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ENHANCING CROSS-BORDER LAW ENFORCEMENT COOPERATION TO REDUCE DRUG SUPPLY PRACTICAL EXPERIENCES IN EU MEMBER STATES

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COUNCIL

EU Drugs Strategy (2013-20)

(2012/C 402/01)

PREFACE

1. This EU Drugs Strategy provides the overarching political framework and priorities for EU drugs policy identified by Member States and EU institutions, for the period 2013-20. The framework, aim and objectives of this Strategy will serve as a basis for two consecutive 4-year EU Drugs Action plans.

2. This Drugs Strategy is based first and foremost on the fundamental principles of EU law and, in every regard, upholds the founding values of the Union: respect for human dignity, liberty, democracy, equality, solidarity, the rule of law and human rights. It aims to protect and improve the well-being of society and of the individual, to protect public health, to offer a high level of security for the general public and to take a balanced, integrated and evidence-based approach to the drugs phenomenon.

3. The Strategy is also based on international law, the relevant UN Conventions [1] which provide the international legal framework for addressing the illicit drugs phenomenon and the Universal Declaration on Human Rights. This EU Drugs Strategy takes into account relevant UN political documents, including the UN Political Declaration and Action Plan on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem, adopted in 2009, which states that drug demand reduction and drug supply reduction are mutually reinforcing elements in illicit drugs policy and the UN Political Declaration on HIV/AIDS. The Strategy has been drafted on the basis of the principles set out in the Lisbon Treaty and on the respective competences of the Union and individual Member States. Due regard is given to subsidiarity and proportionality, as this EU Strategy intends to add value to national strategies. The Strategy shall be implemented in accordance with these principles and competencies. Furthermore, the Strategy respects fully the European Convention on Human Rights and the EU Charter of Fundamental Rights.

4. By 2020, the priorities and actions in the field of illicit drugs, encouraged and coordinated through this EU Drugs Strategy, should have achieved an overall impact on key aspects of the EU drug situation. They shall ensure a high level of human health protection, social stability and security, through a coherent, effective and efficient implementation of measures, interventions and approaches in drug demand and drug supply reduction at national, EU and international level, and by minimising potential unintended negative consequences associated with the implementation of these actions.

5. The drugs phenomenon is a national and international issue that needs to be addressed in a global context. In this regard, coordinated action carried out at EU level plays an important role. This EU Drugs

[1] The UN Single Convention on Narcotic Drugs of 1961 as amended by the 1972 protocol, the Convention on Psychotropic Substances (1971) and the Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

Strategy provides a common and evidence-based framework for responding to the drugs phenomenon within and outside the EU. By providing a framework for joint and complementary actions, the Strategy ensures that resources invested in this area are used effectively and efficiently, whilst taking into account the institutional and financial constraints and capacities of Member States and of the EU institutions.

6. The Strategy aims to contribute to a reduction in drug demand and drug supply within the EU, as well as a reduction as regards the health and social risks and harms caused by drugs through a strategic approach that supports and complements national policies, that provides a framework for coordinated and joint actions and that forms the basis and political framework for EU external cooperation in this field. This will be achieved through an integrated, balanced and evidence-based approach.

7. Finally, this Strategy builds on the lessons learned from the implementation of previous EU Drugs Strategies and associated Action Plans, including the findings and recommendations from the external evaluation of the EU Drugs Strategy 2005-12, while taking into account other relevant policy developments and actions at EU level and international level in the field of drugs.

I. **Introduction**

8. The Strategy takes on board new approaches and addresses new challenges which have been identified in recent years, including:

— the increasing trend towards poly-substance use, including the combination of licit substances, such as alcohol and prescribed controlled medication, and illicit substances;

— the trends towards non-opioid drug use as well as the emergence and spread of new psychoactive substances;

— the need to ensure and improve access to prescribed controlled medications;

— the need to improve the quality, coverage and diversification of drug demand reduction services;

— the continued high incidence of blood-borne diseases, especially hepatitis C virus, among injecting drug users and potential risks of new outbreaks of HIV infections and other blood-borne diseases related to injecting drugs use;

— the continuing high prevalence of numbers of drug-related deaths within the EU;

— the need to target drug use through an integrated health care approach addressing — inter alia — psychiatric co-morbidity;

— the dynamics in the illicit drug markets, including shifting drug trafficking routes, cross-border organised crime and the use of new communication technologies as a facilitator for the distribution of illicit drugs and new psychoactive substances;

— the need to prevent diversion of precursors, pre-precursors and other essential chemicals used in the illicit manufacture of drugs from legal trade to the illicit market and the diversion of certain chemicals used as cutting agents.

9. The objectives of the EU Drugs Strategy are:

— to contribute to a measurable reduction of the demand for drugs, of drug dependence and of drug-related health and social risks and harms;

— to contribute to a disruption of the illicit drugs market and a measurable reduction of the availability of illicit drugs;

— to encourage coordination through active discourse and analysis of developments and challenges in the field of drugs at EU and international level;

— to further strengthen dialogue and cooperation between the EU and third countries and international organisations on drug issues;

— to contribute to a better dissemination of monitoring, research and evaluation results and a better understanding of all aspects of the drugs phenomenon and of the impact of interventions in order to provide sound and comprehensive evidence-base for policies and actions.

10. The Strategy builds upon the achievements [1] made by the EU in the field of illicit drugs and is informed by an ongoing, comprehensive assessment of the current drug situation in particular that provided by the EMCDDA, while recognising the need to proactively respond to developments and challenges.

11. The Strategy is structured around two policy areas; drug demand reduction and drug supply reduction, and three cross-cutting themes: (a) coordination, (b) international cooperation and (c) research, information, monitoring and evaluation. Its two consecutive Action Plans, drafted by corresponding Presidencies in 2013 and 2017, will provide a list of specific actions with a timetable, responsible parties, indicators and assessment tools.

12. Taking due account of the current drugs situation and the implementation needs of the Strategy, a limited number of targeted actions will be selected on each of the two policy areas and three cross-cutting themes, for inclusion in the Action Plans based on criteria which include the following:

(a) actions must be evidence-based, scientifically sound and cost-effective, and aim for realistic and measurable results that can be evaluated;

(b) actions will be time-bound, have associated benchmarks, performance indicators and identify responsible parties for their implementation, reporting and evaluation;

(c) actions must have a clear EU relevance and added value.

13. To safeguard a continued focus on the implementation of the Strategy and of its accompanying Action Plans, each Presidency, with the support of the Commission and the technical input from EMCDDA and Europol shall address priorities and actions that require follow up in the HDG during its term and shall monitor progress. The Commission, taking into account information provided by the Member States, the European External Action Service (EEAS), and available from the EMCDDA, Europol and other EU bodies, as well as from the civil society, shall provide biannual progress reports, with the purpose of assessing the implementation of objectives and priorities of the EU Drugs Strategy and its Action Plan(s).

14. The Commission, taking into account information provided by the Member States and available from the EMCDDA, Europol, other relevant EU institutions and bodies and civil society, will initiate an external midterm assessment of the Strategy by 2016, in view of preparing a second Action Plan for the period 2017-20. Upon conclusion of the Drugs Strategy and its Action Plans by 2020, the Commission will initiate an overall external evaluation of their implementation. This evaluation should also take into account information gathered from the Member States, the EMCDDA, Europol, other relevant EU institutions and bodies, civil society, and previous evaluations in order to provide input and recommendations for the future development of EU drugs policy.

15. To reach its objectives and to ensure efficiency, the EU Drugs Strategy 2013-20 will use, wherever possible, existing instruments and bodies operating in the drug field, within the respective mandate, or that have relevance for key aspects of it, both within the EU (in particular the EMCDDA, Europol, Eurojust, the European Centre for Disease Prevention and Control (ECDC) and the European Medicines Agency (EMA) and collaboration with bodies outside the EU (such as UNODC, WCO, WHO and the Pompidou Group). The Commission, the High Representative, the Council, the European Parliament will ensure that the EU's activities in the field of illicit drugs are coordinated and that they complement each other.

[1] Report on the independent assessment of the EU Drugs Strategy 2005-12 and its action plans (http://ec.europa.eu/justice/anti-drugs/files/rand_final_report_eu_drug_strategy_2005-2012_en.pdf)

16. Appropriate and targeted resources should be allocated for the implementation of the objectives of this EU Drugs Strategy at both EU and national level.

II. **Policy field: drug demand reduction**

17. Drug demand reduction consists of a range of equally important and mutually reinforcing measures, including prevention (environmental, universal, selective and indicated), early detection and intervention, risk and harm reduction, treatment, rehabilitation, social reintegration and recovery.

18. In the field of drug demand reduction, the objective of the EU Drugs Strategy 2013-20 is to contribute to the measurable reduction of the use of illicit drugs, to delay the age of onset, to prevent and reduce problem drug use, drug dependence and drug-related health and social risks and harms through an integrated, multidisciplinary and evidence-based approach, and by promoting and safeguarding coherence between health, social and justice policies.

19. In the field of drug demand reduction, the following priorities (not listed in the order of priority) are identified.

19.1. Improve the availability, accessibility and coverage of effective and diversified drug demand reduction measures, promote the use and exchange of best practices and develop and implement quality standards in prevention (environmental, universal, selective and indicated), early detection and intervention, risk and harm reduction, treatment, rehabilitation, social reintegration and recovery.

19.2. Improve the availability and effectiveness of prevention programmes (from initial impact to long-term sustainability), and raise awareness about the risk of the use of illicit drugs and other psycho-active substances and related consequences. To this end, prevention measures should include early detection and intervention, promotion of healthy lifestyles and targeted prevention (i.e. selective and indicated) directed also at families and communities.

19.3. Scale up and develop effective demand reduction measures to respond to challenges such as: polydrug use including the combined use of licit and illicit substances, misuse of prescribed controlled medications and the use of new psychoactive substances.

19.4. Invest in and further research on effective risk and harm reduction measures aimed at substantially reducing the number of direct and indirect drug-related deaths and infectious blood-borne diseases, associated with drug use, but not limited to, HIV and viral hepatitis as well as sexually transmittable diseases and tuberculosis.

19.5. Expand the availability, accessibility and coverage of effective and diversified drug treatment across the EU to problem and dependent drug users including non-opioids users, so that all those who wish to enter drug treatment can do so, according to relevant needs.

19.6. Scale up the development, availability and coverage of drug demand reduction measures in prison settings, as appropriate and based on a proper assessment of the health situation and the needs of prisoners, with the aim of achieving a quality of care equivalent to that provided in the community and in accordance with the right to health care and human dignity as enshrined in the European Convention on Human Rights and the EU Charter of Fundamental Rights. Continuity of care should be ensured at all stages of the criminal justice system and after release.

19.7. Develop and expand integrated models of care, covering needs related to mental and/or physical health-related problems, rehabilitation and social support in order to improve and increase the health and social situation, social reintegration and recovery of problem and dependent drug users, including those affected by co-morbidity.

19.8. Develop effective and differentiated drug demand reduction measures that aim to reduce and/or delay the onset of drug use and that are appropriate to the needs of specific groups, patterns of drug use and settings, with particular attention to be paid to vulnerable and marginalised groups.

19.9. Prevent local and regional drug use epidemics, which may threaten the public health within the EU by ensuring coordinated and effective common approaches.

19.10. Drug demand reduction priorities need to take into account the specific characteristics, needs and challenges posed by the drug phenomenon at national and EU level. It is imperative that an appropriate level of resources is provided for that purpose at local, national and EU level.

III. **Policy field: drug supply reduction**

20. Drug supply reduction includes the prevention and dissuasion and disruption of drug-related, in particular organised, crime, through judicial and law enforcement cooperation, interdiction, confiscation of criminal assets, investigations and border management.

21. In the field of drug supply reduction, the objective of the EU Drugs Strategy 2013-20 is to contribute to a measurable reduction of the availability of illicit drugs, through the disruption of illicit drug trafficking, the dismantling of organised crime groups that are involved in drug production and trafficking, efficient use of the criminal justice system, effective intelligence-led law enforcement and increased intelligence sharing. At EU level, emphasis will be placed on large-scale, cross-border and organised drug-related crime.

22. In the field of drug supply reduction, the following priorities (not listed in the order of priority) are identified.

22.1. Strengthen the cooperation and coordination between law enforcement agencies at strategic and operational level. This should include, but not be limited to, improving cross-border exchange of information (and intelligence) in real time, best practices and knowledge, as well as conducting joint operations and investigations. Cooperation with third countries as regards tackling drug-related organised crime operating towards and within the EU should be seen as important in this respect.

22.2. Reduce intra-EU and cross-border production, smuggling, trafficking, distribution and sale of illicit drugs and the facilitation of such activities, as well as reduce the diversion of drug precursors, pre-precursors and other essential chemicals used in the illicit manufacture of drugs.

22.3. Respond effectively to the evolving trends, such as the diversion of certain chemicals utilised as cutting agents for illicit drugs and the supply of drugs through the use of new technology.

22.4. Special attention must be given to new communication technologies as having a significant role as a facilitation for the production, marketing, trafficking and distribution of drugs (including controlled new psychoactive substances).

22.5. Member States shall continue to cooperate, and coordinate — where appropriate — their actions at EU level, together with relevant EU and international bodies and agencies, such as Europol, Eurojust, EMCDDA and fully exploit existing instruments and methods provided in the field of judicial and law enforcement cooperation, such as intelligence-led policing, drug profiling, Joint Investigation Teams, Joint Customs and Police Operations and relevant initiatives such as the EMPACT projects, Liaison Officer Platforms and through the use of regional platforms.

22.6. At EU level, emphasis shall be placed on intelligence-led law enforcement aimed at targeting large-scale drug production and trafficking. Closer coordination and cooperation between law enforcement agencies within and between Member States as well as with Europol should be further strengthened.

22.7. Where necessary, when such tasks are not initiated or implemented through Europol, ad hoc regional collaboration initiatives or platforms may be created within the EU, to counter emerging threats from shifting drug trafficking routes and emerging organised crime hubs. This shall be done by means of coordinated operation responses. Such actions need to be compatible with and complementary to existing legal and operational arrangements at EU level and shall be based on threat assessments and analysis. Such cooperation structures should be flexible, may have a temporary lifespan depending on the future development of the specific threat that they address and work in close cooperation with all relevant EU agencies and platforms, in particular with Europol.

22.8. Strengthen, where deemed necessary, the EU drug-related judicial and law enforcement cooperation and the use of existing practices by establishing faster and more accurate responses. Support judicial and law enforcement cooperation activities and exchange of information and intelligence.

22.9. Reinforce the European Union's legislative framework in a targeted way as deemed necessary so as to strengthen the EU response in dealing with new trends, ensure that collaborative efforts complement each other with a view to dismantle cross-border organised crime groups, confiscate the proceeds of drug-related crime by fully utilising the EU network of asset recovery offices and thus ensure a more effective response to drug trafficking. The further development of relevant law enforcement instruments can be explored.

22.10. The EU shall work towards more effective policies in the field of drug supply reduction, by reinforcing policy evaluation and analysis to improve the understanding of drug-markets, drug-related crimes and the effectiveness of drug-related law enforcement responses.

22.11. In order to prevent crime, avoid recidivism and enhance the efficiency and effectiveness of the criminal justice system while ensuring proportionality, the EU shall encourage, where appropriate, the use, monitoring and effective implementation of drug policies and programmes including arrest referral and appropriate alternatives to coercive sanctions (such as education, treatment, rehabilitation, aftercare and social reintegration) for drug-using offenders.

IV. **Cross-cutting theme: coordination**

23. In the field of EU drugs policy, the objective of coordination is twofold, namely to ensure synergies, communication and an effective exchange of information and views in support of the policy objectives, while at the same time encouraging an active political discourse and analysis of developments and challenges in the field of drugs at EU and international levels.

Coordination is required within and among EU institutions, Member States, other relevant European bodies and civil society on the one hand, and between the EU, international bodies and third countries on the other hand.

24. In the field of coordination, the following priorities (not listed in the order of priority) are identified.

24.1. Ensure synergies, coherence and effective working practices among relevant Member States, EU institutions, bodies and initiatives, based on the principle of sincere cooperation ([1]), avoiding duplication of efforts, securing efficient exchange of information, using resources effectively and guaranteeing continuity of actions across Presidencies.

24.2. Given the role of the HDG as the main drugs coordinating body within the Council, its coordinating efforts need to be further strengthened to take account of the work of the various bodies, that include a drugs component such as the Standing Committee on Operational Cooperation on Internal Security (COSI) and the Working Party on Public Health. In addition, the balanced approach to the drugs

([1]) TEU article 4.

problem, targeting with equal vigour the demand for and the supply of drugs, requires close cooperation, interaction and information exchange with relevant other Council preparatory bodies including those in the area of external action and other relevant EU initiatives, in the areas of judicial and criminal matters, law enforcement, public health, social affairs.

24.3. Ensure that the EU and Member States further develop and implement working methods and best practices for multidisciplinary cooperation in support of the objectives of the Strategy and that these are promoted at national level.

24.4. Provide opportunities under each Presidency to discuss, monitor and evaluate issues of coordination, cooperation, emerging trends, effective interventions and other policy developments of added value to the EU Drugs Strategy for instance during the National Drugs Coordinators' Meetings.

