



‘Associated Trio’: Accelerating the Accession of Georgia, Moldova, and Ukraine to the EU

Criminal Drug Law
and Policy Dimension

This publication was prepared and published by the Eurasian Harm Reduction Association (EHRA), a non-profit, membership-based public organisation that unites and supports more than 300 Central and Eastern European and Central Asian (CEECA) harm reduction activists and organisations to ensure the rights and freedoms, health and well-being of people who use psychoactive substances.

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Acronyms

CEPOL

European Union Agency for Law Enforcement Training

CESCR

Committee on Economic, Social and Cultural Rights

DG

Directorate-General

DG JUST

EU Directorate-General for Justice and Consumers

DG NEAR

Directorate-General for Neighbourhood and
Enlargement Negotiations

DG SANTE

Directorate-General for Health and Food Safety

EC

European Commission

ECHR

European Court of Human Rights

EDPQS

European Drug Prevention Quality Standards

EMCDDA

European Monitoring Centre for Drugs and Drug
Addiction

IMPACT

European Multidisciplinary Platform Against
Criminal Threats

EU

European Union

EUDA

European Union Drugs Agency

EUPC

The European Prevention Curriculum

Eurojust

European Union Agency for Criminal Justice
Cooperation

Europol

EU Agency for Law Enforcement Cooperation

Frontex

European Border and Coast Guard Agency

MoU

Memorandum of Understanding

UNAIDS

Joint United Nations Programme on HIV/AIDS

UNDP

United Nations Development Programme

UN OHCHR

United Nations Office of the High Commissioner for
Human Rights

WHO

World Health Organization



Brief information about the accession

In 2014, Georgia, Moldova, and Ukraine entered into Association Agreements with the European Union (EU). The Association Agreements highlighted commitments by the countries to respect democratic principles, the rule of law, good governance, human rights, and fundamental freedoms. Within such priority areas as justice, freedom, and security, the countries undertook to strengthen drug enforcement and the administration of justice on issues related to narcotic drugs.

In May 2021, the foreign ministers of Georgia, Moldova, and Ukraine collaboratively established the 'Associated Trio', demonstrating their collective commitment to advancing integration with the Union and the implementation of the Association Agreements¹.

By December 2023, the Associated Trio achieved the pivotal status of EU membership candidates, marking a significant milestone in their accession process. The European Commission (EC) recommended the initiation of accession negotiations.

The Associated Trio memorandum of understanding (MoU) is one of many indicators of the common interests of the countries related to European integration. The learning and sharing of best practices of law and policy reform form one such interest.

To join the EU, the three countries must meet a set of general criteria established by the EU, which are often referred to as the “Copenhagen criteria”². Among the criteria is the stability of institutions that guarantee democracy, the rule of law, human rights, and respect for and protection of minorities. Countries must also express a clear willingness and commitment to assume the obligations of EU membership and to align their policies with those of the EU.

Progress towards meeting these criteria by each candidate country is assessed on a case-by-case basis.

Due to this, Georgia, Moldova, and Ukraine can plan the fastest steps toward progress according to their national context. This may include selecting cross-cutting reforms that may simultaneously improve the stability of institutions that guarantee democracy, the rule of law, human rights, and the protection of minorities. One such cross-cutting issue is the reform of outdated drug laws and policies.



EU institutions that define or contribute to the EU drug policy



Although the EU Member States are primarily responsible for their own drug laws and policies, the EU is involved in preventing, dissuasion from (discouraging), and disrupting drug-related crime through cooperation of judiciary and law enforcement, intelligence sharing, interdiction efforts, asset confiscation, investigations, and border management. In addition to the conventional institutions the Council, Commission, and Parliament several specialised bodies are dedicated to addressing specific issues related to drugs³.

Table 1: EU institutions and regulations that define the EU drug policy

EU LAW-MAKING AND POLICY DIRECTION BODIES

Institution	Role	Regulation
Council of the EU (Council of Ministers) – voice of EU member governments	Adopts the EU drugs strategy and action plan; sets the political priorities and objectives for the EU drug policy; coordinates with the European Parliament and the Commission.	EU Drugs Strategy 2021-2025
European Parliament (elected by EU citizens) – the voice of EU citizens	Co-legislates with the Council on drug-related issues; adopts resolutions; reports on EU drug policy; monitors and evaluates the implementation of the EU drugs strategy and action plan.	Resolution on the EU's role in the global fight against drug trafficking
European Council (EU Heads of State)	Brings together EU leaders to set the EU's political agenda. Does not have a direct role in the legislative process or the development of specific policies, including the EU Drugs Strategy. The European Council may discuss broader strategic issues and provide high-level guidance on priorities for the EU, but the detailed development and adoption of policies, including the EU Drugs Strategy, occurs at the level of the Council of the European Union, which represents the member states more directly in the policymaking process.	EU Drugs Strategy 2021-2025

EU'S POLITICALLY INDEPENDENT EXECUTIVE ARM

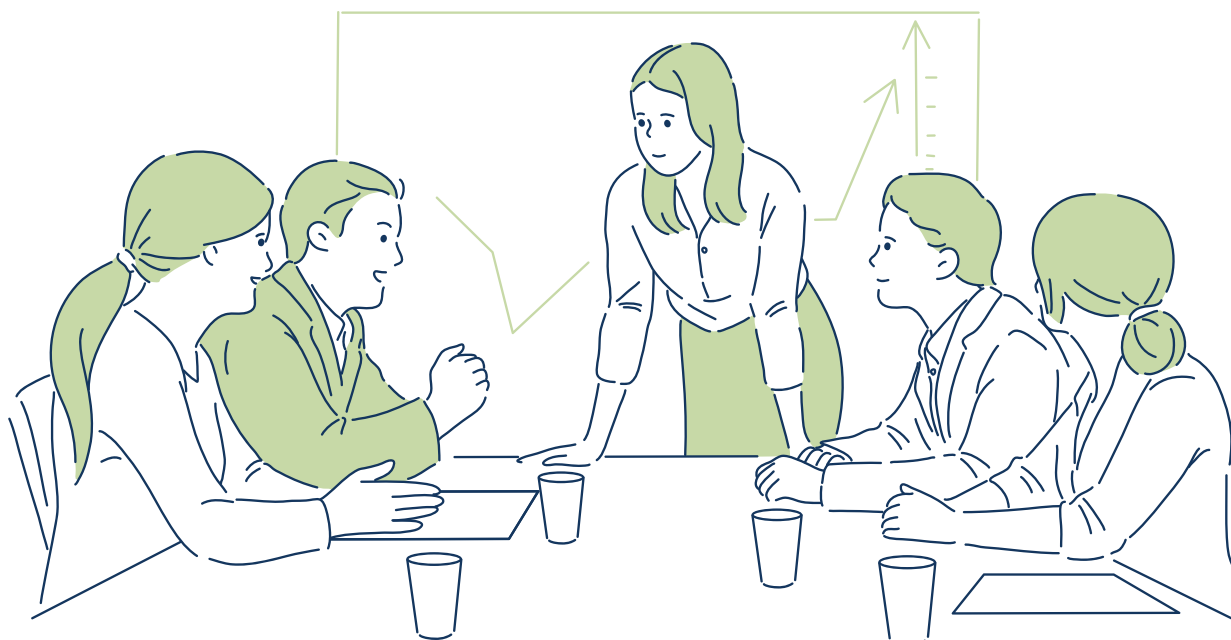
Institution	Role	Regulation
European Commission	Proposes and implements EU drug policy; coordinates with member states and international partners; monitors and evaluates the implementation of the EU drugs strategy and action plan. The Commission is organised into policy departments, known as Directorates-General (DGs). Most relevant for this brief are DG NEAR and DG SANTE (see below).	EU Agenda and Action Plan on Drugs, 2021-2025
Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR)	DG NEAR has a limited mandate of coordinating cooperation on drug monitoring, drug enforcement, health, and science development between the EU, the neighbouring countries, and countries of the EU enlargement agenda, including the Associated Trio.	2023 EU Enlargement package ⁴
Directorate-General for Health and Food Safety (DG SANTE)	DG SANTE is an EU agency responsible for evaluating and overseeing pharmaceutical products. The drug policy mandate of DG SANTE is to furnish dependable data and analyses regarding drugs, drug dependence, and their impact. It aims to support evidence-based interventions and policymaking in the EU and neighbouring countries. Additionally, DG SANTE engages in international collaboration on pharmaceuticals with other regulatory bodies and organisations.	Strategic Plan 2020-2024, DG Health and Food Safety
EU Directorate-General for Justice and Consumers (DG JUST)	DG JUST is responsible for issues related to justice, consumer rights, and gender equality within the European Commission. This mandate may interfere with the effective, rights-based implementation and enforcement of EU legislation on drugs, such as the EU Drugs Strategy, 2021-2025, and the EU Action Plan on Drugs, 2021-2025.	DG JUST Strategic Plan, 2020-2024

