating prevention, assistance and protection of society. A Drugs Unit should be set up. This would be a policy support unit and would include representatives of the various administrative authorities with competence in this matter. It would formulate objectives which would be shared by the different levels of power.
DENMARK	-no.
SPAIN	- Yes, a national plan was provided for in Royal Decree 1911/1999 of 17 December 1999 approving the National Drugs Strategy for the period 2000-08.
FINLAND	- A national anti-drug strategy was adopted in 1999. This strategy is based on a ban on drug trafficking, but also on prevention, and treatment for users. It specified the duties of the different authorities.
FRANCE	- no.
GREECE	- not currently.
IRELAND	-The Government National Drug Strategy which will cover the whole area of supply (including trafficking) and demand reduction is currently under review.
ITALY	- The <i>Comitato Nazionale di Coordinamento per l'azione antidroga</i> (National Anti-Drugs Coordination Committee) includes several ministers and the representatives of several services. - This committee is responsible for guiding and promoting the general prevention and intervention policy against the unlawful production and circulation of drugs and psychotropic substances at national and international level.
LUXEMBOURG	- no.

NETHERLANDS	<p>- No law reform is planned.</p> <p>- The current policy is to step up investigations into the illegal cultivation of hemp and the resulting trafficking.</p> <p>In addition, the intensive investigation of the production and trade in synthetic drugs which has been conducted in recent years by the Synthetic Drugs Unit has shown that there is a need to focus the investigation of this type of drug offence on a very wide area: not only the detection and dismantling of illegal laboratories, but also the detection and prosecution of environmental offences. The Synthetic Drugs Unit is a national team, in which all the investigation services are represented (police, customs, the Financial Intelligence and Investigation Department (FIOD), the Royal Netherlands Military Constabulary, the National Transport Inspectorate (RVI) and the Economic Investigation Service (ECD)).</p>
PORTUGAL	<p>-Yes, Council of Ministers Resolution No 46/99 of 26 May 1999 published in the I-B Series No 122/99 of the <i>Diario da Republica</i>, which approves the national anti-drugs strategy.</p>
UNITED KINGDOM	<p>-no answer on this subject.</p>
SWEDEN	<p>-in 1998 the Swedish Government set up a special Drugs Committee. Its mission is to evaluate the measures adopted since the mid-1980s. The review will cover legislation and measures to prevent drug abuse, rehabilitate drug addicts and restrict access to drugs. The Committee's main task is to make recommendations on ways of creating better conditions in the long term for coordinated and intensified measures to combat drug abuse. The Committee's report should now be available.</p>

Brussels, 23 February 2001

A. Decourrière

LEGISLATION AND REGULATIONS ON DRUG TRAFFICKING IN THE EU MEMBER STATES

CONCLUSIONS

§ 1. The fifteen member countries of the European Union have adopted laws on the control of drugs (generally amended on a number of occasions, mainly to implement the 1961, 1971 and 1988 international conventions).

Two countries (France in 1994 and Spain in 1995) have incorporated in their criminal code rules penalising drug possession and trafficking.

The legislation of all the Member States imposes heavy penalties for drug trafficking, in particular when the scale and seriousness of the case can be considered aggravating circumstances. The prison terms are then much longer than basic prison terms.

However, the concept of "drug trafficking" does not correspond to a given offence.

In this connection it should be borne in mind that under the United Nations Convention of 20 December 1988 the term "trafficking" covers the offences referred to in paragraphs 1 and 2 of Article 3 of the Convention, i.e. not only production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention, the cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended, the manufacture, transport or distribution of equipment, materials or of substances listed in Table 1 and Table 2, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances, etc.¹ but also, in accordance with the domestic law of each party, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption.²

The member countries' laws do not, therefore, define drug trafficking as a specific act punishable as such, but rather penalise a series of acts which are prohibited under the international conventions.

1 See Article 3.1 of the 1988 Convention, which also refers to other offences such as the financing of one of the offences listed or acts commonly covered by the concept of money laundering.

2 See Article 3.2 of the 1988 Convention.

The acts referred to by the national criminal law provisions include the following: production, manufacture, import, export, possession, acquisition or transport with a view to sale, distribution or disposal without authorisation and any form of illicit disposal, free of charge or for a consideration, of drugs and psychotropic substances.