24.5. Promote and encourage the active and meaningful participation and involvement of civil society, including non-governmental organisations as well as young people, drug users and clients of drug-related services, in the development and implementation of drug policies, at national, EU and international level. Also to ensure the engagement with the EU Civil Society Forum on Drugs at EU and international level.

24.6. Ensure that the EU speaks with one strong voice in international forums such as the Commission on Narcotic Drugs (CND) and in dialogues with third countries, promoting the integrated, balanced and evidence-based EU approach to drugs. In this framework, the EU Delegations can play a useful role in promoting such approach in the field of drugs and in facilitating a coherent discourse on drugs policy.

V. **Cross-cutting theme: international cooperation**

25. International cooperation is a key area where the EU adds value to Member States efforts in coordinating drug policies and addressing challenges. The EU external relations in the field of drugs are based on the principles of shared responsibility, multilateralism, an integrated, balanced and evidence-based approach, the mainstreaming of development, respect for human rights and human dignity and respect for international conventions.

26. The objective of the EU Drugs Strategy 2013-20 in the field of international cooperation, is to further strengthen dialogue and cooperation between the EU and third countries and international organisations on drug issues in a comprehensive and balanced manner.

27. The EU Drugs Strategy is part of an overall approach that enables the EU to speak with one voice in the international arena and with the partner countries. The EU will remain committed to international cooperation and debate on the fundamentals of drug policy, and actively share the achievements of the EU approach in drug policy that is balanced between drug demand reduction and drug supply reduction, based on scientific evidence and intelligence as well as respecting human rights.

This requires coherence between policies and actions at the EU level, including external cooperation on drug demand reduction, including risk and harm reduction, drug supply reduction, alternative development, the exchange and transfer of knowledge and the involvement of both state and non-state actors.

28. The EU and its Member States should guarantee the integration of the EU Drugs Strategy and its objectives within the EU's overall foreign policy framework as part of a comprehensive approach that makes full use of the variety of policies and diplomatic, political and financial instruments at the EU's disposal in a coherent and coordinated manner. The High Representative supported by the EEAS should facilitate this process.

29. The EU external action approach in the field of drugs aims to further strengthen and support third countries' efforts to deal with the challenges to public health, safety and security. This will be done through the implementation of initiatives set out in this Strategy and subsequent action plans, including alternative development, drug demand reduction, drug supply reduction, the promotion and protection of human rights and also taking into account regional initiatives. Given the impact of drug production and trafficking on the internal stability and security situation in source and transit countries, actions will also target corruption, money laundering and the proceeds of drug-related crime.

30. In the field of international cooperation, the following priorities (not listed in the order of priority) are identified.

30.1. Improve coherence between the internal and external aspects of the EU drugs policies and responses towards third countries in the field of drugs.

30.2. Increase the EU's engagement and coordination in the international drug policy discourse, both in respect of negotiations with international organisations and structures including the UN, G8 and the Council of Europe and relations with third countries by achieving common EU positions, and ensure an effective role within the UN drug policy process.

30.3. Ensure that international cooperation in the field of drugs is integrated within the overall political relations and framework agreements between the EU and its partners, both at national and/or regional level. It should reflect the integrated, balanced and evidence-based EU approach and include: political dialogue, drug coordination, demand reduction (including risk and harm reduction), supply reduction including alternative development and law enforcement, integration of drug policies within the broader development cooperation agenda, information, research, monitoring and evaluation.

30.4. Ensure that the EU international response and actions in priority third countries and regions around the world are comprehensive taking into account every dimension of the drug phenomenon, and address the development, stability and security of these countries and regions through enhanced partnership.

30.5. Ensure that the EU international drug response is evidence-based and includes a monitoring process on the situation and progress involving different information tools from the Commission, EEAS, including the EU Delegations, Member States, EMCDDA, Europol, Eurojust and the European Centre for Disease Prevention and Control in close cooperation with UNODC.

30.6. Ensure that support to the candidate and potential candidate countries, and the countries of the European Neighbourhood Policy, focuses on capacity-building on both supply and demand reduction and evidence-based, effective and balanced drug policies, through strengthened cooperation including sharing of EU best practices and participation, where appropriate, in EU agencies, such as the EMCDDA, Europol and Eurojust.

30.7. Ensure a sustainable level of policy dialogue and information sharing on the strategies, aims and relevant initiatives through the dialogues on drugs with international partners, both at regional and bilateral level. Key partners are identified on the basis of their status of cooperation with the EU and their relevance in addressing the global illicit drug phenomenon while taking account of partners emerging as a result of developments in the drug situation. The Political Dialogues should be complementary to and coherent with other external cooperation structures and their impact and, where appropriate, provide a forum for discussing priorities on cooperation and progress on EU-funded projects.

30.8. Ensure an appropriate level of funding and expertise (provided for by the EU and its Member States) including by reinforcing coordination, monitoring and evaluation of financial and technical support,

while striving for synergies and by continuously balancing the transparent allocation of cooperation, resources, financial and technical assistance, between drug demand and drug supply reduction measures reflecting the EU approach. The EU should work towards providing relevant expertise in EU Delegations to support the implementation of measures targeting third countries in the field of drugs. The midterm review and final assessment of this EU Drugs Strategy should reflect on the impact of EU spending in third countries and the Commission and the EEAS should provide updates on priorities and progress on the EU spending overseas to Member States when appropriate.

30.9. When providing financial and technical support to source countries, the EU and Member States shall ensure, in particular, that alternative development programmes:

— are non-conditional, non-discriminating and, if eradication is scheduled, properly sequenced,

— set realistic rural development-related objectives and indicators for success, ensuring ownership among target communities and

— support local development, while considering interactions with factors such as human security, governance, violence, human rights, development and food security.

30.10. Ensure that the protection of human rights is fully integrated in political dialogues and in the implementation and delivery of relevant programs and projects in the field of drugs.

VI. **Cross-cutting theme: information, research, monitoring and evaluation**

31. The objective of the EU Drugs Strategy 2013-20 in the field of information, research, monitoring and evaluation is to contribute to a better understanding of all aspects of the drugs phenomenon and of the impact of measures in order to provide sound and comprehensive evidence for policies and actions. Furthermore, the EU Drugs Strategy 2013-20 aims to contribute to a better dissemination of monitoring, research and evaluation results at EU and national level ensuring the strengthening of synergies, a balanced allocation of financial resources and avoiding duplication of efforts. This can be achieved through harmonisation of methodologies, networking and closer cooperation.

32. In the field of information, research, monitoring and evaluation the following priorities (not listed in the order of priority) are identified.

32.1. The EU and its Member States should continue to invest in information exchange, data collection and monitoring, and in research and evaluation of the drug situation and responses to it at national and EU level. This should cover all relevant aspects of the drug phenomenon, including drug demand and drug supply. Particular emphasis should be placed on maintaining and further enhancing data collection and reporting through the EMCDDA key indicators in drug demand reduction.

32.2. The EMCDDA should, within its mandate, further enhance the knowledge infrastructure and should continue to play a key role as the central facilitator, supporter and provider of information, research, monitoring and evaluation of illicit drugs across the EU. It should continue to provide a timely, holistic and comprehensive analysis of the European drugs situation and of responses to it, and collaborate with other relevant agencies, including, when relevant and appropriate, the European Centre for Disease Control (ECDC) and the European Medicines Agency (EMA) and WHO.

32.3. Europol should continue its efforts as regards information gathering and analysis in the area of drug-related organised crime, while Member States should deliver relevant information to the Agency. The Agency should continue the regular delivery of threat assessment reports (e.g. EU SOCTA) on EU drug-related organised crime.

32.4. Member States, EU institutions and agencies should enhance information and data collection on all aspects of drug supply, including on drug markets, drug-related crimes and drug supply reduction with the aim to improve analysis and informed decision making. Member States, the Commission, EMCDDA, Europol and — where appropriate — other EU agencies should work together to improve data collection and the development of policy-relevant and scientifically sound indicators.

32.5. The EU institutions, bodies and Member States should improve the capacity to detect, assess and respond rapidly and effectively to the emergence of new psychoactive substances, to behavioural changes in drugs consumption and epidemic outbreaks and to other emerging trends that pose risks to public health and safety. This can be achieved, inter alia, through the strengthening of existing EU legislation, the exchange of information, intelligence, knowledge and best practices.

32.6. Member States, EU institutions and agencies should promote and support research, including applied research, into new psychoactive substances and ensure cooperation and coordination between networks at national and EU level in order to strengthen the understanding of the phenomenon. Monitoring in this area should be scaled up in close coordination with the EMCDDA. In particular, emphasis should be placed on developing forensic and toxicological capacity as well as on improving the availability of epidemiological information.

32.7. Member States should continue efforts to maintain the achievements made within the EU in terms of monitoring and information exchange, including through the Reitox Network of National Focal Points, while supporting the further development of EU standardised data collection and analysis in the areas of drug demand and drug supply.

32.8. Ensure adequate financing for drug-related research and development projects at EU and national level, according to financial resources including through the EU financial programmes covering the period 2014-20. Projects supported at EU level should take into account the priorities of the Strategy and its Action Plans and deliver a clear EU added value, ensuring coherence and synergies while avoiding duplication within programmes and with EU bodies.

32.9. EU institutions, bodies and Member States should recognise the role of scientific evaluation of policies and interventions (with a focus on outcomes achieved) as a key element in strengthening of the EU approach to drugs, and should promote its use both at national, EU and international level.

32.10. Ensure and reinforce training of professionals involved with drug-related issues, both in the drug demand as well as the drug supply reduction field.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COUNCIL

EU ACTION PLAN ON DRUGS 2013-2016

(2013/C 351/01)

CONTENTS

Introduction

The use of illicit drugs and the misuse of drugs generally, is a major problem for individuals, families and communities across Europe. Apart from the health and social implications of drug misuse, the illicit drugs market constitutes a major element of criminal activity across European society and, indeed, on a global level.

In December 2012, the Council adopted the EU Drugs Strategy for 2013-2020. The Strategy aims to contribute to a reduction in drug demand and drug supply within the EU. It also aims to reduce the health and social risks and harms caused by drugs through a strategic approach that supports and complements national policies, that provides a framework for coordinated and joint actions and that forms the basis and political framework for EU external cooperation in this field. This will be achieved through an integrated, balanced and evidence-based approach.

The objectives of the Strategy are:

— to contribute to a measurable reduction of the use of drugs, of drug dependence and of drug-related health and social risks and harms,

— to contribute to a disruption of the illicit drugs market and a measurable reduction of the availability of illicit drugs,

— to encourage coordination through active discourse and analysis of developments and challenges in the field of drugs at EU and international level,

— to further strengthen dialogue and cooperation between the EU and third countries, international organisations and fora on drug issues,

— to contribute to a better understanding of all aspects of the drugs phenomenon and of the impact of interventions in order to provide a sound and comprehensive evidence-base for policies and actions.

This EU Drugs Action Plan, like the EU Drugs Strategy, is based on the fundamental principles of EU law and it upholds the founding values of the Union — respect for human dignity, liberty, democracy, equality, solidarity, the rule of law and human rights. It is also based on the UN conventions that provide the international legal framework to address, inter alia, the use of illicit drugs, as well as on the Universal Declaration on Human Rights.

The Plan sets out the actions that will be implemented to achieve the objectives of the Strategy. Actions are set out under the two policy areas of the Strategy:

— drug demand reduction, and

— drug supply reduction;

and the three cross-cutting themes of the Strategy:

— coordination,

— international cooperation, and

— information, research, monitoring and evaluation.

Actions are aligned to objectives of the EU Drugs Strategy 2013-2020. In drawing up the actions, account was taken of the need to be evidence-based, scientifically sound, realistic, time-bound and measurable with a clear EU relevance and added value. This Action Plan indicates timetables, responsible parties, indicators and data collection/assessment mechanisms.

Based on existing reporting mechanisms, a number of over-arching indicators are set out in Annex 1. These facilitate the measurement of the overall effectiveness of this EU Drugs Action Plan and do not involve an additional reporting burden. A number of these are referenced, as appropriate, across the Plan. Furthermore, throughout the Plan, indicators are set out that draw on programme, evaluative and other data sources. Utilisation of these indicators is dependent on data collection processes in each Member State or at EU institution level.

In line with the Strategy stipulation that its detailed implementation should be set out in two consecutive Action Plans, this Action Plan covers the four years from 2013 until 2016. A second Action Plan for the period 2017-2020 will be prepared following an external mid-term assessment of the EU Drugs Strategy by 2016 and taking account of any other relevant strategies and evaluations.

1. **Drug demand reduction**

Contribute to a measurable reduction in the use of illicit drugs, in problem drug use, in drug dependence and in drug-related health and social harms as well as contributing to a delay in the onset of drug use

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
1. Prevent drug use and, secondly, delay the onset of drug use	1. Improve the availability and effectiveness of prevention measures that take account of: (a) population risk factors such as age; gender; cultural and social factors; (b) situational risk factors such as homelessness; drug use in nightlife and recreational settings; the workplace; and driving under the influence of drugs; and (c) individual risk factors such as mental health; problem behaviour and psychosocial development; and other factors known to affect individual vulnerability to drug use such as genetic influences and family circumstances	Ongoing	MS	— Overarching indicators 1, 12 — Level of provision at MS level of evidence-based universal and environmental prevention measures — Level of provision at MS level of targeted prevention measures, including family- and community-based measures — Level of provision at MS level of indicated prevention measures	EMCDDA reporting Reitox national reports MS reporting on results of measures
	2. In addition to the prevention of drug use, strengthen and better target prevention and diversionary measures to delay the age of first use of illicit drugs	Ongoing	MS	— Overarching indicators 1, 5, 12 — Level of provision at MS level of evidence-based prevention and diversionary measures that target young people in family, community, and formal/non-formal education settings	EMCDDA reporting MS reporting on results of measures
	3. Raise awareness of the risks and consequences associated with the use of illicit drugs and other psychoactive substances	Ongoing	MS COM EMCDDA	— Overarching indicators 5, 12 — Level of awareness in general and youth populations of healthy lifestyles and of the risks and consequences of the use of illicit drugs and other psychoactive substances	EMCDDA reporting Eurobarometer surveys ESPAD HBSC

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
	4. Enable a more informed response to the challenge of the misuse of prescribed and 'over the counter' opioids and other psychoactive medicines	2014-2016	MS HDG EMA EMCDDA	— Collation of data by MS on levels and patterns of prescribing of psychoactive medicines by end-2014 — Number of initiatives that focus on the promotion of appropriate use of prescribed and 'over the counter' opioids and other psychoactive medicines	MS reporting Report of ALICE RAP project
2. Enhance the effectiveness of drug treatment and rehabilitation, including services for people with co-morbidity, to reduce the use of illicit drugs; problem drug use; the incidence of drug dependency and drug-related health and social risks and harms and to support the recovery and social re/integration of problematic and dependent drug users	5. Develop and expand the diversity, availability, coverage and accessibility of comprehensive and integrated treatment services including those which address polydrug use (combined use of illicit and/or licit substances including alcohol)	Ongoing	MS	— Overarching indicators 1, 6, 11 — Extent of the diversity of comprehensive and integrated treatment services at MS level including those which address polydrug use — MS data on treatment retention and outcomes	EMCDDA reporting Reitox national reports EMCDDA Best practice portal
	6. Expand the provision of rehabilitation/recovery services with an emphasis on services that: (a) focus on providing a continuum of care through case management and interagency collaboration for individuals; (b) focus on supporting the social re/integration (including the employability) of problem and dependent drug users; and (c) strengthen the diagnostic process and the treatment of psychiatric and physical co-morbidity involving drug use	Ongoing	MS	— Overarching indicator 11 MS data on: — Extent of increase in rehabilitation/recovery services adopting case management and inter-agency approaches — Extent of increase in the number of programmes, specifically targeted at drug users with co-morbidity, involving partnerships between both mental health and drug rehabilitation/recovery services — Level and duration of abstentions from consumption of illicit and/or licit drugs by people leaving drug treatment — Availability of treatment options to meet needs of people who experience relapses to drug use	EMCDDA reporting MS reporting on results of services

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
	7. Ensure that treatment and outreach services incorporate greater access to risk and harm reduction options to lessen the negative consequences of drug use and to substantially reduce the number of direct and indirect drug-related deaths and infectious blood-borne diseases associated with drug use but not limited to HIV and viral hepatitis, as well as sexually transmittable diseases and tuberculosis	Ongoing	MS	— Overarching indicators 2, 3, 4, 11 — Extent of increased availability of and access to evidence-based risk and harm reduction measures in MS	EMCDDA reporting Reitox national reports MS reporting on services
	8. Scale up the development, availability and coverage of health care measures for drug users in prison and after release with the aim of achieving a quality of care equivalent to that provided in the community	Ongoing	MS	— Overarching indicator 10 — Availability of services for drug users in prisons and the extent to which prison health care policies and practices incorporate care models comprising best practices in needs assessment and continuity of care for prisoners during imprisonment — Extent of decrease in drug-related physical and mental health problems amongst prisoners — Extent to which prison-based services and community-based services provide continuity of care for prisoners upon release with particular emphasis on avoiding drug overdoses	EMCDDA reporting Reitox national reports MS reporting on services
3. Embed coordinated, best practice and quality approaches in drug demand reduction	9. Agree and commence the implementation of EU minimum quality standards, that help bridge the gap between science and practice, for: (a) environmental, universal, selective and indicated prevention measures; (b) early detection and intervention measures;	2014-2016	Council HDG MS COM EMCDDA	— Consensus achieved by MS on minimum quality standards building on previous EU preparatory studies	EMCDDA Best practice portal COM biennial progress report

