

TITLE: EUROPEAN CANNABIS INITIATIVE

(FINAL VERSION)

TEXT

We call on the European Commission to invite Member States to promote human rights-centered cannabis policies that exclude the imposition of criminal and administrative sanctions for adult use, possession and cultivation of the plant and its derivatives for personal purposes.

We call on the Commission not to interfere in Member States' choices to adopt regulations for a legal market for adult use of cannabis in response to their national situation.

We call on the Commission to invite Member States to foster access to medical cannabis based on scientific evidence and the experiences of patients, and to allow patients the transportation of cannabis and any of its derivatives prescribed for therapeutic uses throughout the EU in order to ensure the full enjoyment of the right to health.

We invite the Commission to allocate the necessary resources for researching cannabis – including in herbal and traditional medicine – for its therapeutic uses and to share them internationally.

ANNEX (maximum 5,000 characters)

The European Citizens Initiative “A Human Rights-centered Approach to Cannabis” aims to address some of the issues at the center of framework decision [2004/757/JHA](#). It urges common sense approaches and proportionality of penalties in implementing the International Drug Control System all over the European Union with particular attention to cannabis for both medical and non medical uses, and suggests the allocation of resources to support research on cannabis and its availability for therapeutic reasons.

The [Strategy on Drugs](#) that should guide the European Union until 2025 is based first and foremost on the fundamental principles of EU law and, in every regard, upholds the founding values of the EU: respect for human dignity, liberty, democracy, equality, solidarity, the rule of law and human rights.

On 9 December 2022, the Council of the European Union adopted its [conclusions on human rights-based approach in drug policies](#). The documents, among other things:

Invites EU Member States, where appropriate, to support the active and meaningful participation and involvement of the scientific and expert community, the civil society, including non-governmental organisations, young persons, women, people who use drugs in drug policies;

Encourages EU Member States and, according to their competences, the relevant EU bodies and agencies to strengthen international cooperation and mainstream the human rights-, evidence-based and balanced approach, including in development programmes on drug policies, promoting full compliance with international human rights law, including the principles of equality and non-discrimination;

Encourages EU Member States, where appropriate and in accordance with their national legislation and within the framework of the UN drug control conventions and EU law, to further explore evidence-based best practices and innovative approaches that reduce stigma and discrimination against people who use drugs.

The European Union has progressively opened up to innovative approaches to drug policies that revolve around the principle of non discrimination that is central to the respect of human rights. That stance has been at the center of the latest EU common position presented before relevant fora and bodies of the system of the United Nations.

Over the last few years, EU Member States have been promoting significant changes in their national policies that deal with non medical and non scientific use of cannabis. For the last 20 years, Since 1990s non commercial Cannabis Social Clubs have been operating in Spain. In December 2021, Malta regulated home growing of cannabis and its use in private, alongside non-profit communal growing clubs for recreational purposes. Luxembourg is planning to allow home growing, while Germany, the Czech Republic - and non-EU Switzerland - are having discussions about the possibility of setting up systems to regulate cannabis sales for non medical or scientific purposes. Additionally, the Netherlands is piloting a model for a closed cannabis supply chain for cannabis coffeeshops. Elsewhere, like in Portugal, Italy or in Greece, personal use has been substantially depenalised over the last decade. Changes in national approaches have often been promoted by civil society with the final objective to protect public health and to ensure the full respect of the human rights of users - an estimated [52 million people in the EU](#) - as well as to have an impact on the [hundreds of thousands](#) of detainees that populate European prisons clogging national systems so much that the European Court of Human Rights had to intervene with [sentences that denounced inhumane and degrading treatments as a result of the overcrowding](#).

Council Framework Decision 2004/757/JHA of 25 october 2004, laid down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, after almost 20 years, that document is no longer in line with the latest developments in the field of drug control and does not reflect international decisions

adopted recently; this ECI suggests an updated approach to align the EU with the new scenario and to adjust European policies to the most recent social and cultural trends in our continent that are based on innovative approaches that do not focus on punishing non-violent habits.