As we will see, some national laws do make finer distinctions, for instance between facts which concern drug use and those which concern trafficking, or between users who sell to cover their own consumption and dealers acting for profit. We will therefore be proposing a classification of users on the one hand and traffickers on the other in order to highlight the necessary distinction which has to be made between social and public health policies to aid users and addicts and measures to combat drug trafficking.

§ 2. The penalties laid down for basic offences are increased when activities are for profit, or in gangs, or as part of structured organisation whose purpose is illicit dealing in drugs. The laws of individual countries regard this either as an aggravated offence or as aggravating circumstances.

Some countries group together the offences of sale and illicit dealing and organisations and conspiracies of traffickers under a single head in one section of an act (Portugal: Section 21 of Decree-Law 15/93, *Trafficking and other illicit activities*) or under a section of the Criminal Code (France: Section 222-34 et seq of the Criminal Code, *Drug trafficking*).

Other countries give a definition of drug trafficking in their legislation (Drug Trafficking in Ireland and the United Kingdom; *Handeltreiben* in Germany), but the concept of trafficking also corresponds in these countries to the various forms of illicit activity punishable in all the countries.

Ultimately, it is the courts which, depending on the facts and circumstances of each case, determine what offences have been committed and what penalties are to be imposed in the light of the scale of the trafficking, even though this concept is not expressly laid down and defined in the national legislation applicable.

§ 3. Description of offences depending on the quantity of substances, type of substances and role of the offender:

1° The replies vary substantially from a theoretical angle.

The laws of four countries (Belgium, France, Greece, Luxembourg) do not make any distinction according to the quantity or type of substances³ but the judicial authorities take these parameters into account in deciding whether to prosecute and in determining sentences.

3 Belgium and Luxembourg are planning to decriminalise personal use of cannabis, but there will be no distinction between substances as far as trafficking is concerned.

In the other eleven countries, subject to some important variables relating in particular to the products, there are "substantial quantities" (Germany) or "threshold quantities" (Austria) or "large quantities" (Denmark) or "manifestly large quantities" (Spain) which distinguish a minor offence from a serious offence, and in some cases there are also penalties which concern all substances (narcotic, psychotropic, precursor) or on the other hand separate penalties for drugs which are a serious health risk (hard drugs) and those which are not a serious health risk (soft drugs).

2° However, the criminal law system of the EU countries leaves a great deal of discretion to courts by laying down only a minimum penalty (or a maximum penalty) and leaving it to the judge to decide, in each individual case, whether there are aggravating or mitigating circumstances which can have a decisive influence on the sentences imposed.

3° In trafficking cases, especially when large quantities of drugs are involved, the type of drug is not an essential factor.

When an offence involves substantial quantities of drugs, or when a large number of persons are involved, or when the offence committed concerns young people, national legislation considers that there are aggravating circumstances or that a "serious" offence (Sweden) or "aggravated" offence (Finland) has been committed. These circumstances or offences attract heavier penalties than the basic offences.

4° The role of the accused is generally decisive in determining how the police, the public prosecutor and the court deal with each individual case.

If the accused has been active in a conspiracy or an organised gang, or if he regularly engages in trafficking, special provisions apply, targeting the conspiracy, the regular aspect or the position as leader of an organised gang, i.e. aggravating circumstances which attract the heaviest penalties.

5° If the offender is a drug addict (i.e. the addict illegally sells drugs), sales are still offences and therefore treated in the same way as trafficking in all fifteen EU countries.

All offences are punishable, whether committed by a single person or by a group of persons.⁴

4 In addition, if a drug trafficker has acted to the benefit or on the account of a body corporate, this body may have any illicit profits confiscated under the legal rules applying to seizure and confiscation (see the replies to question 11).

However, a drug addict who sells to third parties to cover his own personal needs receives a lighter penalty, either under the Drugs Act proper⁵ or because of the way in which the circumstances of the case are viewed by the public prosecutor in deciding whether to prosecute⁶ and by the judge when sentencing.⁷

In some countries the law has specific offences for trafficking in small quantities or "less serious" trafficking (Austria, Portugal, Sweden) or for sale for personal use by the buyer (France and Greece).

6° On the basis of the parameters which were proposed (see questions 3 and 8) and which are expressly used in the law of some countries to distinguish between basic offences and aggravating circumstances, but also on the basis of national legislation concerning drug users, it is possible to classify offenders in the following categories:

- simple user (who produces, acquires and/or illegally possesses drugs for his own personal use);
- user-dealer (who sells drugs or offers them for sale in order to secure the means to cover his own needs);
- dealer (who sells illegally for profit; this is a person involved in neighbourhood trafficking or a small-scale network);
- local trafficker (who as a rule has a local network of dealers or who sells to persons who deal on their own account);
- international trafficker (who is involved in trafficking or organises and directs trafficking on an international scale or who imports and exports large quantities of drugs).