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
	(c) risk and harm reduction measures; and (d) treatment, rehabilitation, social integration and recovery measures				

2. **Drug supply reduction**

Contribute to a measurable reduction of the availability and supply of illicit drugs in the EU

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
4. Enhance effective law enforcement coordination and cooperation within the EU to counter illicit drug activity, in coherence, as appropriate, with relevant actions determined through the EU policy cycle	10. Utilise to best effect available intelligence and information-sharing law enforcement instruments, channels and communication tools used to collate and analyse drug-related information	Ongoing	MS Europol Eurojust COSI	— Overarching indicator 7 — Extent of high impact intelligence led and targeted activities, of joint operations, joint investigation teams and cross-border cooperation initiatives focusing on criminal organisations engaged in illicit drug activity — Increased use of Europol's drug-related information sharing, analysis and expert systems — Results achieved from EMPACT projects and bilateral and multilateral initiatives	EMCDDA reporting EU agencies reporting EMPACT driver reports
	11. Identify and prioritise the most pressing threats associated with drug-related organised crime	2014	Council COSI Europol MS COM	— EU policy cycle and crime priorities for 2014-2017 in place	Council conclusions on EU policy cycle EU SOCTA EMPACT evaluation
	12. Strengthen CEPOL's training for law enforcement officers in relation to illicit drug production and trafficking, particularly training methods and techniques:	2014-2016	MS CEPOL Europol COSI COM	— Training needs assessment carried out by end-2014 — Availability and uptake of relevant training courses — Number of law enforcement officers trained and effectively deployed as a result	COM biennial progress report CEPOL annual report CEPOL Curricula EMPACT evaluation

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
	(a) to combat the use of new communication technologies in illicit drug production and trafficking; (b) to enhance asset confiscation; (c) to combat money laundering; and (d) to detect and dismantle illicit clandestine laboratories and cannabis cultivation sites				
	13. Improve counter narcotic activities through strengthening and monitoring the effectiveness of regional information-sharing platforms and regional security-sharing platforms with the aim of disrupting and suppressing emerging threats from changing drug trafficking routes	Ongoing	COM MS Europol COSI Regional information-sharing platforms Regional security-sharing platforms	— Overarching indicator 7 — Number of intelligence led activities leading to the disruption and suppression of drug trafficking routes — Level of information sharing through effective activity of the liaison officer network	EMCDDA reporting Security/information-sharing platforms and evaluation reports EU SOCTA EMPACT evaluation
	14. Strengthen actions to prevent the diversion of drug precursors and pre-precursors for use in the illicit manufacture of drugs	Ongoing	MS Europol COM CUG COSI	— Number of cases and quantity of stopped or seized shipments of precursors intended for illicit use — Results achieved from EMPACT projects — Use of Pre-Export Notification (PEN) Online System and increased use of the Precursors Incident Communication System (PICS) — Number of joint follow-up meetings and other activities linked to the prevention of the diversion of precursors and pre-precursors	Reports from EU and MS law enforcement agencies EMPACT evaluation Driver reports

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
	15. Counter cross-border drug trafficking and improve border security notably at EU seaports, airports and land border crossing points through intensified efforts, including information and intelligence sharing, by relevant law enforcement agencies	Ongoing	MS Europol CCWP COSI	— Increased number of multi-disciplinary/multi-agency joint operations and cross-border cooperation initiatives — Number of effective memoranda of understanding (MOU) agreed between law enforcement agencies and relevant bodies such as airlines, air express couriers, shipping companies, harbour authorities and chemical companies — Results achieved from EMPACT projects — Improved intelligence and information sharing on cross-border drug trafficking utilising, inter alia, available border surveillance systems	COM biennial progress report EMPACT evaluation and driver reports MS reporting
	16. Develop and progressively implement key indicators on drug supply by standardising, improving and streamlining data collection in this field, building on currently available data	2013-2016	COM MS Council HDG EMCDDA Europol	— Roadmap developed and agreed on the implementation of key drug supply indicators — MS agreement reached on key drug supply indicators	Overview of existing supply data collection in MS EMCDDA reporting COM biennial progress report
5. Enhance effective judicial cooperation and legislation within the EU	17. Strengthen EU judicial cooperation in targeting cross-border drug trafficking, money laundering, and in the confiscation of the proceeds of drug-related organised crime	2013-2016	Council COM MS Eurojust	— Adoption and timely implementation of agreed EU measures and legislation on (a) confiscation and recovery of criminal assets; (b) money laundering; (c) approximation of drug trafficking offences and sanctions across the EU — Increased number of financial investigations and confiscations in relation to the proceeds of drug-related organised crime through EU judicial cooperation — Timely and effective responses to mutual assistance requests and European Arrest Warrants in relation to illicit drug trafficking	Eurojust reporting COM biennial progress report

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
	18. Introduce and adopt new EU legislative measures to address the emergence, use and rapid spread of new psychoactive substances	2013-2016	COM Council HDG MS	— EU legislation in place — Implementation of EU legislation in MS	COM biennial progress report
	19. Strengthen EU legislation on drug precursors to prevent their diversion without disrupting lawful trade	Ongoing	Council COM MS	— Adoption and implementation of regulations of the European Parliament and of the Council on drug precursors amending both Council Regulation (EC) No 111/2005 and Regulation (EC) No 273/2004	COM biennial progress report EU annual report on drug precursors
	20. Combat the use of certain pharmacologically active substances (as defined in Directive 2011/62/EU) as cutting agents for illicit drugs	Ongoing	MS COM EMA EMCDDA Europol	— Number of seizures of active substances used as cutting agents for illicit drugs — Timely implementation of new EU legislative requirements aimed at securing the supply chain for active substances under Directive 2011/62/EU, the Falsified Medicines Directive	Reports from the CCWP and CUG MS reporting
	21. Members States to provide, where appropriate and in accordance with their legal frameworks, alternatives to coercive sanctions (such as education, treatment, rehabilitation, aftercare and social integration) for drug-using offenders	2015	MS	— Increased availability and implementation of alternatives to prison for drug-using offenders in the areas of education, treatment, rehabilitation, aftercare and social integration — Increased monitoring, implementation and evaluation of alternatives to coercive sanctions	Reitox national reports
6. Respond effectively to current and emerging trends in illicit drug activity	22. Identify strategic responses to address the role of new communication technologies and the hosting of associated websites, in the production, marketing, purchasing and distribution of illicit drugs, including controlled new psychoactive substances	Ongoing	Council COM HDG MS Europol COSI	— Results achieved from law enforcement actions targeting drug-related crime via the Internet — Increased number of joint operations and cross-border cooperation initiatives	Progress review of EU policy cycle priorities EMPACT evaluation and driver reports MS reporting Reports from EU agencies

3. **Coordination**

Member States and EU to effectively coordinate drugs policy

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
7. Ensure effective EU coordination in the drugs field	23. Enhance information sharing between the HDG and other relevant Council Working Groups	Ongoing	PRES Council EEAS HDG	— Extent to which the EU Drugs Strategy/and Action Plan are taken into account in the programmes of other Council Working Groups including COAFR, COASI, COEST, COLAT and COWEB	Council Working Group reporting
	24. Each presidency may convene meetings of the National Drugs Coordinators, and of other groupings as appropriate, to consider emerging trends, effective interventions and other policy developments of added value to the EU Drugs Strategy and to MS	Biannually	PRES MS	— Extent to which National Drug Coordinators' meeting agenda reflects developments, trends and new insights in policy responses and provides for improved communication and information exchange	Presidency reporting
	25. The HDG will facilitate: (a) monitoring of the implementation of the Action Plan through thematic debates; and (b) an annual dialogue on the state of the drugs phenomenon in Europe	(a) Biannually (b) Annually	PRES HDG MS COM EMCDDA Europol	— Extent of implementation of the Action Plan — Timeliness of dialogue at the HDG on latest drug-related trends and data	Presidency reporting
	26. Ensure consistency and continuity of MS and EU actions across presidencies to strengthen the integrated, balanced and evidence-based approach to drugs in the EU	Biannually	PRES PRES Trio MS COM HDG EMCDDA Europol	— Extent of consistency and continuity of actions across presidencies — Advancement in implementation of EU Drugs Strategy priorities across presidencies	Presidency reporting
	27. Ensure coordination of EU drugs policies and responses, to support international cooperation between the EU, third countries and international organisations	Ongoing	EEAS COM HDG MS	— Level of consistency and coherence in the objectives, expected results and measures foreseen in EU actions on drugs	Annual EEAS report to the HDG COM biennial progress report

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
				— Inclusion of drug-related priorities in strategies of relevant EU bodies — Intensified cooperation between the HDG and the geographical/regional working groups, including COAFR, COASI, COEST, COLAT and COWEB	
	28. Achieve a coordinated and appropriate level of resources at EU level and Member State level to fulfil the priorities of the EU Drugs Strategy	Annually	MS COM EEAS Council HDG	— Overarching indicator 14 — Amount of funding at EU level, and where appropriate, MS level — Extent of coordination on drugs-related financial programmes across Council Working Groups	EMCDDA reporting COM biennial progress report
8. Ensure effective coordination of drug-related policy at national level	29. Coordinate actions on drugs policy between government departments/ministries and relevant agencies at MS level and ensure appropriate multi-disciplinary representation on, or input to, HDG delegations	Ongoing	MS	— Overarching indicator 14 — Effectiveness of a horizontal drug policy coordination mechanism at MS level — Number of cross-cutting actions in drug demand and supply reduction at Member State level	EMCDDA reporting Reitox national reporting COM Biennial Progress Report MS reporting
9. Ensure the participation of civil society in drugs policy	30. Promote and support dialogue with, and involvement of, civil society and the scientific community in the development and implementation of drugs policies at MS and EU levels	Ongoing	MS COM HDG PRES	— Timely dialogues between EU Civil Society Forum on Drugs and the HDG during each Presidency period — Engagement of EU Civil Society Forum in reviewing implementation of the EU Drugs Action Plan — Level of involvement of civil society in MS and EU drugs policy development and implementation with particular regard to the involvement of drug users, clients of drug-related services and young people — Timely dialogue between the scientific community (natural and social sciences, including neuroscience and behavioural research) and the HDG	COM biennial progress report Feedback from EU Civil Society Forum on Drugs and from civil society representatives at MS level MS reporting Feedback from scientific community through the EMCDDA Scientific Committee

4. International Cooperation

Strengthen dialogue and cooperation between the EU and third countries and international organisations on drugs issues in a comprehensive and balanced manner

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
10. Integrate the EU Drugs Strategy within the EU's overall foreign policy framework as part of a comprehensive approach that makes full use of the variety of policies and diplomatic, political and financial instruments at the EU's disposal in a coherent and coordinated manner	31. Ensure policy coherence between the internal and external aspects of the EU drugs policies and fully integrate drugs issues within the political dialogues and framework agreements between the EU and its partners and in the EU advocacy on global issues or challenges	Ongoing	COM EEAS PRES HDG MS	— Overarching indicator 13 — Drug policy priorities increasingly reflected in EU's external policies and actions — Inclusion of drug-related priorities in EU strategies with third countries and regions — Number of agreements, strategy papers, action plans in place	EEAS reporting Mid-term review of EU Drugs Strategy COM biennial progress report
	32. Ensure that the policy priorities and the balance between demand and supply reduction are well reflected in policy options and in the programming and implementation of external assistance, particularly in source and transit countries, through projects involving: (a) development of integrated, balanced and evidence-based drug policies; (b) supply reduction; (c) the prevention of the diversion of drug precursors and pre-precursors; (d) drug demand reduction; and (e) alternative development measures	Ongoing	COM MS EEAS	— Extent to which EU's drug policy priorities, especially the balance between demand and supply reduction, are reflected in funded priorities and projects — Level of implementation of coordinated actions in action plans between the EU and third countries and regions — Number of third country national strategies and action plans that incorporate integrated drug policies	COM biennial progress report EEAS reporting on programming Monitoring and evaluation by MS
	33. Improve capacity and strengthen the role of EU Delegations to enable them to proactively engage on drugs policy issues	2013-2016	EEAS COM MS	— Relevant expertise, training and policy guidance provided to EU Delegations — Regional networking among EU Delegations on drug issues enhanced	EEAS reporting on EU Delegations

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
				— Coordination with MS enhanced	
	34. Ensure an appropriate level of EU and MS funding and expertise to further strengthen and support third countries' efforts in addressing and preventing illicit drug crop cultivation, through rural development measures, in order to deal with the challenges to public health, safety and security	Ongoing	MS EEAS COM	— Number of third country national policies, strategies and action plans that incorporate integrated approaches to the problem of illicit drug crop cultivation — Improvements in human development indicators in drug-cultivating areas — Number of rural development projects and programmes funded by the EU and MS in regions where illicit crop cultivation is taking place, or in regions at risk of illicit crop cultivation — Reported local decrease in illicit drug crop cultivation in the long term	EU and MS project and programme monitoring and evaluation systems and reports UNDP human development reports Third country reports
	35. Promote and implement the EU approach to alternative development (consistent with the EU Drugs Strategy 2013-2020; the EU Approach to Alternative Development and the United Nations Guiding Principles on Alternative Development 2013) in co-operation with third countries, taking into account human rights, human security and specific framework conditions, including: (a) incorporating alternative development into the broader agenda of Member States, encouraging third countries that wish to do so to integrate alternative development into their national strategies; (b) contributing to initiatives that aim to reduce poverty, conflict and vulnerability by supporting sustainable, legal and gender sensitive livelihoods for people	Ongoing	MS COM EEAS	— Number of third country national policies, strategies and action plans that incorporate: — integrated approaches to the problem of illicit drug cultivation, and — effectively organised alternative development initiatives — Number of evaluated projects that demonstrate positive outcomes relating to sustainable, legal and gender sensitive livelihoods — Improvements in human development indicators	Third countries' implementation reports of national drugs strategies EU and MS project and programme monitoring and evaluation system and report UNDP human development reports

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
	who were previously, or are currently, involved in illicit drug production				
	36. Support third countries, including civil society in those countries, to develop and implement risk and harm reduction initiatives particularly where there is a growing threat of transmission of drug-related blood-borne viruses associated with drug use including but not limited to HIV and viral hepatitis, as well as sexually transmittable diseases and tuberculosis	Ongoing	MS COM EEAS	— Number and quality of risk and harm reduction initiatives developed — Prevalence of drug-related deaths in third countries and drug-related blood-borne viruses including but not limited to HIV and viral hepatitis, as well as sexually transmittable diseases and tuberculosis	Third country reports COM biennial progress report WHO reports
	37. Support third countries to tackle drug-related organised crime, including drug trafficking, by: (a) intelligence sharing and the exchange of best practices; (b) strengthening counter-narcotics capacity and developing expertise of source and transit countries; (c) working with international partners to tackle the enablers of drug trafficking such as corruption, weak institutions, poor governance and lack of financial regulatory controls; (d) strengthening cooperation in the field of asset identification and recovery, in particular through the creation of dedicated national platforms; and (e) intensifying regional and intra-regional cooperation	Ongoing	MS EEAS COM Europol	— Number and effectiveness of projects and programmes — Sustained reduction in drug trafficking	COM biennial progress report MS reporting Europol reporting EEAS reporting UNODC annual world drug report

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
	38. Reinforce cooperation and update and implement dialogues, declarations and EU Drugs Action Plans with partners, including: (a) acceding countries, candidate countries and potential candidates; (b) European Neighbourhood Policy countries; (c) United States of America, the Russian Federation; (d) other countries or regions of priority notably: — Afghanistan and Pakistan, — Central Asian republics, — China, — Latin American and the Caribbean (CELAC), — Africa, in particular West Africa	Ongoing	PRES Trio COM EEAS MS	— Overarching indicator 13 — Strengthened cooperation in the field of drugs with relevant partners — Dialogues organised — Declarations agreed — Programmes and action plans implemented	EEAS reporting Mid-term review of EU Drugs Strategy COM biennial progress report EU reporting matrices Implementation reports of the relevant action plans
	39. Improve the Dublin Group consultative mechanism through intensified EU coordination and participation, better implementation and dissemination of the recommendations of the Mini Dublin Group reports	Ongoing	Dublin Group COM EEAS MS	— Level of activity across Dublin Group structures including number of Dublin Group recommendations effectively implemented	Dublin Group reports
	40. Hold an annual dialogue on EU and MS drugs-related assistance to third countries accompanied by a written update	From 2014	COM EEAS MS	— Annual dialogue on funding held	COM biennial progress report MS reporting EEAS reporting Project and programme monitoring and evaluation system and reports

