

Drug decriminalisation in Portugal: setting the record straight

Portugal decriminalised the possession of all drugs for personal use in 2001, and there now exists a significant body of evidence on what happened following the move. Both opponents and advocates of drug policy reform are sometimes guilty of misrepresenting this evidence, with the former ignoring or incorrectly disputing the benefits of reform, and the latter tending to overstate them.

The reality is that Portugal's drug situation has improved significantly in several key areas. Most notably, HIV infections and drug-related deaths have decreased, while the dramatic rise in use feared by some has failed to materialise. However, such improvements are not solely the result of the decriminalisation policy; Portugal's shift towards a more health-centred approach to drugs, as well as wider health and social policy changes, are equally, if not more, responsible for the positive changes observed. Drawing on the most up-to-date evidence, this briefing clarifies the extent of Portugal's achievement, and debunks some of the erroneous claims made about the country's innovative approach to drugs.

Background

Portugal decriminalised the personal possession of all drugs in 2001. This means that, while it is no longer a criminal offence to possess drugs for personal use, it is still an administrative violation, punishable by penalties such as fines or community service. The specific penalty to be applied is decided by 'Commissions for the Dissuasion of Drug Addiction', which are regional panels made up of legal, health and social work professionals. In reality, the vast majority of those referred to the commissions by the police have their cases 'suspended', effectively meaning they receive no penalty.¹ People who are dependent on drugs are encouraged to seek treatment, but are rarely sanctioned if they choose not to – the commissions' aim is for people to enter treatment voluntarily; they do not attempt to force them to do so.²

The initial aim of the commissions, and of the decriminalisation policy more broadly, was to

tackle the severely worsening health of Portugal's drug using population, in particular its people who inject drugs. In the years leading up to the reform, the number of drug-related deaths had soared, and rates of HIV, AIDS, Tuberculosis, and Hepatitis B and C among people who inject drugs were rapidly increasing. There was a growing consensus among law enforcement and health officials that the criminalisation and marginalisation of people who use drugs was contributing to this problem, and that under a new, more humane, legal framework it could be better managed.

Portugal complemented its policy of decriminalisation by allocating greater resources across the drugs field, expanding and improving prevention, treatment, harm reduction and social reintegration programmes. The introduction of these measures coincided with an expansion of the Portuguese welfare state, which included a guaranteed minimum income. While decriminalisation played an important role, it is

likely that the positive outcomes described below would not have been achieved without these wider health and social reforms.³

Finally, although Portugal’s decriminalisation policy has attracted the most media attention, it is not the only country to have enacted such a reform. While there are variations in how ‘decriminalisation’ is defined and implemented, around 25 countries have removed criminal penalties for the personal possession of some or all drugs,⁴ contributing to the growing global shift away from punitive drug policies.

