

Issue I: Use of the Internet for drug-related activities

Recommendation 1

Governments should be encouraged to ensure that their law enforcement agencies are well informed, professionally trained and suitably resourced to be effective in the investigation of cyber-related offences and the related use of the Internet for illicit trafficking.

Any action taken YES NO

Comments:

- In Switzerland, the responsibility to combat drug trafficking lies with the cantons. This applies also to cyber-related offences in this crime field. Therefore, each canton has its own cyber-investigators.
- On national level, the Swiss Police Institute develops an e-learning 'Cybercrime' for the police corps and organizes courses for cyber-investigators.
- NEDIK, which is a national network of cybercrime units, ensures the exchange of best practices and the coordination of national cyber-investigations.

Recommendation 2

Governments must work together to overcome the obstacles encountered in undertaking the investigation of cyber-related trafficking offences across multiple jurisdictions and introduce the changes needed in legislation, practices and procedure to expedite information-sharing, enquiries with Internet service providers and the transfer of evidence.

Any action taken YES NO

Comments:

- Swiss national laws provide all the required powers and procedures to support foreign request.
- Furthermore, Switzerland signed the Budapest Convention on Cybercrime. It is a Council of Europe convention and one of the most important international treaties on crimes committed via the Internet and other computer networks, dealing particularly with infringements of copyright, computer-related fraud, child pornography and violations of network security.

Recommendation 3

Governments should encourage their law enforcement agencies to develop the specialist skills that will support the investigation of cyber-related offences and lead to successful criminal prosecutions.

Any action taken YES NO

Comments:

- The Swiss authorities set up a national working group that develops cyber trainings. The training structure bases on five skill levels. For each level exist specific courses, such as e-learnings, hands-on trainings or academic courses (CAS/MAS).
- The cyber-investigators participate in international trainings. For example by Europol, CEPOL (European Union Agency for Law Enforcement Training) or ECTEG (European Cybercrime Training and Education Group).

Issue II: Alternatives to imprisonment for certain offences as demand reduction strategies that promote public health and public safety

Recommendation 1

Governments are encouraged to make full use of alternatives to imprisonment for people with drug use disorders in contact with the criminal justice system, particularly at the time of their arrest and at the pretrial stage.

Any action taken YES NO

Comments:

Article 237 of the Swiss Code of Criminal Procedure (SCCP; SR 312.0) allows for less severe measures than pre-trial detention to be ordered if these measures achieve the same purpose as detention. Among these measures, the judge may subject the person to medical treatment or controls. Finally, according to article 60 of the Swiss Penal Code (SPC; SR 311), where the offender is drug-dependent and has committed a crime or offence in relation to this addiction, the judge may order institutional treatment, which is carried out in a specialised establishment or, if necessary, in a psychiatric hospital, if it is expected that this treatment will divert him from other offences in relation to this addiction. The execution of the measure in Art. 60 SPC takes precedence over the execution of a jointly imposed custodial sentence (art. 57 para. 2 SPC). The deprivation of liberty resulting from institutional treatment may not, as a general rule, exceed three years. However, the judge may order a one-time extension of the measure for one year if certain conditions are met.

Recommendation 2

Governments are encouraged to promote and implement institutional mechanisms, including through induction and training programs, that enable the police to screen, assess and refer appropriate cases to treatment facilities, taking into account their dual role as the first responders and the first criminal justice actors encountered by people with drug use disorders when they come into contact with the criminal justice system.

Any action taken YES NO

Comments:

Police officers in Switzerland are aware of this role. During their basic training, they are trained in how to deal with people with risk behavior. In addition, the official duties of the police corps are governed by official regulations. Among other things, these regulations show police officers how to deal with special situations. The police know the contact points and care services for drug addicts. Drug addicts also belong to the group of persons with risk behavior. If there is contact with such persons and a state of health is established that requires medical care, they are assigned to medical care. If there is a reason for detention, the official doctor checks whether the person can be detained. Medical care is, in principle, guaranteed. The medical doctor makes the assignment to a therapy center.

Recommendation 3

Governments are encouraged to adopt or amend legislation, policies, and guidelines that allow flexibility when handing down sentences for drug-related offences that take into account the nature and gravity of the offence as well as the personality and background of the offender.

