

# European Drug Policy: Analysis and Case Studies

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## Europe and Decriminalization

In Europe today there is a trend toward more tolerant public attitudes and policies regarding cannabis use and cannabis users. To possess marijuana in some countries is a criminal offense, while in others it is merely a civil infraction easily ameliorated with the payment of a fine. In other countries there exists greater leniency where the government has decided not to commit overwhelming amounts of money into the enforcement of laws prohibiting cannabis - despite the presence of the laws.

European drug policy is largely centered around provisions set forth in the United Nations Single Convention on Narcotics in 1961. Present at the Convention were representatives from twelve European countries: Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom. By agreeing to sign the Convention, the parties pledged to combat drug abuse and international trafficking through national legislation. The provisions allowed each country to develop a strategy of action specific to their locality, while still adhering to the requirements established under the [Single Convention](#). Provisions on trafficking specifically prohibited and penalized "cultivation and production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of the substances listed under the Convention." This left governments little room for interpretation of laws involving trafficking. However, the provisions for drug use are more ambiguous; a reflection of differing national attitudes toward use. The Convention only mandated that countries "take some form of action" to deter drug use among their citizens. The non-specific language of this provision essentially translated into a policy where countries were free to enact their own state drug laws, provided that, legally, they are in accordance with the Single Convention.

The 1970s saw the advent of a new approach in addressing drug policy. Europe as a whole implemented a shared plan to reduce criminal sanctions as a means of discouraging illicit drug use (see [Appendix A](#)). The 1972 Protocol Amending the Single Convention attempted to expand the provisions set forth in 1961 by instructing parties to take "all practicable measures for the prevention of abuse of psychotropic substances and for the early identification, treatment, education, after-care, rehabilitation, and social reintegration of the persons involved." This provision required countries to take some action against drug use, however, no criminal penalties were established. Countries such as Spain and the Netherlands adopted lenient policies toward *consumption-related behavior*, defined as a wide range of non-commercial conduct including use, purchase or possession of small amounts for the purpose of personal use, or non-commercial distribution to acquaintances for their own personal use. The result was de-facto decriminalization, as police and courts assigned a low priority to prosecuting recreational cannabis users.

### **The Frankfurt Resolution**

One document that greatly influenced modern European drug policy was the Frankfurt Resolution of November 1990. Representatives from the cities of Amsterdam, Frankfurt, Hamburg, and Zurich convened to exchange knowledge and experience in dealing with drug policy issues. The Resolution declared that attempts at eliminating drugs and drug consumption from civilization are a failure, and a new model is needed to better cope with drug use in European cities. The key element of the Frankfurt Resolution was an open declaration that the war on drug users is a failure, and "at its best, drug policy can regulate and limit the results of drug use only." The Resolution went on to state:

Drug using is for the majority of users a temporary part of their biography, which can be overcome within the process of maturing out of addiction. Drug policy may not render this process more difficult, but it must support this process... A drug policy fighting against addiction exclusively with the criminal law and the compulsion to abstinence and offering abstinence only has failed... Criminalization is a counterpart to drug aid and drug therapy and is a burden for police and justice they cannot carry... The aid for drug users must no longer be threatened by criminal law... it is necessary to lay stress on harm reduction and repressive forms of intervention must be reduced to the absolute necessary minimum.

The Resolution suggested that Europe enact legislation decriminalizing the purchase, possession, and consumption of cannabis, and support the controlled legal trade of cannabis and cannabis products. This led countries to examine alternatives to penal sanctions, specifically imprisonment, and treat violations of the cannabis laws as a civil offense.

### **Diversions**

In some cases drug offenders may agree to undergo medical rehabilitation in exchange for a reduction or even elimination of their prison sentence. These measures can be seen as valuable to the addicted user who needs active intervention and assistance in weaning himself from drugs. Unfortunately, this approach does not necessarily apply to cannabis users, who in most cases only use the substance

recreationally without becoming dependent. This presents the courts with a problem. To deny cannabis offenders the option of treatment may force the court to impose harsh jail sentences resulting in more harm than the drug itself. On the other hand, to compel cannabis users to enter therapy in lieu of jail time squanders the resources allotted for serious addicts in need of medical treatment. Essentially, both the law and its practitioners lose credibility in the eyes of the users, who are well aware that the treatment is unnecessary (EC 54). Most countries have attempted to remedy this predicament by separating cannabis users from other drug offenders under the law. This is done by issuing "civil" rather than criminal penalty, frequently in the form of a fine for a summary offense or other administrative sanction.

## **Fines**

One common method suggested when discussing alternatives to arrest and detainment of individuals caught in possession of cannabis products are through fines issued by police officers. The logic behind this idea is that individuals can avoid the aggravation and stigma of being taken in and booked for minor drug offenses, while the criminal justice system can conserve expenditures by curtailing man-hours spent filling out paperwork and detaining offenders. This in turn also allows police departments to better channel their resources to more violent and predatory criminal conduct instead of essentially victimless crimes.

When an individual is found in illegal possession of cannabis products, the police officer is mandated to issue an on-the-spot fine similar to a traffic citation. The individual may either choose to plead guilty and pay the fine then and there, or may take the fine with him and send the money to the police station within a specified amount of time. Only if the individual wishes to challenge the offense is he given a date to appear in court and argue his case. Otherwise, once the fine is paid, there is no permanent record kept of the individual's offense and no follow up by police is necessary. A model of this practice is illustrated in Switzerland's system of on-the-spot fines for minor traffic violations:

These fines are collected by the policeman immediately after he has observed a violation. The offender exchanges cash (to a maximum of about \$25) for a numbered receipt. Each day an officer must account for cash equivalent to the value of the receipts he has distributed. The offender has the right to see the schedule and need not pay the fine at that juncture, in which case he can pay by mail within 10 days or go to court. If the fine is SF 50 (\$20.00) or less and the offender pays it, the process is anonymous; no identifying information is recorded. Foreigners are obliged to pay these fines on-the-spot or provide surety. The Swiss police will issue a court citation rather than an on-the-spot fine to a repeated offender who appears to be using the fines as a license fee.

