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The European Union and illicit drugs

The EU has a central place on the world's map of illegal drug consumption and production. Whereas the use of "established" drugs has stabilised in the EU, drug control authorities have increasingly been struggling with the emergence of new psychoactive substances which reproduce the effects of illegal drugs.

The UN has created an international system defining drugs of which the production and sale are prohibited. All EU Member States (MS) are parties to the relevant UN conventions.

In the EU, drug policy remains a domain essentially reserved to national policies. However, the EU has been increasingly active with respect to both law enforcement and health-related issues. A new EU joint drug strategy will be adopted in 2012.

The European Parliament was the first institution to address illicit drugs at EU level. It has however presented only limited sets of recommendations due to radical differences of opinion amongst MEPs. A 2004 resolution following the report by Giusto Catania, which critically assessed the EU joint strategy, seems not to have had an impact on the overall EU approach to drugs.

Whereas MS have willingly cooperated in combating drug trafficking, that has not been the case for regulating drug use, which is addressed in contrasting ways throughout the EU. The Netherlands and Sweden represent the most liberal and the most restrictive ends of the political spectrum.

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Illicit drugs in the EU

Challenges to policy-makers

The drug-related problems experienced by MS are typical of the developed world. The affluence of EU societies is reflected in high levels of consumption of illicit drugs.

For a long time, the most common illegal drugs available in the EU were those substances which have been around for decades, and centuries for some, such as heroin, cocaine, amphetamine, ecstasy and cannabis. Their use has been relatively stable in recent years.

However, over the last decade, a large market has developed for so-called "legal highs" or "designer drugs", imitating the effects of illegal substances. 2009 and 2010 saw rapid growth in sales of these substances. Suppliers were able to introduce a new drug practically every week, offering an alternative each time a substance had been banned. This trend continued in 2011.

Whereas the vast majority of users take drugs for recreational purposes – often limited to a particular stage in life – the EU also has a population of "problem drug users" suffering from drug addiction. Every year between 6 400 and 8 500 people die in the EU because of drug overdoses. Those who inject drugs are at greatest risk of dying from an overdose or suffering from acute health problems, such as blood-borne infections (e.g. HIV and hepatitis).

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Besides being a major end market for drugs, the EU is home to crime syndicates increasingly active in producing drugs. Those groups are long-established suppliers of precursors (the substances needed to manufacture drugs) to non-European traffickers. Moreover, the EU has become the leading producer of amphetamine and a major producer of other synthetic drugs.

The limits of EU action

The EU institutions have actively fostered cooperation between MS on various drug-related issues. They have come to define the EU approach to drugs as integrated, multidisciplinary, balanced and combining reductions in demand and supply.[1] However, in reality, only in combating drug trafficking has a high level of cooperation been achieved. There seems little prospect of establishing a common drugs policy.

The EU's gradual involvement in the drugs field has only been possible within boundaries defined on the one hand by the UN and on the other hand, by MS unwilling to surrender their sovereignty in an area of social policy highly influenced by a government's ideology. This is particularly so with respect to regulating drug use.

International context

Drug policies

Throughout history, policy-makers took various approaches to mind-altering substances, sometimes refraining from any form of regulation. However, prohibition has become the quasi-worldwide rule over the past century. Following the counterculture protests of the 1960s, the concept of the "war on drugs" has been promoted, strongly supported by the US and codified by the UN.

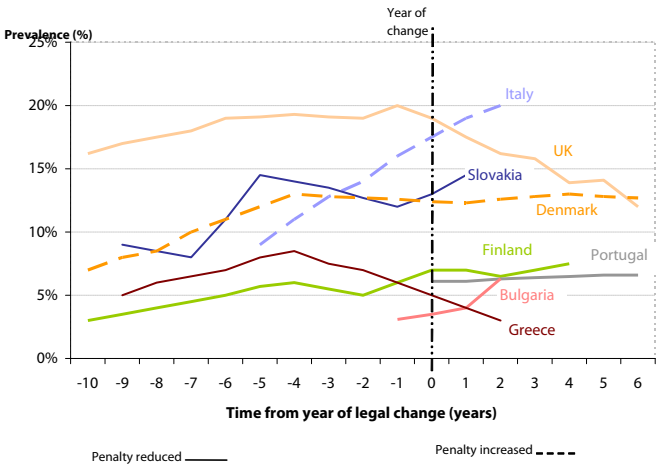
Nowadays, almost all jurisdictions around the world criminalise at least producing and trading in psychoactive substances for purposes other than medical or scientific. Such policies are justified by the need to tackle organised crime groups thriving on profits from the drug business.