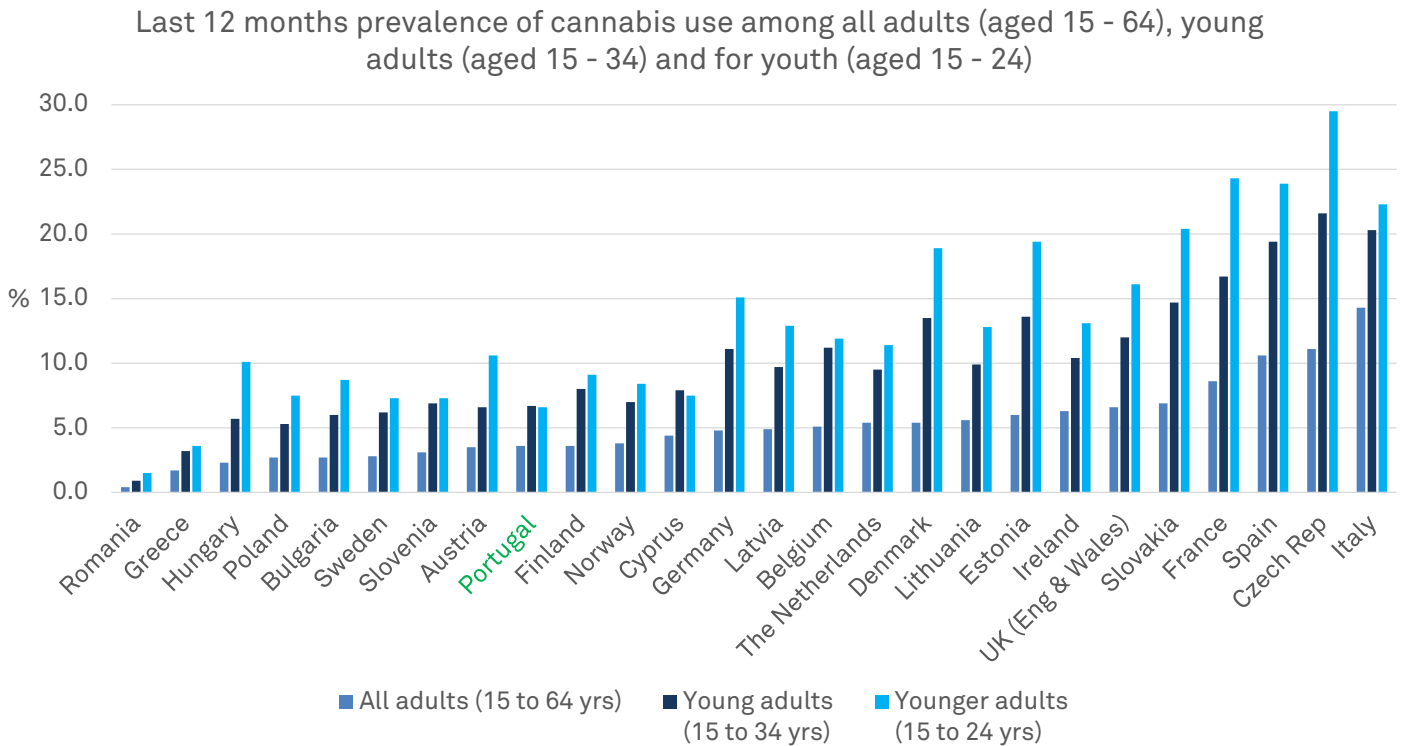
Drug use

One of the most keenly disputed outcomes of Portugal’s reforms is their impact on levels of drug use. Conflicting accounts of how rates of use changed after 2001 are usually due to different data sets, age groups, or indicators of changing drug use patterns being used. But a more complete picture of the situation post-decriminalisation reveals:

- Levels of drug use are below the European average⁵
- Drug use has declined among those aged 15-24,⁶ the population most at risk of initiating drug use⁷
- Lifetime drug use among the general population has increased slightly,⁸ in line with trends

- in comparable nearby countries.⁹ However, lifetime use is widely considered to be the least accurate measure of a country’s current drug use situation^{10 11}
- Rates of past-year and past-month drug use among the general population – which are seen as the best indicators of evolving drug use trends¹² – have decreased¹³
- Between 2000 and 2005 (the most recent years for which data are available) rates of problematic drug use and injecting drug use decreased¹⁴
- Drug use among adolescents decreased for several years following decriminalisation, but has since risen to around 2003 levels¹⁵
- Rates of continuation of drug use (i.e. the proportion of the population that have ever used an illicit drug and continue to do so) have decreased¹⁶

Overall, this suggests that removing criminal penalties for personal drug possession did not cause an increase in levels of drug use. This tallies with a significant body of evidence from around the world that shows the enforcement of criminal drug laws has, at best, a marginal impact in deterring people from using drugs.^{17 18 19} There is essentially no relationship between the punitiveness of a country’s drug laws and its rates of drug use. Instead, drug use tends to rise and fall in line with broader cultural, social or economic trends.