One can apply this method used for traffic citations as the Swiss currently are, to other civil offenses such as cannabis possession.

## **The Dutch Model**

The Netherlands is a party to the 1961 Single Convention of New York, and according to the International Narcotics Control Board, its drug legislation is in

conformity with the requirements of the Single Convention. However, no other country has been so critical about the lack of effectiveness of the drug prohibition model, also no other country has shown so much tolerance and pragmatism as has the Netherlands. Their policies have since reflected a change in attitude toward the nature of drug use and its role in a civil society.

The Dutch have always maintained that the drug abuse problem is "basically and principally a matter of health and of social well-being." A policy was needed that dealt realistically with the drug situation yet still respected the personal freedoms of the Dutch citizens. Severe and disproportionate sentences had not succeeded in frightening off the growing number of users, and the efforts undertaken by the authorities ran counter to the insight of modern criminology. An all-out fight against drug abuse and drug abusers threatened to drive the latter over the edges of society into an underground and invisible realm, and thus, beyond the reach of any "helping" institution - other than the law.

In the early 1970's, at the center of the debate was cannabis, which had been used recreationally in the Netherlands for centuries. With over 10,000 cannabis users integrated throughout Dutch society, there was a strong need to revise the current drug policy measures. The amended Opium Act of 1976 was a compromise between the international standards of prosecution and punishment of drug traffickers (especially by raising penalties), and an affirmation of the domestic consensus with respect to the use, possession and retail trade of cannabis. A distinction was made between 'hard' drugs, which involved an unacceptable degree of risk (drugs such as cocaine, heroin, and amphetamine) and cannabis products (marijuana and hashish) known as 'soft' drugs. The penalties for possession of these substances or for importing, exporting, or trafficking in them differ accordingly as to whether the substance in question is a hard drug or a cannabis product. Possession of less than 30 grams of marijuana, for instance, is a summary offense liable to a custodial sentence not exceeding one month, whereas possession of any hard drug is indictable. According to the Dutch government "the Act also reflects the view that criminal law plays only a minor part in preventing individual drug abuse. Although the risks to society must of course be taken into account, every possible effort must be made to ensure that drug users are not caused more harm by criminal proceedings than by the use of the drug itself."

Part of this effort was the "normalization" of drug problems by the Dutch. This essentially means the admission--as a government and as a society--that extensive drug abuse has obtained a firm footing in society, as is the case with alcohol and tobacco. When evaluating the pros and cons with regard to the damage caused, it proved to be an unrealistic option to try and eradicate drugs and addiction completely. By fighting illicit trafficking in an all-out way, the policy would be iatrogenic, meaning the cure was worse than the disease. A more realistic option was needed to contain the damage caused by drug abuse, and remedy the situation with maximum public health benefits while minimizing the diminishing of civil liberties. This method, known as "harm reduction," also meant setting limits to what society can and cannot tolerate in terms of the rights of drug users as members of an organized society. Essentially, the Dutch would "go on paying attention to cannabis and its risks in prevention programs, as we do with respect to alcohol and tobacco, that is, not as a part of a strategy of deterrence but as an effort to promote healthy lifestyles."

One facet of the Netherlands's move to normalize cannabis use is the de-facto decriminalization of cannabis possession by police. By not actively enforcing the prohibition laws on the streets, police reduce the consequences associated with possessing small quantities of cannabis for personal use. Additionally, the Dutch expediency principle helped to separate the true criminal element from the recreational consumer who posed a minimal risk to society. The expediency principle gave public prosecutors in the Netherlands discretionary powers, and in certain cases the prosecutor could decide not to prosecute. To prevent a situation occurring in which each public prosecutor goes their own way and thereby endangers the uniformity of policy, public guidelines were established for detecting and prosecuting different criminal offenses. The guidelines issued by the Public Prosecutions Department gave highest priority to combating trafficking and lowest to cases of possession. In practice this means that, although the police do confiscate any drugs found in someone's possession, the Public Prosecutions Department would refrain from prosecuting--on the grounds of public interest--in cases that involve relatively small quantities (up to 0.5 grams of hard drugs or 30 grams of soft drugs), unless the offender is also suspected of dealing or another drug-related crime.

In 1976 the amended Opium Act was enacted, and relatively less severe penalties were imposed on the use of cannabis products. The legislation could not and did not legalize cannabis. However, a rather visible--and manageable--retail market of cannabis petty-dealers and consumers was allowed to develop. Wholesale dealers and international traffickers, however, were prosecuted and punished severely. In this way the retail market for cannabis products on the wholesale was successfully separated from the heroin market, thereby establishing one of the most successful tenets of current Dutch drug policy - greatly reducing one of the only "gateways" from soft drugs to hard drugs - the separation of distribution channels.