COUNCIL OF EUROPE DRUG POLICY COOPERATION PLATFORM

Institution	Role	Regulation
Pompidou Group	Although not an EU body, the Pompidou Group is the Council of Europe's drug policy cooperation platform. It offers scientific evidence and analysis on drugs, dependence, and their consequences. It backs evidence-based interventions and policymaking within 41 Pompidou Group member states, including Georgia, Moldova, and Ukraine. Aligned with the Council of Europe's core values of human rights, democracy, and the rule of law, the Pompidou Group aims to strike a balance between community interests and the safeguarding of individual fundamental rights in addressing drug use and illicit trafficking.	Statute for the Pompidou Group

AGENCIES OF THE EUROPEAN UNION

Institution	Role	Regulation
European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)	Provides scientific data and analyses on the drug situation and responses in Europe; supports evidence-based policymaking and practice; assesses the risks of new psychoactive substances.	Regulation (EC) No 1920/2006
European Union Drugs Agency (EUDA)	On 2 July 2024, EMCDDA will transform into EUDA, maintaining a health focus but broadening its mandate to tackle drug supply and reduced availability in the EU. The agency aims to address safety and security concerns by cooperating internationally, especially with third countries, in particular candidate countries, and supporting UN initiatives.	Regulation (EU) 2023/1322 of the European Parliament and of the Council of 27 June 2023 on the European Union Drugs Agency(EUDA) and repealing Regulation (EC) No 1920/2006
EU Agency for Law Enforcement Cooperation (Europol)	Supports member states in preventing and combating drug trafficking and related crimes; facilitates information exchange and operational cooperation; and provides threat assessments and intelligence analyses.	Regulation (EU) 2016/794
European Multidisciplinary Platform Against Criminal Threats (EMPACT)	Implements the EU policy cycle for organised and serious international crime; coordinates operational actions and joint investigations against drug trafficking networks; fosters cross-border and cross-sector cooperation in partnership with the European Union Agency for Law Enforcement Training (CEPOL), the European Union Agency for Criminal Justice Cooperation (Eurojust), and the European Border and Coast Guard Agency (Frontex).	Council conclusions on setting the EU's priorities for the fight against organised and serious international crime between 2021 and 2025





Drug law reforms to improve the stability of democratic institutions

Georgia, Moldova, and Ukraine have made significant progress in reforming health laws to facilitate access to harm reduction services for individuals using drugs, including within prison settings.

However, these countries continue to retain outdated, largely Soviet-era, imbalanced criminal drug laws and enforcement policies with a disproportionate focus on harsh drug enforcement⁵. These antiquated legal frameworks obstruct the availability of health services, contribute to widespread systemic human rights violations, fuel prison overcrowding, encourage corruption among law enforcement officials, and result in the misapplication of laws. Moreover, such laws divert public resources away from addressing wholesale drug trafficking by disproportionately targeting individuals who use drugs. There is an urgent need for comprehensive reforms in criminal drug laws and enforcement policies to shift the focus from penalising drug users to targeting those involved in wholesale drug trafficking, thereby promoting a more effective and rights-based approach to drug enforcement.

As part of the EU accession process, reforming drug laws can contribute to improving the stability of a country's democratic institutions in several ways:



REDUCTION IN CORRUPTION

Strict and punitive drug laws often create opportunities for corruption within law enforcement and judicial institutions. Reforming these laws, such as decriminalisation or regulation, can help reduce the financial incentives for corruption and promote transparency within these institutions. This, in turn, strengthens the foundations of democracy by fostering a cleaner and more accountable political system.



ENHANCED RULE OF LAW

Punitive drug laws can sometimes lead to arbitrary or selective enforcement, undermining the rule of law. When drug laws are reformed to be more rational and proportionate, it fosters a sense of fairness and equality under the law. This contributes to trust in the legal system by citizens, a critical aspect of a stable democracy.



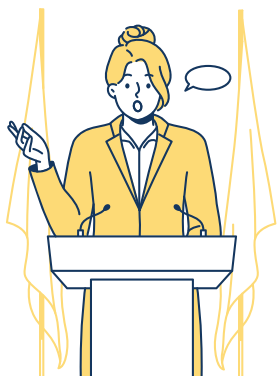
RESPECT FOR HUMAN RIGHTS

Stringent drug policies can result in human rights abuses, such as overcrowded prisons, arbitrary arrests, and violations of individual freedoms. Reforms that prioritise harm reduction and a rights-based approach ensure that individual human rights are upheld, aligning with democratic principles.



RESOURCE ALLOCATION

Draconian drug policies can divert significant resources away from addressing more pressing societal issues. By redirecting resources towards public health initiatives, education, and social services, drug law reforms can improve overall governance and the government's capacity to address the needs of citizens effectively.



PUBLIC TRUST AND ENGAGEMENT

When drug policies are perceived as overly punitive or ineffective, it can erode public trust in government institutions. Reform efforts that are evidence-based and responsive to public health concerns are more likely to garner public support and engagement with the democratic process. Moreover, reforms can win public trust when the communities of people affected by drug problems are meaningfully engaged in the process of law and policy reforms, including through community-led monitoring initiatives.



LAW ENFORCEMENT AND CRIMINAL JUSTICE SYSTEM EFFICIENCY

Overburdened criminal justice systems can hinder the proactive enforcement of fundamental laws, and timely resolution of cases and contribute to backlogs in courts. Drug law reform can alleviate these strains, allowing the law enforcement and justice system to focus on more pressing matters and operate more efficiently.

An imbalanced approach to drug laws and policies in Georgia, Moldova, and Ukraine, which places a disproportionate emphasis on law enforcement rather than public health, represents a significant challenge to the development of sustainable democratic institutions, the rule of law, and the protection of human rights. Reforming these drug laws and policies stands as one of the most potent cross-cutting instruments for rapidly advancing progress in establishing durable institutions for democracy, the rule of law, good governance, and human rights. Such reforms can foster a more just and equitable society, reduce the burden on law enforcement, and redirect resources toward enhancing public health and social well-being.



Association agreements

The Association Agreements between the EU and Georgia, Moldova, and Ukraine encompass substantive provisions concerning drug enforcement. These Agreements are designed to fortify collaborative efforts between the involved parties in combating both drug trafficking and drug abuse. Within the Agreements, there are explicit provisions facilitating the exchange of information and best practices, alongside the encouragement of joint initiatives and training programmes. Moreover, the Agreements establish a structured framework for cooperation among the law enforcement agencies of the parties.

These documents, emphasising a comprehensive approach, specifically delineate issues related to drug production and trafficking from those pertaining to drug use and public health.

The EC provides regular updates to the European Parliament on each of the three countries, including issues related to drug enforcement^{6,7,8}.

Association Agreements stipulate a balanced and integrated approach towards drug issues. Arguably, neither of the Associated Trio countries has achieved such an approach, mostly due to their respective outdated criminal drug laws.

- 6 European Commission (2023). Commission staff working document. Ukraine 2023 Report. Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023. Communication on EU Enlargement policy. SWD(2023) 699 final. Brussels; European Commission, 8.11.2023. https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf (accessed 11 March 2024).
- 7 European Commission (2023). Commission staff working document. Republic of Moldova 2023 Report. Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions. 2023 Communication on EU Enlargement Policy. SWD(2023) 698 final. Brussels; European Commission, 8.11.2023. https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_698%20Moldova%20report.pdf (accessed 11 March 2024).
- 8 European Commission (2023). Commission staff working document. Georgia 2023 Report. Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2023 Communication on EU Enlargement policy. SWD(2023) 697 final. Brussels; European Commission, 8.11.2023. https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_697%20Georgia%20report.pdf (accessed 11 March 2024).