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
	41. Ensure that the promotion and protection of human rights are fully integrated in political dialogues and in the planning and implementation of relevant drugs-related programmes and projects including through the development of a human rights guidance and impact assessment tool	Ongoing	COM EEAS MS	— Human rights effectively mainstreamed into EU external drugs action — Human rights guidance and assessment tool developed and implemented	COM biennial progress report COHOM annual human rights report MS reporting
11. Improve cohesiveness of EU approach and EU visibility in the United Nations (UN) and strengthen EU coordination with international bodies related to the drugs field	42. Contribute to shaping the agenda on international drugs policy, including through: (a) action by EU and MS Delegations at the UN General Assembly and the Commission on Narcotic Drugs (CND); (b) preparation, coordination and adoption of EU common positions and joint resolutions in the UN General Assembly and the CND and ensuring that the EU speaks with one strong voice in these and other international fora; (c) the mid-term review process of the 2009 UN Political Declaration and Action Plan on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem; and (d) the 2016 UN General Assembly Special Session on Drugs	Ongoing	EEAS PRES MS COM Council HDG	— Overarching indicator 13 — Effective promotion of EU policies in the UN, including at the CND — Number of EU common positions supported by other regions and international bodies — Frequency with which EU speaks with a single effective voice in international fora and in dialogues with third countries — Level of successful adoption of EU resolutions at UN including at the CND — Outcome of the mid-term review of the 2009 UN Political Declaration and Action Plan on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem — Adoption of an EU Joint Position Paper for the 2016 UNGASS and reflection of the EU positions in the UNGASS outcome	EEAS reporting Mid-term review of the EU Drugs Strategy COM biennial progress report Convergence indicator Mid-term review UNGASS outcome
	43. Strengthen partnerships with the UNODC, WHO UNAIDS and other relevant UN agencies, international and regional bodies and organisations and initiatives (such as the Council of Europe and the Paris Pact Initiative)	Ongoing	Council EEAS COM PRES HDG	— Overarching indicator 13 — Number of information exchanges and activities between the EU and relevant international and regional bodies and organisations and initiatives — Effectiveness of partnerships with relevant bodies	EEAS reporting Mid-term review of the EU Drugs Strategy COM biennial progress report

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
12. Support the process for acceding countries, candidate countries, and potential candidates to adapt to and align with the EU *acquis* in the drugs field, through targeted assistance and monitoring	44. Provide targeted technical assistance, and other assistance and support as necessary, to acceding countries, candidate countries, and potential candidates to facilitate their adaptation to and alignment with the EU *acquis* in the drugs field	Ongoing	COM MS EMCDDA Europol Eurojust Frontex EEAS	— Increased compliance by countries with EU *acquis* — Number and quality of completed projects — National Drugs Strategies and national drugs coordinating structures established	COM biennial progress report Acceding countries, candidate countries and potential candidates reports

5. Information, research, monitoring and evaluation

Contribute to a better understanding of all aspects of the drugs phenomenon and of the impact of measures in order to provide sound and comprehensive evidence for policies and actions

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
13. Ensure adequate investment in research, data collection, monitoring, evaluation and information exchange on all aspects of the drug phenomenon	45. Promote appropriate financing of EU-level drug-related multi-disciplinary research and studies including through EU related financial programmes (2014-2020)	2014-2016	MS COM EMCDDA	— Amount and type of EU funding provided across the different programme and projects	COM biennial progress report
	46. Ensure that EU-supported projects: (a) take account of the priorities of the EU Drugs Strategy and Action Plan on Drugs; (b) take account of gaps in policy formulation; (c) deliver clear added value and ensure coherence and synergy; and (d) avoid duplication with research under other programmes and bodies; (e) take account of the importance of behavioural research and neuroscience	2014-2016	COM EMCDDA	— The inclusion of the priorities of the EU Strategy and Action Plan on Drugs in the funding and assessment criteria of EU-funded drugs-related research — Number, impact, complementarity and value of EU-funded drugs-related research grants and contracts awarded — Number of EU-funded drugs-related articles and research reports published in peer-reviewed journals with high impact factors — Annual debate at the HDG on drug-related research projects funded by the EU	COM biennial progress report Research project reports EMCDDA Scientific Committee recommendations on research priorities Science Citation Index and similar bibliometric tools Strategic research agenda and projects stemming from the ERA-net on drug demand and supply reduction

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
	47. Promote scientific evaluations of policies and interventions at national, EU and international level	2013-2016	COM MS EMCDDA	— Overarching indicator 14 — Regular progress review to the Council and European Parliament on Strategy and Action Plan implementation — External mid-term assessment of the Strategy/Action Plan completed — 2016 — European guidelines for the evaluation of national drug strategies and action plans published — Delivery of dedicated studies into the effectiveness and impacts of EU and international drug policies — Completed evaluation of the implementation of the 2003 Council Recommendation on the prevention and reduction of health-related harm associated with drug dependence	EMCDDA reporting COM biennial progress report Mid-term assessment report of EU drugs strategy EMCDDA reporting EMCDDA Scientific Committee reporting Reports of ALICE RAP and LINKSCH and ERA-net Reitox national reports
14. Maintain networking and cooperation and develop capacity within and across the EU's knowledge infrastructure for information, research, monitoring and evaluation of drugs, particularly illicit drugs	48. In collaboration with relevant parties as appropriate, continue to provide comprehensive analyses of: (a) the EU drugs situation; (b) the dynamics of drug use within general populations and target groups; and (c) responses to drug use	Ongoing	EMCDDA Europol MS	— Overarching indicators 1-15 — Current deficits in the knowledge base established and an EU level framework developed to maximise analyses from current data holdings — Number of overviews and topic analyses on the drug situation	EMCDDA reporting MS reporting
	49. Enhance training for those involved in responding to the drugs phenomenon	2014-2016	MS EMCDDA CEPOL	— Number of initiatives at MS and EU level to train professionals in aspects of drug demand reduction and drug supply reduction — Number of initiatives at MS and EU level implemented to train professionals related to data collection and reporting of drug demand reduction and drug supply reduction	MS reporting EMCDDA training report CEPOL annual report Reitox annual reports

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
	50. Enhance data collection, research, analysis and reporting on: (a) drug demand reduction; (b) drug supply reduction; (c) emerging trends, such as polydrug use and misuse of prescribed controlled medicines, that pose risks to health and safety; (d) blood-borne viruses associated with drug use including but not limited to HIV and viral hepatitis, as well as sexually transmittable diseases and tuberculosis; (e) psychiatric and physical co-morbidity; (f) drug problems among prisoners and the availability and coverage of drug demand reduction interventions and services in prison settings; and (g) other drug-related consequences	Ongoing	MS COM EMCDDA Europol ECDC EMA	— Increased availability and implementation of evidence-based and scientifically sound indicators on drug supply reduction and drug demand reduction — At MS level, extent of new research initiated on emerging trends such as polydrug use and the misuse of prescribed controlled medicines; blood-borne diseases associated with drug use including but not limited to HIV and viral hepatitis, as well as sexually transmittable diseases and tuberculosis; psychiatric and physical co-morbidity; and other drug-related consequences — EU-wide study carried out on drug-related community intimidation and its impact on individuals, families and communities most affected and effective responses to it — Adoption of evidence-based and scientifically sound indicators on drug problems among prisoners	EMCDDA reporting MS reporting Harmonised data reports from EU bodies including EMCDDA EU SOCTA
	51. Improve the capacity to detect, assess and respond effectively to the emergence and use of new psychoactive substances and monitor the extent to which such new substances impact on the number and profile of users	Ongoing	COM MS EMCDDA Europol	— Overarching indicator 6 — Extent of new epidemiological, pharmacological and toxicological research initiated on new psychoactive substances and supported by MS and EU research programmes — Extent of information, best practice and intelligence exchange — Extent of sharing by toxicology laboratories and by research institutes of toxicological and health data analyses on new psychoactive substances	EMCDDA reporting EMCDDA-Europol implementation report Reports by laboratories and research institutes Reitox national reports

Objective	Action	Timetable	Responsible party	Indicator(s)	Data collection/assessment mechanisms
	52. Strengthen efforts to share forensic science data, including laboratory reference standards, on new psychoactive substances, by enhancing co-operation through existing networks, such as the Drugs Working Group of the European Network of Forensic Science Institutes in the framework of the JHA Council conclusions on the vision for European Forensic Science 2020	2016	COM MS EMCDDA	— Overarching indicator 15 — Extent of sharing of forensic science data on new psychoactive substances — Ease of access to laboratory reference standards by forensic science laboratories and institutes	EMCDDA/Europol reporting COM biennial progress report
	53. Improve the ability to identify, assess and respond at MS and EU levels to (a) behavioural changes in drug consumption and (b) to epidemic outbreaks	Ongoing	MS EMCDDA ECDC EMA	— Number and effectiveness of new drug-related public health initiatives developed and implemented — Number and effectiveness of existing initiatives that are adjusted to take account of drug consumption or epidemic outbreaks — Number and impact of early warning reports, risk assessment and alerts	Reitox national reports Early Warning System reports EMCDDA reporting
15. Enhance dissemination of monitoring, research and evaluation results at EU and national level	54. Member States continue to support EU monitoring and information exchange efforts, including cooperation with, and adequate support for, Reitox national focal points	Ongoing	MS EMCDDA	— Open-access outputs from EU-funded studies disseminated — Extent to which Reitox national focal points funding and other resources match requirements — Number and effectiveness of Reitox national focal points dissemination initiatives	Web dissemination including OpenAire, Cordis EMCDDA website Reitox national reports

ANNEX 1

15 over-arching indicators for the EU Action Plan on Drugs 2013-2016 (existing reporting mechanisms)

1. Percentage of population who use drugs currently (within last month), used drugs recently (within last year), and who have ever used (lifetime use) by drug and age group (EMCDDA General population survey)

2. Estimated trends in the prevalence of problem and injecting drug use (EMCDDA Problem drug use)

3. Trends in drug-induced deaths and mortality amongst drug users (according to national definitions) (EMCDDA Drug-related deaths)

4. Prevalence and incidence, among injecting drug users, of infectious diseases attributable to drug use, including HIV and viral hepatitis, sexually transmittable diseases and tuberculosis (EMCDDA Drug-related infectious diseases)

5. Trends in the age of first use of illicit drugs (European School Survey Project on Alcohol and Other Drugs (ESPAD), Health Behaviour in School-aged Children (HBSC) and General Population Drug Use Survey (EMCDDA Key epidemiological indicator))

6. Trends in numbers of people entering drug treatment (EMCDDA Treatment demand) and the estimated total number of people in drug treatment (EMCDDA Treatment demand and health and social responses)

7. Trends in number of and quantities of seized illicit drugs (EMCDDA Drug seizures: cannabis incl. herbal cannabis, heroin, cocaine, crack cocaine, amphetamine, methamphetamine, ecstasy, LSD and other substances)

8. Trends in retail price and purity of illicit drugs (EMCDDA Price and purity: cannabis incl. herbal cannabis, heroin, cocaine, crack cocaine, amphetamine, methamphetamine, ecstasy, LSD, other substances and composition of drug tablets)

9. Trends in the number of initial reports of drug law offences, by drug and type of offence (supply v use/possession) (EMCDDA Drug offences)

10. Prevalence of drug use amongst prisoners (EMCDDA Drug use in prisons)

11. Assessment of availability, coverage and quality of services and interventions in the areas of prevention, harm reduction, social integration and treatment (EMCDDA Health and social responses)

12. Evidence-based interventions on prevention, treatment, social integration and recovery and their expected impact on drug use prevalence and problem drug use (EMCDDA Best practice portal)

13. Strong dialogue and cooperation, in the drugs-related field, with other regions, third countries, international organisations and other parties (External Mid-Term Evaluation of Strategy/Action Plan; EEAS reporting)

14. Developments in national drug strategies, evaluations, legislation, coordination mechanisms and public expenditure estimates in EU Member States (EMCDDA)

15. Early warning system on new psychoactive substances (EMCDDA/Europol)

ANNEX 2

Glossary of acronyms

ALICE RAP	Addiction and Lifestyles in Contemporary Europe — Reframing Addictions Project
ASEAN	Association of South-East Asian Nations
CCWP	Council of the EU — Customs Cooperation Working Party
CELAC	Comunidad de Estados Latinoamericanos y Caribeños (Community of Latin American and Caribbean States)
CEPOL	European Police College
CICAD	La Comisión Interamericana para el Control del Abuso de Drogas (The Inter-American Drug Abuse Control Commission)
CND	Commission on Narcotic Drugs (UN)
COAFR	Council of the EU — Africa Working Party
COASI	Council of the EU — Asia-Oceania Working Party
COEST	Council of the EU — Working Party on Eastern Europe and Central Asia
COHOM	Council of the EU — Working Party on Human Rights
COLAT	Council of the EU — Working Party on Latin America
COM	European Union Commission
COSI	Council of the EU — Standing Committee on Operational Cooperation on Internal Security
COWEB	Council of the EU — Working Party on the Western Balkans Region
CUG	Council of the EU — Customs Union Group
ECDC	European Centre for Disease Prevention and Control
ECOWAS	Economic Community of West African States
EEAS	European External Action Service
EMA	European Medicines Agency
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
EMPACT	European Multidisciplinary Platform against Criminal Threats
ENFSI	European Network of Forensic Science Institutes
ERA-net	European Research Area — Network
ESPAD	European School Survey Project on Alcohol and Other Drugs
EU SOCTA	EU Serious and Organised Crime Threat Assessment
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

HBSC	Health Behaviour in School-aged Children Survey
HDG	Council of the EU — Horizontal Working Group on Drugs
INCB	International Narcotics Control Board (UN)
JHA	Justice and Home Affairs
LINKSCH	The LINKSCH project is a comparative study of two major drug markets, cannabis and heroin, through the prism of the transit chains operating between Central Asia and the EU and those between North Africa and the EU
MS	Member State
PEN	UNODC/INCB developed Pre-Export Notification Online System
PICS	Precursors Incident Communication System
PRES	Rotating presidency of the Council of the European Union
PRES Trio	Grouping of three consecutive rotating presidencies of the Council of the European Union
Reitox	Réseau Européen d'Information sur les Drogues et les Toxicomanies
SOCTA	Serious and Organised Crime Threat Assessment
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNGASS	United Nations General Assembly Special Session
UNODC	United Nations Office on Drugs and Crime
WCO	World Customs Organisation
WHO	World Health Organisation (UN)

COUNCIL OF
THE EUROPEAN UNION

Brussels, 25 May 2012

10231/12

CORDROGUE 37
SAN 121
ENFOPOL 145
RELEX 455

"I/A" ITEM NOTE

from:	General Secretariat
to:	COREPER / Council
No. prev. doc.:	9986/1/12 CORDROGUE 30 SAN 115 ENFOPOL 142 RELEX 446
Subject:	Draft Council Conclusions on the new EU drugs strategy

1. As the current EU Drugs Strategy expires at the end of the year, the Presidency decided to propose Council conclusions on the new strategy, aiming to draw guidelines for the new EU drugs strategy.

2. Draft Council conclusions were presented and examined during the HDG meetings of 18 April and 22 May 2012.

3. On the basis of these discussions and taking into account the comments provided after these discussions, the draft Council Conclusions on new drugs strategy were finalised.

4. Consequently, COREPER is invited to confirm the agreement on the text of the draft Conclusions as set out in annex and to submit it to the Council for approval.

ANNEX

Draft Council Conclusions on the new EU drugs strategy

THE COUNCIL OF THE EUROPEAN UNION,

RECALLING

- the EU Drugs Strategy 2005-2012[1], which has formed the basis of the EU drug policy since 2005 and provided the framework for two consecutive four-year Action Plans;
- the EU Drug Action Plan 2005-2008[2] and the EU Drug Action Plan 2009-2012[3] and the final report of the evaluation of the EU Drug Action Plan 2005-2008[4];
- the conclusions and recommendations of the Report on the independent assessment of the EU Drugs Strategy 2005-2012 and its action plans;
- the EMCDDA trend report prepared for the evaluation of the 2005-2012 EU Drugs Strategy, which indicated changes in the EU drug situation over the last eight years;
- the Stockholm programme which names the following principles on which the new EU drugs strategy should be based: improving coordination and cooperation by using all available means under the Lisbon Treaty, mobilising the civil society and contributing to research and comparability of information[5];
- the European Pact to combat international drug trafficking – disrupting cocaine and heroin routes[6] and the European Pact against synthetic drugs[7] which seek to improve coordination between the various initiatives launched to clamp down on drug trafficking;
- the EU policy cycle for organised and serious international crime[8] – an instrument developed to identify priority threats to the EU and coordinate strategic and operational cooperation to address these in a more coherent way;

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1 15074/04 CORDROGUE 77 SAN 187 ENFOPOL 178 RELEX 564
2 OJ 2005/C 168/01
3 OJ 2008/C 326/09
4 13407/08 CORDROGUE 69 SAN 195 ENFOPOL 164 RELEX 682 + ADD3
5 OJ 2010/C 115/24
6 8821/10 JAI 320 COSI 20 CORDROGUE 40 CRIMORG 79 JAIEX 39
7 15544/11 JAI 740 COSI 82 CORDROGUE 66 ENFOPOL 360 CRIMORG 184 JAIEX 111 UD 261
8 15358/10 COSI 69 ENFOPOL 298 CRIMORG 185 ENFOCUSTOM 94

- the Commission Communication "*Towards a stronger European response to drugs*"[9], which outlines current challenges in the field of drugs, while presenting proposals to address them;
- the Internal Security Strategy for the European Union[10], which identifies drugs trafficking as a form of criminality requiring concerted European action;
- the UN Political Declaration and Action Plan on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem which enumerates drug demand and drug supply reduction measures to be taken by the participating states[11];

REITERATING THAT

- drug policy is mainly the competence of the EU Member States;
- the aim of the EU Drugs Strategy 2005-2012 was to add value to national strategies while respecting the principles of subsidiarity and proportionality set out in the Treaties;
- that the strategy intended to allow scope for local, regional, national and transnational dynamics and potentialities and to make optimal use of the resources available;
- the EU Drugs Strategy 2005-2012 was based on an integrated, multidisciplinary and balanced approach, addressing with equal vigour drug demand and supply reduction.

