

HIV CRIMINALISATION IN THE EU

a comparative 20-country report



METHODS

The study was conducted in two phases using a standardised survey. The first phase was conducted in 2018-2019, during which the data was collected from 10 European countries. In the second phase conducted in 2022, data was collected from 10 additional countries, incorporating both the original survey and the new questions. This data collection phase involved reviewing the initial 10 countries and adding new questions to assess the impact of legislation introduced during the COVID-19 pandemic, along with the latest trends and expected legal changes.

The countries were chosen because they are considered representative of the epidemiological, political, geographical, and economic diversity of the European Union and represent a variety of history with HIV criminalisation. Data was collected via AIDS Action Europe member organisations based on their previous and ongoing work on HIV criminalisation.²

OBJECTIVE

There is no evidence that HIV criminalisation¹ laws help to prevent new HIV-infections. Despite the progress of scientific evidence and recent positive developments in the practice of investigations and prosecutions in some European countries, HIV criminalisation remains a key issue both for people living with HIV (PLHIV) and preventative measures across Europe. This study aimed to explore relevant legislation, specific cases of HIV criminalisation, existence of professional guidelines or training, the role of the media in case depiction, and the impact of discriminatory laws on key populations.

RESULTS

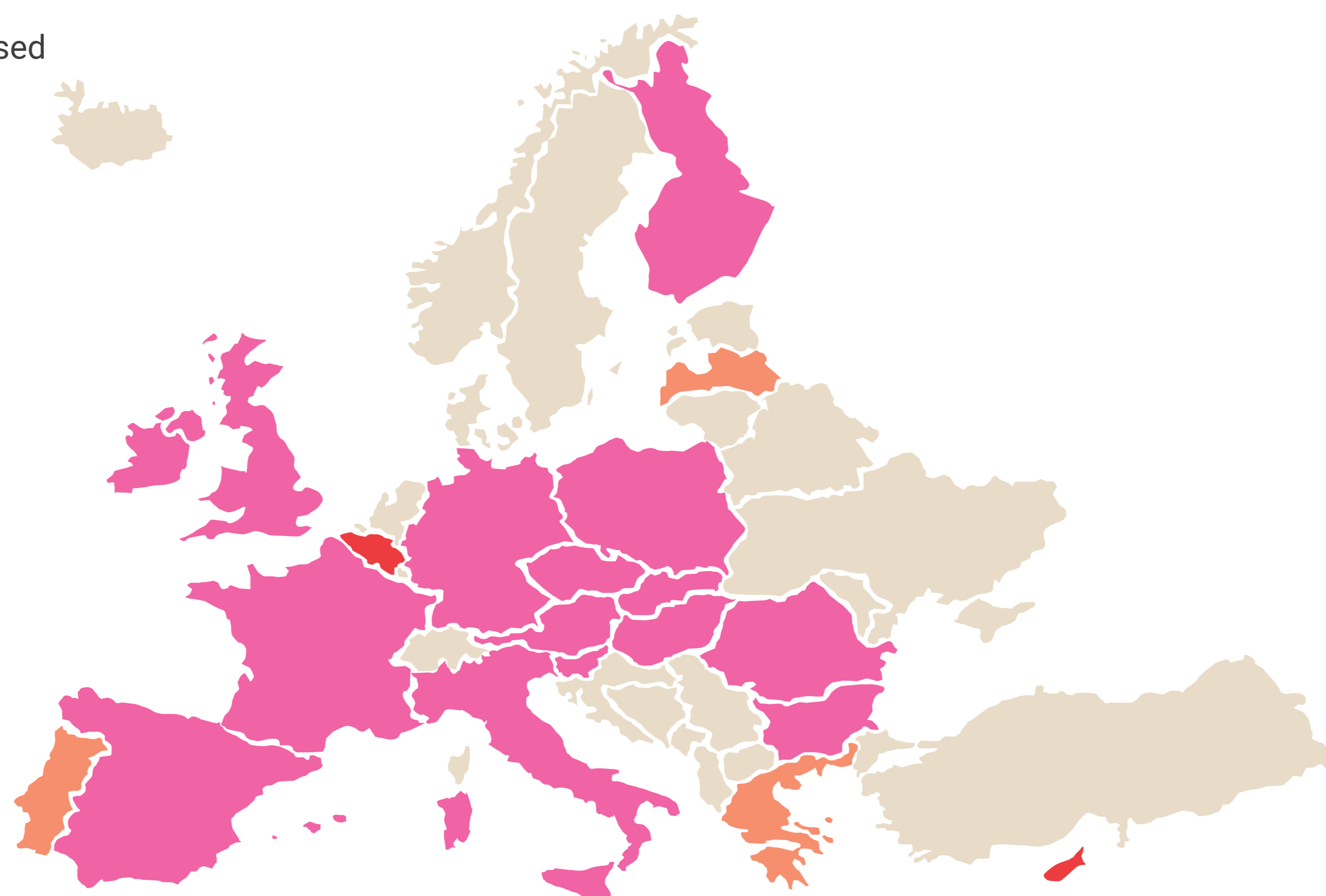
The study illustrates key issues surrounding HIV criminalisation in Europe. These include the fact that HIV criminalisation cases are underreported as a result of database inaccessibility and non-disclosure requirements, indicating that the actual number of HIV criminalisation cases is higher than reported. In addition, there is a lack of HIV-specific training for police, prosecutors and judges across Europe. Out of the twenty countries covered in this report, only the UK, has a guidance for Prosecutors and the Police for cases of HIV-criminalisation.