§ 4. The proposed classification should enable the EU countries to retain certain specific national features and apply their own criminal law policy while at the same time adopting certain common standards, in particular as regards the most serious trafficking cases.

On the basis of the replies given and the legislation applicable, we would suggest classifying offenders as follows:

- 1) simple user;

5 In Greece and Germany for instance. In Spain "heavy addiction" is a mitigating circumstance.

6 Account must be taken of the principle of whether to prosecute and also of the possibilities of alternative measures (e.g. suspension of prosecution of an accused addict who agrees to treatment in Germany; alternatives to detention on remand in Belgium; imposition of judicial control with a view to an agreement to undergo treatment in France; possible dropping of prosecution of an addict who agrees to treatment in Finland).

7 Account must be taken of the sentencing on a case-by-case basis and the possibilities of alternative penalties which exist in most member countries (probation and treatment in place of prison sentences or part of a prison sentence: for instance, suspended sentence where medical treatment is accepted in Germany; partial or total exemption from responsibility because of the state of addiction in Spain; probation in Belgium; suspension of sentence or probation in France; introduction of the Drug Court in Ireland).

2) dealer, who may be:

- user-dealer;
- dealer proper;

3) trafficker, who may be:

- local trafficker;
- international trafficker.

The reasons for this classification are as follows:

- many legislative provisions concern all dealers (in particular when the offence concerns a quantity below the "threshold quantities" (Austria), minor offences (Sweden), or less serious trafficking (Portugal));
- similarly, as regards traffickers, the national legislation of most countries covers all traffickers acting as organised gangs or involved in a conspiracy;
- nevertheless, some specific provisions and also case law would, we feel, justify making a distinction between user-dealers and dealers proper and also between local traffickers and international traffickers; the profile and role of such offenders are generally different and the offences they commit do not have the same object and are not equally serious.

§ 5. Using certain national provisions as examples, the following table can be produced:

1° For users:

- the type of product is often of considerable importance, as sentences are lighter mainly for cannabis-based products;
- the sale of limited quantities and consumption of cannabis are tolerated in certain circumstances in the Netherlands; Belgium and Luxembourg are planning to drop prison sentences for users of cannabis-based products;
- the acquisition and possession of small quantities of drugs for personal use generally carry lighter penalties than "basic infringements"; in some cases the use of drugs is no more than an administrative offence (Italy).

2° For dealers:

- the legislation of many countries makes a distinction between dealers and other traffickers by laying down specific provisions covering "less serious trafficking" (Portugal), or offences involving "limited quantities" (Denmark), or a "small quantity" (Austria);

- the national legislation of most countries has specific provisions concerning user-dealers and/or alternative health policy measures which apply to drug-users in general and addicts in particular. For instance:

■ in Austria drug addicts who sell drugs are given lighter penalties than non-using dealers (the prosecution of a drug addict can be suspended subject to certain conditions);

■ in Denmark treatment can be ordered instead of a prison sentence of six to twelve months and the judicial authorities take drug-use into account;

■ in Spain, there is provision for exemption or reduction of the penalty, "heavy addiction" being regarded as a mitigating circumstance;

■ in Finland prosecution can be dropped;

■ in France, a suspended sentence with probation may be considered, etc.

In all countries, possibilities of suspended sentences and probation exist for minor offences, and for the addicts involved, medical treatment and probation can be ordered (increase, remission of penalty subject to certain conditions is possible under Section 14 of Act No 1729/1987; in Portugal, a trafficker-user may not be in possession of a larger quantity than is required for average personal use for five days, and treatment may be ordered as an alternative to imprisonment; in Sweden possibilities exist for probation or strict negotiated treatment).