NOTING THAT

- even though the nature and characteristics of the illicit drug problem have changed since the beginning of the EU Drugs Strategy 2005-2012, the fundamental challenges within the EU remain the same;
- drug use in the EU appears to be relatively stable; prevalence levels overall remain high, but are not rising, and in some important areas, such as cannabis use by young people, there are positive signs;
- there are, however, indications of worrying developments in the synthetic drugs market and, more generally, in the way drug consumers now use a wider set of substances;

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9 COM (2011) 689 final
10 5842/10 JAI 90
11 http://www.unodc.org/documents/commissions/CND-Uploads/CND-52-RelatedFiles/V0984963-English.pdf

- heroin continues to constitute the biggest drug problem in the EU, as heroin use accounts for the largest share of drug-related diseases and deaths and prevalence level remains stable at an estimated 1.3 million regular opioid users in the EU; however treatment data indicate that the characteristics of opioid problem is changing as opioid users have become older and the proportion of injectors has declined;
- cannabis continues to be the most commonly used illicit drug in the EU as the most recent estimates of drug use in Europe from the EMCDDA show that about 12 million European adults, on average about 3.6% of the adult population, have used cannabis in the last month;
- cocaine has become the second most commonly used illicit drug in the EU, although prevalence levels and trends differ considerably between Member States.

BEARING IN MIND

- the outcomes of the assessment of the implementation of the EU Drugs Strategy 2005-2012 and its Action Plans which inter alia demonstrated:
    - that the Strategy has provided added value to individual Member States and their strategies by offering a platform for consensus building and coordination in relation to a horizontal and increasingly international issue;
    - that the Strategy helped the EU and its Member States to speak with one voice at international fora and that it promoted a clearly recognisable and acknowledged 'EU approach to tackling drug-related challenges;
    - that the Horizontal Drugs Group (HDG) has functioned as the main coordinating body at the EU level and has facilitated information exchange between Member States as well as contributed to the formation of common positions on the external dimension of the EU drugs policy; however the coordinating role of the HDG in the area of supply reduction is becoming more complicated, as law enforcement activities in drugs policy have also become a priority on the EU internal security agenda;

- that the strategy had some success in the field of demand reduction, especially in promoting an evidenced-based approach; however persistent challenges remain, especially in relation to different levels of implementation of harm reduction measures and drug treatment in the Member States, difficulties of coordination and implementation at the national level, and the continued funding of demand reduction programmes in an economic downturn;
- that with respect to supply reduction the objectives of the Strategy and Actions Plans are considered relevant to addressing the drugs challenges faced in the EU; however the measurability of progress in this area remains a challenge;
- that international cooperation on drugs policy is a key area where the EU adds value to Member State efforts to coordinate and address drugs challenges;
- that there are considerable achievements in the field of information, research and evaluation; however there is scope for a greater focus to expand and improve the knowledge base around supply reduction;
- that the EMCDDA plays a key role as a facilitator, shaper and supporter of efforts in the area of information, research and evaluation across the EU.

CONSIDERING THAT

- new and potentially harmful psychoactive substances, often being marketed as legal alternatives to internationally controlled drugs, are emerging at unprecedented pace posing a risk to public health and safety;
- the increase in poly-drug use, including the combination of illicit drugs with alcohol, and sometimes, medicines and unregulated new psychoactive substances, which can lead to multiple adverse health consequences, represents an increasing challenge;
- drug traffickers exploit the EU internal market as well as the possibilities provided by modern technologies and develop innovative methods for diverting drug precursors and smuggling drugs into and within the EU;
- illicit drugs remains a major criminal commodity in the EU and intelligence suggests that there is a trend towards increased cooperation between national criminal networks and that drug trafficking is an integrated part of poly-criminal activities;

- although there is an increasing level of interventions and programmes in the field of drug-demand reduction in the Member States, there are still large differences between and within Member States when it comes to the quality, accessibility and coverage of such interventions;
- infectious diseases related to injecting drug use such as Hepatitis C Virus (HCV) and HIV continue to pose serious health risks, including the potential risk of new outbreaks of HIV and of other blood-borne infections related to injecting drug use in certain regions within the EU and in neighbouring regions[12];
- the illicit drug problem in all its facets continues to pose serious risks to the health and safety of EU citizens, and to the stability, security, health and development of countries outside the EU, including the Candidate and Associated and Neighbourhood countries, as well as third countries along the trafficking routes.

AGREES THAT

1. the EU needs an EU drugs strategy for 2013-2020 as the political framework in the field of drugs, which should be adopted by the end of 2012;
2. the new strategy should be a concise document concentrating on five thematic areas: coordination; demand reduction; supply reduction; international co-operation and research, information and evaluation;
3. the new strategy shall contain a limited number of clearly defined strategic objectives, setting out the longer-term strategic development of EU drugs policy, and consolidating and building on existing instruments;
4. the detailed implementation of the new strategy should be set out in two consecutive action plans covering each a period of four years;
5. the present integrated, multidisciplinary and balanced approach should continue to form the basis of the EU approach to the drug problem in the future; drug demand and drug supply reduction measures shall be based on available evidence, well balanced, and implemented with equal vigour;
6. in the implementation of the new strategy, appropriate resources should be allocated to measures in both drug demand and drug supply reduction as well as to measures of a horizontal nature;

[12] EMCDDA report on the drugs situation in Europe in 2011, doc. 17139/11 CORDROGUE 78 + ADD1

7. demand reduction in the new integrated strategy includes universal as well as targeted prevention, early intervention, treatment, care, risk and harm reduction, recovery, social reintegration, initiatives in prison settings and measures to ensure and improve quality and standards;
8. supply reduction activities in the new strategy should remain focused on cooperation between law enforcement authorities, including through exchange of information and joint operations and investigations, and on coordination of law enforcement initiatives, including in regard to regional projects and control of illicit drugs entering the EU by sea and by air;
9. the new strategy should take on board new approaches and address new challenges which have been identified in recent years, including those related to new or ongoing threats to the health and safety of EU citizens, especially:
    - poly-drug use, including the combination of illicit drugs and alcohol,
    - the rapid spread of new psychoactive substances,
    - ensuring access to and addressing the misuse of prescribed controlled medications,
    - the dynamics in the drug markets, including the use of the internet as a facilitator for the distribution of illicit drugs,
    - the diversion of precursors used in the illicit manufacture of drugs,
    - the quality of demand reduction services,
    - the high incidence of blood borne diseases, especially HCV, among injecting drug users and potential risks of outbreaks of HIV epidemics and other blood borne infections related to injecting drugs use;
10. the new strategy should further promote an intelligence and evidence-based approach to the drug problem, recognising work under the EU policy cycle for organised and serious international crime as part of the wider EU internal security agenda;
11. in formulating the new strategy appropriate consideration should be given to recommendations put forward by high-level scientific societies as well as the opinion of the civil society;
12. the new strategy should take note of the progress made towards minimum quality standards in drug demand reduction and of key indicators in drug supply reduction, as well as of other available indicators;

13. the new strategy should also focus on improving the internal EU coordination, as the HDG as the main coordinating body should further align its activities with other EU initiatives touching upon drugs policy, in particular the EU policy cycle for organised and serious international crime and other initiatives within COSI as well as initiatives in the health area, and take into account the work of the EU agencies;
14. the drugs situation should continue to be monitored in order to create a knowledge base for a better common understanding of the drugs problems and the development of an optimal response to new trends, especially concerning supply of drugs and the impact of interventions to reduce supply;
15. in this regard, information, research, analysis, evaluation, and the collection and exchange of information by the EMCDDA through its network of national focal points and the Early Warning System as well as by other EU bodies should continue to be supported;
16. projects and programmes to foster alternative development and alternative livelihoods in drug-producing countries should continue to be supported since illicit drug crop cultivation is in many countries linked to development problems such as poverty, weak rural development, fragile statehood and violence;
17. with respect to international cooperation, the EU approach should continue to be comprehensive, focusing on cooperation with strategic partners: in particular the existing dialogues with international partners, including the countries in the Western Balkans, Latin America and the Caribbean (including the Andean Community countries), West Africa, Central Asia and Afghanistan, the Eastern Partnership, Russia, and the United States, should be further improved to ensure a greater level of knowledge of the strategies, objectives and relevant initiatives amongst individuals and organisations having responsibilities in the area of drugs policy in third countries and in the EU;
18. to ensure continuous focus on the implementation of the strategy and of its accompanying action plans, and on monitoring and evaluation of outcomes, each Presidency should towards the end of its six-month term give an overview to the HDG of the activities carried out in regards to any action plan in force;
19. at the end of the period covered by the new strategy and each action plan, an evaluation needs to be conducted in order to provide input and recommendations for the future development of EU drugs policy.

DECISION No 1150/2007/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 September 2007

establishing for the period 2007-2013 the Specific Programme 'Drug prevention and information' as part of the General Programme 'Fundamental Rights and Justice'

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 152 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) According to the Treaty, a high level of human health should be ensured in the definition and implementation of all Community policies and activities. Community action is required to include a contribution to the attainment of a high level of health protection.

(2) Community action should complement national policies directed towards improving public health, obviating sources of danger to human health and reducing health-related harm associated with drug dependence, including information and prevention policies.

(3) Given that, according to research, the morbidity and the mortality associated with drug dependence affects a sizeable number of European citizens, the health-related harm associated with drug dependence constitutes a major problem for public health.

(4) The Communication from the Commission to the Council and the European Parliament on the results of the final evaluation of the EU Drugs Strategy and Action Plan on Drugs (2000 to 2004) pointed out the need regularly to involve civil society in the formulation of the EU's policies on drugs.

(5) Decision No 1786/2002/EC of the European Parliament and of the Council of 23 September 2002 adopting a programme of Community action in the field of public health (2003 to 2008) [4] includes the development of strategies and measures on drug dependence, as one of the important lifestyle-related health determinants.

(6) In Recommendation 2003/488/EC of 18 June 2003 on the prevention and reduction of health-related harm associated with drug dependence [5], the Council recommended that Member States set as a public health objective the prevention of drug dependence and the reduction of related risks, and that they develop and implement comprehensive strategies accordingly.

(7) In December 2004, the European Council endorsed the EU Drugs Strategy 2005 to 2012, which covers all European Union drug-related activities and sets main targets. These targets include the attainment of a high level of health protection, well-being and social cohesion by preventing and reducing drug use, dependence and drug-related harm to health and society.

(8) The Council adopted the EU Drugs Action Plan (2005 to 2008) [6] as a crucial instrument for transposing the EU Drugs Strategy 2005 to 2012 into concrete actions. The ultimate aim of the Action Plan is to reduce significantly the prevalence of drug use among the population and to reduce the social harm and health damage caused by the use of and trade in illicit drugs.

[1] OJ C 69, 21.3.2006, p. 1.
[2] OJ C 192, 16.8.2006, p. 25.
[3] Opinion of the European Parliament of 14 December 2006 (not yet published in the Official Journal), Council Common Position of 23 July 2007 (not yet published in the Official Journal) and position of the European Parliament of 6 September 2007 (not yet published in the Official Journal).
[4] OJ L 271, 9.10.2002, p. 1. Decision as amended by Decision No 786/2004/EC (OJ L 138, 30.4.2004, p. 7).
[5] OJ L 165, 3.7.2003, p. 31.
[6] OJ C 168, 8.7.2005, p. 1.

(9) The specific programme, 'Drug prevention and information', established under this Decision (hereinafter referred to as 'the Programme') aims at implementing targets identified by the EU Drugs Strategy 2005 to 2012 and the EU Drugs Action Plans 2005 to 2008 and 2009 to 2012, by supporting projects aimed at preventing drug use, including by addressing reduction of drug-related harm and treatment methods taking into account the latest scientific knowledge.

(10) It is important and necessary to recognise the serious, immediate and long-term implications of drugs for health, for psychological and social development including the equal opportunities of those concerned, for individuals, families and communities, and to recognise the high social and economic costs to society as a whole.

(11) Special attention should be paid to the prevention of drug use among young people who are the most vulnerable in the population. The main challenge in prevention is to encourage young people to adopt healthy lifestyles.

(12) The European Community can bring added value to the actions to be undertaken by Member States in the field of drug prevention and information, including treatment and reduction of drug-related harm, by complementing those actions and by promoting synergies.

(13) In accordance with Article 7(3) of Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1], the European Parliament should be informed by the Commission of committee proceedings relating to the implementation of this programme. In particular, the European Parliament should receive the draft annual programme when it is submitted to the management committee. In addition, the European Parliament should receive the results of voting and summary records of the meetings of that Committee.

(14) Complementarity with the technical expertise of the European Monitoring Centre for Drugs and Drug Addiction (hereinafter referred to as 'the Centre') should be assured by making use of methodology and best practices developed by the Centre and by its involvement in the preparation of the annual work programme.

(15) Since the objectives of this Decision cannot, because of the need for an exchange of information at Community level and for the Community-wide dissemination of good practices, be sufficiently achieved by the Member States and can therefore, due to the need for a coordinated and multidisciplinary approach and by reason of the scale and effects of the Programme, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.

(16) Bearing in mind the importance of visibility of the Community funding, the Commission should provide guidance to ensure that any authority, non-governmental organisation, international organisation or other entity receiving a grant under the Programme acknowledges properly the support received.

(17) This Decision lays down for the entire duration of the Programme, a financial envelope constituting the prime reference within the meaning of point 37 of the Inter-institutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management [2] for the budgetary authority during the annual budgetary procedure.

(18) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [3], (hereinafter referred to as 'the Financial Regulation'), and Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 [4], which safeguard the Community's financial interests, should be applied taking into account the principles of simplicity and consistency in the choice of budgetary instruments, a limitation on the number of cases where the Commission retains direct responsibility for their implementation and management, and the required proportionality between the amount of resources and the administrative burden related to their use.

[1] OJ L 184, 17.7.1999, p. 23. Decision as last amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

[2] OJ C 139, 14.6.2006, p. 1.

[3] OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

[4] OJ L 357, 31.12.2002, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 478/2007 (OJ L 111, 28.4.2007, p. 13).

(19) Appropriate measures should also be taken to prevent irregularities and fraud and the necessary steps should be taken to recover funds lost, wrongly paid or incorrectly used in accordance with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests [1], Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities [2] and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) [3].

(20) The Financial Regulation requires a basic act to be provided to cover operating grants.

(21) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC, with a distinction being made between those measures which are subject to the management procedure and those which are subject to the advisory procedure, the advisory procedure being in certain cases, with a view to increased efficiency, the more appropriate.

(22) In order to ensure the effective and timely implementation of the Programme, this Decision should apply from 1 January 2007,

HAVE DECIDED AS FOLLOWS:

Article 1

Establishment and scope of the Programme

1. This Decision establishes the Specific Programme 'Drug prevention and information', (hereinafter referred to as 'the Programme'), as part of the General Programme 'Fundamental Rights and Justice', in order to contribute to ensuring a high level of human health protection and to reducing drug-related health damage.

2. The Programme shall cover the period from 1 January 2007 to 31 December 2013.

Article 2

General objectives

The Programme shall have the following general objectives:

(a) to prevent and reduce drug use, dependence and drug-related harm;

(b) to contribute to the improvement of information on drug use; and

(c) to support the implementation of the EU Drugs Strategy.

Article 3

Specific objectives

The Programme shall have the following specific objectives:

(a) to promote transnational actions to:

(i) set up multidisciplinary networks;

(ii) ensure the expansion of the knowledge base, the exchange of information and the identification and dissemination of good practices, including through training, study visits and staff exchange;

(iii) raise awareness of the health and social problems caused by drug use and to encourage an open dialogue with a view to promoting a better understanding of the phenomenon of drugs; and

(iv) support measures aimed at preventing drug use, including by addressing reduction of drug-related harm and treatment methods taking into account the latest state of scientific knowledge;

(b) to involve civil society in the implementation and development of the EU Drugs Strategy and EU Action plans; and

(c) to monitor, implement and evaluate the implementation of specific actions under the Drugs Action Plans 2005 to 2008 and 2009 to 2012. The European Parliament is involved in the evaluation process through its participation in the Commission's evaluation steering group.

