

CALL FOR EVIDENCE FOR AN INITIATIVE (without an impact assessment)

TITLE OF THE INITIATIVE	Commission recommendation on the implementation of alternatives to coercive sanctions as response to drug law offences and drug-related crimes
LEAD DG – RESPONSIBLE UNIT	Directorate-General for Migration and Home Affairs (DG HOME), Unit D5 Organised Crime and Drugs
LIKELY TYPE OF INITIATIVE	Commission Recommendation
INDICATIVE TIMING	Q4-2022
ADDITIONAL INFORMATION	EU drugs policy: https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/drug-control_en
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A. Political context, problem definition and subsidiarity check

Political context

Alternatives to coercive sanctions refers to measures that Member States apply instead of, or alongside, traditional criminal justice measures. They are used in response to drug law offences and drug-related crimes and often have a rehabilitative element. The *Study on alternatives to coercive sanctions as response to drug law offences and drug-related crimes* (2016)¹, funded by the European Commission, concluded that all EU Member States have at least one alternative to coercive sanctions in place. Generally, the available alternatives relate to treatment, thus focusing on people with problematic drug use patterns. They can be implemented in different stages of judicial proceedings.

The Council Conclusions of 8 March 2018 *Promoting the use of alternatives to coercive sanctions for drug using offenders*² acknowledge the importance of alternatives to coercive sanctions for both security and health-related aims. The Council Conclusions also stressed the need to improve the provision and application of such alternatives.

The EU Drugs Strategy 2021-2025³ (Priority Area 7.4) and the corresponding Action 49 of the EU Drugs Action Plan 2021-2025⁴, commits the Commission to follow up on the 2016 study on alternatives to coercive sanctions, ‘e.g. through a possible Commission Recommendation on the topic that respects the different national approaches on the matter and the Member States’ competence to legislate in this field’.

In parallel, the Directorate-General for Justice and Consumers is working on a Commission recommendation on rights and conditions for pre-trial detention⁵.

Problem the initiative aims to tackle

According to a report⁶ from the European Monitoring Centre for Drugs and Drug Addiction, people who use drugs are eight times more likely to commit a crime than those who do not. Similarly, people in prison are

¹ European Commission, Directorate-General for Migration and Home Affairs, Disley, E., Ito, K., Strang, L., et al., *Study on alternatives to coercive sanctions as response to drug law offences and drug-related crimes*, Publications Office, 2016, <https://data.europa.eu/doi/10.2837/662794>

² [Council Conclusions of 8 March 2018](#) *Promoting the use of alternatives to coercive sanctions for drug using offenders*.

³ [The EU Drugs Strategy 2021-2025](#)

⁴ [EU Drugs Action Plan 2021-2025](#)

⁵ [Pre-trial detention – EU recommendation on rights and conditions \(europa.eu\)](#)

⁶ [Prison and drugs in Europe: current and future challenges](#), June 2021 – EMCDDA.

substantially more likely than their peers in the community to have used drugs, to use drugs regularly or to experience drug-related problems. Indeed, some start using drugs while in this setting. There is, therefore, a vicious and costly circle of crime and drug use; nevertheless, drug-related treatment can be effective in breaking it. Furthermore, alternatives to coercive sanctions can contribute to alleviating prison overcrowding, recidivism, addiction, and problem drug use and related negative health effects. They may also have a positive economic impact since they are generally less expensive than incarceration.

Currently, alternatives to coercive sanctions are underused. Sometimes, they face problems and barriers linked to their design, implementation and delivery, and fail to deliver on their intended outcomes. One barrier to the implementation of alternatives to coercive sanctions is a lack of local coordination between stakeholders. For example, those deciding on the sanctions often do not learn about the outcome, and stop applying them in subsequent cases due to lack of feedback. Furthermore, availability of data on the implementation and outcomes of the various alternatives to coercive sanctions needs to be improved⁷.

Experience of drug use is more frequently reported by males (50.6 million) than females (32.8 million)⁸. At the European level, 62% of women in prison and 41% of men in prison have used an illicit drug before imprisonment⁹. The increase in drug use during imprisonment is more pronounced in women than in men¹⁰. Thus, women in prison are disproportionately affected by drug use compared with the general population.

