

Inconsistencies in the assumptions linking punitive sanctions and use of cannabis and new psychoactive substances in Europe

Changing the severity of statutory penalties for cannabis use offences does not appear to have a consistent impact on cannabis use by young adults, and new policy responses to the proliferation of new psychoactive substances within European countries usually exclude any penalty for use.

The level of drug use in the population is an ongoing topic of concern for policymakers, and regular adjustments to the penalty for this might reflect how much sanctions are viewed politically as appropriate to deter use. It is therefore interesting that not only is it difficult to observe the impact of such adjustments on cannabis prevalence, but also policymakers addressing new challenges do not always penalize use or personal possession.

Article 3(2) of the 1988 United Nations Convention on Illicit Traffic requests (although does not oblige) states to criminalize possession of drugs for personal use [1]. Increasing the statutory penalty has been presented as a measure to reduce use, assuming that increasing penalties deters drug usage, and reducing them increases it. Several years after the decriminalization of drug use and personal possession in Portugal, the International Narcotics Control Board (INCB) stated that decriminalization of cannabis use ‘would send the wrong message to the general public’ [2], yet those who argue for policy change claim there is no such simple link [3].

Findings from the United States [4] and Australia [5] have found few links between penalties and cannabis use, so we tested the western European experience, with its different cultures and legal systems, using data from the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). Measures of prevalence are available from general population surveys, and we used these to consider the impact of penalty adjustments on reported last-year use of cannabis. During the period 2000–15, 10 countries changed their penalty levels in laws for cannabis use-related offences (some more than once) and produced prevalence estimates before and after the penalty change [6]. We overlaid the two data sets to determine if the association hypothesized above is observable. For ease of interpretation, we aligned use trends during the year of penalty change in each country, and extended them to consider longer-term trends. A deterrence theory would suggest that after increasing the penalty the use would fall, and after decreasing it the use would rise. However, no consistent association can be observed visually (see Fig. 1).

There are several caveats to this observation. Surveys have various methodological limitations, and the data reviewed here do not permit more robust statistical analysis. Exploration of last-year prevalence precludes comment on incidence or patterns of use. It is unclear if the (sometimes minor) legal changes were understood by cannabis