This European Citizens Initiative suggests the promotion of new approaches that can offer a more effective set of rules and policies to update the implementation of the three UN Conventions without sacrificing the full enjoyment of civil, political, economic, social and cultural rights on the altar of policies that have been built on the backbone of criminal law and that have amply proven to be ineffective to “control” a phenomenon that, over the years, has become part of the European way of life and culture.

The international legal framework on which the “international drug control system” is based must be updated to the most recent social, cultural, legislative and policy trends that stem from the following official decision taken at the United Nations:

- i) the [outcome document](#) of the UN General Assembly on Drugs (UNGASS) of 2016;
- ii) the [decision of the UN Commission of Narcotic Drugs](#) that in December 2020 deleted the cannabis plant from schedule IV of the 1961 UN Convention;
- iii) the UN system [common position](#) supporting the implementation of the international drug control policy through effective inter-agency collaboration;
- iv) the UN human rights experts' [statement](#) published on June 26, 2022.

This ECI is in line with the growing concerns about existing norms and policies, preoccupations testified at the international level by the proposal adopted by the UN Committee on Economic, Social and Cultural Rights (CESCR) in October 2022, to draft a “[General Comment](#)” that should address the impact of drug policies on economic, social and cultural rights.

In April 2020, that same CESCR adopted [General Comment 25](#) on Science, i.d. article 15 of the International Covenant on Economic, Social and Cultural Rights, which contains one paragraph entirely dedicated to controlled substances with particular attention to cannabis:

[...] Scientific research is impaired for some substances under the international conventions on drug control, as these substances are classified as harmful for health and with no scientific or medical value. However, some of these classifications were made with insufficient scientific support to substantiate the decision, as credible evidence exists regarding the medical uses of a number of them, such as cannabis for the treatment of certain epilepsies. Thus, States Parties should harmonize the fulfillment of their obligations under the international

drug control regime with their obligations to respect, protect and fulfill the [right to participate and to enjoy the benefits from scientific progress and its applications,] RPEBSPA, through a regular revision of its policies in relation to controlled substances. Prohibition of research in those substances are in principle limitations of the RPEBSPA and should meet the requirements of article 4 of the Covenant. Besides, because of the potential benefits for the health of these controlled substances, these restrictions should also be weighed in relation to State Parties' obligations under article 12 of the Covenant.

The paragraph above is a declaration of incongruity between the current interpretation of the three UN Conventions on Drugs and what is established by the International Covenant on Economic, Social and Cultural Right (ICESCR) concerning freedom of research and the right to enjoy scientific progress and its applications. The ICESCR is a document which, unlike the Conventions, has precise constitutional implications for the State Parties that have ratified it - and all EU Member States have ratified and implemented it.

Reports of offenses against national drug legislation (use, possession, trafficking, etc.) reflect differences in law but also different ways in which the law is enforced and applied as well as the priorities and resources allocated to specific problems by criminal justice agencies around Europe. EU Member States have different legislations and also different priorities when it comes to applying penal or administrative sentences to those who violate drug laws. Despite decades of strict rules on narcotics, there is no evidence that toughening penalties has proven to be instrumental in bringing about a more effective control of drugs and in setting up systems that diminish the risks or harms connected to problematic drugs use.

Detainees in the EU for drug-related offenses amount, on average, to 20% of the total prison population of the EU, generating overcrowding and, therefore, posing a threat to the possibility of keeping prison conditions humane. Not all Member States have health services in detention facilities managed by the Health Ministry, and not all provide Harm Reduction services in their penitentiaries. Avoiding incarceration for non-violent drug offenders, in particular for people with drug use disorders, could have a double positive impact on the number of inmates, let alone the quality of life of those not restricted in prisons, and on the provision of the necessary scio-sanitary assistance to people in need. This general context urges a significant shift in criminal policies all over the EU pursuing proportionality of penalties in particular for so-called “non-violent” offenses like personal use or growing of illicit plants and substances or their interpersonal exchange that does not involve money .