The situation in the Netherlands today is a careful balance between cannabis consumers and retailers (known as "coffee shops") and the Dutch government. An explosion in the coffee shop market and a Europe without borders has led to an increasing amount of foreign 'drug' tourism to the Netherlands which has led the Dutch government to impose tighter regulations on the cannabis market. Known as the 'coffee shop rules' enacted in December 1991, owners must now adhere to five rules set forth by the State: they are not to (1) advertise, (2) trade in hard drugs, (3) sell drugs to minors, or (4) sell drugs in quantities of more than 30 grams. Moreover, (5) they are held responsible for preventing any public disturbance or nuisance on or in the vicinity of their premises. Failure to comply results in closure. A licensing system was also setup to regulate the number and location of these coffee shops. These are not licenses to sell soft drugs, but merely entitle the holder to open a coffee shop. No one with a police record can be issued a license, and license holders must adhere to the five "coffee shop rules." Coffee shops are so common today that many of the shop workers have been unionized.

The international relevancy of the Dutch experience with cannabis policies is that it provides some clues for a more rational debate about European influence on worldwide drug policies. The key to successful cannabis policy seems to come from flexible law enforcement measures that can be tailored specifically to the level and intensity of the drug abuse problem of that locality. Blanket penalties for cannabis fail to reach the large scale organized crime leaders and instead cost communities a great amount of public resources wasted on detaining and indicting responsible adult users.

Dutch author and researcher Hank Jan Van Vliet observed, "Every country and city has to find ways, somehow or other, to contain and manage its own drug problems--according to national conditions and culture."

### **The Christiania Experiment**

During the 1970s, as with much of the world, Denmark was undergoing a social transformation as the hippie counterculture flourished in the city of Copenhagen. There was a feeling of personal freedom and independence that naturally lent itself to the exploration of a new and diverse way of life free from government restraint.

In 1971, a group of hippies and political activists crawled through a fence of an old military barracks just north of Copenhagen. They settled in the abandoned buildings and declared the area "liberated." Soon afterward, many artists, students, intellectuals, and university professors moved into the 35 hectare compound and began making renovations to many of the better buildings in the north side of the barracks. The community grew to over 1000 residents and the area was declared a "Free City" and named Christiania. The Social Democratic government considered the community a "social experiment," and in 1973 promised to allow the occupants to remain in Christiania for at least three years. The following years would see the Danish government attempt to develop new modes of government, based upon negotiation, respecting Christiania's status as an "alternative society."

As this new paradigm of self-rule was progressing throughout the 1970s into the 1980s, many of the initial founders and 'cultural-carriers' of the community began to leave as the city became burdened by crime, violence, and rampant drug use. The southern part of the area, which was a long time haven for criminals, psychiatric patients, and other deviants, was slowly becoming more and more like a slum. Christiania was also having trouble living up to the agreements made with the Danish government for normalization/legalization. Such issues included: (1) taxation of pubs and restaurants, (2) plans for utilization of the Northern Area (the most attractive part), (3) which community expenses were liable to be taxed under the social security/welfare system, and (4) the status of a "framework agreement" between Christiania and the Ministry of Defense. Together the strain of the increased "slummification" of Christiania coupled with its inability to function under the agreements made with Parliament began to threaten the future of the Free City.

In 1979, Christianites united together in what was coined the "Junk Blockade" evicting all junkies and hard drug dealers from the community. Since then, almost the entire drug scene in Christiania has centered on cannabis, a drug symbolizing the community's demand to be free from the norms governing Danish society. It had seemed the Christianites had successfully countered the increasing presence of addicts and drug pushers independent of police influence.

However, in subsequent years the Danish police began to develop a confrontational relationship with Christiania. There was a definite resentment of the community's flourishing cannabis market and lax housing and business regulations. The major source of conflict between police and the Free City circulated around the open air drug scene. Hash dealers set up shop on a central thoroughfare known as "Pusher Street", and in the 1980s plainclothes police raids into the interior of the city were common. Uropatruljen, or "unrest patrols" were often met by a barrage of stones and barking dogs as they tried to make arrests within the city. Confrontations

between Christianites and police became more and more violent as time went by, often escalating into small scale riots. The Danish police even stationed a group of riot police just outside the city to come to their assistance when things got out of hand.

The situation between police and Christiania had become very tense, and finally in 1989 a steering committee was setup to mediate between the two groups. The committee wanted to carry through the process of normalizing Christiania by securing taxes and legal conformity from unlicensed pubs and restaurants, while still respecting the rights of the Free City as a social experiment. The major point of contention, however, revolved around the cannabis market. Although Christiania had the sympathy of many who disapproved of the police's excessive force in handling the drug situation, the surrounding municipalities could not accept the open cannabis market on Pusher Street.

The conflict reached a head in 1993, and even the sympathetic steering committee threatened to close down Christiania. The issue had two visible factions: on one hand, police and politicians wanted Christiania closed down permanently at any price; on the other side were the Christianites who (either users themselves or sympathizers) wanted to keep the community as an example of the possibility of living undramatically with endemic use of cannabis. In Autumn of 1993, the normalization move was at its height as police raided restaurants and coffee shops seizing furnishings and harassing cannabis dealers. Before long however, dealers were getting tipped off on the raids and moving their goods before the police arrived. This led the police to begin stopping and searching individuals leaving Christiania for drugs and other illegal possessions. The result was the arrest of a large number of recreational users of cannabis who otherwise were breaking no law. The Christianites combatted this by provoking the police into illegal searches and then suing for wrongful arrest. The police came back by instituting a special "Christiania Patrol" staffed by local officers patrolling in plainclothes. This operation proved to be a failure as it only resulted in increased violent encounters between police and the Christianites. In one case, an angry policeman threw a tear gas grenade over the fence into a childrens' playground sending kids coughing and screaming into school.

It was becoming obvious that the police "stress tactics" were doing little to curb cannabis use in Christiania. Professional drug crime and trafficking steadily declined while arrests on small-time dealers and recreational users rose. Despite these repressive efforts, cannabis prices remained constant or even fell.