This initiative is necessary to fulfil the intention, under the EU Drugs Action Plan 2021-2025, to ‘scale up the availability, effective implementation, monitoring and evaluation of measures provided as alternatives to coercive sanctions’. Without action at EU level, alternatives to coercive sanctions will remain underused and the barriers they face will remain. Their design, implementation and delivery will remain fragmented. They will continue to be applied imprecisely and therefore ineffectively. The differential effect on marginalised groups will remain dependent on societal attitudes.

Basis for EU action (legal basis and subsidiarity check)

Legal basis

The procedural legal basis for the initiative is Article 292 of the Treaty on the Functioning of the European Union (TFEU). The substantive legal basis for the EU responses to reducing drug-related harms is covered by the broader EU action in the provisions on the area of freedom, security and justice, as provided for in Title V of Part Three of the TFEU, and on public health, as provided for in Title XIV of Part Three of the TFEU.

The initiative does not propose any extension of EU regulatory power or binding commitments on Member States but aims to complement and support Member States’ activities in this policy area.

Practical need for EU action

Alternatives to coercive sanctions for drug-using offenders is both a domestic and cross-border concern. Action at EU level would help to: a) support Member States’ actions in reducing drug-related harms through such measures; and b) provide a coordinated approach towards better implementation of such measures, which in return would support mutual recognition between Member States of alternative sanctions, in line with Council Framework Decision 2008/947/JHA.

B. What does the initiative aim to achieve and how

Likely impacts

Generally, this initiative has the potential to encourage the further development of alternatives to coercive sanctions. Depending on its implementation, it may lead to increased availability and effectiveness of alternatives to coercive sanctions that are targeted to the needs of different groups and individuals, and which have clearly defined objectives. In this regard, the likely impact is economic (reduction in cost) and social (supporting reintegration of offenders into society). This initiative also has the potential to have positive impacts

⁷ Study on alternatives to coercive sanctions as response to drug law offences and drug-related crimes 2016, Rand Europe.

⁸ [European Drug Report 2021](#), EMCDDA.

⁹ Systematic review of studies in 12 European countries – 10 EU + UK + Norway: van de Baan et al., (2022) *Prevalence of illicit drug use before imprisonment in Europe: results from a comprehensive literature review*, *Drugs: Education, Prevention and Policy*, 29:1, pages 1-12. [DOI: 10.1080/09687637.2021.1879022](https://doi.org/10.1080/09687637.2021.1879022)

¹⁰ Prison and drugs in Europe: current and future challenges, June 2021 – EMCDDA.

on fundamental rights and equality. Drug use is more frequently reported by males than females. However, among people that end up in prison, a higher proportion of women than men have a drug use disorder. This initiative, therefore, will take into account the gender perspective. Additionally, awareness will be raised concerning the equitable application of alternatives to coercive sanctions in line with fundamental rights, such as the right to non-discrimination.

Awareness will also be raised among all those involved in the criminal justice process, such as law enforcement services, prosecutors and judges. Furthermore, feedback and information exchange at both the local level (between those imposing the sanction and those supervising the sanction) and the EU level (through improved availability of data and a harmonised monitoring framework) will likely be improved. This includes dialogue and mutual learning activities to promote exchange of best practices regarding alternatives to coercive measures. Improved coordination of the cross-border aspects in this area will likely lead to a simplification of mutual recognition.

Future monitoring

This initiative envisages a two-year reporting cycle in which Member States report the extent of implementation results, challenges and best practices, and policy changes in the field of alternatives to coercive sanctions. Indicators for this reporting by Member States may include the uptake of alternatives to coercive sanctions and the observed effectiveness of individual measures. All data should be disaggregated by gender and marginalised groups.

C. Better regulation

Impact assessment

No impact assessment is necessary for this initiative. The measures proposed by this recommendation will be non-binding. Therefore, the impact is dependent on the Member States' level of implementation and cannot be clearly identified beforehand.

Consultation strategy

The following targeted consultation activities with all relevant stakeholders are under consideration:

- targeted consultations with civil society and other experts; and
- targeted consultations with Member State authorities (both those imposing the sanction and those implementing the sanction, i.e. justice and health authorities).

The aim of these targeted consultations is to ensure that this initiative is evidence-informed, including regarding current barriers for the equitable application of alternatives to coercive sanctions, particularly any new developments since 2016, and to take into account the differing situations in Member States.