Article 4

Actions

With a view to pursuing the general and specific objectives set out in Articles 2 and 3, the Programme shall support the following types of action under the conditions set out in the annual work programme referred to in Article 9(2):

[1] OJ L 312, 23.12.1995, p. 1.
[2] OJ L 292, 15.11.1996, p. 2.
[3] OJ L 136, 31.5.1999, p. 1.

(a) specific actions taken by the Commission, such as studies and research, opinion polls and surveys, formulation of indicators and common methodologies, collection, development and dissemination of data and statistics, seminars, conferences and experts' meetings, organisation of public campaigns and events, development and maintenance of websites, preparation and dissemination of information materials, support to and animation of networks of national experts, analytical, monitoring and evaluation activities;

(b) specific transnational projects of Community interest presented by at least two Member States, or at least one Member State and one other state which may either be an acceding or a candidate country under the conditions set out in the annual work programme; or

(c) the activities of non-governmental organisations or other entities pursuing an aim of general European interest regarding the general objectives of the Programme under the conditions set out in the annual work programme.

Article 5

Participation

The following countries may participate in the actions of the Programme:

(a) the EFTA States which are party to the EEA Agreement, in accordance with the provisions of that Agreement; and

(b) the candidate countries and the western Balkan countries included in the stabilisation and association process in accordance with the conditions laid down in the association agreements or their additional protocols relating to participation in Community programmes concluded or to be concluded with those countries.

Candidate countries not participating in the Programme may be associated with projects where this would contribute to their preparation for accession, as may other third countries or international organisations not participating in the Programme where this serves the aim of the projects.

Article 6

Target groups

1. The Programme is targeted at all groups that directly or indirectly deal with the phenomenon of drugs.

2. With regard to drugs, youth, women, vulnerable groups and people living in socially disadvantaged areas are groups at risk and shall be identified as target groups. Other target groups include teachers and educational staff, parents, social workers, local and national authorities, medical and paramedical staff, judicial staff, law enforcement and penitentiary authorities, non-governmental organisations, trade unions and religious communities.

Article 7

Access to the Programme

Access to the Programme shall be open to public or private organisations and institutions (local authorities at the relevant level, university departments and research centres) working in the area of information on and prevention of drug use including the reduction and treatment of drug-related harm.

Bodies and organisations which are profit-oriented shall have access to grants under the Programme only in conjunction with non-profit or state organisations.

Article 8

Types of intervention

1. Community financing may take the following legal forms:

(a) grants; or

(b) public procurement contracts.

2. Community grants shall be awarded further to calls for proposals, save in duly substantiated exceptional cases as provided for in the Financial Regulation, and shall be provided through operating grants and grants to actions.

The annual work programme shall specify the minimum rate of the annual expenditure to be awarded to grants and the maximum rate of co-financing.

3. Furthermore, provision is made for expenditure for accompanying measures, through public procurement contracts, in which case Community financing shall cover the purchase of goods and services. This shall cover, *inter alia*, expenditure on information and communication, preparation, implementation, monitoring, checking and evaluation of projects, policies, programmes and legislation.

Article 9

Implementing measures

1. The Commission shall implement the Community financial support in accordance with the Financial Regulation.

2. To implement the Programme, the Commission shall, within the limits of the general objectives set out in Article 2, adopt an annual work programme taking into account the technical expertise of the Centre. The Programme shall set out the specific objectives, thematic priorities, a description of accompanying measures referred to in Article 8 and, if necessary, a list of other actions.

The first annual work programme shall be adopted by 23 January 2008.

3. The annual work programme shall be adopted in accordance with the management procedure referred to in Article 10(3).

4. The evaluation and award procedures relating to grants to actions shall take into account, *inter alia*, the following criteria:

(a) conformity of the proposed action with the annual work programme, the objectives set out in Articles 2 and 3 and the types of action set out in Article 4;

(b) quality of the proposed action in terms of its design, organisation, presentation and expected results;

(c) amount requested for Community financing and its appropriateness in relation to expected results; and

(d) impact of the expected results on the objectives set out in Articles 2 and 3 and on the actions referred to in Article 4.

5. Applications for operating grants as referred to in Article 4(c) shall be assessed in the light of:

(a) their consistency with the Programme objectives;

(b) the quality of the planned activities;

(c) the likely multiplier effect on the public of these activities;

(d) the geographic and social impact of the activities carried out;

(e) citizen involvement in the organisation of the bodies concerned;

(f) the cost/benefit ratio of the activity proposed.

6. Decisions related to proposed actions referred to in Article 4(a) shall be adopted by the Commission in accordance with the management procedure referred to in Article 10(3). Decisions related to projects and activities referred to in Article 4(b) and (c) respectively shall be adopted by the Commission in accordance with the advisory procedure referred to in Article 10(2).

Decisions on applications for grants involving profit-oriented bodies or organisations shall be adopted by the Commission in accordance with the management procedure referred to in Article 10(3).

Article 10

Committee

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

Article 11

Complementarity

1. Synergies and complementarity shall be sought with other Community instruments, in particular with the General Programme 'Security and Safeguarding Liberties', the 7th Research and Development Framework Programme and the Community Programme on Public Health. Complementarity with the methodology and best practices developed by the Centre shall be assured, in particular with regard to the statistical element of information on drugs.

2. The Programme may share resources with other Community instruments, in particular the General Programmes 'Security and Safeguarding Liberties', 'Solidarity and Management of Migration Flows' and the 7th Research and Development Framework Programme in order to implement actions meeting the objectives of all the programmes.

3. Operations financed under this Decision shall not receive financial support for the same purpose from other Community financial instruments. The Commission shall require that the beneficiaries of the Programme provide the Commission with information about financing received from the general budget of the European Union and from other sources, as well as information about ongoing applications for financing.

Article 12

Budgetary resources

1. The financial envelope for the implementation of this Decision from 1 January 2007 to 31 December 2013 shall be EUR 21 350 000.

2. The budgetary resources allocated to the actions provided for in the Programme shall be entered in the annual appropriations of the general budget of the European Union. The available annual appropriations shall be authorised by the budgetary authority within the limits of the financial framework.

Article 13

Monitoring

1. The Commission shall ensure that for any action financed by the Programme, the beneficiary submits technical and financial reports on the progress of work and that a final report is submitted within three months of the completion of the action. The Commission shall determine the form and content of the reports.

2. The Commission shall ensure that the contracts and agreements resulting from the implementation of the Programme provide in particular for supervision and financial control by the Commission (or any representative authorised by it), if necessary by means of on-the-spot checks, including sample checks, and audits by the Court of Auditors.

3. For a period of five years following the last payment in respect of any action, the Commission shall require that the beneficiary of financial support keeps available for the Commission all the supporting documents regarding expenditure on the action.

4. On the basis of the results of the reports and on-the-spot checks referred to in paragraphs 1 and 2, the Commission shall, if necessary, adjust the scale or the conditions of allocation of the financial support originally approved and also the timetable for payments.

5. The Commission shall take every other step necessary to verify that the actions financed are carried out properly and in compliance with the provisions of this Decision and the Financial Regulation.

Article 14

Protection of Community financial interests

1. The Commission shall ensure that, when actions financed under this Decision are implemented, the financial interests of the Community are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and by the recovery of the amounts wrongly paid and, if irregularities are detected, by effective, proportional and dissuasive penalties, in accordance with Regulations (EC, Euratom) No 2988/95, (Euratom, EC) No 2185/96 and (EC) No 1073/1999.

2. For the Community actions financed under this Decision, Regulations (EC, Euratom) No 2988/95 and (Euratom, EC) No 2185/96 shall apply to any infringement of a provision of Community law, including infringements of a contractual obligation stipulated on the basis of the Programme, resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by the Communities, by an unjustified item of expenditure.

3. The Commission shall reduce, suspend or recover the amount of financial support granted for an action, if it finds irregularities, including non-compliance with the provisions of this Decision or the individual decision or the contract or agreement granting the financial support in question, or if it transpires that, without Commission approval having being sought, the action has been subjected to a change which conflicts with the nature or implementing conditions of the project.

4. If the time limits have not been observed or if only part of the allocated financial support is justified by the progress made with implementing an action, the Commission shall request the beneficiary to submit observations within a specified period. If the beneficiary does not give a satisfactory answer, the Commission may cancel the remaining financial support and require repayment of sums already paid.

5. The Commission shall ensure that any undue payment is repaid to the Commission. Interest shall be added to any sums not repaid in good time under the conditions laid down by the Financial Regulation.

Article 15

Evaluation

1. The Programme shall be monitored regularly in order to follow the implementation of activities carried out under it.

2. The Commission shall ensure the regular, independent, external evaluation of the Programme.

3. The Commission shall provide the European Parliament and the Council with:

(a) an annual presentation on the implementation of the Programme;

(b) an interim evaluation report on the results obtained and the qualitative and quantitative aspects of the implementation of the Programme not later than 31 March 2011;

(c) a Communication on the continuation of the Programme not later than 30 August 2012; and

(d) an *ex-post* evaluation report not later than 31 December 2014.

Article 16

Publication of projects

Each year, the Commission shall publish the list of projects financed under the Programme with a short description of each project.

Article 17

Visibility

The Commission shall lay down guidelines to ensure the visibility of the financing granted under this Decision.

Article 18

Entry into force

This Decision shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2007, with the exception of Article 9(2) and (3) and Article 10(3), which shall apply from the date when this Decision enters into force.

Done at Strasbourg, 25 September 2007.

For the European Parliament	*For the Council*
The President	*The President*
H.-G. PÖTTERING	M. LOBO ANTUNES

I

(Acts whose publication is obligatory)

REGULATION (EC) No 1920/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 12 December 2006

on the European Monitoring Centre for Drugs and Drug Addiction (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 152 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) At its meeting in Luxembourg on 28 and 29 June 1991, the European Council, approved the setting-up of a European Drugs Monitoring Centre. Such a body, named the European Centre for Drugs and Drug Addiction ('the Centre'), was established by Council Regulation (EEC) No 302/93 of 8 February 1993 [3], which has been substantially amended several times [4]. Since further amendments are to be made, it should, in the interests of clarity, be recast.

(2) Factual, objective, reliable and comparable information concerning drugs, drug addiction and their consequences is required at Community level to help provide the Community and the Member States with an overall view and thus give them added value when, in their respective areas of competence, they take measures or decide on action to combat drugs.

(3) The drug phenomenon comprises many complex and closely interwoven aspects which cannot easily be dissociated. Therefore, the Centre should be entrusted with the task of furnishing general information which will help to provide the Community and its Member States with an overall view of the drug and drug addiction phenomenon. This task should not prejudice the allocation of powers between the Community and its Member States with regard to legislative provisions concerning drug supply and demand.

(4) By means of Decision No 2367/2002/EC of 16 December 2002 [5], the European Parliament and the Council established the Community statistical programme for the period from 2003 to 2007, which includes the Community's actions on statistics in the field of health and safety.

(5) Council Decision 2005/387/JHA of 10 May 2005 on information exchange, risk-assessment and control of new psychoactive substances [6] sets out the role of the Centre and its Scientific Committee in the rapid information system and in the assessment of the risks of new substances.

(6) Account should be taken of new methods of use, especially poly-drug use, where illicit drugs are taken in combination with licit drugs or medication.

(7) It should be one of the Centre's tasks to provide information on best practices and guidelines in the Member States and to facilitate the exchange of such practices among them.

(8) The Council Resolution of 10 December 2001 on the implementation of the five key epidemiological indicators on drugs urges Member States to ensure, making use of national focal points, that comparable information on those indicators is available. The implementation by Member States of those indicators is a precondition for the Centre to perform its tasks as set out in this Regulation.

[1] OJ C 69, 21.3.2006, p. 22.

[2] Opinion of the European Parliament delivered on 14 June 2006 (not yet published in the Official Journal).

[3] OJ L 36, 12.2.1993, p. 1. Regulation as last amended by Regulation (EC) No 1651/2003 (OJ L 245, 29.9.2003, p. 30).

[4] See Annex II.

[5] OJ L 358, 31.12.2002, p. 1. Decision as amended by Decision No 787/2004/EC (OJ L 138, 30.4.2004, p. 12).

[6] OJ L 127, 20.5.2005, p. 32.

(9) It is desirable for the Commission to be able to entrust the Centre directly with the implementation of Community structural assistance projects relating to drug information systems in third countries such as the candidate countries or the countries of the western Balkans which have been authorised by the European Council to participate in Community programmes and agencies.

(10) The way in which the Centre is organised and its working methods should be consistent with the objective nature of the results sought, namely the comparability and compatibility of sources and methods in connection with drug information.

(11) The information compiled by the Centre should concern priority areas, the content, scope and implementing arrangements of which should be defined.

(12) There are national, European and international organisations and bodies that already supply information of this kind, and it is necessary for the Centre to be able to carry out its tasks in close cooperation with them.

(13) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [1] should apply to the processing of personal data by the Centre.

(14) The Centre should also apply the general principles and limits governing the right of access to documents as provided for in Article 255 of the Treaty and defined by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2].

(15) The Centre should have legal personality.

(16) In view of its size, the Centre's Management Board should be assisted by an Executive Committee.

(17) In order to ensure that the European Parliament is well informed of the state of the drugs phenomenon in the European Union, it should have the right to question the Centre's Director.

(18) The Centre's work should be conducted in a transparent fashion and its management should be subject to all existing good governance and anti-fraud rules, in particular Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) [3] and the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF) [4] to which the Centre has acceded and the necessary implementing provisions of which it has adopted.

(19) An external evaluation of the Centre's work should be conducted on a regular basis, and this Regulation should be adapted accordingly, if needed.

(20) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

(21) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS REGULATION:

Article 1

Objective

1. This Regulation provides for the European Monitoring Centre for Drugs and Drug Addiction ('the Centre').

2. The Centre's objective is to provide, in the areas referred to in Article 3, the Community and its Member States with factual, objective, reliable and comparable information at European level concerning drugs and drug addiction and their consequences.

[1] OJ L 8, 12.1.2001, p. 1.
[2] OJ L 145, 31.5.2001, p. 43.
[3] OJ L 136, 31.5.1999, p. 1.
[4] OJ L 136, 31.5.1999, p. 15.

3. The statistical, documentary and technical information processed or produced is intended to help provide the Community and the Member States with an overall view of the drug and drug addiction situation when, in their respective areas of competence, they take measures or decide on action. The statistical element of this information shall be developed, in collaboration with the relevant statistical authorities, using as necessary the Community Statistical Programme to promote synergy and avoid duplication. Account shall be taken of further data from the World Health Organisation and the United Nations Organisation (the 'UN') available worldwide.

4. Without prejudice to Article 2(d)(v), the Centre may not take any measure which goes beyond the sphere of information and the processing thereof.

5. The Centre shall not collect any data making it possible to identify individuals or small groups of individuals. It shall refrain from any transmission of information relating to specific named cases.

Article 2

Tasks

In order to achieve the objective set out in Article 1, the Centre shall perform the following tasks within its areas of activity:

(a) **Collection and analysis of existing data**

(i) collecting, registering and analysing information, including data resulting from research, communicated by Member States and data emanating from Community, non-governmental national sources and competent international organisations, including the European Police Office (Europol); providing information on best practices in the Member States and facilitating the exchange of such practices among them; this collection, registration, analysis and information work shall also cover data on emerging trends in poly-drug use, including the combined use of licit and illicit psychoactive substances;

(ii) carrying out surveys, preparatory studies and feasibility studies, together with any pilot projects necessary to accomplish its tasks; organising meetings of experts and, whenever necessary, setting up ad hoc working parties for the purpose; setting up and making available open scientific documentation resources and assisting in the promotion of information activities;

(iii) providing an organisational and technical system capable of supplying information on similar or complementary programmes or action pursued by the Member States;

(iv) establishing and coordinating, in consultation and in cooperation with the competent authorities and organisations in the Member States, the network referred to in Article 5;

(v) facilitating exchanges of information between decision-makers, researchers, specialists and those involved in drugs-related issues in governmental and non-governmental organisations;

(b) **Improvement of data-comparison methods**

(i) ensuring improved comparability, objectivity and reliability of data at European level by establishing indicators and common criteria of a non-binding nature, compliance with which may be recommended by the Centre, with a view to ensuring greater uniformity of the measurement methods used by the Member States and the Community; in particular, the Centre shall develop tools and instruments to help Member States to monitor and evaluate their national policies and the Commission to monitor and evaluate Union policies;

(ii) facilitating and structuring information exchange in terms of both quality and quantity (databases);

(c) **Dissemination of data**

(i) making the information produced by it available to the Community, the Member States and competent organisations;

(ii) ensuring wide dissemination of work done in each Member State and by the Community itself, and, where appropriate, by third countries or international organisations;

(iii) ensuring wide dissemination of reliable non-confidential data, publishing on the basis of data which it gathers, a yearly report on the state of the drugs problem, including data on emerging trends;

(d) **Cooperation with European and international bodies and organisations and with third countries**

(i) contributing to improving coordination between national and Community action in its areas of activity;

(ii) without prejudice to Member States' obligations with regard to transmission of information under the provisions of the United Nations Conventions on drugs, promoting the incorporation of data on drugs and drug addiction gathered in the Member States or emanating from the Community into international monitoring and drug-control programmes, particularly those established by the UN and its specialised agencies;

(iii) cooperating actively with Europol to attain maximum efficiency in monitoring the drugs problem;

(iv) cooperating actively with the organisations and bodies referred to in Article 20;

(v) transferring, at the request of the Commission and with the approval of the Management Board referred to in Article 9, its know-how to certain third countries such as candidate countries or the countries of the western Balkans and assist in the creation and strengthening of structural links with the network referred to in Article 5 and the setting-up and consolidation of the national focal points referred to in that Article;

(e) **Information obligations**

In principle, the Centre shall, if it identifies new developments and changing trends, inform the competent authorities of the Member States thereof.