Any action taken YES NO

Comments:

The treatment of addictions under article (art.) 60 of the Swiss Code of Criminal Procedure (SCCP), like the outpatient treatment of art. 63 of the Swiss Penal Code (SPC), consists of measures and not penalties, i.e. their imposition is not based on the seriousness of the perpetrator's fault, but on his need for treatment (cf. art. 56 al.1 lit. b SPC). This need is also taken into account by the fact that enforcement of the measure in art. 60 SPC takes precedence over the enforcement of a jointly imposed custodial sentence (art. 57 al. 2 SPC) and that in the case of art. 63 SPC, the measure may be enforced at liberty, the custodial sentence then being suspended in favour of processing (art. 63 al. 2 SPC).

With regard to the determination of the sentence in general, art. 47 al.1 SPC provides that it must be determined on the basis of the author's guilt in the first place and that the author's background and personal situation as well as the effect of the sentence on his future must be taken into consideration.

According to art. 19 al. 1 SPC, the perpetrator is not punishable if, at the time of acting, he did not have the power to assess the unlawfulness of his act or to determine himself on the basis of this assessment. Similarly, the judge shall reduce the penalty if the perpetrator's criminal liability is not complete (art. 19 al. 2 SPC). However, it should be noted that if the author could avoid irresponsibility or limited liability and foresee the act committed in this state, the author will be judged as if he were responsible for his acts (art. 19 al. 4 SPC).

Recommendation 4

Governments are encouraged to employ a multidisciplinary approach in providing treatment and rehabilitation as an alternative to conviction or punishment and to promote and develop the capacity for institutional coordination between justice, health, and social services authorities.

Any action taken YES NO

Comments:

Alternative measures to conviction:

- article (art.) 52- 54 Swiss Penal Code (SPC). No interest to be punished, compensation for damages by the author, damage suffered by the author as a result of his act.
- art. 316 of the Swiss Code of Criminal Procedure (SCCP; SR 312.0).

Conciliation possible when the preliminary proceedings relate exclusively to offences prosecuted on complaint, or if an exemption from punishment by way of compensation under art. 53 SPC is involved. If the conciliation is successful, the procedure is closed.

Although it is a criminal sanction in its own right, the author may request the execution of a custodial sentence of up to six months' imprisonment in the form of community service if there is no reason to fear that he will flee or commit other offences (art. 79 a SPC). The use of electronic surveillance is also possible under certain conditions for custodial sentences from 20 days to 12 months (art. 79 b SPC).

If the offender is a minor, the proceedings may be suspended at any time to give way to a mediation procedure, provided that the conditions of art. 17 of the Federal Act on Juvenile Criminal Procedure (SR 312.1) are met.

In addition, it should be noted that a person may be placed in an appropriate institution when, because of mental disorder, mental disability or serious neglect, the necessary assistance or treatment cannot be provided in another way (art. 426 al. 1 of the Swiss Civil Code; SR 210). This measure, called placement for assistance or treatment, is not part of the arsenal of criminal sanctions.

Finally, in the context of the enforcement of a criminal sanction, interdisciplinary exchanges between justice, social actors (e. g. probation services) and medicine in the broad sense are prescribed in certain cases (enforcement of a measure, probation assistance, rules of conduct, etc.) customary and frequent.

Recommendation 5

Governments are encouraged to implement measures to increase public awareness of the benefits of using alternatives to imprisonment.

Any action taken YES NO

Comments:

The corresponding alternatives are already enshrined in law in the Swiss Penal Code. Ultimately, after weighing the facts, the competent judge decides which measure is to be applied in the case to be judged by the court. Raising public awareness is obsolete. Reference is also made to the comments in Recommendation 4.

Recommendation 6

Governments are encouraged to collect and analyse gender- and age-disaggregated data on the use of alternatives to imprisonment and, if applicable, to undertake periodic evaluation of existing initiatives to provide treatment as an alternative to conviction or punishment for people with drug use disorders.