Table 2: Relevant sections of Association Agreements

COUNTRY	SECTION OF THE ASSOCIATION AGREEMENT
GEORGIA	<p>Article 17</p> <p>The Parties shall cooperate on combating and preventing criminal and illegal activities, in particular, transnational activities, organised or otherwise, such as:</p> <ul style="list-style-type: none"> • smuggling and trafficking in human beings as well as small arms and illicit drugs.
	<p>Article 18</p> <ol style="list-style-type: none"> 1. Within their respective powers and competencies, the Parties shall cooperate to ensure a balanced and integrated approach towards drug issues. Drug policies and actions shall be aimed at reinforcing structures for preventing and combating illicit drugs, reducing the supply of, trafficking in and the demand for illicit drugs, addressing the health and social consequences of drug abuse with a view to reducing harm as well as at a more effective prevention of diversion of chemical precursors used for the illicit manufacture of narcotic drugs and psychotropic substances. 2. The Parties shall agree on the necessary methods of cooperation to attain these objectives. Actions shall be based on commonly agreed principles along the lines of the relevant international conventions, and the EU Drugs Strategy (2013-20), the Political Declaration on the guiding principles of drug demand reduction, approved by the Twentieth United Nations General Assembly Special Session on Drugs in June 1998.
	<p>Article 355-356</p> <p>The Parties agree to develop their cooperation in the field of public health, with a view to raising the level of public health safety and protection of human health as an essential component for sustainable development and economic growth.</p> <p>The cooperation shall cover the following areas, in particular:</p> <ul style="list-style-type: none"> • epidemiological surveillance and control of communicable diseases, such as for example HIV/AIDS, viral hepatitis, tuberculosis as well as antimicrobial resistance, as well as increased preparedness for public health threats and emergencies; • prevention and control of non-communicable diseases, mainly through exchange of information and best practices, promoting healthy lifestyles, physical activity and addressing major health determinants, such as nutrition, addiction to alcohol, drugs and tobacco.
MOLDOVA	<p>Article 16</p> <p>Preventing and combating organised crime, corruption and other illegal activities.</p> <p>The Parties shall cooperate on preventing and combating all forms of criminal and illegal activities, organised or otherwise, including those of a transnational character, such as:</p> <ul style="list-style-type: none"> • smuggling and trafficking in goods, including in small arms and illicit drugs.
	<p>Article 17</p> <ul style="list-style-type: none"> • Within their respective powers and competencies, the Parties shall cooperate to ensure a balanced and integrated approach towards drug issues. Drug policies and actions shall be aimed at reinforcing structures for tackling illicit drugs, reducing the supply of, trafficking in and the demand for illicit drugs, coping with the health and social consequences of drug abuse, as well as at a more effective prevention of diversion of chemical precursors used for the illicit manufacture of narcotic drugs and psychotropic substances. • The Parties shall agree on the necessary methods of cooperation to attain those objectives. Actions shall be based on commonly agreed principles along the lines of the relevant international conventions, the EU Drugs Strategy (2013-20), the Political Declaration on the guiding principles of drug demand reduction, approved by the United Nations General Assembly Twentieth Special Session on Drugs in June 1998.

Article 113-114

The Parties agree to develop their cooperation in the field of public health, with a view to raising the level of public health safety and protection of human health as a precondition for sustainable development and economic growth.

The cooperation shall cover, in particular, the following areas:

- epidemiological surveillance and control of communicable diseases, such as HIV/AIDS, viral hepatitis and tuberculosis, as well as increased preparedness for public health threats and emergencies;
- prevention and control of non-communicable diseases, mainly through exchange of information and best practices, promoting healthy lifestyles and addressing major health determinants, such as nutrition and addiction to alcohol, drugs and tobacco.

UKRAINE

Parties declared commitment to combating organised crime and money laundering, to reducing the supply of and demand for illicit drugs and to stepping up cooperation in the fight against terrorism.

Article 21

1. The Parties shall cooperate on issues relating to illicit drugs, on the basis of commonly agreed principles along the lines of the relevant international conventions, and taking into account the Political Declaration and the Special Declaration on the guiding principles of drug demand reduction, approved by the Twentieth United Nations General Assembly Special Session on Drugs in June 1998.
2. This cooperation shall aim to combat illicit drugs, reduce the supply of, trafficking in, and demand for, illicit drugs, and cope with the health and social consequences of drug abuse. It shall also aim at a more effective prevention of diversion of chemical precursors used for the illicit manufacture of narcotic drugs and psychotropic substances.
3. The Parties shall use the necessary methods of cooperation to attain these objectives, ensuring a balanced and integrated approach towards the issues at stake.

Article 22

Fight against crime and corruption

1. The Parties shall cooperate in combating and preventing criminal and illegal activities, organized or otherwise.
2. This cooperation shall address, inter alia: smuggling of, and trafficking in, human beings as well as firearms and illicit drugs.

Article 426-427

The Parties shall develop their cooperation in the public health field, to raise the level of public health safety and protection of human health as a precondition for sustainable development and economic growth.

Such cooperation shall cover, in particular, the following areas:

- prevention and control of communicable diseases, such as HIV/AIDS and tuberculosis, increased preparedness regarding highly pathogenic disease outbreaks, and implementation of the International Health Regulations;
- prevention and control of non-communicable diseases, through exchange of information and good practices, promoting healthy lifestyles, addressing major health determinants and problems, such as mother and child health, mental health, and addiction to alcohol, drugs and tobacco, including implementation of the Framework Convention on Tobacco Control of 2003.



EU regulations related to drug enforcement

EU laws and regulations that relate to drug enforcement primarily concentrate on three key objectives: combatting drug trafficking; preventing drug abuse; and enhancing international cooperation in this domain. The key principles for the EU to achieve these objectives are enshrined in the approach statement of the EU Drugs Strategy:

“ *The Strategy takes an evidence-based, integrated, balanced and multidisciplinary approach to the drugs phenomenon at national, EU and international level. It also incorporates a gender equality and health equity perspective⁹.*

Essential legal instruments within the EU's drug enforcement framework encompass the European Council Framework Decision 2004/757/JHA, the EU Drugs Strategy, and the EU Action Plan on Drugs. These documents do not impose strictly binding requirements but rather offer recommendations, with the expectation that each EU member state actively contributes to shaping the broader impact on critical aspects of the EU's drug landscape. They underline a comprehensive approach that combines law enforcement actions with prevention, treatment, and harm reduction measures to effectively address the intricate challenges posed by drug abuse and trafficking.

Council Framework Decision 2004/757/JHA¹⁰

The Council Framework Decision 2004/757/JHA establishes the core components of criminal acts and associated penalties concerning drug trafficking. The effectiveness of combating illicit drug trafficking relies heavily on aligning national measures with the provisions set out in this Framework Decision. Article 2 of the Decision outlines specific offenses that must be subject to criminal penalties within member states. It is important to note that, unlike Article 3 of the 1988 UN Convention against Illicit Traffic in Narcotic and Psychotropic Substances, Article 2 of the Framework Decision excludes activities related to personal drug consumption (Article 2(2)).

Table 3. Article 3, 1988 UN Convention and Article 2, Framework Decision

Article 3	Article 2
<p>United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances</p> <p>1. OFFENCES AND SANCTIONS Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:</p> <p>a)</p> <ul style="list-style-type: none">i. The production, manufacture, extraction; preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;ii. The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;iii. The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in i) above;iv. The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;v. The organization, management or financing of any of the offences enumerated in i), ii), iii) or iv) above; <p>b)</p> <ul style="list-style-type: none">i. The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;ii. The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences	<p>Council Framework Decision 2004/757/JHA</p> <p>1. CRIMES LINKED TO TRAFFICKIN IN DRUGS AND PRECURSORS Each Member State shall take the necessary measures to ensure that the following intentional conduct when committed without right is punishable:</p> <ul style="list-style-type: none">(a) the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of drugs;(b) the cultivation of opium poppy, coca bush or cannabis plant;(c) the possession or purchase of drugs with a view to conducting one of the activities listed in (a);(d) the manufacture, transport or distribution of precursors, knowing that they are to be used in or for the illicit production or manufacture of drugs. <p>2. The conduct described in paragraph 1 shall not be included in the scope of this Framework Decision when it is committed by its perpetrators exclusively for their own personal consumption as defined by national law.</p>

10 Framework Decision 2004/757/JHA of 25 October 2004, Brussels; Official Journal of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004F0757> (accessed 11 March 2024).

Article 3

Article 2

established in accordance with subparagraph a) of this paragraph or from an act of participation in such an offence or offences;

c)

Subject to its constitutional principles and the basic concepts of its legal system:

- i. The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with subparagraph a) of this paragraph or from an act of participation in such offence or offences;
- ii. The possession of equipment or materials or substances listed in Table I and Table II, knowing that they are being or are to be used in or for the illicit cultivation, production or iii) Publicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this article or to use narcotic drugs or psychotropic substances illicitly;
- iii. Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.

3. Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

4. a. Each Party shall make the commission of the offences established in accordance with paragraph 1 of this article liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.

b. The Parties may provide, in addition to conviction or punishment, for an offence established in accordance with paragraph 1 of this article, that the offender shall undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.

c. Notwithstanding the preceding subparagraphs, in appropriate cases of a minor nature, the Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare.

d. The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 2 of this article, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender.

5. The Parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences

Article 3

Article 2

established in accordance with paragraph 1 of this article particularly serious, such as:

- a. The involvement in the offence of an organized criminal group to which the offender belongs;
- b. The involvement of the offender in other international organized criminal activities;
- c. The involvement of the offender in other illegal activities facilitated by commission of the offence;
- d. The use of violence or arms by the offender;
- e. The fact that the offender holds a public office and that the offence is connected with the office in question;
- f. The victimization or use of minors;
- g. The fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities;
- h. Prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a Party.

