

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 so as to be effective in the investigation of cyber-related offences and the related use of the Internet for illicit trafficking.

Any action taken **YES**

Comments:

As far as the suppression of drug offences is concerned, the increase in the online drug-trade as an additional way of distribution - both on the so-called Clearnet (here specifically the distribution of new psychoactive substances) and especially on the so-called Darknet - , poses a major challenge to the law enforcement agencies. The Darknet has augmented/changed the manifestation of drug-related crimes. New modi operandi and new types of offenders have emerged.

On the Internet, nearly all kinds of narcotic drugs are offered for world-wide dispatch. Acquiring and distributing drugs through the Internet offers a great number of advantages for the offenders, i.a.:

- High level of anonymity, for example due to terms for payment and dispatch;
- Reducing risks, i. a. the risk of being discovered by the police and the danger to buyers/consumers compared to street sale, for example, where they actually get in touch with the selling offenders;
- General accessibility for all and sundry and all age groups no matter where they are;
- Diversity of the illegal offer.

In addition to a high number of lone offenders, who deal in smaller quantities of drugs, there are so-called "top sellers", some of whom use organised structures and earn enormous profits. Involving gangs and/or division of tasks and the offenders' high degree of conspiracy/ anonymity render police measures and investigations difficult due to network structures and divided responsibilities. At the same time, offenders become increasingly conscious of the gigantic income opportunities which the online drug-trade opens up. The technical possibilities for seclusion and conspiracy together with a direct access to the market and the offer of narcotic drugs and various other incriminated goods (such as counterfeit money or weapons) offer organised crime groups opportunities for expanding their field of activity "at a lower risk". This requires an effective and sustainable suppression of such offences while particularly taking into account more than one area of crime.

A basic prerequisite for online drug-trade is the distribution of the drugs by postal mail. Sending narcotic drugs by mail becomes increasingly important; and the effective suppression of this phenomenon poses new challenges to the law enforcement agencies (illegal drugs are more easily accessible to the public, only small quantities are dispatched but on a massive scale, high evaluation and investigation workload).

Measures:

- Opening / assisting investigations against subjects at various levels i.e. buyers, sellers (vendors), top sellers and platform administrators.
- National and international meetings focusing on this issue.
- Cooperation with cybercrime authorities, non-police institutions (e.g. postal service providers), covert sources such as confidential informants, non-overtly investigating police officers, other specialized departments (e. g. counterfeit money, pharmaceuticals).
- Implementation of trainings/workshops on internet research and investigation.
- Implementation of further internet research and investigation competencies at the local customs investigation offices.
- Increase of human resources for combating internet-related (customs) crime.

Recommendation 2

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**

Comments:

See comments under Recommendation 1.

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**

Comments:

Redundant to Recommendation 2.

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**

Comments:

In German criminal law there are different alternatives to imprisonment for people with drug use disorders in contact with criminal justice system.

Pursuant to Section 31a of the Law on Narcotics (Betäubungsmittelgesetz - BtMG) the public prosecution office may dispense with prosecution in specific minor cases of self-consumption.

According to Sections 35, 36 BtMG the enforcement authorities may defer the enforcement of the prison sentence under certain circumstances if the person is doing – or willing to do – drug rehabilitation. Section 37 BtMG gives the opportunity to dispense with prosecution if the person is doing – or willing to do – drug rehabilitation.

Pursuant to Section 64 of the Criminal Code (Strafgesetzbuch - StGB) a person, who has an addiction to alcohol or other drugs and is convicted of an unlawful act committed while he was intoxicated or as a result of his addiction or is not convicted only because he has been found to be insane or insanity cannot be excluded on the evidence, the court shall make a custodial addiction treatment order if there is a danger that he will commit future serious unlawful acts as a consequence of his addiction.

Even in cases where none of these alternatives apply, it is not uncommon, that a conviction will only lead to a fine, not to an imprisonment.

If the convict receives a suspended sentence with probation pursuant to Section 56 following of the Criminal Code (Strafgesetzbuch - StGB), the court may impose conditions and instructions on the convicted person. This can be participation in drug counseling, social work, abstinence from drugs etc. If the convicted person agrees, the court also can instruct to undergo a rehabilitation.

Recommendation 2

Governments are encouraged to promote and implement institutional mechanisms, including through induction and training programmes, 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**

Comments:

Law enforcement agencies are professionally trained in first aid, included how to deal with people with drug use disorders.
However, the law enforcement authorities are not responsible to benchmark the drug dependence of any criminals. Addiction has to be checked by a doctor.