Finally the two sides got a break by Christmas 1993 when Minister of Justice Erling Olsen hinted that the police should be more flexible in handling minor cannabis offenses. On December 23, Olsen released a press statement announcing a deal had been struck between the residents of Christiania and the steering committee. In return for a reduction in police activity the Christianites would "keep down the cannabis market" through self-policing. In addition, Danish police could appear in Christiania only in uniform. The police responded with protests claiming the dangers of police work in Christiania, but the government concluded that patrol in Christiania was no more dangerous than elsewhere. Nevertheless the Christiania Patrol was dismantled, and police simply avoided the area altogether.

In January 1994, Christiania was given an ultimatum to 'normalize' everything before mid-April, or the Free City would be closed down by February 1, 1995. The

ultimatum did result in some normalization measures, however the cannabis trade merely tapered off temporarily. When the deadline came, the government hailed its threat to close down Christiania, but Parliament granted a 'stay of execution' (in light of the progressing normalization measures) and the cannabis trade once again commenced.

Danish officials as well as representatives from Christiania have conceded that police efforts during the early 1990s to clamp down on the cannabis trade only resulted in hardening and professionalizing cannabis dealing. The trade was largely taken over by gangs and criminal organizations while the remaining 'old timer' hippies disappeared. Currently, both Christianites and the police are in a state of recuperation from the turbulent unrest in the Free City. It appears, in summary, that the attempts to crush the open cannabis market in Christiania have been unsuccessful; the main result being a loss of prestige for law enforcement.

### **Legal Access in Switzerland?**

An article in the June 1999 edition of *Spectra*, a newsletter put out by the Swiss Federal Office of Public Health, describes a new plan for legalization and regulation of cannabis in Switzerland.

The article entitled "Cannabis as a Socially Acceptable Recreational Substance" describes the current boom in cannabis consumption among the Swiss population and significant changes in the country's perception of cannabis use. The Federal Commission for Drug Issues (EKDF), a group of experts appointed to advise the government on drug policy, has concluded that the status of cannabis needs to be reassessed.

"Altered habits of consumption have turned [cannabis] into a recreational drug enjoyed by a large percentage of the population, unaccompanied by any feelings of wrong doing and a world away from the consumption of 'hard' drugs," the article stated.

Switzerland has been a critic of cannabis prohibition for some time, and is representative of the general move toward "harm reduction" policies embraced by other European countries such as Germany and the Netherlands. However, Switzerland's ratification of the Single Convention on Narcotic Drugs in 1961 requires the country to keep its laws in accordance with international standards.

One new proposal calls for an amendment to the Swiss Narcotics Act that would allow exemption from prosecution for cannabis consumption and procurement for personal use. Under the new law, police and the judiciary system would be permitted to refrain from prosecuting small scale cannabis buyers and sellers, a model not dissimilar to the current Dutch policy.

An alternative option, although in conflict with international conventions, would be the creation of a controlled cannabis market in which legal trade would be permitted through a set of clearly-defined conditions set forth by the state. This would include a licensing system that regulated retail sale in terms of product quality, taxation, advertising, and price-fixing. In addition, age restrictions and proof of residence would be required of all cannabis consumers.



The Commission largely supports the licensing model as it creates a clearly defined, enforceable framework better able to bridge the gap between a prohibited trade and tolerant public attitude.

"The stated overriding aim of any future cannabis policy is to create general conditions that minimize any adverse consequences of cannabis use for consumers and society alike."

In August of 1999, the Swiss Federal Department of Health issued a report proposing a formal policy of cannabis decriminalization. Director Thomas Zeltner stated, "we remain in the lead for innovative approaches addressing drug-related issues." Further, "the consumption of cannabis can't be avoided through prohibition." states the Swiss Department of the Interior.

The proposal states, "cannabis does relatively little damage to health" and under some circumstances "can have a therapeutic effect."

### **Drug Policy by Country**

The following is a listing of drug laws and general policy of the fifteen members of the European Community and Switzerland. Each description attempts to define: (1) the official drug laws on the books regarding use, possession, acquisition, and trafficking; (2) whether the country makes a legal distinction between cannabis and other drugs; (3) general penalties for drug offenses; and (4) enforcement procedures used in dealing with cannabis laws (also see [Appendix B](#)). The information provided was obtained in English from the Commission of the European Community and the [European Monitoring Centre for Drugs and Drug Addiction](#). Whenever possible, individual embassies and consulates were contacted for additional assistance. Note that these laws are as of September 1999 and are likely to change.

#### Austria

There is no reference in Austrian law to illicit drug consumption. Possession and acquisition of small quantities of drugs for personal use are punishable offenses depending on the policy of individual Federal states. The quantity of drugs involved largely determines the severity of the penalty. In cases where the offender is willing to undergo treatment, the courts may allow to charges to be provisionally set aside. Trafficking penalties in Austria are stiff: 5 years for basic offense, 1-15 years for smugglers of large quantities, and 20 years for gang leaders.

Reports are withdrawn in cases involving a first-time cannabis offense. Afterwards, penalties are defined according to the quantity involved, and can range anywhere from a fine to 6 months imprisonment.

#### Belgium

Belgian law makes no distinction between hard and soft drugs. Instead, the law makes a distinction between personal and collective use of drugs. Drug use is not a criminal offense when it is an individual, but it is an offense when used collectively. Group use carries a penalty of three months to five years in prison and/or a fine of

1,000 to 100,000 Bfrs. Acquisition and possession of drugs is an offense, which carries the same penalty as collective drug use. No distinction is made between possession for personal use and possession for trafficking. So, in theory, it is possible to have a small quantity of drugs for personal use and be charged with a trafficking offense. The penalty for trafficking is three months to five years imprisonment and a fine of 1,000 to 10,000 Bfrs. However, the reality of the situation is not as staunch. Belgium has become more lenient in their law enforcement practices which is consistent with the general trend in Europe towards a more liberal drug policy.