6. The Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences, and with due regard to the need to deter the commission of such offences.

7. The Parties shall, ensure that their courts or other competent authorities bear in mind the serious nature of the offences enumerated in paragraph 1 of this article and the circumstances enumerated in paragraph 5 of this article when considering the eventuality of early release or parole of persons convicted of such offences.

8. Each Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with paragraph 1 of this article, and a longer period where the alleged offender has evaded the administration of justice.

9. Each Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or convicted of an offence established in accordance with paragraph 1 of this article, who is found within its territory, is present at the necessary criminal proceedings.

10. For the purpose of co-operation among the Parties under this Convention, including, in particular, co-operation under articles 5, 6, 7 and 9, offences established in accordance with this article shall not be considered as fiscal offences or as political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the Parties.
Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a Party and that such offences shall be prosecuted and punished in conformity with that law.

Typically, member states do not fully incorporate the definitions from Article 2 into their national legislation. This underscores the importance of maintaining consistency in interpretations and implementation principles across member states¹¹.

Other Council Decisions on Drug Enforcement and Health

In addition to the Council Framework Decision 2004/757/JHA, the Council of the EU has adopted several other decisions related to drug law enforcement and health. While these decisions may not directly pertain to the reform of criminal drug laws and policies, they offer insights into various drug enforcement issues within the realm of EU coordination and cooperation:

COUNCIL DECISION 2005/387/JHA: Establishes a mechanism for the swift exchange of information on new psychoactive substances, risk assessment, and control measures. It aims to safeguard public health and prevent the emergence of a new drug market.

COUNCIL DECISION 2008/615/JHA: Strengthens cross-border cooperation, especially in the fight against terrorism and cross-border crime. It facilitates the exchange of information and intelligence among law enforcement authorities of member states. It also establishes joint investigation teams and outlines mutual recognition of decisions related to property or evidence freezing.

COUNCIL DECISION 2008/616/JHA: Defines the rules for implementing Council Decision 2008/615/JHA, including technical specifications for data transmission, procedures for joint investigation teams, and conditions for recognising the freezing of decisions.

COUNCIL RESOLUTION OF 8 JUNE 2011 on a new EU approach to the detection and mitigation of the impact of new psychoactive substances: Advocates for a comprehensive and multidisciplinary approach to detecting and mitigating the impact of new psychoactive substances. It involves health, social, education, research, law enforcement, and judicial authorities. It encourages member states to enhance cooperation and coordination at both the EU and international levels.

COUNCIL CONCLUSIONS on promoting the use of alternatives to coercive sanctions for drug using offenders (8 MARCH 2018): Emphasises the importance for Member States to adopt alternative measures to coercive sanctions for drug-using offenders, aiming to prevent crime, reduce recidivism, and enhance the criminal justice system's efficiency. These measures include education; treatment; suspension of sentence; rehabilitation; and social reintegration. It encourages Member States to implement these measures at various stages of legal proceedings; to share implementation data; raise awareness through training; and promote international cooperation and the exchange of best practices. It also invites the EMCDDA to monitor and share information on the effectiveness and cost-effectiveness of these measures, with the Commission supporting these efforts as part of the overall evaluation of the EU Drugs Strategy.

In addition, the EMCDDA offers guiding documents that help understand and implement the balanced approach to prevention, harm reduction, and evidence-based drug dependence treatment.

- Health and social responses to drug problems: a European guide¹²: Examines current public health challenges in the field of drugs in EU countries. It provides practical advice to practitioners and policymakers, addressing the design, targeting, and implementation of effective responses, taking into account various patterns of drug use (such as cannabis, opioids, polydrug use), different drug-related harms (infectious diseases, overdose), diverse settings (communities, prisons, recreational settings, schools, workplaces), and various vulnerable groups of people (such as homeless individuals, migrants).

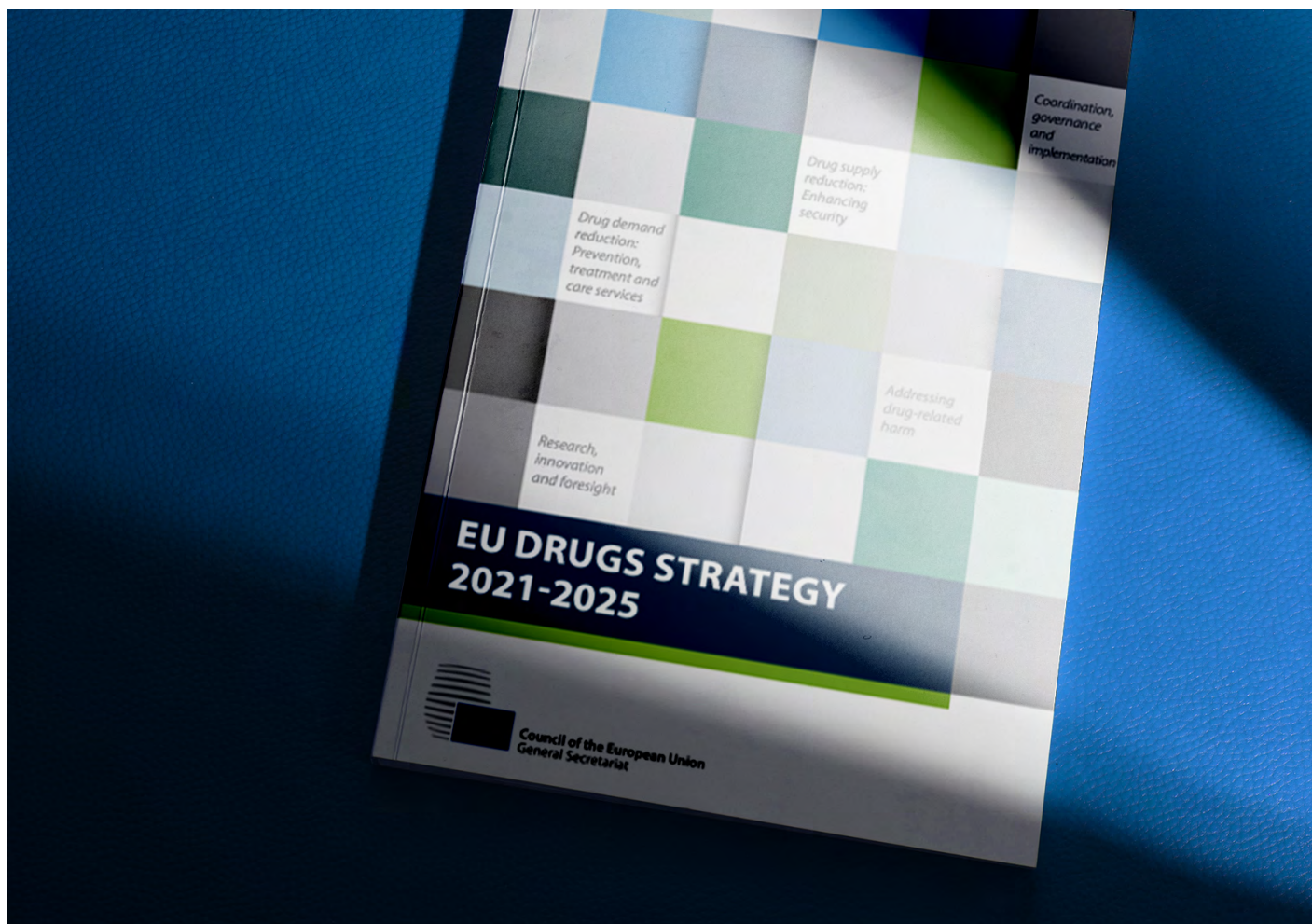
EU Drugs Strategy¹³

The EU Drugs Strategy sets the framework for EU drug policy and outlines the priorities and objectives for addressing drug-related issues. It promotes a balanced approach that encompasses drug demand reduction (prevention, treatment, harm reduction) and drug supply reduction (law enforcement, international cooperation).

The Drugs Strategy requires that focus should be given to tracking, tracing, freezing, and confiscating the huge criminal assets obtained from drug trafficking and related offenses in order to remove the capacity of organised crime groups to engage in future crimes and to infiltrate the legal economy. Essentially the Strategy follows the European Council Framework Decision 2004/757/JHA in delineating punitive measures as only suitable for the offences of trafficking from all other measures suitable to the prevention of drug use; raising awareness of the adverse effects of drugs; ensuring access to, and the strengthening of, treatment and care services, harm-reduction interventions and other measures to protect and support people who use drugs; and addressing the health and social needs of people who use drugs in prison settings and after release. The Strategy stipulates the stepping-up of efforts in mainstreaming the implementation of effective alternatives to coercive sanctions for drug-using offenders and for people arrested, charged with, or convicted for drug-related offenses or people found in possession of drugs for personal use. The Strategy also stipulates the meaningful participation and involvement of civil society, including the Civil Society Forum on Drugs, in the development and implementation of drug policies at national, EU, and international levels.