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**

Comments:

The principles of sentencing are laid down in Section 46 of the Criminal Code (Strafgesetzbuch - StGB). Section 46 paragraph 2 states that the court shall weigh the circumstances in favor of and against the offender and gives examples of those circumstances. Consideration shall in particular be given to the motives and aims of the offender; the attitude reflected in the offence and the degree of force of will involved in its commission; the degree of the violation of the offender's duties; the modus operandi and the consequences caused by the offence to the extent that the offender is to blame for them; the offender's prior history, his personal and financial circumstances; his conduct after the offence, particularly his efforts to make restitution for the harm caused as well as the offender's efforts at reconciliation with the victim.
These principles also apply to drug-related offences and allow flexibility when handing down sentences that take into account the nature and gravity of the offence as well as the personality and background of the offender.

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**

Comments:

It is possible to make use of the measures laid down in Sections 31a, 35, 36, 37 of the law on Narcotics (Betäubungsmittelgesetz - BtMG) or Section 64 Strafgesetzbuch (StGB) (see above, comments on Recommendation 1). The specific organization of those treatments lies in the responsibility of the individual federal states (Bundesländer) or at community level.

Recommendation 5

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

Any action taken **YES**

Comments:

The Federal Government Drug Commissioner (Die Drogenbeauftragte der Bundesregierung) coordinates the addiction and drug policies of the Federal Government, provides information on those policies and publishes an annual report (Drogen- und Suchtbericht) on these issues. The report provides, inter alia, information on projects, studies and initiatives of the Federal Government and others.

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**

Comments:

Data on prosecution and penal systems, and in that context on the use of alternatives to imprisonment, is collected by the Federal Statistical Office (Statistisches Bundesamt) and published in different criminal justice statistics (in particular statistic of the Public Prosecution Offices, statistics on prosecution and statistics on penal systems). These statistics include information on the number of people in the different kinds of alternatives to imprisonment mentioned in the comments to Recommendation 1.

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

Recommendation 1

Governments are encouraged to collect and analyse 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 programmes.

Any action taken **YES**

Comments:

Gender-disaggregated data are collected on a regular basis.

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 programmes, particularly for pregnant women and women with caretaking responsibilities.

Any action taken **YES**

Comments:

Takes place. For some years, children growing up in a family affected by addiction have been a particular focus of German drug policy.

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 programmes 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**

Comments:

Takes place.

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**

Comments:

According to Section 32 paragraph 2 of the German Anti Money Laundering Act (AMLA) the German Financial Intelligence Unit (FIU) is obliged to transmit the result of its analysis and all relevant information to the competent law enforcement agencies without delay if it finds in the operational analysis that property is related to money laundering, terrorist financing or another criminal offence. Further, it transmits personal data, upon request, to the law enforcement agencies insofar as this is necessary for the investigation of money laundering and terrorist financing or the conduct of criminal proceedings related to these, or the investigation of other threats and the conduct of other criminal proceedings.

According to Section 32 paragraph 3 of the AMLA in general the FIU shall transmit personal data, upon request, to the law enforcement agencies, the Federal Office for the Protection of the Constitution, the Federal Intelligence Service or the military counterintelligence office of the Federal Ministry of Defence insofar as this is necessary for

1. the investigation of money laundering and terrorist financing or the conduct of criminal proceedings related to these, or
2. the investigation of other threats and the conduct of other criminal proceedings not covered by number 1 above.

The FIU shall transmit personal data, ex officio or upon request, to competent domestic public authorities other than those mentioned above insofar as this is necessary for

1. taxation procedures,
2. procedures to protect the social security systems, or
3. the performance of tasks by the supervisory authorities.

Furthermore according to Section 32 paragraph 4 AMLA in the cases referred to in paragraph 3, first sentence, numbers 1 and 2, the law enforcement agencies and the Federal Office for the Protection of the Constitution shall be entitled to retrieve, by automated means, the data for the performance of their tasks from the FIU, insofar as no transmission restrictions preclude this.

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**

Comments:

According to Section 32 paragraph 7 of the German Anti Money Laundering Act (AMLA) the recipient may only use the personal data transmitted for the purpose for which they were transmitted. Their use for other purposes is permissible to the extent that it would also have been permissible for the data to be transmitted for those purposes. The purpose of the abovementioned transmission is to ensure law enforcement.

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 Programme against Money-Laundering of the United Nations Office on Drugs and Crime (UNODC) and other training institutions.

Any action taken **YES**

Comments:

The available tools are being used as appropriate.

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**

Comments:

The Federal Government intends to share the final report with UNODC.