3° For traffickers:

- in general national legislation makes no distinction between local trafficking and international trafficking as regards the offences of drug trafficking. The parameters laid down by law, as mentioned above, are generally the quantities involved, the profession of the offender, the age of the victims and involvement in an organised gang or a conspiracy;⁸ however, by making import and export a specific offence, the legislation implicitly makes a distinction between local trafficking and international trafficking (Netherlands and France);

- it would seem that in practice the parameters concerning quantities possessed or carried and the involvement of an organised gang in local trafficking prompt the judicial authorities to make a distinction between small-scale neighbourhood trafficking, local trafficking and international trafficking, the latter carrying the heaviest penalties (since the main factor in determining the penalty is quantity (combined with value) of the drugs involved in the offence);

8 Germany, Section 30 and 30a BtMG; Austria, Section 27 SMG; Belgium, Section 2a, §3 and §4 of the Act of 24 February 1921; Denmark, Section 191 of the Criminal Code; Spain, Sections 369 and 370 of the Criminal Code; Finland, Chapter 50 of the Criminal Code; France, Section 222-34 et seq of the Criminal Code; Greece, Section 5 of Act No 1729/1987; Ireland, Section 3 of the Criminal Justice Act, 1994; Italy, Section 74 of DPR No 309; Luxembourg, Sections 10 and 11 of the Act of 19 February 1993; Netherlands, Opiumwet and Section 140 of the Criminal Code; Portugal, Section 24 of Decree-law No 15/93 (this provision provides that participation in other illegal activities organised on an international scale constitute an aggravating circumstance); United Kingdom, Misuse of Drugs Act, 1971 and other provisions; Sweden, Narcotics (penalties) Act and Smuggled Goods Act.

- the basic penalties laid down by national legislation seem to be applied essentially to dealers proper, i.e. all persons who are involved in neighbourhood trafficking and small-scale networks. In such cases, and purely as an indication, the judicial authorities apply the following rules: in Belgium the range of basic penalties is a prison term of three months to five years, and in Luxembourg one year to five years; in the Netherlands, occasional sales of small quantities are not as a rule considered to be trafficking; in the United Kingdom the courts look at each case in the light of case-law, etc. In all countries, depending on the facts of the case, prison sentences may or may not be suspended and probation may be ordered.

§ 6. The penalties laid down and/or actually imposed for the most serious cases of drug trafficking are as follows:

GERMANY	The minimum sentence provided for by law is <u>five years' imprisonment</u> for repeated trafficking as a member of a gang or for carrying a firearm in connection with trafficking. Nothing more detailed is said about sentences actually imposed.
AUSTRIA	Sentences of <u>around ten years' imprisonment</u> are given in the most serious cases (these are for members of a conspiracy trafficking in large quantities; anyone involved in trafficking where the quantities exceed 25 times the threshold quantity; the leader of a conspiracy to commit trafficking offences).
BELGIUM	In the most serious local trafficking cases, prison sentences are <u>around five or six years</u> , and in international trafficking offences involving large quantities, the prison terms are <u>around eight, nine or ten years</u> .
DENMARK	For trafficking offences, and depending on the circumstances, the courts base sentences on Section 191 of the Criminal Code (maximum ten years) and for conspiracy, Section 88 of the Criminal Code (<u>maximum fifteen years</u>). Nothing more detailed is said about sentences actually imposed.
SPAIN	In cases of trafficking in substances which seriously damage health, Sections 369 and 370 of the Criminal Code lay down prison terms of <u>at least nine years and one day</u> and <u>at least thirteen years and six months</u> respectively. Nothing more detailed is said about sentences actually imposed.
FINLAND	For offenders found guilty of more than one trafficking offence and if there is systematic and extensive conspiracy, prison terms of <u>over ten years</u> are imposed (up to a maximum of thirteen years allowed by law).