12 European Monitoring Centre for Drugs and Drug Addiction (2021). Health and social responses to drug problems: a European guide. Luxembourg; Publications Office of the European Union. https://www.emcdda.europa.eu/publications/health-and-social-responses-a-european-guide_en (accessed 11 March 2024).

13 General-Secretariat of the Council of the European Union (2021), Ibid. The EU Drugs Strategy is an important EU policy document that guides the EU's approach to drug-related issues. While it is not legally binding, it plays an essential role in shaping the EU's drug policies and promoting coordination and cooperation among member states. It is accompanied by specific action plans and initiatives that may have legal or regulatory implications at both the EU and national levels. However, the strategy itself is a high-level policy framework



The EU Action Plan on Drugs¹⁴

The EU Drug Action Plan complements the EU Drugs Strategy by listing specific measures and actions to be undertaken collectively by EU member states and the EC in response to drug-related challenges. It encompasses initiatives related to enhancing cooperation in drug law enforcement, particularly in combating drug trafficking. This cooperation entails fostering harmonised approaches among countries in defining trafficking offenses, emphasising a shared focus rather than identical wording. The Action Plan also underscores the imperative to reduce barriers to treatment access for individuals who use drugs. It advocates for the expansion of effective measures that serve as alternatives to coercive sanctions for drug-related offenders, those in pre-trial detention, individuals arrested, charged, or convicted for drug-related offenses, or those found in possession of drugs for personal use. These measures include, but are not limited to, treatment, rehabilitation, recovery, and social reintegration, all in alignment with respective national legislation.



Human rights documents to inform reforms

The EU Drugs Strategy 2021-2025 is guided by the right to health and, among other documents, refers to the International Guidelines on Human Rights and Drug Policy¹⁵ and the UN system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration¹⁶.

15 UNAIDS, UNDP, WHO, UN OHCHR, International Centre on Human Rights and Drug Policy (2020). International Guidelines on Human Rights and Drug Policy. New York; UNDP.
<https://www.undp.org/publications/international-guidelines-human-rights-and-drug-policy> (accessed 11 March 2024).

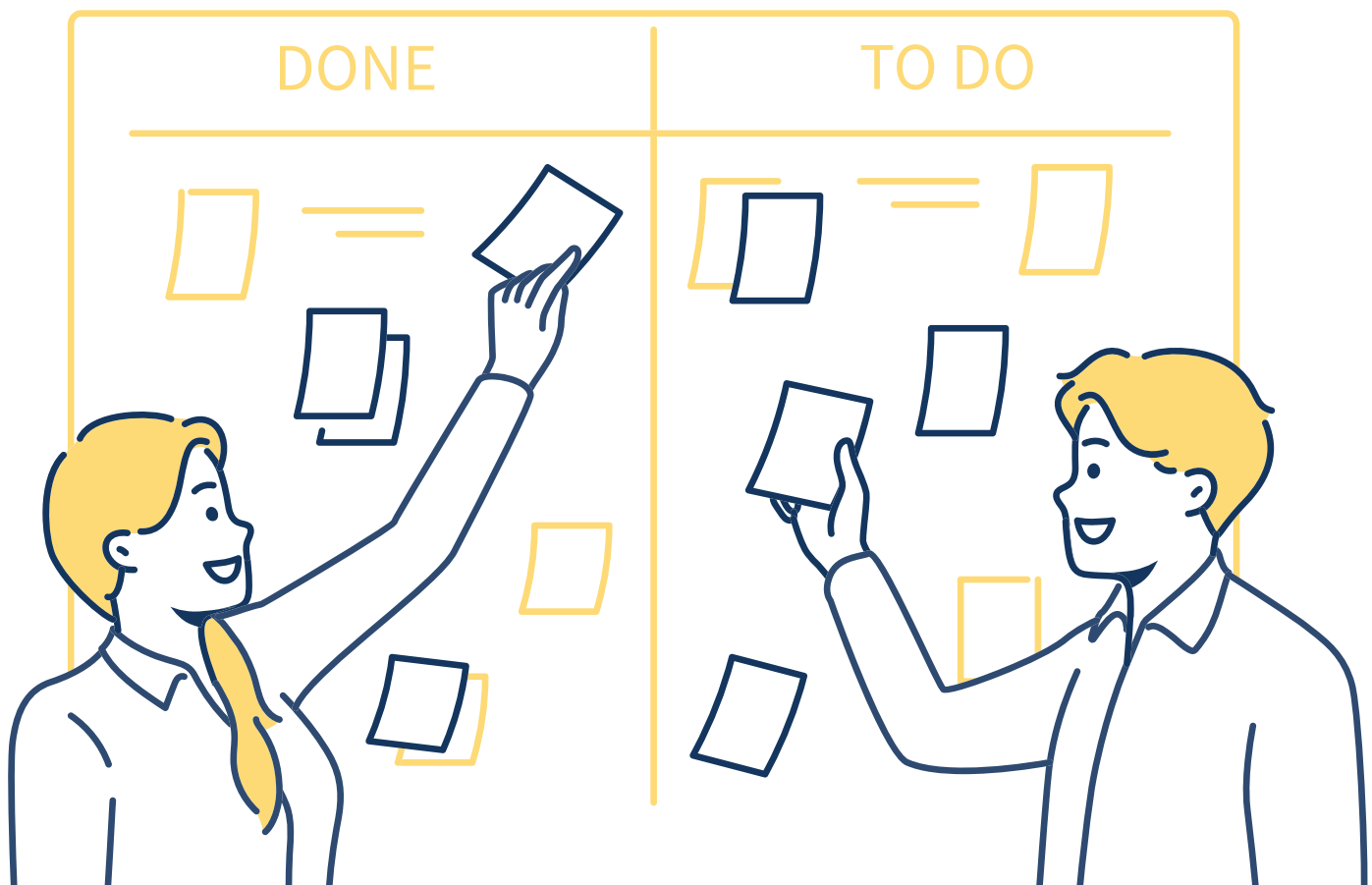
16 United Nations (2018). United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration. New York; United Nations, NCEB/2018/2. 2018.
[https://unsceb.org/sites/default/files/2021-01/2018 Nov - UN system common position on drug policy.pdf](https://unsceb.org/sites/default/files/2021-01/2018%20Nov%20UN%20system%20common%20position%20on%20drug%20policy.pdf) (accessed 11 March 2024).

International Guidelines on Human Rights and Drug Policy

The guidelines serve as a tool to apply established human rights principles within the legal and policy framework of drug control. Their aim is to enhance the protection of human rights, including their interpretation and application within the drug control conventions. They establish a set of common standards that can guide the development of sustainable, rights-based approaches to drug control, taking into account the national context of a particular country. Decriminalisation of possession for personal use is mentioned as one of the interventions to enhance the implementation of the right to health, the right to privacy, freedom of thought, conscience, and religion.

The UN System Common Position supports the implementation of the international drug control policy through effective inter-agency collaboration

The 2018 UN System Common Position emphasises the need for harmonised efforts among UN entities, promoting a coherent and integrated response to drug-related challenges while prioritising human rights, public health, and sustainable development. The Common Position establishes the need to promote alternatives to conviction and punishment in appropriate cases, including the decriminalisation of drug possession for personal use; promote the principle of proportionality; to address prison overcrowding and over-incarceration by people accused of drug crimes; to support the implementation of effective criminal justice responses that ensure legal guarantees and due process safeguards pertaining to criminal justice proceedings and ensure timely access to legal aid and the right to a fair trial; and to support practical measures to prohibit arbitrary arrest and detention and torture.