Article 3

Priority areas of activity

The objective and tasks of the Centre, as set out in Articles 1 and 2, shall be implemented following the order of priorities indicated in Annex I.

Article 4

Working method

1. The Centre shall progressively carry out its tasks in the light of the objectives adopted in the three-year and annual work programmes referred to in Article 9(4) and (5) and with due regard to the available resources.

2. In pursuing its activities, the Centre shall, in order to avoid duplication, take account of activities already carried out by other existing or future institutions and agencies, notably Europol, and shall ensure that it adds to their value.

Article 5

European Information Network on Drugs and Drug Addiction (Reitox)

1. The Centre shall have at its disposal the European Information Network on Drugs and Drug Addiction (Reitox). The network shall consist of one focal point for each Member State and each country which has concluded an agreement pursuant to Article 21 and a focal point for the Commission. The designation of the national focal points shall be the exclusive responsibility of the countries concerned.

2. The national focal points shall form an interface between the participating countries and the Centre. They shall contribute to the establishment of key indicators and data, including guidelines for their implementation with a view to obtaining reliable and comparable information at European Union level. They shall collect and analyse in an objective manner at national level, bringing together experience from different sectors – health, justice, law enforcement – in cooperation with experts and national organisations active in the field of drugs policy, all relevant information on drugs and drug addiction, as well as on policies and solutions applied. In particular, they shall provide data for the five epidemiological indicators specified by the Centre.

Each Member State shall ensure that its representative in the Reitox Network provides the information set out in Article 4(1) of Decision 2005/387/JHA.

The national focal points may also provide the Centre with information on new trends in the use of existing psychoactive substances and/or new combinations of psychoactive substances which pose a potential risk to public health as well as information on possible measures related to public health.

3. The national authorities shall ensure the operation of their focal point for the collection and analysis of data at national level on the basis of guidelines adopted with the Centre.

4. The specific tasks allocated to the national focal points shall appear in the Centre's three-year programme as referred to in Article 9(4).

5. While fully respecting the primacy of the national focal points, and in close cooperation with them, the Centre may have recourse to additional expertise and sources of information in the field of drugs and drug addiction.

Article 6

Protection and confidentiality of data

1. Data on drugs and drug addiction provided to or by the Centre may be published subject to compliance with Community and national rules on the dissemination and confidentiality of information. Personal data may not be published or made accessible to the public.

Member States and the national focal points shall be under no obligation to provide information classified as confidential under their national law.

2. Regulation (EC) No 45/2001 shall apply to the Centre.

Article 7

Access to documents

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Centre.

2. The Management Board referred to in Article 9 shall adopt the arrangements for implementing Regulation (EC) No 1049/2001.

3. Decisions taken by the Centre pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the Ombudsman or form the subject of an action before the Court of Justice of the European Communities, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

Article 8

Legal capacity and location

1. The Centre shall have legal personality. In each of the Member States, it shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

2. The seat of the Centre shall be located in Lisbon.

Article 9

Management Board

1. The Centre shall have a Management Board consisting of one representative from each Member State, two representatives from the Commission, two independent experts particularly knowledgeable in the field of drugs designated by the European Parliament and one representative from each country which has concluded an agreement pursuant to Article 21.

Each member of the Management Board shall have one vote, except for the representatives of the countries which have concluded agreements pursuant to Article 21, who shall not have the right to vote.

The decisions of the Management Board shall be taken by a two-thirds majority of the members with a right to vote, except in the cases provided for in paragraph 6 of this Article and in Article 20.

Each member of the Management Board may be assisted or represented by a substitute. Where a full member who has the right to vote is absent, his or her substitute may exercise that right.

The Management Board may invite as non-voting observers representatives of international organisations with which the Centre cooperates in accordance with Article 20.

2. The Chairperson and Vice-Chairperson of the Management Board shall be elected from amongst and by its members for a three-year period. Their terms of office shall be renewable once.

The Chairperson and Vice-Chairperson shall have the right to take part in the voting.

The Management Board shall draw up its own rules of procedure.

3. The meetings of the Management Board shall be convened by its Chairperson. It shall hold an ordinary meeting at least once a year. The Centre's Director, as referred to in Article 11, shall take part in the meetings of the Management Board, without voting rights, and shall, under Article 11(3), provide for the Board's Secretariat.

4. The Management Board shall adopt a three-year work programme on the basis of a draft submitted by the Director, after consulting the Scientific Committee referred to in Article 13 and obtaining the opinion of the Commission, and shall forward it to the European Parliament, the Council and the Commission.

5. Under the three-year work programme, the Management Board shall adopt each year the Centre's annual work programme on the basis of a draft submitted by the Director, after consulting the Scientific Committee and obtaining the opinion of the Commission. The work programme shall be forwarded to the European Parliament, the Council and the Commission. It may be adjusted in the course of the year in accordance with the same procedure.

6. Where the Commission expresses its disagreement with the three-year or annual work programme, those programmes shall be adopted by the Management Board by a three-fourths majority of the members with a right to vote.

7. The Management Board shall adopt the annual report on the Centre's activities and forward it by 15 June to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States.

8. The Centre shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures.

Article 10

Executive Committee

1. The Management Board shall be assisted by an Executive Committee. The Executive Committee shall be made up of the Chairperson and the Vice-Chairperson of the Management Board, two other members of the Management Board representing the Member States and appointed by the Management Board and two Commission representatives. The Director shall take part in meetings of the Executive Committee.

2. The Executive Committee shall meet at least twice a year and whenever necessary to prepare the decisions of the Management Board and to assist and advise the Director. It shall decide on behalf of the Management Board on those matters provided for in the financial rules adopted pursuant to Article 15(10) that are not reserved to the Management Board by this Regulation. Decisions shall be adopted by consensus.

Article 11

Director

1. The Centre shall be headed by a Director appointed by the Management Board on a proposal from the Commission for a five-year term, which shall be renewable.

2. Before appointment to a first term, out of a maximum of two terms, the candidate selected by the Management Board for the post of Director shall be invited without delay to make a statement before the European Parliament and answer questions put by members of that institution.

3. The Director shall be responsible for:

(a) preparing and implementing the decisions and programmes adopted by the Management Board,

(b) day-to-day administration,

(c) preparing the Centre's work programmes,

(d) the preparation of the draft estimate of the Centre's revenue and expenditure and the implementation of the budget,

(e) the preparation and publication of the reports provided for in this Regulation,

(f) managing all staff-related matters, and in particular exercising the powers which are devolved on the appointing authority,

(g) defining the Centre's organisational structure and submitting it to the Management Board for approval,

(h) the performance of the tasks referred to in Articles 1 and 2,

(i) carrying out a regular assessment of the Centre's work.

4. The Director shall be accountable for his activities to the Management Board.

5. The Director shall be the Centre's legal representative.

Article 12

Hearing of the Director and of the Chairperson of the Management Board before the European Parliament

Each year the Director shall submit to the European Parliament the general report on the Centre's activities. The European Parliament may also ask for a hearing with the Director and the Chairperson of the Management Board on any subject related to the Centre's activities.

Article 13

Scientific Committee

1. The Management Board and the Director shall be assisted by a Scientific Committee which shall deliver an opinion where provided for in this Regulation on any scientific matter concerning the Centre's activities which the Management Board or the Director may submit to it.

The opinions of the Scientific Committee shall be published.

2. The Scientific Committee shall consist of at most fifteen well-known scientists appointed in view of their scientific excellence and their independence by the Management Board, following the publication of a call for expressions of interest in the *Official Journal of the European Union*. The selection procedure shall ensure that the specialist fields of the members of the Scientific Committee cover the most relevant scientific fields linked to the problems of drugs and drug addiction.

The members of the Scientific Committee shall be appointed in a personal capacity and shall give their opinions completely independently of the Member States and the Community Institutions.

The Scientific Committee shall take into account the various positions expressed in national expert opinions, if available, before delivering any opinion.

For the purpose of implementing Decision 2005/387/JHA, the Scientific Committee may be extended following the procedure laid down in Article 6(2) of that Decision.

3. Members shall serve on the Scientific Committee for a three-year period, which shall be renewable.

4. The Scientific Committee shall elect its chairperson for a three-year period. It shall be convened by its chairperson at least once a year.

Article 14

Drawing up of the budget

1. Estimates of all the revenue and expenditure of the Centre shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the budget of the Centre.

2. The revenue and expenditure shown in the budget shall be in balance.

3. The Centre's revenue shall, without prejudice to other resources, consist of a subsidy from the Community entered in the general budget of the European Union (Commission Section), payments for services rendered and any financial contributions from the organisations and bodies and third countries referred to in Articles 20 and 21 respectively.

4. The Centre's expenditure shall include:

(a) staff remuneration, administrative and infrastructure expenses, and operating costs;

(b) expenditure in support of the Reitox focal points.

5. Each year the Management Board, on the basis of a draft drawn up by the Director, shall produce an estimate of revenue and expenditure for the Centre for the following financial year. This estimate, which shall include a draft establishment plan, shall be forwarded by the Management Board to the Commission by 31 March, together with the Centre's work programme. The estimate shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the 'budgetary authority') together with the preliminary draft general budget of the European Union.

6. On the basis of the estimate, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.

7. The budgetary authority shall authorise the appropriations for the subsidy to the Centre and shall adopt the establishment plan for the Centre.

8. The budget shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

9. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of the budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project.

Article 15

Implementation of the budget

1. The Director shall implement the Centre's budget.

2. By 1 March following each financial year, the Centre's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [1] (hereinafter referred to as 'the general Financial Regulation').

3. By 31 March following each financial year, the Commission's accounting officer shall forward the Centre's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be forwarded to the European Parliament and to the Council.

4. On receipt of the Court of Auditors' observations on the Centre's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Centre's final accounts under his own responsibility and submit them to the Management Board for an opinion.

5. The Management Board shall deliver an opinion on the Centre's final accounts.

6. The Director shall, by 1 July following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

The final accounts shall be published.

7. The Director shall send the Court of Auditors a reply to its observations by 30 September. He shall also send this reply to the Management Board.

[1] OJ L 248, 16.9.2002, p. 1.

8. The Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of the general Financial Regulation.

9. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Director in respect of the implementation of the budget for year N.

10. The financial rules applicable to the Centre shall be adopted by the Management Board after the Commission has been consulted. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 [1] on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 unless specifically required for the Centre's operation and with the Commission's prior consent.

Article 16

Combating fraud

1. In order to combat fraud, corruption and any other illegal activities affecting the Communities' financial interests, the provisions of Regulation (EC) No 1073/1999 shall apply without restriction to the Centre.

2. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks at the premises of the recipients of the Centre's funding.

Article 17

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Centre.

Article 18

Staff Regulations

The Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities and the rules adopted jointly by the Community Institutions for the purpose of applying those Staff Regulations and Conditions of Employment shall apply to the staff of the Centre.

Where it engages staff from third countries following the conclusion of the agreements referred to in Article 21, the Centre shall, in any event, comply with the Staff Regulations and Conditions of Employment referred to in paragraph 1 of this Article.

The Centre shall exercise in respect of its staff the powers devolved to the appointing authority.

The Management Board shall, in agreement with the Commission, adopt the appropriate implementing rules in accordance with the Staff Regulations, Article 110, and the Conditions of Employment referred to in paragraph 1.

The Management Board may adopt provisions to allow national experts from other Member States to be employed on secondment at the Centre.

Article 19

Liability

1. The contractual liability of the Centre shall be governed by the law applicable to the contract in question. The Court of Justice shall have jurisdiction pursuant to an arbitration clause contained in a contract concluded by the Centre.

2. In the case of non-contractual liability, the Centre shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by the Centre or its staff in the performance of their duties. The Court of Justice shall have jurisdiction in disputes relating to the compensation of any such damage.

3. The personal liability of its staff towards the Centre shall be governed by the provisions applying to the staff of the Centre.

Article 20

Cooperation with other organisations and bodies

Without prejudice to relations which the Commission may maintain pursuant to Article 302 of the Treaty, the Centre shall actively seek to cooperate with international organisations and other, particularly European, governmental and non-governmental bodies competent in the sector of drugs.

Such cooperation shall be based on working arrangements concluded with the organisations and bodies referred to in the first paragraph. Those arrangements shall be adopted by the Management Board on the basis of a draft submitted by the Director and after the Commission has delivered an opinion. Where the Commission expresses its disagreement with these arrangements, the Management Board shall adopt them by a three-fourths majority of the members with a right to vote.

[1] OJ L 357, 31.12.2002, p. 72.

Article 21

Participation of third countries

The Centre shall be open to the participation of any third country that shares the interest of the Community and of its Member States in the Centre's objectives and work, on the basis of agreements entered into between such third countries and the Community on the basis of Article 300 of the Treaty.

Article 22

Jurisdiction of the Court of Justice

The Court of Justice shall have jurisdiction in actions brought against the Centre under Article 230 of the Treaty.

Article 23

Evaluation report

The Commission shall initiate an external evaluation of the Centre every six years to coincide with the completion of two of the Centre's three-year work programmes. Such evaluations shall also include the Reitox system. The Commission shall forward the evaluation report to the European Parliament, the Council and the Management Board.

In that context, the Commission shall, if appropriate, present a proposal for revision of the provisions of this Regulation in the light of developments in respect of regulatory agencies, in accordance with the procedure laid down in Article 251 of the Treaty.

Article 24

Repeal

Regulation (EEC) No 302/93 is hereby repealed.

References made to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

Article 25

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 12 December 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
M. PEKKARINEN

ANNEX I

A. The work of the Centre shall be carried out with due regard to the respective powers of the Community and its Member States in the area of drugs, as those powers are defined by the Treaty. It shall cover the various facets of the drugs and drug addiction phenomenon, and the solutions applied. In doing so, the Centre shall be guided by the Drugs Strategies and Action Plans adopted by the European Union.

The Centre shall focus on the following priority areas:

1) monitoring the state of the drugs problem, in particular using epidemiological or other indicators, and monitoring emerging trends, in particular those involving poly-drug use;

2) monitoring the solutions applied to drug-related problems; providing information on best practices in the Member States and facilitating the exchange of such practices among them;

3) assessing the risks of new psychoactive substances and maintaining a rapid information system with regard to their use and also regarding new methods of using existing psychoactive substances;

4) developing tools and instruments to help Member States to monitor and evaluate their national policies and the Commission to monitor and evaluate European Union policies.

B. The Commission shall make available to the Centre, for dissemination, the information and statistical data which it possesses pursuant to its powers.

ANNEX II

REPEALED REGULATION AND SUCCESSIVE AMENDMENTS

Council Regulation (EEC) No 302/93	OJ L 36, 12.2.1993, p. 1.
Council Regulation (EC) No 3294/94	OJ L 341, 30.12.1994, p. 7.
Council Regulation (EC) No 2220/2000	OJ L 253, 7.10.2000, p. 1.
Council Regulation (EC) No 1651/2003	OJ L 245, 29.9.2003, p. 30.