In April of 1998, Belgian officials decided to relax the enforcement of prohibitionist laws regarding cannabis. Belgian laws have not changed. It remains illegal to possess and/or collectively consume marijuana, but the government has declared that cases of private possession and consumption will be the lowest priority of law enforcement.

## Denmark

Denmark's legislation regarding drugs makes no distinction between hard and soft drugs, and drug use directly is not an offense. Acquisition of drugs is a criminal offense, and, the law makes no distinction between personal use and large scale trafficking, the latter subject to a penalty of up to six years imprisonment. In reality, the courts rarely view small amounts as "acquisition" and generally do not invoke severe penalties possible under the law. There are three categories of possession: for personal use, simple, and large scale. Possession for personal use is not an offense. If convicted, simple possession, meaning smaller amounts of less harmful drugs, can result in six years in prison. Large-scale possession of dangerous drugs can sentence one to up to ten years in prison.

Although cannabis is categorized in Danish law with cocaine, heroin, and other highly addictive substances (in accordance with 1961 UN Convention), a directive from the Chief Prosecutor "provides for particularly lenient treatment of local trafficking in [cannabis] or possession with a view to use." The tendency of the courts' action for possession for personal use is most often a warning or a fine. Possession of small quantities of cannabis normally results in just a warning and confiscation of the substance.

## France

No distinction exists between hard and soft drugs in French law. In theory, all drug use is a criminal offense imposing a penalty of two months to one year in jail in addition to a fine of FF 500 to FF 15, 000. The application of the law, in actuality, is flexible. In most cases involving small amounts of drugs, the French courts can decide simply to issue a warning or impose a compulsory therapy order in lieu of prosecution. Drug possession, acquisition and/or trafficking is a criminal offense punishable anywhere from two to ten years in prison, as the law makes no distinction between small and large quantities. However, when the courts find a person obtaining drugs for personal use it is rare that the person is prosecuted under these guidelines and the charge is usually reduced to simple drug use.

In 1978, a circular from the Minister of Justice instructed prosecution dealing with cases of illicit use of cannabis (leaf or resin, with the exception of cannabis oil), to restrict action to a formal warning and recommendation that the user seek help from

an institution providing psychological or educative support. The circular effectively decriminalized the use of cannabis leaf and resin in France. A later provision in 1987 extended the warning to the use of all narcotic drugs, with the exception to those people who exhibit symptoms of abuse. In abuse cases treatment can be made compulsory.

## Finland

Drug use, possession, acquisition, and trafficking are all criminal offenses in Finland. In application of penalties, no distinction is made between drugs; however, Finnish law contains the concept of "very dangerous drug" (meaning narcotics) which pose a serious health risk. Cases involving drug violations are generally examined based on the specific circumstances surrounding the offense. Often prosecutors will withdraw from proceedings or waive punishment when there is a small quantity involved and the offender voluntarily undergoes treatment. Trafficking in any drug results in anywhere from 2-10 years imprisonment.

Cannabis offenses in Finland are generally punishable by a fine or a maximum of 2 years imprisonment.

## Germany

There is no distinction between hard and soft drugs in German law. Drug use itself is not a criminal offense, however acquisition of drugs is a crime, regardless of the amount acquired, resulting in one month to four years imprisonment and an "appropriate" fine. In practice, the courts often waive prosecution if drugs are obtained for personal use. The amount which qualifies as acquisition with a view to personal use is left to the court's discretion. Possession for personal use can carry a penalty of up to four years, depending on the type of drug possessed and the degree of risk involved are factors taken into account by the courts. For a first offense with a small quantity of cannabis, the courts may not impose a penalty. Subjectively, the court decides what is considered "small." There is no amount or weight assignment given to a "small" amount nor a "significant" amount. The judge's interpretation, given each case's circumstance, is the definition. Severity of the punishment is also dependent upon the controlling political party in the state where the offense occurs. In general, northern states are less conservative and tend to issue lesser punishment.

Germany's Supreme Court overturned its federal laws outlawing cannabis in April of 1994. This Supreme Court decision is in contrast with the legislation on drugs. Therefore, the legislation is still in effect, but low priority is given to prosecuting people in possession of cannabis for personal use.

## Greece

Greek law makes no distinction between hard and soft drugs, although an interesting distinction that the law does make is between addicts and non-addicts. Drug use is only an offense when the user is a non-addict. Addicts obtaining drugs for personal use are compelled to treatment. An addict is defined as "any person who, having succumbed to the habit of drug use, is incapable of overcoming it without the help of specialized therapy." A specialist is enlisted by the court to draw up a report on anyone accused of or claiming to be an addict. Dependent users

cannot be criminally prosecuted, but they are mandated to treatment for up to one year at a detoxification center. Non-addicts acquiring drugs for personal use is a crime punishable by two to five years of prison. The length of the sentence depends on the amount of drugs obtained and/or possessed. Possession by non-addicts with a view to use is not a specific offense, but it is covered indirectly under the laws of acquisition. Trafficking through negligence results in up to one year imprisonment while trafficking given aggravating circumstances carries a penalty of up to eight years in prison.

## Ireland

Under Irish law, the acquisition and use of drugs, other than opium, is not a criminal offense. Although drug use is not illegal, possession of drugs is an offense generally carrying a penalty of up to L1000 fine. Ireland does make a distinction between cannabis products and other drugs, and penalties are significantly higher for offenses involving 'hard drugs' than with cannabis products. A distinction is also made between the trafficking of cannabis as opposed to other drugs, however Irish law does not distinguish between personal and large scale trafficking of cannabis. A large-scale conviction could result in up to a seven years prison sentence and L1500 fine.