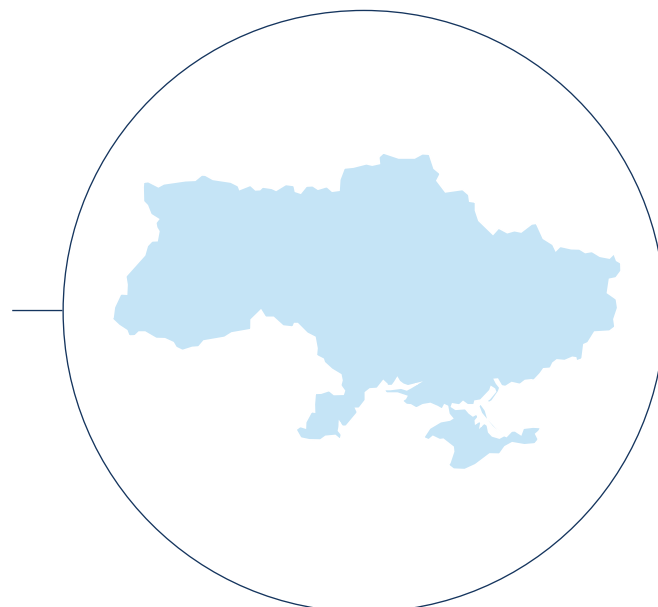


Concluding observations of the Committee on Economic, Social, and Cultural Rights

Committee on Economic, Social and Cultural Rights (CESCR) monitors the implementation of the International Covenant on Economic, Social and Cultural Rights – a human rights treaty signed and ratified by Georgia, Moldova, and Ukraine¹⁷. Article 12 of the Covenant guarantees the right to health. CESCR recommendations point to country-related issues and provide guidance on how to address them in view of the right to health. Given the similarities between Georgia, Moldova and Ukraine, these recommendations shall be taken into account in all of these countries for drug policy reforms.

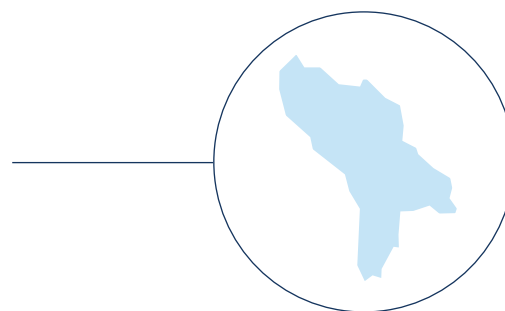
CONCLUDING OBSERVATIONS ON THE SEVENTH PERIODIC REPORT OF UKRAINE¹⁸

In April 2020, the Committee recommended Ukraine to apply a coherent human rights-based approach to people who use drugs and consider decriminalising drug possession for personal consumption. The Committee also encouraged Ukraine to continue its efforts to expand harm reduction programmes, particularly in prisons; to ensure the quality and adequacy of the privatised opioid substitution therapy programmes; to take the necessary measures to combat social stigma against people who use drugs by training the police, social workers, child protection officers, and medical professionals, as well as to raise awareness among the public, especially about the right to health in the context of drug control.



CONCLUDING OBSERVATIONS ON THE THIRD PERIODIC REPORT OF THE REPUBLIC OF MOLDOVA¹⁹

In October 2017, the Committee recommended the Republic of Moldova to apply a human rights-based approach to the treatment of drug users and to provide appropriate health care, psychological support, and rehabilitation. It also urged the State party to maintain harm reduction programmes for drug users.



17 Ukraine signed the Covenant on 20 March 1968 and ratified it on 12 November 1973. See UN Treaty Collection. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=en (accessed 11 March 2024).

18 Committee on Economic, Social and Cultural Rights (2 Apr 2020). Concluding observations of the Committee on Economic, Social and Cultural Rights on the seventh periodic report of Ukraine. E/C.12/UKR/CO/7. Geneva; UN Economic and Social Council, Paras. 42–43. [https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuWxT7OYzyYjJGL8qwRLmzDL%](https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuWxT7OYzyYjJGL8qwRLmzDL%26) (accessed 11 March 2024).

19 Committee on Economic, Social and Cultural Rights (19 October 2017). Concluding observations on the third periodic report of the Republic of Moldova. E/C.12/MDA/CO/3. Geneva; UN Economic and Social Council, Para. 67. [https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW2YzVRrmjV5ZGpj%26Fi0fjDspZ08NX%](https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW2YzVRrmjV5ZGpj%26Fi0fjDspZ08NX%26) (accessed 11 March 2024).

Judgments of the European Court of Human Rights (ECHR)

Georgia, Moldova, and Ukraine accepted the jurisdiction of ECHR, whose judgments concerning one of the three countries are equally informative for drug policy reforms in each of them, given the similarity of drug enforcement. Several important judgments from the ECHR have addressed drug policy matters in Georgia, highlighting recurring human rights violations by drug enforcement agencies^{20, 21, 22, 23}. These violations involve the planting of drugs on individuals deemed socially vulnerable, often initially suspected of being intoxicated, or arrested based on anonymous reports of drug possession. Post-arrest, unauthorised personal searches reveal small drug quantities (such as 1.3962 grams of heroin in *Kalandia v. Georgia*, or 8 grams of cannabis in *Shubitidze v. Georgia*). Notably, these searches lack proper authorisation and violate the norms of criminal procedure.

Compounding these violations, national courts subsequently admit unlawfully obtained evidence despite well-substantiated defense arguments challenging procedural irregularities. These judgments underscore a systemic failure to adhere to legal procedures, emphasising the need for a critical examination of domestic legal frameworks and enforcement practices to address documented human rights breaches in Georgia's drug policy enforcement.

These cases notably indicate a pressing need to shift the focus of drug enforcement efforts. Rather than disproportionately persecuting individuals carrying negligible amounts of drugs, there is a compelling argument for redirecting attention toward operations targeting wholesale drug trafficking. Such a recalibration would align enforcement priorities with the overarching goal of addressing systemic issues and safeguarding human rights in the context of drug policy enforcement in Georgia.

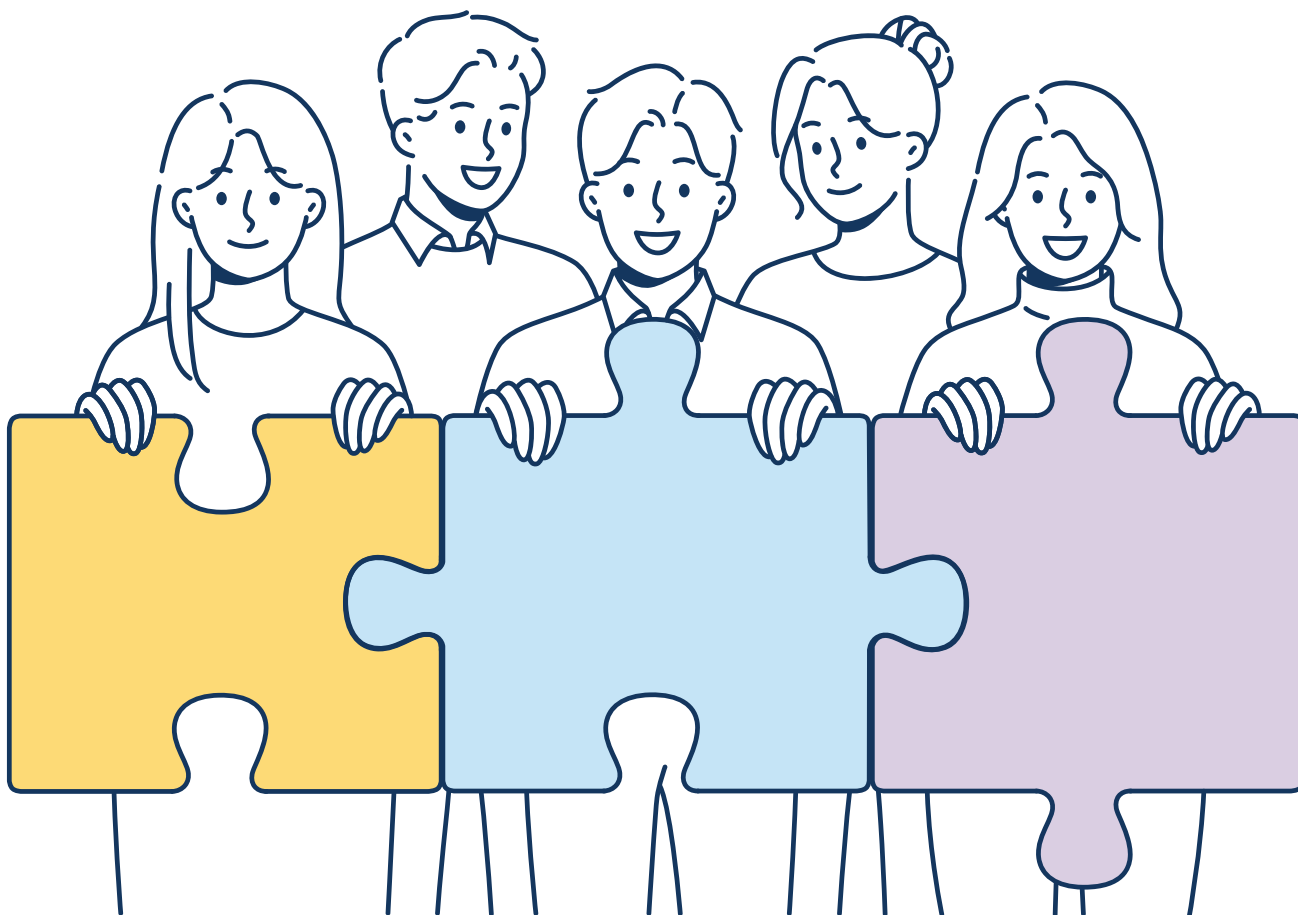


20 European Court of Human Rights. *Kalandia v. Georgia*, Application no. 57255/10, Judgment of 22 April 2021. Strasbourg; ECHR. <https://hudoc.echr.coe.int/fre#%7B%22languageisocode%22:%5B%22001-209324%22%5D%7D> (accessed 11 March 2024).