The [EU Strategy on Drugs](#) takes into account policy developments at multilateral level and contributes to the acceleration of their implementation. First and foremost, the EU supported the drafting and adoption of the [outcome document of the 2016 UNGASS](#) entitled “*Our joint commitment to effectively addressing and countering the world drug problem*”, which is

the most comprehensive policy document in that respect adopted at the international level to this date. The EU also supports the [2019 Ministerial Declaration](#) adopted at the United Nations on strengthening actions at the “*national, regional and international levels to accelerate the implementation of joint commitments to address and counter the world drug problem, the applicable goals of the 2030 Agenda for Sustainable Development, the UN system common position supporting the implementation.*” Unfortunately all this public support has not been translated into national or regional policies that have structurally incorporated those comprehensive human rights concerns.

Crucial to the EU strategy on drugs is the so-called effective [inter-agency collaboration](#), as well as the [International Guidelines on Human Rights and Drug Policy](#), and takes into account the respective competences of the EU and individual Member States. The lack of significant progress in the containment of illicit narcotics around Europe, and all over the world for that matter, imposes a radical rethinking of the approach that for so many years has not been instrumental in achieving the objective of reducing drug demand and supply, and in reducing the harms related to problematic drug use in Europe - as well as elsewhere.

The time is ripe to review the European drug strategy to finally become a guiding document for national strategies sharing the most recent and innovative legislative and policy trends that have inspired some Member States to apply different approaches based on common sense and proportionality of punishments reconsidering the criminalization of personal use, possession and non commercial exchange of plants and substances under international control starting from cannabis. Such a comprehensive change of scenario would align the Strategy to the fully respect the European Convention on Human Rights and the Charter of Fundamental Rights of the EU in concrete terms and not just in declarations.

The ultimate purpose of this ECI is to consider non-violent personal drugs-related choices within the framework of the international instruments of human rights.

All women, men and children, including people with drug-use disorders, have the right to enjoy the highest attainable standard of personal freedom as well as physical and mental health, including freedom from violence, arbitrary arrest for “non-violent” conducts.

A new EU approach to substances under international control, starting from cannabis, which is the center of the ECI, would also have significant positive impacts on access to the plant for scientific and medical purposes.

In fact, the [2016 UNGASS outcome document](#) notes with concern that “*the availability of internationally controlled drugs for medical and scientific purposes, including for the relief of pain and suffering, remains low to non-existent in many countries of the world*” highlighting the need to “*enhance*

national efforts and international cooperation at all levels to address that situation by promoting measures to ensure their availability and accessibility for medical and scientific purposes, within the framework of national legal systems, while simultaneously preventing their diversion, abuse and trafficking, in order to fulfill the aims and objectives of the three international drug control conventions”. A comprehensive change suggested by the European Commission to Member States would create favorable general conditions to implement the declarations adopted by consensus in New York in 2016 at the national level.

The most recent EU Drug Strategy was adopted in a moment in which, for the first time in the history of the United Nations, [the UN Commission on Narcotic Drugs \(CND\) voted to delete the plant of cannabis from schedule IV of the 1961 Convention](#). In fact, in January 2019, the World Health Organization (WHO) adopted a series of recommendations to change the scope of control of cannabis and cannabis-related substances. After over a year of discussion, the CND took action on five WHO recommendations to review the cannabis and cannabis resin collocation in Schedule IV of the 1961 Convention, but to maintain it in Schedule I of the same document. The decision happened with 27 votes in favor, 25 against and one abstention. All EU CND Member States voted in favor with the exception of Hungary that voted against.