## Italy

Drug legislation in Italy makes a distinction between hard and soft drugs. Drug use is not an offense, but acquisition and possession of drugs are offenses. The law bases maximum limits for possession on a reference dose calculated from the user's average daily intake of the drug.

Cannabis and cannabis products are classified as a Schedule II drug under Italian law. Following the established maximum limits for possession, possession of 1.5 grams of cannabis leaf or .5 grams of resin may result in simply a warning or administrative penalty (suspension of drivers license for example). Possessing larger amounts than the established daily dose or repeat offenses are penalized with a progressive scale of sanctions. Obtaining a drug for personal use is distinct from acquisition for a third party. The former (provided the amount is consistent with the indicated reference dose) may be only a minor offense, while the latter could be interpreted as trafficking and subject to more severe penalties. The penalty for trafficking in cannabis and other soft drugs is up to six years imprisonment and a fine of Lit 10 million-150 million.

## Luxembourg

No distinction is made between hard and soft drugs in Luxembourg's legislation. Drug use is treated as a criminal offense. Individual use and/or acquisition is penalized with three months to three years and a fine of Lfrs. 2501 to Lfrs. 100,000. Group use or a repeat offense increases the punishment to upwards of six years in jail and/or fine of Lfrs 5,000 to 50,000,000. In practice, in certain cases only a warning is issued. All other cases are followed through with criminal proceedings. Court authorities have the right to order blood and urine tests where a drug offense is suspected. Refusal to submit to these tests carries a heavy fine and/or imprisonment. In practice, if possession is for personal use, a warning is normally issued if the case involves a small quantity and no aggravating circumstances are

present. Trafficking in drugs can result in anywhere from one to five years imprisonment and/or a fine of Ffrs 5,000-50,000,000.

## Netherlands

In the Netherlands, drug use is not a criminal offense. Acquisition of drugs, for personal use, is not a criminal offense. The law does specify possession as an offense, but the law is not enforced, and criminal action is never perused. Dutch drug policy makes a distinction between drugs that entail an unacceptable risk ('hard drugs' such as heroin, cocaine, and LSD) and hemp products ('soft drugs' such as marijuana and hashish). Possession, trafficking, and production are criminal offenses in the case of all drugs except for medicinal, scientific, and instructional purposes. However, the Public Prosecution service has created guidelines giving first priority to the import and export of hard drugs and the lowest priority to investigating and prosecuting offenses involving small quantities of soft or hard drugs for personal use.

Cannabis use is largely tolerated in the Netherlands. Small quantities of cannabis products may be purchased from retail dealers known as 'coffee shops' and consumed on the premises. The 'coffee shop rules' (enacted in 1991) allow individual municipalities to decide its level of tolerance to cannabis use. Provisions of the rules forbid advertising, sale to minors, and limit the amount of cannabis permitted to be sold at one time. Licensed coffee shop owners are also subject to state taxes and can be held responsible for any misconduct by their patrons.

## Portugal

Drug laws in Portugal make no distinction between hard and soft drugs. Drug use is not an offense, but possession and acquisition of drugs are criminal offenses. The sentencing for these offenses varies depending if the court finds the user to be an addict or a non-addict. If the court finds the offender to be an addict dependent on obtaining the drug for personal use, medical treatment may be substituted for criminal sanctions. For recreational users, the maximum punishment for possession and/or acquisition has been traditionally three months in prison with an additional 90 days redeemable through a fine. In practice however, Portuguese officials may decide to waive the penalty in lieu of a reprimand if the drug use is accepted as having only been occasional. Trafficking in illicit drugs can carry a penalty of six to twelve years imprisonment and/or a fine of Esc 50,000-5,000,000.

On April 22, 1999, the Portuguese government announced a decision from the council of ministers to decriminalize the use and possession of drugs for personal use. This plan abolishes the three month imprisonment rendered as punishment for these offenses, and emphasizes harm-reduction strategies as an alternate means of control. Decriminalization does not mean that possession and use are not sanctioned, however penalties have been reduced to fines, community service, and/or revocation of driver licenses for minor drug offenders.

## Spain

Spanish law differentiates between hard and soft drugs. Neither use nor possession of any drugs with a view to use are subject to penalty. The only criminal offenses under Spanish drug laws are manufacture, cultivation, trafficking, or incitement to use.

The use of cannabis is not a criminal offense directly, or indirectly. The acquisition of cannabis is not an offense, and possession for personal use is not an offense. However, if a judge decides that cannabis or cannabis products are possessed for trafficking, then the penalty is from three years to six years in jail and a fine of Pts. 500,000-50,000,000.

## Sweden

All drug use, possession, acquisition, and trafficking are crimes and are punishable under Swedish law. Setting up a contact between a dealer and consumer is also punishable by law. The police also hold the right to confiscate any articles used for drug abuse or manufacture (paraphernalia). Crimes are divided into three degrees: minor, simple, and aggravated. Minor offenses carry a penalty of up to six months imprisonment; simple offenses up to three years, and aggravated at least two years and up to ten years in prison. The quantity and type of drug involved, rather than the activity, determines the grading of the offense.

Cannabis use is explicitly forbidden in Sweden. Offenses are defined according to the amount involved and punishable by fine. In some cases the fine can be exchanged for counseling.