Furthermore, the report demonstrates sensationalist and stigmatising media coverage of HIV criminalisation cases, and highlights the disproportionate impact of criminalisation laws on key populations. The impact of COVID-19 restrictions varied across Europe. Despite anticipated concerns, most countries did not report significant changes, but there were exceptions in Cyprus and Poland. Cyprus had limited access to HIV treatment during lockdowns, while Poland experienced an increase in penalties for HIV exposure due to revised laws, which were introduced in a manner that raised questions about their legitimacy.

CONCLUSION

The study highlights the critical need for legal and policy changes in addressing HIV criminalisation in Europe. HIV criminalisation together with insufficient training of the judges and law enforcement personnel, sensationalist media coverage disproportionately and negatively affect key populations. To ensure fair and informed legal processes that correspond to current scientific knowledge, it is critical to introduce guidelines and training for law enforcement officers and judges. In addition, the media must play a responsible role when disseminating information about HIV criminalisation cases in a sensitive and non-stigmatising manner. Advocating for HIV decriminalisation, sensitising the media, and improving judicial knowledge can help to reduce stigma and discrimination, while also advancing human rights and quality of life for PLHIV and key populations.

- non disclosure, exposure and transmission criminalised
- exposure and transmission criminalised
- transmission criminalised



** In Scotland, under the law of 'Culpable and Reckless Conduct' a person can be prosecuted for recklessly putting someone at risk of infection, even if the infection is not passed on. In practice, exposure has only been prosecuted in cases that also involved transmission. In England, Wales and Northern Ireland exposure can only be prosecuted if there is evidence that the person intentionally (as opposed to recklessly) set out to transmit HIV.*

¹ "HIV criminalisation" refers to the use of criminal law to penalise alleged, perceived or potential HIV exposure; alleged nondisclosure of a known HIV-positive status prior to sexual contact (including acts that do not risk HIV transmission); or non-intentional HIV transmission

² AGIHAS, AIDS Solidarity Movement, AIDS-Hilfe Wien, APOYO POSITIVO, ARAS, Association Legebitra, Centre for Life, AIDES, Czech AIDS Help Society, Deutsche Aidshilfe, Fondazione LILA Milano, Foundation for Social Education, GAT, Hättér Society, Health Without Borders Association, HIV Ireland, National AIDS Trust, Odysseus, Positiviset ry, PRAKSIS, Sensoa vzw,



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