FRANCE	<p>For the most serious offences, the penalties under the Criminal Code are <u>very heavy</u> (twenty years, thirty years, or even life imprisonment for leaders of drug trafficking gangs). Nothing more detailed is said about sentences actually imposed.</p>
GREECE	<p>The penalties laid down by law for trafficking offences are heavy: prison terms of <u>at least ten years</u> (basic offence) or <u>at least fifteen years</u> (special cases), or life imprisonment (aggravating circumstances - Section 8 of Law No 1729/1987). Nothing more detailed is said about sentences actually imposed.</p>
IRELAND	<p>Except where the court takes into account special circumstances, there is a compulsory sentence of <u>ten years</u>' imprisonment for possession of drugs of a value of IEP 10 000 or more. In the most serious offences the penalty can be a maximum of 22 years' imprisonment. Nothing more detailed is said about sentences actually imposed.</p>
ITALY	<p>Persons leading, organising or financing a drugs-trafficking conspiracy can be imprisoned for <u>twenty years at least</u>, and the penalty for those taking part in the conspiracy is <u>at least ten years</u> (Section 74). Nothing more detailed is said about sentences actually imposed.</p>
LUXEMBOURG	<p>For involvement in a conspiracy the prison sentence laid down by law is <u>fifteen to twenty years</u>. Nothing more detailed is said about sentences actually imposed.</p>
NETHERLANDS	<p>Maximum penalties are laid down by law: for import or export of List I substances, combined with involvement in a conspiracy, the maximum prison term is sixteen years (maximum of twelve years for List II substances). In 1999 sentences were passed in 2 639 cases involving hard drugs, of which 318 were for terms of over 36 months; sentences were passed in 170 cases of trafficking in soft drugs, fifteen of which were for terms of over 36 months.</p>
PORTUGAL	<p>The limits set for penalties in cases of basic drug-trafficking offences are <u>four to twelve years</u>' imprisonment; they are <u>increased by a third</u> when the offender is involved in other criminal activities organised at international level or facilitated by the commission of the offence, or has acted as member of a gang. Nothing more detailed is said about sentences actually imposed.</p>

UNITED KINGDOM	<p>A scale of penalties is provided for depending on the harmfulness of the substances. The courts do, however, enjoy a great deal of discretion and take account of circumstances.</p> <p>In 1997, out of 10 422 convictions, the sentences were for two to five years in 3% of cases and over seven years in 5% of cases (all other sentences were shorter). In 1998 there were sentences of between two to five years in 2% of cases and over seven years for 2% as well.</p> <p>If necessary, courts are guided by sentencing in higher courts. In the leading case “John Uzu Aramah” (1982) the Court of Appeal deemed a sentence of <u>six years</u>’ imprisonment for importing 59 kg of cannabis to be entirely appropriate. The Sentencing Advisory Panel recommended in May 2000 a penalty of at least fourteen years for importing 40 kg or more of opium, and ten years at least for importing 4 kg or more of opium, although courts were invited to look at all aspects of the case, including personal factors.</p>
SWEDEN	<p>In serious trafficking cases, and where there is reoffending or repeat offences, the penalty can be as much as <u>eighteen years</u>. This has actually been imposed.</p> <p>For other cases of trafficking, it can be said for example that sale of 500 gr of cannabis attracts a prison sentence of ten months to a year, and the supply of 500 gr of heroin attracts a prison sentence of <u>seven or eight years</u>.</p>

This table does not give a full picture of sentences actually imposed in the Member States.

It would appear that statistics are not readily available in most cases.

In addition the rules on parole are a major influencing factor in the time actually spent in prison.

§ 7. The Member States have all adopted legislation on drug trafficking based on the fundamental criminal law concepts which they all share.

Given the overriding need to combat drug trafficking, minimum rules should be established relating to the constituent elements of offences and to penalties applicable.⁹

On the basis of the study carried out¹⁰ we feel that certain parameters could be used to approximate or even harmonise the rules governing the most serious offences.

9 See the Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice (Doc. 13844/98 - paragraph 46) endorsed by the Vienna European Council in December 1988, and the Presidency conclusions (paragraph 48) of the Tampere European Council in October 1999.

10 This study is expressly provided for in the Action Plan on Drugs 2000-04 (Article 4.2.4).

It is therefore possible to go beyond the first stage which would be to propose a minimum for the heaviest penalty for drug trafficking. A political move such as this would still leave the Member States' judicial authorities with a good deal of discretion as they would still have the power to apply national rules on mitigating circumstances and the serving of sentences.

Common definitions of offences and penalties should take into account the following questions and concepts:

- King's evidence (a concept which would benefit from a harmonised approach) (Rules of procedure? Value of the information as evidence? Protection of the informer?, etc.);
- the amount of fines (financial penalties would do well to be harmonised or at least approximated);
- accessory and/or optional penalties, bans on exercising certain professions, closing down establishments, etc. (it ought to be possible to establish common definitions of offences);
- confiscation of all illicit benefits deriving directly or indirectly from the trafficking offence and/or from participation in a gang, conspiracy or organisation whose object or purpose is drug trafficking; confiscation is undoubtedly a measure which can play an essential role in combating organised crime in general and drug trafficking in particular; seizure and confiscation of illicit profits must be made easier by effective application of mutual assistance and procedural rules both at European and wider international level.

Brussels, 7 March 2001

A. Decourrière