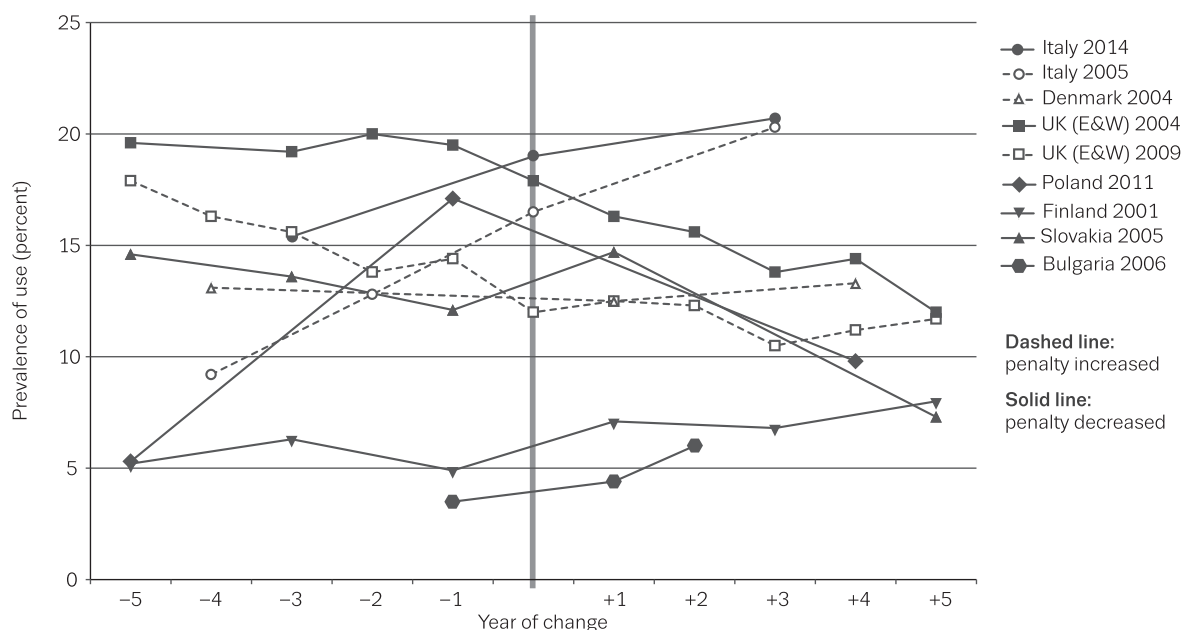


Figure 1 Trend in last-year prevalence of cannabis use, ages 15–34, pre–post penalty change

users, or if they impacted upon the perception, or reality, of the risks of receiving a penalty [7]. The probability of being arrested for a cannabis use-related offence has been estimated at less than 5%, greatly diluting any general deterrent [8]. In addition, the choice of disposal by the judiciary, following convention or guideline, may be unchanged despite a change in law [9]. Police forces may have adopted policies only to target certain types of cannabis offence; conversely, in Portugal police were reporting cannabis users in order to refer them to a health assessment. Other factors driving European cannabis trends may include: the introduction of public smoking bans, as the drug is usually smoked with tobacco [10]; growing concerns about cannabis-related psychosis [11]; changes in potency, price and availability; and the introduction (and eventual suppression) of a 'legal' market for synthetic cannabinoids removing users' fear of arrest [12].

Long term trends may be driven by a more complex set of interactions which are not influenced directly by simply policy manipulations. This observation is in line with data from other studies, suggesting that changes in legal sanctions do not have a direct impact upon prevalence [13,14]. However, this complexity often appears absent from policy debate, which is frequently preoccupied with the costs and benefits of penalty adjustments. At the same time, while most measures suggest that cannabis prevalence in Europe remains relatively stable, the data on drug law offences suggest that the number of cannabis users coming into contact with the criminal justice system is growing, and the cost and benefits of this remain unclear.

While policymakers seem reluctant to decriminalize personal possession of cannabis, the phenomenon of new psychoactive substances (NPS) in the European Union (EU) has elicited a different legal approach to drug users. Several EU countries have seen an unprecedented increase in NPS distribution, use and harms, and have not been able to classify each substance efficiently as a drug in order to penalize its supply and use. Countries first responded using other laws available [15], but by late 2017 12 EU countries had developed innovative responses to punish NPS supply—and supply only [16]. Reducing penalties for cannabis use remains controversial in some of these countries, yet 11 have passed NPS control legislation that does not create any offence of personal possession at all, even if some police have the power to confiscate. Again, their reasons may differ—proportional responses to harms not yet proven, or practical enforcement challenges, for example—but the broad trend is notable. Unfortunately, comparable routine data collection on NPS use is not sensitive enough to conduct any analysis similar to the above.

In conclusion, the debate around drug use sometimes appears to revolve primarily around concern that lowering legal penalties is likely to encourage use. However, as in the United States and Australia, the available European data

suggest that moderate changes in statutory penalties have not been shown to be associated with changes in cannabis use prevalence. It is premature to assume that these findings transpose to more dangerous drugs, but the public health model of decriminalized drug control that was initially so controversial in Portugal has been recommended as best practice by the INCB President [17], and dedicated NPS control laws have generally omitted any penalty for users.

We hope this editorial will encourage legislators to reduce their concern for the effect of the penalty size on use rates, and to consider a wider range of policy options for controlling drug consumption, accompanied by careful evaluation of their probable impacts [18].

Declaration of interests

The organizers of Cannabis Europa conference in London, May 2018 paid B.H. travel and accommodation to describe European countries' laws on cannabis.

Keywords Cannabis, decriminalisation, law, NPS, policy, prevalence.

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