Furthermore, the latest EU Drugs strategy has also taken into consideration suggestions from the lessons learned from the COVID-19 pandemic that have put a future-oriented approach, promoting research, innovation and foresight to respond more effectively to, and anticipate, forthcoming challenges. Some of the recommendations were also the product of public consultations that saw the active participation of civil society.

This ECI lastly suggested the organization of Citizens’ Assemblies to foster the triggering of national and EU reforms to update and upgrade norms and policies on cannabis bringing them in line both with most recent normative development and with social and cultural approaches of recent years within a framework of the national and international obligations vis-à-vis human rights.

Recently the Report of the Office of the United Nations High Commissioner for Human Rights, published in September 2023, denounced the failure of punitive drug policies and the global ‘war on drugs’, and called for a new approach based on health and human rights, including through the legal regulation of drugs.

This Report outlines human rights challenges in addressing and countering key aspects of the world drug problem. It also offers an overview of recent positive developments to shift towards more human rights-centred drug policies, and provides recommendations on the

way forward in view of the upcoming midterm review of the 2019 Ministerial Declaration and to contribute to the implementation of the 2030 Agenda for Sustainable Development.

“According to UNODC, of the 3.1 million individuals arrested for drug offences globally, an estimated 61 per cent were arrested for possession of drugs, while 78 per cent of the 2.5 million people in prison for drug offences – who account for some 20 per cent of the total global prison population – were sentenced for drug trafficking. In many instances, however, people were merely in possession of drugs but sentenced for drug trafficking (https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/A_HRC_47_CRP_1.pdf)

Human rights mechanisms have expressed concerns over the unnecessary and disproportionate use of the criminal justice system to deal with drug-related offences, which has led to an exponential growth of prison populations. In particular, treaty bodies have expressed concerns about the criminalization of the possession of small quantities of drugs, which has led to the incarceration and marginalization of drug users; the high levels of detention of persons who use drugs; the prolonged use of solitary confinement and illtreatment of those detained for drug-related offences; the extensive use of prolonged pretrial detention in cases involving drug offences; persons convicted of drug-related offences facing penalties of compulsory rehabilitation or incarceration; long prison sentences faced by drug users; and deaths of prisoners at anti-drug units.

Bearing in mind the human rights impacts of punitive drug policies, international human rights mechanisms have issued progressive recommendations to States to apply a public health and human rights approach to drug policies, including by decriminalizing drug possession for personal use and providing harm reduction services(E/C.12/UKR/CO/7, para. 43; E/C.12/LTU/CO/3, para. 55; E/C.12/GTM/CO/4, para. 45; E/C.12/BLR/CO/7, para. 38; E/C.12/NOR/CO/6, para. 43; and A/HRC/41/17, para. 110.156; and

<https://www.ohchr.org/en/press-releases/2023/06/un-experts-call-end-global-war-drugs>)

Furthermore, the United Nations system common position on drug-related matters calls for the decriminalization of drug possession for personal use (CEB/2018/2, annex I), and the International Narcotics Control Board has concluded that decriminalization is aligned with the United Nations drug control conventions

(https://www.incb.org/documents/Speeches/Speeches2020/INCB_President_statement_Norway_side_event_drug_reform.pdf and

https://www.incb.org/documents/Publications/AnnualReports/AR2022/Annual_Report/E_INCB_2022_1_eng.pdf. See also submission from Pompidou Group).

If effectively designed and implemented, decriminalization can be a powerful instrument to ensure that the rights of people who use drugs are protected. For example, in Portugal, the

implementation of integrated responses within a decriminalization framework of personal consumption and possession of drugs has led to lower drug use levels, decreased drug use among adolescents, and a significant reduction of HIV infections among injecting drug users and of overdoses”.

A Human Rights-centered approach to Cannabis

(Draft for a European Citizens Initiative)

This draft text of an European Citizens Initiative had been curated by Citizens Take Over Europe coalition as part of the process launched by Eumans and European Alternatives [“Democracy. Ecology and Liberty Beyond Borders - a paneuropean government plan through European Citizens Initiatives”](#).