## Switzerland

Switzerland has been reassessing its drug policy in recent years moving away from criminal sanctions and more toward "harm reduction" strategies. Technically drug use, possession, and acquisition are prohibited under Swiss law; however, enforcement of the law varies greatly between the thirteen cantons who share different degrees of tolerance toward drug behavior.

New legislation is presently being enacted to better deal with the increasing cannabis consumption in Switzerland. In August of 1999, the Swiss Federal Department of Health issued a report proposing a formal policy of cannabis decriminalization. Director Thomas Zeltner stated, "we remain in the lead for innovative approaches addressing drug-related issues." Further, "the consumption of cannabis can't be avoided through prohibition." states the Swiss Department of the Interior.

The proposal states, "cannabis does relatively little damage to health" and under some circumstances "can have a therapeutic effect."

Cannabis is seen as a widely used recreational drug enjoyed by broad sections of the Swiss population. While a proposal is currently afoot to amend the Swiss Narcotics Act to exempt cannabis users from prosecution, most localities have already essentially decriminalized the consumer. The concern now lies with licensing and regulation of the cannabis market, similar to what has been done with the 'coffee shop policies' in the Netherlands.

## United Kingdom

In the United Kingdom, use of drugs, other than opium, is not an offense. Possession and acquisition of drugs is an offense, and the UK divides drugs into three categories for the purpose of law enforcement. There are no special provisions exempting drug addicts from criminal responsibility.

Cannabis and cannabis resin are grouped into Category B. The penalty for possession and/or acquisition of a Category B substance is a summary offense of six months' imprisonment and/or a fine of L400, or upon indictment up to five years in prison. In practice, the courts usually impose a fine in cases involving cannabis products. Trafficking (also to include personal cultivation) carries a possible twelve months in prison and/or L400 fine.

## **Summary**

Europe is a working example of the revised approach to drug policy in which the user is treated as a responsible citizen. A major part of the European model of drug policy is to treat drug use not as a criminal activity that must be stamped out completely, but rather a part of human nature that should best be handled in a manner that minimizes adverse effects to both the individual and society as a whole. Efforts are spent examining the factors that lead people to experiment with drugs, including an individual's social setting, family support, and educational level. European countries largely believe that the way to approach drug use is to emphasize truthful education over propaganda and promotion of self-development over repressive law enforcement. Most of Europe has recognized that the criminal justice system only exacerbates problems associated with drug use by causing social stigma and an increased sense of failure and self-esteem for the user. Instead, a more pro-active and holistic approach is utilized in deterring drug use instead of a reactionary one that has proved historically to be a failure.

Each country has developed its own policy in regards illicit drug use, with varying degrees of tolerance and enforcement towards consumption-related behavior. Nearly all the countries examined here have in recent years restructured their laws for cannabis, whether in the form of national legislation or de-facto decriminalization. The consumer is no longer seen as a criminal, and cannabis is general seen as equal to other recreational vices such as tobacco and alcohol use. The current trend of European countries is moving toward a complete decriminalization of cannabis, and in some cases legalization and regulation of commercial trade through a government approved licensing system.

Most European countries firmly believe that there can be no legal basis for prohibiting freedom of action in respect to one's own body. Most of Europe has recognized that the responsible use of cannabis by an adult, in their home, is not part of a country's crime problem. This "European" mentality of freedom to conduct one's personal affairs while respecting the rights of others stands as an example to the United States and other countries. When a tolerant and compassionate view toward drug use and drug users is realized, inevitably, nations begin to see a noticeable improvement in the quality of life for its citizens.

## **Appendix A\***

Types of Penalty Reforms for Consumption-Related Drug Offenses

Reduced "Criminal" Penalties	Decriminalization	
<ul style="list-style-type: none"> <li>Maximum term of custodial confinement greater than 7 days;</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>Convicted offender is subject of criminal record with same consequences as violators of other criminal provisions</li> </ul> <p>Types of Ameliorative Reforms</p> <ul style="list-style-type: none"> <li>Substantial reductions in maximum terms of imprisonment (e.g. 30 days, 90 days) for all violators</li> <li>Preclusion of incarceration and/or "conviction" for first offenders</li> <li>Mandatory, though conditional, "diversion" in lieu of prosecution or punishment</li> <li>Explicit authorization of dismissals, discharges, warnings, diversions, and other non-criminal dispositions in discretion of prosecutors and courts</li> </ul>	<p>"Non-Criminal" Penalties</p> <ul style="list-style-type: none"> <li>Maximum term of custodial confinement of 7 days or less;</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>"Convicted" offender has no "criminal" record</li> </ul> <p>Qualifications</p> <ul style="list-style-type: none"> <li>Violators still may be "arrested" and processed through "criminal" courts</li> <li>Prescribed penalty may be short period of detention, fine, official reprimand or reasonable period of community service, social service supervision, or other non-custodial penalty</li> </ul>	<p>No Penalty ("Depenalization")</p> <ul style="list-style-type: none"> <li>Offense is not subject to formal imposition of penalties ("not punishable")</li> </ul> <p>Qualifications</p> <ul style="list-style-type: none"> <li>Detected offenders may still be arrested and processed through criminal courts pending determination of non-punishability</li> <li>Coercive intervention may still be possible under legal equivalent of "civil commitment"</li> </ul>