21 European Court of Human Rights. *Shubitidze v. Georgia*, Application no. 43854/12, Judgment of 17 June 2021. Strasbourg; ECHR. <https://hudoc.echr.coe.int/fre#%7B%22languageisocode%22:%5B%22001-210418%22%5D%7D> (accessed 11 March 2024).

22 European Court of Human Rights. *Kobiashvili v. Georgia*, Application no. 36416/06, Judgment of 14 March 2019. Strasbourg; ECHR. <https://hudoc.echr.coe.int/fre#%7B%22languageisocode%22:%5B%22001-191544%22%5D%7D> (accessed 11 March 2024).

23 European Court of Human Rights. *Tlashadze and Kakashvili v. Georgia*. Application no. 41674/10. Judgment of 25 May 2021. Strasbourg; ECHR. <https://hudoc.echr.coe.int/fre#%7B%22languageisocode%22:%5B%22001-208752%22%5D%7D> (accessed 11 March 2024).



One early case at the ECHR addressed violations of the right to a fair trial due to illegal police provocation, exemplified in *Teixeira de Castro v Portugal* (App 25829/94), June 9, 1998. This case was indicative of issues within Portugal's drug enforcement system before subsequent reforms were implemented, including decriminalisation. Notably, countries such as Russia²⁴, with a focus on low-level drug crimes, are known for instances of police provocation. Georgian, Moldovan, and Ukrainian criminal drug laws and drug enforcement systems share similarities with Russia. Police provocation is one such shared similarity. For example, in Ukraine there are numerous cases, some reaching the Supreme Court of Ukraine, featuring elements of provocation²⁵. The absence of ECHR cases on provocation in the three counties does not indicate the absence of such cases, but rather that these issues have not been brought before the ECHR. Such practices undermine the rule of law, diminish police professionalism, and squander public resources. Portugal saw no cases of police provocation post-decriminalisation, indicating that drug policy reforms were successful in eliminating this problem. Drug policy reform in the three countries, including decriminalisation, has the potential to yield similarly positive outcomes.

24 A summary of Russian cases on police provocation, see, European Court of Human Rights. *Kuzmina and Others v. Russia* (Applications nos. 66152/14 and 8 others), 20 April 2021. Strasbourg; ECHR. <https://hudoc.echr.coe.int/fre#%7B%22tabview%22%3A%22document%22%2C%22itemid%22%3A%222001-209328%22%7D> (accessed 11 March 2024).

25 «Запрет провокации преступления: практика Верховного Суда. Часть 2. Провокация по делам о наркотиках» – сборник, подготовленный Алексеем Гурой, членом Национальной ассоциации адвокатов Украины, лектором Высшей школы адвокатуры НААУ. 2023. In Russian. [Prohibition of provocation of a crime: practice of the Supreme Court. Part 2. Provocation in drug cases – a collection prepared by Alexey Gura, a member of the National Bar Association of Ukraine, lecturer at the Higher School of Advocacy of the NAAU. 2023].

Immediate priorities for drug law and policy reforms

The three countries share common issues that diverge from the balanced EU drug approach, particularly in distinguishing drug trafficking from drug-use-related behaviour.

INADEQUATE THRESHOLD QUANTITIES

The threshold quantities for criminal and administrative liability are unreasonably small in all three countries. These are often determined based on the total weight of seized substances, irrespective of the actual quantity of illicit substances in the mix. This small threshold makes it easier for law enforcement to meet performance targets by concentrating on individuals using drugs. Statistics from police in these countries consistently show that arrests related to simple possession are the most prevalent^{26, 27, 28}.

LACK OF WHOLESALE COMMERCIAL TRAFFICKING DEFINITION

The absence of a clear definition for wholesale commercial trafficking is evident across all three countries. In these nations, drug distribution encompasses any act of transferring any amount of a controlled substance to another person. The existing threshold amounts discourage law enforcement from focusing on wholesale commercial trafficking. For instance, in Georgia, the distribution of 1.001 grams of heroin is treated as seriously as distributing 20 or 40 kg's of heroin. This makes it more convenient for law enforcement to prosecute an individual for transferring a small amount of drugs in the context of personal use than to identify, investigate, and prosecute a sophisticated trafficking network. The lack of distinction in national drug laws between wholesale commercial trafficking and distribution activities within the realm of drug use contributes to similar results in performance indicators.

26 Statistics of the Ministry of Internal Affairs on registered drug crimes in 2018-2021. Statistical information is available on the website of the Ministry at <https://police.ge/en/useful-information/statistics>

27 European Monitoring Centre for Drugs and Drug Addiction (2023). Report On Drug and Alcohol Situation in Ukraine, 2023 (based on data 2022). Kyiv; EMCDDA, pp24. https://www.emcdda.europa.eu/drugs-library/national-report-drug-and-alcohol-situation-ukraine-2023-based-data-2022_en (accessed 11 March 2024).

28 Криміналізація наркотиків і права людей, що використовують наркотики в Республіці Молдова. Звіт про дослідження. ЕАДР. 2019. Стр. 9. In Russian. [Eurasian Harm Reduction Association (2019). Criminalisation of drugs and the rights of people who use drugs in the Republic of Moldova. Research report. Vilnius; EHRA, pp9]. <https://harmreductioneurasia.org/wp-content/uploads/2020/04/Drug-criminalization-and-human-rights-Moldova-RUS.pdf> (accessed 11 March 2024).

UNDERDEVELOPED DRUG REFERRAL PRACTICES

Despite efforts in all three countries to pilot referral mechanisms for individuals whose legal issues stem primarily from problematic drug use, these mechanisms are sporadic and receive minimal national funding. They often operate within a policy vacuum, heavily relying on the discretion of local police officers rather than adhering to a well-defined national approach. The absence of a standardised referral mechanism leaves law enforcement with limited flexibility in dealing with offenders exhibiting problematic drug use.

Addressing the identified issues must emerge as an immediate priority for comprehensive drug policy reforms in the three countries. The inadequate threshold quantities for criminal and administrative liability, the lack of a clear definition for wholesale commercial trafficking, and the underdeveloped drug referral practices collectively hinder the alignment of these nations with the EU drugs strategy. To effectively navigate these challenges, there is an urgent need for policy adjustments that establish reasonable thresholds, differentiate between personal use and wholesale trafficking, and institute robust, well-funded referral mechanisms. By prioritising these reforms, the three countries can not only enhance their adherence to international best practices but also foster a more effective and equitable approach to drug policy that aligns with contemporary standards and addresses the root causes of drug-related issues within their borders.





Law and policy reform scenario

The immediate priorities outlined above justify the necessity of such an optimal reform scenario that it would involve a complete repeal of laws imposing criminal liability for the possession of any quantity of a narcotic drug, provided there is no intent to distribute.

While retaining the prohibition or regulation of possessing or handling controlled substances, these activities would be excluded from criminal laws and drug enforcement measures. However, garnering robust support for such an ideal scenario in the three countries seems improbable, given the longstanding state-sponsored justifications for imposing severe criminal sanctions for drug offenses. Additionally, the entrenched practice of gauging legal sanctions based on threshold quantities in all three countries further complicates the prospect of immediate support for the termination of such thresholds.

As a result, an immediate priority for reforms should be the establishment of reasonable and science-based threshold quantities. These thresholds would effectively exclude drug use behaviour from the purview of criminal laws, emphasising the intent rather than the quantity possessed. Following the international precedent of determining thresholds based on the number of daily doses aligns with best practices across the EU, as seen in Portugal (such as ten daily doses)²⁹.

To implement this approach effectively, the three countries could adopt a two-step determination of daily doses.

1st STEP

Involves policy determination, wherein thresholds are established for each substance based on scientific and practical considerations. These initial thresholds would solely serve the purpose of assessing whether there is a public interest in pursuing legal action against an offender. It is crucial to define these step-one thresholds reasonably to prevent the unwarranted prosecution of individuals for drug-use-related behaviour, aligning with scientific principles and human rights considerations. Countries could establish a permanent Council at the Ministry of Health to advise the Minister on appropriate quantities of controlled substances for the above purposes in a transparent, inclusive, evidence-based, and human rights-oriented manner. Representatives of the communities of people who use drugs should have a voice in such a Council. Experts from the EMCDDA could also provide evidence-based advice and information about the best practices of EU countries.