Whereas this approach remains dominant, it has been subjected to growing criticism. Its opponents argue that it has led to boosting drug-related crime.[2] Moreover, there is no evidence that the global drug problem has been or can be reduced by strict controls.[3]

A particularly contentious issue is that of criminalising drug use. There seems to be a general consensus that, in order to be efficient, a drug policy also needs to address the demand side of the drug problem. It is argued however that policies based on strict law enforcement lead to escalating drug users' problems. Moreover, it is held that those policies are ineffective in curbing drug use, or at least their effectiveness has not been proven.[4]

The complexity of this issue is illustrated by the EMCDDA's analysis of the impact of policy changes in several MS on cannabis consumption. No simple association was observed between legal changes and the prevalence of cannabis use.[5]

Figure 1: The impact of drug policy changes over ten years on cannabis use among 15-34 year-olds in selected MS.



Source: 2011 Annual report, EMCDDA.

In this context, there is a growing tendency to address drug use from a health rather than law-enforcement perspective. In this field, prevention policies have been increasingly complemented with so-called "harm reduction" measures, which seek to reduce the health, social and economic harm of drug use on individuals and

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societies. Such interventions include *inter alia* needle and syringe programmes and opioid substitution treatment (e.g. providing methadone to heroin addicts). Promoted by the EU, this concept has gradually gained ground within international bodies, despite the reticence of some UN control agencies and countries, including the US.

The UN system

Since the Second World War, international cooperation on illegal drugs has mainly taken place under the aegis of the UN. The UNODC is the main UN institution, mandated to assist UN members in combating illicit drugs, crime and terrorism. It relies on voluntary contributions, mainly from UN members, for 90% of its budget. The EU is a major donor to UNODC.

The UN has set up a highly institutionalised drug-control framework based on three complementary conventions:

- The Single Convention on Narcotic Drugs of 1961
- The Convention on Psychotropic Substances of 1971
- The Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

The UN has assigned the Commission on Narcotic Drugs and the International Narcotics Control Board with monitoring the implementation of the above conventions. In practice, the enforcement of the three conventions is guaranteed not only by these institutions, but also by the US Department of State, making the international prohibitive regime 'more coercive than promotional'.[6]

EU law and policy

First steps

In the founding treaties, no reference was made to illegal drugs. However in the aftermath of the 1985 Schengen Agreement, drug issues became part of the debate concerning the implications of free movement of persons for public security. The first European plan to combat drugs was elaborated in 1990 (see figure 2).

The actors involved

The three EU institutions have been involved in shaping the EU action on drugs, and the interaction between them has been described as a power struggle.

Before Lisbon, the centre of gravity lay within the Council, since drug issues were dealt with mainly under second and third pillars, so the Commission's and Parliament's powers were limited. Within the Council, the Horizontal Drugs Group (HDG) has been the major coordinating body, as all drugs-related dossiers are analysed by this group before reaching Coreper. The role of HDG and other working parties illustrates the technical rather than political nature of EU policy-making not only in the area of drugs, but in law enforcement in general.

The Commission's role lies mainly in proposing EU-wide control measures for new drugs and enforcing the EU laws to prevent the diversion of precursors. It also provides financial support in the field of illicit drugs through various programmes.[7]

Furthermore, the Commission coordinates EU positions in international fora. Assuming this role, it has contributed to mainstreaming "harm reduction" at UN

Figure 2: Timeline of European drug policy instruments

Source: 2011 Annual report, EMCDDA.

level. It is argued that the Commission's promotion of a health-based approach to drugs was fuelled by the urge to enhance its own role, linked to its competence under the former first pillar.[8]

Drugs and EU external action

When adopting the EU *acquis*, candidate countries are required to ratify the three UN conventions. They are also able to seek EU funds to address drug problems.
Moreover, the EU has included drugs issues in dialogue with both ACP and ASEAN countries. The beneficiaries of EU development aid are required to adopt anti-drug policies. While official Commission documents speak of a "balanced approach", in practice the emphasis lies clearly on law enforcement.