\*from Europe and Decriminalization, Richard Bonnie, 1980

**Appendix B\***

	Product classification	Drug use	Notification	Combined treatment/penalty procedure	Possession with a view to use	Drug Possession	Supplying drug to users	Drug trafficking
Belgium (1921 & 1975)	no distinction between different	<u>collective drug use</u> : 3 months to 5 years	there is none	no specific dispositions	as for drug trafficking	3 m to 5 years imprisonment	3 m to 5 years 10 to 20 years* imprisonment	3 m to 5 years imprisonment



	drugs							
Denmark (1955 & 1976)	no distinction between different drugs	not an offense	there is none	voluntary treatment taken in consideration	as for drug trafficking	to 2 years imprisonment	to 2 years to 10 years* imprisonment	to 2 years to 10 years* imprisonment
France (1970 & 1987)	no distinction between different drugs	all sort of use prohibited 2 m to 1 year	notification to health authority	voluntary incentives compulsory	theoretically as for drug trafficking	2 to 10 years imprisonment	1 to 5 years imprisonment	2 to 10 years 10 to 20 years imprisonment
Germany (1973 & 1981)	no distinction between different drugs	not an offense	there is none	syst of incentive if imprison < 2 years	1 to 4 years imprisonment	1 to 15 years imprisonment if great quantity	1 to 4 years 1 to 15 years* imprisonment	1 to 4 years 1 to 15 years* imprisonment
Greece (1970 & 1976)	no distinction between different drugs	not an offense	there is none	voluntary incentives compulsory	only not addicts punished: 2 to 5 years	5 to 20 years imprisonment	5 to 20 years imprisonment perpetuity*	5 to 20 years imprisonment perpetuity*
Ireland (1977 & 1984)	distinction between cannabis and other drugs	not an offense except opium (14 years)	there is none	voluntary incentives compulsory	SD: to 3 years HD: to 7 years	SD: to 7 years HD: to perpetuity	SD: to 7 years HD: to perpetuity	SD: to 7 years HD: to perpetuity
Italy (1975 & 1990)	distinction between cannabis and other drugs	prohibited but not punished	notification to health authority	voluntary incentives compulsory	1,2'/ suspension of driving license 3'/prison & fine	SD: 2 to 6 years HD: 4 to 15 years	4 to 15 years aggravat. 1/3** imprisonment	4 to 15 years 20 years minim.* imprsnt
Luxembourg (1973 & 1989)	no distinction between different drugs	indiv.: 3 m to 3 years / collective: 1 to 5 years	penalties for refusal to submit to biological test	voluntary incentives compulsory	acquisition and possess for use to 5 years	1 to 5 years imprisonment	1 to 5 years imprisonment perpetuity*	1 to 5 years imprisonment
Netherlands (1928 & 1976)	distinction between cannabis and other drugs	not an offense	there is none	voluntary incentives compulsory	SD: to 3 m HD: to 1 year	to 2 years imprisonment	SD: to 2 years HD: to 8 years (National)	SD: to 4 years HD: to 12 years (International)
Portugal (1983)	no distinction between different drugs	not an offense	there is none	voluntary incentives compulsory	to 1 year imprisonment	1 to 4 years imprisonment	6 to 12 years imprisonment	12 to 18 years imprisonment
Spain (1983 & 1988)	distinction between cannabis and other drugs	not an offense	law about social dangerousity of drug addicts	voluntary incentives compulsory	not an offense	SD: 4 m to 4 years HD: 8 m to 8 years	SD: 6 m to 6 years HD: 6 to 14 years	SD: 10 to 17 years* HD: 14 to 23 years
United Kingdom (1971 & 1986)	distinction among 3 dangerous levels	not an offense except opium (14 years)	notification to Home Office	voluntary incentives compulsory	A - to 7 years B - to 5 years C - to 2 years	A - to 14 years B - to 14 years C - to 5 years	A - to 14 years B - to 14 years C - to 5 years	A - to 14 years B - to 14 years C - to 5 years

\*from the Commission of the European Community, 1991.

## Sources

Bonnie, Richard J. "Europe and Decriminalization: A Comparative View." Marijuana Use and Criminal Sanctions. Charlottesville, VA: The Michie Company, 1980. 129-239.

Commission of the European Community. The Community of Twelve and the Drug Demand. Ed. Bernard Leroy. Doc. CEC/LUX/V/E, 1991.

Drug Text Information Services. Ed. Mario Lap. <http://www.drugtext.org/>.

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). 1998 Annual Report on the State of the Drugs Problem in the European Union. Luxembourg: Office for Official Publications of the European Communities, 1998.

Felstiner, William L.F. and Ann Drew. European Alternatives to Criminal Trials and Their Applicability in the United States. National Institute of Law Enforcement Assistance Administration, U.S. Department of Justice.

Frankfurt Resolution. Konferenz: Europaisch Stadte Im Zentrum Des Illegalen Drogenhandels. Nov. 20-22, 1990.

Horsten-Von Meyenfeldt, Liesbeth. "The Netherlands: Tightening Up the Cafes Policy." European Drug Policies and Enforcement. Ed. Nicholas Dorn et al. New York: St. Martin's Press, Inc. 1996. 97-105.

Jorgen, Jepsen. "Copenhagen: A War on Socially Marginal People." European Drug Policies and Enforcement. Ed. Nicholas Dorn et al. New York: St. Martin's Press, Inc., 1996. 9-32.

Molander, Eva. "Sweden---A Drug Free Society?" Current Sweden: Issues Analysis Debate. Stockholm: The Swedish Institute, 1995.

Swiss Federal Office of Public Health. "Cannabis Report by the Federal Commission for Drug Issues." Spectra. vol 16, June 1999.

Van de Wijngaart, G.F. et al. "The Normalization of Cannabis Use." Paper presented at 16th Intern. Institute on the Prevention and Treatment of Drug Dependence. Lausanne, Switzerland, June 1987.

Van Vliet, Henk Jan. "Separation of Drug Markets and the Normalization of Drug Problems in the Netherlands: An Example for Other Nations?" The Journal of Drug Issues. 20:3 (1990): 463-471.

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