Objectives:

- Human rights-centered drug policies that exclude criminal and administrative sanctions for personal use of cannabis and its related activities and that allow Members States to adopt (innovative approaches such as) regulations of legal sales for adult use according to their national situation;
- Unrestricted access to medical cannabis for EU citizens and its transportation throughout the European Union to ensure the full enjoyment of the right to health.
- Allocation of resources for researching cannabis and its therapeutic uses.
- **Alternative?** Human rights-centered drug policies that exclude criminal and administrative sanctions for personal use/possession and which allow member states to regulate and license cannabis for adult use on a national level.
- **Alternative?** European Union shall not interfere, if member states wish to regulate their internal cannabis markets including commercial selling points for adults, production, wholesale et cetera. [*alt:* Reaffirm the exclusive competence of Member States and their democratic decision-making processes on all aspects of their domestic cannabis laws and policies.]

**Version composed on 22 March on the basis of the comments received
(maximum length is 1100 characters without spaces, this, with a new para, is 1058)**

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We call on the Commission not to interfere in Member States' choices to adopt regulations of a legal market for adult use of cannabis in response to their national situation.

We call on the Commission to invite Member States to foster access to medical cannabis based on scientific evidence and the experiences of patients, and to allow and/or to patients the transportation of cannabis and any of its derivatives prescribed for therapeutic uses throughout the EU in order to ensure the full enjoyment of the right to health.

We invite the Commission to allocate the necessary resources for researching cannabis – including in herbal and traditional medicine – for its therapeutic uses and to share them internationally.

Previous Version - 23 february

We call on the European Commission to invite Member States to promote human rights-centered cannabis policies that exclude the imposition of criminal and administrative sanctions for personal use of cannabis, any of its derivatives and related non harmful activities like “domestic” growing and interpersonal exchange.

We call on the European Commission to invite Member States to foster access to medical cannabis and to allow the transportation of cannabis and any of its derivatives prescribed for therapeutic uses throughout the European Union to ensure the full enjoyment of the right to health.

We invite the European Commission to allocate the necessary resources for researching cannabis –including in herbal and traditional medicine– for its therapeutic uses.

Provisions of the Treaties considered relevant by the organisers: TFEU: Articles 82 – 86, 114 and 168 TFEU

Background

The European Citizens Initiative “A Human Rights-centered Approach to Cannabis” aims to address some of the issues at the center of framework decision [2004/757/JHA](#). It urges common sense approaches and proportionality of penalties in implementing the International Drug Control System all over the European Union with particular attention to cannabis for both medical and non medical uses, and suggests the allocation of resources to support research on cannabis and its availability for therapeutic reasons.

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Over the last few years, EU Member States have been promoting significant changes in their national policies that deal with non medical and non scientific use of cannabis. In December 2021, Malta regulated home growing of cannabis and its use in private, alongside non-profit communal growing clubs for recreational purposes. Luxembourg is planning to allow home growing, while Germany, the Czech Republic - and non-EU Switzerland - are having discussions about the possibility of setting up systems to regulate cannabis sales for non medical or scientific purposes. Additionally, the Netherlands is piloting a model for a closed cannabis supply chain for cannabis coffeeshops. Elsewhere, like in Portugal, Italy or in Greece, personal use has been substantially depenalised over the last decade. Changes in national approaches have often been promoted by civil society with the final objective to protect public health and to ensure the full respect of the human rights of users - an estimated [52 million people in the EU](#) - as well as to have an impact on the [hundreds of thousands](#) of detainees that populate European prisons clogging national systems so much that the European Court of Human Rights had to intervene with [sentences that denounced inhumane and degrading treatments as a result of the overcrowding](#).

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and that have amply proven to be ineffective to “control” a phenomenon that, over the years, has become part of the European way of life and culture.

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