Drugs issues also fall within the ambit of several EU agencies, including Europol (which first operated as a drugs unit), and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). The latter collates, analyses and disseminates drug-related data from MS.

Legal framework

EU legislation
Several drug-related acts have been adopted under the former first and third pillars, including:

- The 2004 Council Framework Decision which laid down minimum provisions on criminal acts and penalties in the field of drug trafficking,
- The 2005 Council Decision addressing the problem of "legal highs", which set up a mechanism for a rapid exchange of information on new psychoactive substances, and
- Three regulations on the monitoring of trade in precursors.

The Council also adopted a recommendation on the prevention and reduction of health-related harm associated with drug dependence.

The new legal basis
The Lisbon Treaty vested the Council and the European Parliament with the power to adopt by ordinary legislative procedure directives establishing minimum rules on criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension (Article 83(1) TFEU). Drug trafficking is one of those areas.

As to public health aspects, the Lisbon Treaty empowers the EU to complement the MS' action to reduce drugs-related health damage including information and prevention (article 168 TFEU).

EU drugs strategies

The EU Drugs Strategy (2005–2012) – an integral part of the Hague Programme – aims to add value to national drug strategies in the EU, while respecting the principle of subsidiarity.

The Strategy has been an umbrella for two four-year EU action plans on drugs:

- EU Drugs Action Plan for 2005-2008
- EU Drugs Action Plan for 2009-2012.

It focuses on two policy fields (supply and demand reduction) and two cross-cutting themes ("International cooperation" and "Research, information and evaluation"). Following the recommendations of the 2006 Green Paper, it also provides for consultation with experts and representatives of civil society. This has been organised *inter alia* through the Civil Society Forum on Drugs.

Towards a new strategy
The new strategy, to be adopted in 2012, is currently being debated. It will cover the years 2013-2020 and be accompanied by an Action Plan for 2013-2016.

The Commission has recently published a communication "Towards a stronger European response to drugs", and launched a public consultation which is open until January 2012.

The Commission has committed to presenting in the next two years:

- A drugs legislative package, proposing to revise the 2004 framework decision on drug trafficking, which has not sufficiently approximated national laws,
- Legislative proposals on drug precursors, confiscation, asset recovery and money laundering, and
- Minimum quality standards to improve drug prevention, treatment and harm-reduction services.

Particular attention will be devoted to responding to the spread of "legal highs".

The European Parliament's position

The Parliament was the first EU institution to address the problem of illicit drug control on a European basis.

In 1986 it launched a committee of inquiry, with Sir Jack Stewart-Clark (UK, ED) as rapporteur, to consider the most appropriate response to the drug problem. However, no conclusive recommendations were reached and the report revealed a split in opinion. Whereas the majority opted for a restrictive policy, a minority considered drug trafficking to be the consequence of repression. In a subsequent 1986 resolution, the EP upheld only the limited set of recommendations on which all agreed.

In 1991 another committee of inquiry was set up, with Patrick Cooney (IE, EPP) as rapporteur, to analyse the growth in organised crime related to drug trafficking. There was no unanimous final report in this case either. This time however the majority questioned the effectiveness of repressive policies and promoted a more health-oriented approach. Nevertheless, the minority position was upheld by the EP, perhaps due to pressure from the US.[9]

The Parliament dealt with the issue once again in 2004, when Giusto Catania (IT, GUE/NGL) presented his controversial own-initiative report. The report stated that none of the objectives of the 2000-2004 EU drugs strategy had been met. It thus proposed a radical policy change, advocating "harm reduction" and a scientific and balanced approach instead of prohibition.

In December 2004, the Parliament adopted the Catania report by a narrow majority (285 votes in favour and 273 against). However, this resolution did not lead to major policy changes, as illustrated by the subsequent EU drugs strategy (2005–2012).