Health

It has been claimed that the prevalence of drug-related infectious diseases rose after decriminalisation,²⁰ yet this is strongly contradicted by the evidence. Although the number of newly diagnosed HIV cases among people who inject drugs in Portugal is well above the European average,²¹ it has declined dramatically over the past decade, falling from 1,016 to 56 between 2001 and 2012.²² Over the same period, the number of new cases of AIDS among people who inject drugs also decreased, from 568 to 38.²³ A similar, downward trend has been observed for cases of Hepatitis C and B among clients of drug treatment centres,²⁴ despite an increase in the number of people seeking treatment.²⁵

Deaths

Some have argued that, since 2001, drug-related deaths in Portugal either remained constant or actually increased.²⁶ However, these claims are based on the number of people who died with traces of any illicit drug in their body, rather than the number of people who died *as a result of* the use of an illicit drug.²⁷

Given an individual can die with traces of drugs in their body without this being the cause of their death, it is the second number – derived from clinical assessments made by physicians, rather than post-mortem toxicological tests – that is the standard, internationally accepted measure of drug-related deaths. And according to this measure, deaths due to drug use have decreased significantly – from approximately 80 in 2001, to 16 in 2012.²⁸

Homicides

A widely repeated claim is that, as a result of Portugal's decriminalisation policy, drug-related homicides increased 40% between 2001 and 2006.^{29 30} But this claim is based on a misrepresentation of the evidence. The 40% increase (from 105 to 148) was for all homicides, defined as any 'intentional killing of a person, including murder, manslaughter, euthanasia and infanticide'³¹ – they were not 'drug-related'. In fact, there are no data collected for drug-related homicides.

This claim stems from the 2009 World Drug Report, in which the United Nations Office on Drugs and Crime speculated that the increase in homicides 'might be related to [drug] trafficking'.³² However, neither the UNODC nor anyone else has proposed a causal mechanism by which the decriminalisation policy could have produced this rise, and given that the policy did not include any changes to how drug trafficking offences were dealt with, the possibility of such a link seems highly implausible. Furthermore, Portugal's homicide rate has since declined to roughly what it was in 2002.³³

Crime

Despite claims to the contrary,³⁴ decriminalisation appears to have had a positive effect on crime. With its re-categorisation of low-level drug possession as an administrative rather than criminal offence, decriminalisation inevitably produced a reduction in the number of people arrested and sent to criminal court for drug offences – from over 14,000 in the year 2000, to around 5,500-6,000 per year once the policy had come into effect.³⁵ The proportion of drug-related offenders (defined as those who committed offences under the influence of drugs and/or to fund drug consumption) in the Portuguese prison population also declined, from 44% in 1999, to just under 21% in 2012.³⁶

Additionally, decriminalisation does not appear to have caused an increase in crimes typically associated with drugs. While opportunistic thefts and robberies had gone up when measured in 2004, it has been suggested that this may have been because police were able to use the time saved by no longer arresting drug users to tackle (and record) other low-level crimes.³⁷ Although difficult to test, this theory is perhaps supported by the fact that, during the same period, there was a reduction in recorded cases of other, more complex crimes typically committed by people who are dependent on drugs, such as thefts from homes and businesses.

The impact of economic recession

There is a real risk that Portugal's severe economic recession will undermine many of the drug-related health and social improvements observed since 2001.

Socioeconomic deprivation is associated with greater levels of drug-related harm and drug

dependence,^{38 39 40} and public spending cuts taken in response to economic crises can exacerbate this situation.

Significant reductions in health and welfare budgets in Portugal have led to fears that the country may experience a dramatic increase in HIV infections, as Greece did when it closed drug treatment and harm reduction programmes as part of its attempts to reduce public spending.⁴¹

The independent Institute for Drugs and Drug Addiction, which was responsible for implementing the national drug strategy, has effectively been abolished and absorbed by the country's National Health Service, which in turn has had its budget cut by 10%.⁴² A number of harm reduction services are also facing partial closure, or experiencing significant delays in receiving public funding, all of which has had a negative effect on the extent and quality of services provided.⁴³

The threat posed by economic recession underscores how crucial adequate health and social investment was in achieving the gains made following decriminalisation. The challenge now for Portugal is ensuring these gains are not lost.

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