Any action taken YES NO

Comments:

The Federal Statistical Office collects data on the use of community service and electronic surveillance:
<https://www.bfs.admin.ch/bfs/en/home/statistics/crime-criminal-justice/execution-penal-sentences-justice/employment-labour-electronic-home-detention-supervision.html>

Issue III: Mainstreaming gender perspectives in drug-related policies and programmes

Recommendation 1

Governments are encouraged to collect and analyses gender-disaggregated data to obtain more information about the situation and circumstances of women drug users and the various roles women assume in drug-related crime and in organized crime groups with a view to developing and implementing effective and comprehensive policies and programs.

Any action taken YES NO

Comments:

Data is collected, distinguishing between women and men and there are specific gender-related indicators.

Presently, the data collection called “addiction monitoring” is revised, but here, too, data will be disaggregated in order to obtain information on the needs of the various target groups.

Recommendation 2

Governments are encouraged to ensure non-discriminatory access to health-care services for women, including in prison, and to develop gender-sensitive prevention, primary care, treatment and reintegration policies and programs, particularly for pregnant women and women with caretaking responsibilities.

Any action taken YES NO

Comments:

The report “diversity” from the Swiss “Infodrog” takes a close look at the diversity in Switzerland, particularly promoting the diversity, permeability, coordination, quality and accessibility of the various prevention, counselling, treatment and harm reduction services.

There are specific addiction related therapeutic groups, designed to match gender-specific needs.

In addition, there are housing groups for women with their children as well as self-help groups, especially designed for them.

Recommendation 3

Governments are encouraged to ensure close cooperation and collaboration among all relevant national authorities in developing and implementing gender-sensitive drug policies and programs that take into account the specific needs and circumstances faced by women and girls with regard to the world drug problem.

Any action taken YES NO

Comments:

Switzerland has put in place drug-related platforms on all governmental levels (federal, cantonal and regional/cities) that enable an exchange in order to promote understanding as well as discussions on new and persistent challenges.

Issue IV: Money-laundering, illicit financial flows and effective countermeasures

Recommendation 1

In support of the investigation of money-laundering offences and the recovery of the proceeds of crime, Governments are encouraged to enable access by their law enforcement authorities to the information held by their financial intelligence units.

Any action taken YES NO

Comments:

According to article 23 para. 2 AMLA (Anti-Money Laundering Act; SR 955.0) the Swiss Financial Intelligence Unit (hereinafter MROS) shall examine and analyses the reports received. Pursuant to article 23 para. 4 AMLA, the financial intelligence unit (hereinafter FIU) must notify the responsible prosecution authority if it has reasonable grounds to suspect that the reported assets are the proceeds of money laundering and/or financing of terrorism. In line with the Financial Action Task Force (FATF) standard, law enforcement agencies can request information from the FIU, which can then be provided by the FIU under the conditions set forth in article 29 AMLA.

Recommendation 2

Governments are encouraged to ensure that evidence gathered through investigations of money-laundering offences by their financial intelligence units has legal standing in their courts if used in prosecutions brought by other law enforcement agencies.

Any action taken YES NO

Comments:

Like most other FIUs, MROS does not perform investigations. The information contained in the reports filed by the FIU represents "intelligence". As mentioned before, under the conditions set forth in article 23 para. 4 AMLA (Anti-Money Laundering Act; SR 955.0), the FIU notifies the responsible prosecution authority through a report that will be added to the case file of the corresponding criminal case (see article 100 et seq. of the Swiss Code of Criminal Procedure (SCCP; SR 312.0).

The competent prosecuting authority as indication, to obtain legally admissible evidence according to article 139 et seq. SCCP, can use the information contained in the said report.

Recommendation 3

Governments are encouraged to make use of the tools available for training and building the capacity of their law enforcement authorities, financial investigators and prosecutors available through the global program against Money-Laundering of the United Nations Office on Drugs and Crime (UNODC) and other training institutions.

Any action taken YES NO

Comments:

MROS will introduce shortly the United Nations's application goAML (Anti-Money-Laundering-System) which is one of UNODC's strategic responses to financial crime.

Recommendation 4

Governments are encouraged to share with UNODC the results of their national money-laundering risk assessments to facilitate a coordinated global response and to strengthen the capacity of competent authorities and financial institutions to thwart attempts at money laundering.

Any action taken YES NO

Comments:

MROS publishes constantly the national money-laundering risk assessments on its website:
<https://www.fedpol.admin.ch/fedpol/en/home/kriminalitaet/geldwaescherei/jb.html>.