All the EP "drug" debates have revealed strong divisions in views, reflecting the diversity of national approaches.

National policies

The 27 MS have developed national drug policies rooted in their respective histories and legal traditions. Drug strategies and action plans have become core instruments of those policies.[10]

All MS have signed the three UN conventions and provided for harsh penalties for drug trafficking. The 2004 Council framework decision led to some alignment of minimum penalties throughout the EU. However, as to possession for personal use, two opposite trends have been observed in the EU. While some MS (e.g. Portugal, Belgium and Luxembourg) have abandoned criminal sanctions, others (such as Bulgaria and Denmark) have been taking an increasingly restrictive approach.

The opposite ends of the policy spectrum

The entirely different Dutch and Swedish drug policies represent policy models which have served other MS as point of reference.

The Netherlands

Since the 1970s, the Netherlands has adopted a unique approach to illicit drugs, which has been described as "pragmatic" and "practical". It is based on such concepts as "normalisation" of drug users (treating them as far as possible as ordinary citizens), "harm reduction", and "separation of the markets" for soft and hard drugs. The sale of cannabis in coffee shops is tolerated, as they

are considered safe environments in which cannabis can be obtained without coming into contact with hard drugs. However, the supply of cannabis to coffee shops remains illegal, which leads some critics to describe the Dutch policy as contradictory. Shaping its policy in accordance with the UN conventions has not spared the Netherlands from criticism, straining relations with its neighbours, Germany in particular.

In the past year there has been an increasing tendency towards a more repressive policy, the phenomenon explained by the political shift to the right, as well as a decline in the public acceptance of illegal drug use. In order to clamp down on "drug tourism", the southern Dutch provinces have recently decided to close coffee shops to foreigners as of January 2012.

The Netherlands remains however one of the few MS to allow prescription of heroin to problem users and has promoted the medical use of cannabis.

Sweden

The ultimate goal of "the Swedish model" is a drug-free society, to be attained by "zero tolerance" measures. Since the late 1960s, Swedish drug policy has been based on control and repression of use. While Swedish authorities and UNODC consider this policy successful, the opinion of academics seems to be more nuanced, especially given the fact that drug consumption in Sweden has always been comparatively low.[11] Despite the emphasis on control, harm reduction measures have increasingly been used.

Further reading

2011 Annual report on the state of the drugs problem in Europe / EMCDDA, November 2011.

Drug policy harmonization and the European Union / Chatwin, C. 2011.

Harm reduction: evidence, impacts and challenges / EMCDDA, 2010.

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Endnotes

1 The EU Drugs Strategy (2005–2012), p. 5.

2 Drugs and Decision-Making in the European Union / Boekhout van Solinge, T. 2002, p. 82.

3 A report on Global Illicit Drugs Markets 1998-2007 / European Commission, 2009, p. 13.

4 The report presents the unintended consequences of prohibition (ibid. pp. 58–59). See also Public Letter to Kofi Annan.

5 In the same vein, the report states that "there is no evidence that any specific policy instrument can reduce the number of drug users" (ibid. p. 13).

6 Crime, war, and global trafficking: designing international cooperation / Jojarth, C. 1975, p. 125.

7 These include the Second programme of Community action in the field of health (2008-13) and The Specific Programme Drug prevention and information (2007-2013), which is part of the General Programme Fundamental Rights and Justice. The latter has a budget for 2007-2013 of EUR 21.35 million.

8 Drugs and Decision-Making in the European Union / Boekhout van Solinge, T. 2002, p. 70.

9 Chatwin, op. cit. p. 32. See also Boekhout van Solinge, T. 2002, op. cit. p. 26–28.

10 The differences in addressing illicit drugs exist not only at national level, but also between regions and municipalities. This is illustrated by the foundation of two networks of European cities promoting entirely different approaches to the problem. Whereas the European Cities on Drug Policy (ECDP) network supports legalisation, liberalisation and harm reduction, the European Cities Against Drugs (ECAD) advocates war on drugs and "zero tolerance" attitude.

11 Chatwin, C. 2011, op. cit. p. 104. See also Dealing with drugs in Europe / Boekhout van Solinge, T. 2004, p. 145.

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