2nd STEP

Involves determining the number of daily doses based on the circumstances of a specific case, considering factors such as the purity of the seized substance and the tolerance of the suspect to its active components. The determination of step-two thresholds would rely on forensic chemistry and forensic psychiatry reports, ensuring a nuanced and case-specific approach to enforcement. This comprehensive framework, balancing scientific rigour with respect for human rights, can contribute significantly to enhancing the rule of law in the three countries.

In parallel, the reforms should aim at focusing law enforcement activities on the disruption of international trafficking networks in cooperation with EU and other international partners. For this, the legal definition of drug trafficking should clearly distinguish it from social distribution in the context of drug use. Such a definition of trafficking could include the purpose of systematic enrichment on a scale that significantly exceeds the basic needs of the suspect and the basic needs of their family. The step one threshold quantities mentioned above can serve as an aid in making such important distinctions, but only to indicate when the engagement of law enforcement, rather than other social and health measures, maybe in the public interest.

In addition, the law must be clear that there is no criminal, administrative, or other sanction for possession of a quantity below a set threshold amount. Furthermore, the law must be clear that defined threshold quantities cannot be applied so as to amount to de jure or de facto derogation from the right to a fair trial, including the presumption of innocence. For example, possession of a quantity greater than a set threshold amount cannot give rise to a legal presumption that possession was for the purpose of trafficking, nor can it suffice on its own to prove such an offence beyond a reasonable doubt.

Criminal law and policy reform recommendations



GEORGIA Chapter XXXIII, the Criminal Code

MOLDOVA Chapter VIII, the Criminal Code

UKRAINE Chapter XIII, the Criminal Code

Articles, concerning drug-use-related behaviour

Article 260 (1), (2), (3), (6) and Article 261 (1), (2), (3), (7). Illegal manufacturing, production, purchase, storage, transportation, transfer of drugs, psychotropic substances, their analogues, precursors, or new psychoactive substances with no intention to sell.

Article 265. Illegal sowing, growing or cultivation of plants containing narcotics.

Article 271. Making a dwelling place or other premises available for illegal use of drugs, their analogues, new psychoactive substances, psychotropic substances or their analogues.

Article 272. Inducement to use drugs, their analogues, new psychoactive substances, psychotropic substances or their analogues.

Article 273. Illegal production, purchase, storage, carrying, transfer and/or illegal consumption without medical prescription of a narcotic drug, its analogue or a precursor in small quantity.

Article 217. Unlawful Turnover of Narcotics, Ethnobotanical Substances, or Their Analogs Not for the Purpose of Alienation.

Article 217. Unlawful Intentional Administration of Narcotics, Ethnobotanical Substances, or Their Analogs into the Body of Another Person Against Their Will.

Article 219. Establishment or Maintenance of Dens for the Consumption of Narcotics or Ethnobotanical Substances.

Article 217. Public Unlawful Consumption or Organization of Unlawful Consumption of Narcotics, Ethnobotanical Substances, or Their Analogs.

Article 309. Illegal production, manufacture, acquisition, storage, transportation, or forwarding of narcotic drugs, psychotropic substances, or their analogs without the purpose of sale.

Article 315. Inclination to the use of narcotic drugs, psychotropic substances or their analogues.

Article 322. Illegal organization or maintenance of places for the use of intoxicants.

Article 316. Illegal public use of narcotics.

GEORGIA Chapter XXXIII, the Criminal Code	MOLDOVA Chapter VIII, the Criminal Code	UKRAINE Chapter XIII, the Criminal Code
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Article 2731 (1), (2), (3), (4), (5), (6), (7). Illegal purchase, storage, carrying, transfer of the cannabis plant, or of marijuana.

Article 274. Evasion of compulsory medical treatment.

RECOMMENDATIONS

Repeal these sections in whole or in part where no intent to sell is stipulated. The criminal law is a grossly disproportionate response to offenses unrelated to drug trafficking or the distribution of drugs. Where necessary and appropriate, consider moving these type of offences into the Code of Administrative Offences with such sanctions as a warning and other non-custodial sanctions when punishment is warranted by the amount in possession or other circumstances (see the sections above concerning the threshold quantities).

Prescribe a variety of treatment alternatives to sanctions to establish a toolbox of incentives for people whose conflict with legislation is underpinned by substance dependence.

Introduce non-criminal justice measures to prevent people from using drugs informed by such sources as the European Drug Prevention Quality Standards³⁰ and the European Prevention Curriculum³¹.

Articles concerning the distribution or trafficking of illicit substances

Article 260 (4), (5), (7) and Article 261 (4), (5), (6), (8). Illegal sale of drugs, psychotropic substances, their analogues, precursors or new psychoactive substances.

Article 217. Unlawful Turnover of Narcotics, Ethnobotanical Substances, or Their Analogs with the Purpose of Alienation.

Article 307. Illegal production, manufacture, acquisition, storage, transportation, forwarding, or sale of narcotic drugs, psychotropic substances, or their analogs.

Article 262 and Article 263. Illegal import or export of drugs, psychotropic substances, their analogues, precursors or new psychoactive substances to/from Georgia or their international transportation by transit.

Article 217. Illegal Trafficking in Precursors with the Purpose of Manufacturing or Processing Narcotics, Ethnobotanical Substances, or their Analogues.

Article 310. Sowing or cultivation of hypnotic poppy or hemp.

Article 2731 (8), (9), (10). Illegal sale of the cannabis plant, or of marijuana.

Article 217. Illegal Trafficking in Materials and Equipment Intended for the Production or Processing of Narcotics, Ethnobotanical Substances, or their Analogues.

³⁰ European Monitoring Centre for Drugs and Drug Addiction (2011). European drug prevention quality standards. A manual for prevention professionals. Luxembourg; Publications Office of the European Union. https://www.emcdda.europa.eu/publications/manuals/prevention-standards_en (accessed 11 March 2024).

³¹ European Monitoring Centre for Drugs and Drug Addiction (2019). The European Prevention Curriculum (EUPC). Luxembourg; Publications Office of the European Union. https://www.emcdda.europa.eu/best-practice/european-prevention-curriculum-eupc_en (accessed 11 March 2024).

GEORGIA Chapter XXXIII, the Criminal Code	MOLDOVA Chapter VIII, the Criminal Code	UKRAINE Chapter XIII, the Criminal Code
Article 266. Arrangement or maintenance of a secret laboratory for illegal production of drugs, their analogues, precursors, new psychoactive substances, psychotropic substances or their analogues.	Article 217. Theft or Extortion of Narcotics or Ethnobotanical Substances.	Article 311. Illegal production, manufacture, acquisition, storage, transportation or forwarding of precursors.
Article 267 and 268. Making of forged prescriptions or other documents for purchasing drugs, psychotropic or potent substances for marketing purposes, or their sale.	Article 218. Unauthorized Prescription or Violation of Rules for the Circulation of Narcotics.	
Article 269 and Article 270. Violation of the procedures for manufacturing, production, receipt, keeping records of, issuance, storage, transportation, transfer or import of drugs or precursors, psychotropic or potent substances.		

RECOMMENDATIONS

Introduce the element of “wholesale drug trafficking for the purpose of systemic enrichment” into the definition of this crime. This element can help define the trafficking offense that should be in the focus of drug enforcement.

Introduce into the Criminal Code a separate Article with offenses of illicit distribution of drugs, psychotropic substances, their analogs with no element of “wholesale drug trafficking for the purpose of systemic enrichment”. Consider such offenses under the category of less serious criminal offenses depending on the type of substance, the quantity of substances of distribution, and other circumstances.

Impact assessment

For regular monitoring and multi-dimensional evaluation of the impact of drug laws and policies on health, human rights, science, and other aspects of public and individual life, Georgia, Moldova, and Ukraine should establish a permanent national interagency impact assessment mechanism, engaging a broad range of experts and civil society representatives, including people who use drugs and community-led monitoring groups, in such a mechanism. National Drug Strategies and the Action Plans should be informed by the results of civil society monitoring and impact assessments.





Conclusions

The proposed reforms hold the potential to expedite accession to the European Union of Georgia, Moldova, and Ukraine by charting a path toward a more balanced and inclusive approach to drug laws and policies. By reducing reliance on punitive measures and clearing the way for evidence-based public health strategies, these reforms not only benefit the well-being of the citizens of each country but also align the nations more closely with the values and principles of the EU. This transformation towards a more progressive and humane approach reflects a commitment to public health and contributes to the development of sustainable democratic institutions guaranteeing democracy, the rule of law, and human rights, ultimately strengthening the position of the 'Associated Trio' on the path toward EU membership.



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