ANNEX III

CORRELATION TABLE

Council Regulation (EEC) No 302/93	This Regulation
Article 1	Article 1
—	Article 1(3), second and third sentences
Article 2(A), sub-heading	Article 2(a), sub-heading
Article 2(A)(1)	Article 2(a)(i), first phrase
—	Article 2(a)(i), second and third phrases
Article 2(A)(2) to (5)	Article 2(a)(ii) to (v)
Article 2(B), sub-heading	Article 2(b), sub-heading
Article 2(B)(6), first phrase	Article 2(b)(i), first phrase
—	Article 2(b)(i), second phrase
Article 2(B)(7)	Article 2(b)(ii)
Article 2(C), sub-heading	Article 2(c), sub-heading
Article 2(C)(8) to (10)	Article 2(c)(i) to (iii)
Article 2(D), sub-heading	Article 2(d), sub-heading
Article 2(D)(11) to (13)	Article 2(d)(i), (ii) and (iv)
—	Article 2(d)(iii) and (v)
—	Article 2(e)
Article 3	Article 4
Article 4	Article 3
Article 5(1)	Article 5(1)
—	Article 5(2), (3) and (4)
Article 5(4)	Article 5(5)
Article 6(2) and (3)	Article 6(1)
—	Article 6(2)
Article 6a	Article 7
Article 7	Article 8
—	Article 8, heading
—	Article 8 (2)
Article 8(1)	Article 9(1), first, fourth and fifth subparagraphs
Article 8(2)	Article 9(1), second and third subparagraphs; Article 9(2); Article 9(3), second sentence
—	Article 9(3), first and third sentences
Article 8(3)	Article 9(4)
Article 8(4)	Article 9(5), first and third sentences
—	Article 9(5), second sentence
—	Article 9(6)
Article 8(5) and (6)	Article 9(7) and (8)
—	Article 10
Article 9(1), first subparagraph	Article 11(1)

Council Regulation (EEC) No 302/93	This Regulation
—	Article 11(2)
Article 9(1), second subparagraph	Article 11(3)
Article 9(1), second subparagraph, first to sixth indent	Article 11(3)(a) to (f), first phrase
—	Article 11(3)(f), second phrase
—	Article 11(3)(g)
Article 9(1), second subparagraph, seventh indent	Article 11(3)(h)
—	Article 11(3)(i)
Article 9(2) and (3)	Article 11(4) and (5)
—	Article 12
Article 10(1)	Article 13(1)
Article 10(2)	Article 13(2), first and fourth subparagraphs
—	Article 13(2), second and third subparagraphs
Article 10(3), (4) and (5)	Article 13(3) and (4)
Article 11(1) to (6)	Article 14(1) to (5)
Article 11(7) to (10)	Article 14(6) to (9)
Article 11a(1) to (5)	Article 15(1) to (5)
Article 11a(6) and (7)	Article 15(6)
Article 11a(8) to (11)	Article 15(7) to (10)
—	Article 16
Article 12	Article 20
—	Article 20, second subparagraph
Article 13(1)	Article 21
Article 13(2)	—
Article 14	Article 17
Article 15	Article 18, first, third and fourth subparagraphs
—	Article 18, second and fifth subparagraphs
Article 16	Article 19
Article 17	Article 22
Article 18	Article 23, first subparagraph, first and third sentences
—	Article 23, first subparagraph, second sentence
—	Article 23, second subparagraph
—	Article 24
Article 19	Article 25
Annex, paragraph A, first subparagraph	Annex I, paragraph A, first subparagraph, first sentence
—	Annex I, paragraph A, first subparagraph, second and third sentences
—	Annex I, paragraph A, second subparagraph, points (1) to (4)
Annex, paragraph A, second subparagraph, points 1 to 5	—
Annex, paragraph B	Annex I, paragraph B
Annex, paragraph C	—
—	Annex II
—	Annex III

(Acts adopted under Title VI of the Treaty on European Union)

COUNCIL DECISION 2005/387/JHA

of 10 May 2005

on the information exchange, risk-assessment and control of new psychoactive substances

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 29, 31(1)(e) and 34 (2)(c) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Whereas:

(1) The particular dangers inherent in the development of psychoactive substances require rapid action by the Member States.

(2) When new psychoactive substances are not brought within the scope of criminal law in all Member States, problems may arise in cooperation between the judicial authorities and law enforcement agencies of Member States owing to the fact that the offence or offences in question are not punishable under the laws of both the requesting and the requested State.

(3) The European Union Action Plan on Drugs 2000-2004 provided for the Commission to organise an appropriate assessment of the Joint Action of 16 June 1997 concerning the information exchange, risk assessment and the control of new synthetic drugs [2] (herineafter 'the Joint Action') taking into account the external evaluation commissioned by the European Monitoring Centre on Drugs and Drug Addiction (hereinafter 'the EMCDDA') of the early warning system. The assessment showed that the Joint Action had fulfilled its expectations. Nevertheless, the outcome of the assessment made it clear that the Joint Action was in need of reinforcement and reorientation. In particular, its main objective, the clarity of its procedures and definitions, the transparency of its operation, and the relevance of its scope had to be redefined. The Communication from the Commission to the European Parliament and the Council on the mid-term evaluation of the EU Action Plan on Drugs (2000-2004) indicated that changes to the legislation would be introduced in order to enhance action against synthetic drugs. The mechanism as established by the Joint Action should therefore be adapted.

(4) New psychoactive substances can be harmful to health.

(5) The new psychoactive substances covered by this Decision may include medicinal products as defined in Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community Code relating to veterinary medicinal products [3] and in Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community Code relating to medicinal products for human use [4].

(6) The information exchange under the early warning system, established under the Joint Action, has proved to be a valuable asset to the Member States.

(7) Nothing in this Decision should prevent Member States from exchanging information, within the European Information Network on Drugs and Drug Addiction (hereinafter 'the Reitox network'), on emerging trends in new uses of existing psychoactive substances which may pose a potential risk to public health, as well as information on possible public health related measures, in accordance with the mandate and procedures of the EMCDDA.

(8) No deterioration of either human or veterinary health care as a result of this Decision will be permitted. Substances of established and acknowledged medical value are therefore excluded from control measures based on this Decision. Suitable regulatory and public health related measures should be taken for substances of established and acknowledged medical value that are being misused.

[1] Opinion delivered on 13 January 2004 (not yet published in the Official Journal).

[2] OJ L 167, 25.6.1997, p. 1.

[3] OJ L 311, 28.11.2001, p. 1. Directive as last amended by Directive 2004/28/EC (OJ L 136, 30.4.2004, p. 58).

[4] OJ L 311, 28.11.2001, p. 67. Directive as last amended by Directive 2004/27/EC (OJ L 136, 30.4.2004, p. 34).

(9) In addition to what is provided for under the pharmacovigilance systems as defined in Directive 2001/82/EC and in Directive 2001/83/EC, the exchange of information on abused or misused psychoactive substances needs to be reinforced and appropriate cooperation with the European Medicines Agency (hereinafter 'EMEA') ensured. The United Nations Commission on Narcotic Drugs (hereinafter 'CND') Resolution 46/7 'Measures to promote the exchange of information on new patterns of drug use and on psychoactive substances consumed', provides a useful framework for action by the Member States.

(10) The introduction of deadlines into every phase of the procedure established by this Decision should guarantee that the instrument can react swiftly and enhances its ability to provide a quick-response mechanism.

(11) The Scientific Committee of the EMCDDA has a central role in the assessment of the risks associated with a new psychoactive substance, it will for the purpose of this Decision be extended to include experts from the Commission, Europol and the EMEA, and experts from scientific fields not represented, or not sufficiently represented, in the Scientific Committee of the EMCDDA.

(12) The extended Scientific Committee that assesses the risks associated with new psychoactive substances should remain a concise technical body of experts, capable of assessing effectively all risks associated with a new psychoactive substance. Therefore the extended Scientific Committee should be kept to a manageable size.

(13) Since the objectives of the proposed action, namely to bring about an exchange of information, a risk-assessment by a scientific committee and an EU-level procedure for bringing notified substances under control, cannot be sufficiently achieved by the Member States and can therefore, by reason of the effects of the envisaged action, be better achieved at European Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Decision does not go what is beyond what is necessary in order to achieve those objectives

(14) In conformity with Article 34(2)(c) of the Treaty, measures based upon this Decision can be taken by qualified majority as these measures are necessary to implement this Decision.

(15) This Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty and reflected in the Charter of Fundamental Rights of the European Union,

HAS DECIDED AS FOLLOWS:

Article 1

Subject matter

This Decision establishes a mechanism for a rapid exchange of information on new psychoactive substances. It takes note of information on suspected adverse reactions to be reported under the pharmacovigilance system as established by Title IX of Directive 2001/83/EC.

This Decision also provides for an assessment of the risks associated with these new psychoactive substances in order to permit the measures applicable in the Member States for control of narcotic and psychotropic substances to be applied also to new psychoactive substances.

Article 2

Scope

This Decision applies to substances not currently listed in any of the schedules to:

(a) the 1961 United Nations Single Convention on Narcotic Drugs, that may pose a comparable threat to public health as the substances listed in Schedule I or II or IV thereof, and

(b) the 1971 United Nations Convention on Psychotropic Substances, that may pose a comparable threat to public health as the substances listed in Schedule I or II or III or IV thereof.

This Decision relates to end-products, as distinct from precursors in respect of which Council Regulation (EEC) No 3677/90 of 13 December 1990 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances [1], and Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors [2] provide for a Community regime.

Article 3

Definitions

For the purpose of this Decision the following definitions shall apply:

(a) 'new psychoactive substance' means a new narcotic drug or a new psychotropic drug in pure form or in a preparation;

[1] OJ L 357, 20.12.1990, p. 1. Regulation as last amended by Commission Regulation (EC) No 1232/2002 (OJ L 180, 10.7.2002, p. 5).
[2] OJ L 47, 18.2.2004, p. 1.

(b) 'new narcotic drug' means a substance in pure form or in a preparation, that has not been scheduled under the 1961 United Nations Single Convention on Narcotic Drugs, and that may pose a threat to public health comparable to the substances listed in Schedule I, II or IV;

(c) 'new psychotropic drug' means a substance in pure form or in a preparation that has not been scheduled under the 1971 United Nations Convention on Psychotropic Substances, and that may pose a threat to public health comparable to the substances listed in Schedule I, II, III or IV;

(d) 'marketing authorisation' means a permission to place a medicinal product on the market, granted by the competent authority of a Member State, as required by Title III of Directive 2001/83/EC (in the case of medicinal products for human use) or Title III of Directive 2001/82/EC (in the case of veterinary medicinal products) or a marketing authorisation granted by the European Commission under Article 3 of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency ([1]);

(e) 'United Nations system' means the World Health Organisation (WHO), the Commission on Narcotic Drugs (CND) and/or the Economic and Social Committee acting in accordance with their respective responsibilities as described in Article 3 of the 1961 United Nations Single Convention on Narcotic Drugs or in Article 2 of the 1971 United Nations Convention on Psychotropic Substances;

(f) 'preparation' means a mixture containing a new psychoactive substance;

(g) 'Reporting Form' means a structured form for notification of a new psychoactive substance and/or of a preparation containing a new psychoactive substance agreed between the EMCDDA/Europol and their respective networks in the Member States' Reitox and the Europol National Units.

Article 4

Exchange of information

1. Each Member State shall ensure that its Europol National Unit and its representative in the Reitox network provide information on the manufacture, traffic and use, including supplementary information on possible medical use, of new psychoactive substances and of preparations containing new psychoactive substances, to Europol and the EMCDDA, taking into account the respective mandates of these two bodies.

([1]) OJ L 136, 30.4.2004, p. 1.

Europol and the EMCDDA shall collect the information received from Member States through a Reporting Form and communicate this information immediately to each other and to the Europol National Units and the representatives of the Reitox network of the Member States, the Commission, and to the EMEA.

2. Should Europol and the EMCDDA consider that the information provided by a Member State on a new psychoactive substance does not merit the communication of information as described in paragraph 1, they shall inform the notifying Member State immediately thereof. Europol and the EMCDDA shall justify their decision to the Council within six weeks.

Article 5

Joint Report

1. Where Europol and the EMCDDA, or the Council, acting by a majority of its members, consider that the information provided by the Member State on a new psychoactive substance merits the collection of further information, this information shall be collated and presented by Europol and the EMCDDA in the form of a Joint Report (hereinafter the 'Joint Report'). The Joint Report shall be submitted to the Council, the EMEA and the Commission.

2. The Joint Report shall contain:

(a) a chemical and physical description, including the name under which the new psychoactive substance is known, including, if available, the scientific name (International Non-proprietary Name);

(b) information on the frequency, circumstances and/or quantities in which a new psychoactive substance is encountered, and information on the means and methods of manufacture of the new psychoactive substance;

(c) information on the involvement of organised crime in the manufacture or trafficking of the new psychoactive substance;

(d) a first indication of the risks associated with the new psychoactive substance, including the health and social risks, and the characteristics of users;

(e) information on whether or not the new substance is currently under assessment, or has been under assessment, by the UN system;

(f) the date of notification on the Reporting Form of the new psychoactive substance to the EMCDDA or to Europol;

(g) information on whether or not the new psychoactive substance is already subject to control measures at national level in a Member State;

(h) as far as possible, information will be made available on:

(i) the chemical precursors that are known to have been used for the manufacture of the substance,

(ii) the mode and scope of the established or expected use of the new substance,

(iii) any other use of the new psychoactive substance and the extent of such use, the risks associated with this use of the new psychoactive substance, including the health and social risks.

3. The EMEA shall submit to Europol and the EMCDDA the following information on whether in the European Union or in any Member State:

(a) the new psychoactive substance has obtained a marketing authorisation;

(b) the new psychoactive substance is the subject of an application for a marketing authorisation;

(c) a marketing authorisation that had been granted in respect of the new psychoactive substance has been suspended.

Where this information relates to marketing authorisations granted by Member States, these Member States shall provide the EMEA with this information if so requested by it.

4. Member States shall provide the details referred to under paragraph 2 within six weeks from the date of notification on the Reporting Form as set out in Article 4(1).

5. The Joint Report shall be submitted no more than four weeks after the date of receipt of the information from Member States and the EMEA. The Report shall be submitted by Europol or the EMCDDA, as appropriate, in accordance with Article 5(1) and (2).

Article 6

Risk assessment

1. The Council, taking into account the advice of Europol and the EMCDDA, and acting by a majority of its members, may request that the risks, including the health and social risks, caused by the use of, the manufacture of, and traffic in, a new psychoactive substance, the involvement of organised crime and possible consequences of control measures, be assessed in accordance with the procedure set out in paragraphs 2 to 4, provided that at least a quarter of its members or the Commission have informed the Council in writing that they are in favour of such an assessment. The Member States or the Commission shall inform the Council thereof as soon as possible, but in any case within four weeks of receipt of the Joint Report. The General Secretariat of the Council shall notify this information to the EMCDDA without delay.

2. In order to carry out the assessment, the EMCDDA shall convene a special meeting under the auspices of its Scientific Committee. In addition, for the purpose of this meeting the Scientific Committee may be extended by a further five experts at most, to be designated by the Director of the EMCDDA, acting on the advice of the Chairperson of the Scientific Committee, chosen from a panel of experts proposed by Member States and approved every three years by the Management Board of the EMCDDA. Such experts will be from scientific fields that are not represented, or not sufficiently represented, in the Scientific Committee, but whose contribution is necessary for the balanced and adequate assessment of the possible risks, including health and social risks. Furthermore, the Commission, Europol and the EMEA shall each be invited to send a maximum of two experts.

3. The risk assessment shall be carried out on the basis of information to be provided to the scientific Committee by the Member States, the EMCDDA, Europol, the EMEA, taking into account all factors which, according to the 1961 United Nations Single Convention on Narcotic Drugs or the 1971 United Nations Convention on Psychotropic Substances, would warrant the placing of a substance under international control.

4. On completion of the risk assessment, a report (hereinafter the 'Risk Assessment Report') shall be drawn up by the Scientific Committee. The Risk Assessment Report shall consist of an analysis of the scientific and law enforcement information available, and shall reflect all opinions held by the members of the Committee. The Risk Assessment Report shall be submitted to the Commission and Council by the chairperson of the Committee, on its behalf, within a period of twelve weeks from the date of the notification by the General Secretariat of the Council to the EMCDDA referred to in paragraph 1.

The Risk Assessment Report shall include:

(a) the physical and chemical description of the new psychoactive substance and its mechanisms of action, including its medical value;

(b) the health risks associated with the new psychoactive substance;

(c) the social risks associated with the new psychoactive substance;

(d) information on the level of involvement of organised crime and information on seizures and/or detections by the authorities, and the manufacture of the new psychoactive substance;

(e) information on any assessment of the new psychoactive substance in the United Nations system;

(f) where appropriate, a description of the control measures that are applicable to the new psychoactive substance in the Member States;

(g) options for control and the possible consequences of the control measures, and

(h) the chemical precursors that are used for the manufacture of the substance.

Article 7

Circumstances where no risk assessment is carried out

1. No risk assessment shall be carried out in the absence of a Europol/EMCDDA Joint Report. Nor shall a risk assessment be carried out where the new psychoactive substance concerned is at an advanced stage of assessment within the United Nations system, namely once the WHO expert committee on drug dependence has published its critical review together with a written recommendation, except where there is significant new information that is relevant in the framework of this Decision.

2. Where the new psychoactive substance has been assessed within the United Nations system, but it has been decided not to schedule the new psychoactive substance under the 1961 Single Convention on Narcotic Drugs or the 1971 Convention on Psychotropic Substances, a risk assessment shall be carried out only if there is significant new information that is relevant in the framework of this Decision.

3. No risk assessment shall be carried out on a new psychoactive substance if:

(a) the new psychoactive substance is used to manufacture a medicinal product which has been granted a marketing authorisation; or,

(b) the new psychoactive substance is used to manufacture a medicinal product for which an application has been made for a marketing authorisation or,

(c) the new psychoactive substance is used to manufacture a medicinal product for which a marketing authorisation has been suspended by a competent authority.

Where the new psychoactive substance falls into one of the categories listed under the first subparagraph, the Commission, on the basis of data collected by EMCDDA and Europol, shall assess with the EMEA the need for further action, in close cooperation with the EMCDDA and in accordance with the mandate and procedures of the EMEA.

The Commission shall report to the Council on the outcome.

Article 8

Procedure for bringing specific new psychoactive substances under control

1. Within six weeks from the date on which it received the Risk Assessment Report, the Commission shall present to the Council an initiative to have the new psychoactive substance subjected to control measures. If the Commission deems it is not necessary to present an initiative on submitting the new psychoactive substance to control measures, within six weeks from the date on which it received the Risk Assessment Report, the Commission shall present a report to the Council explaining its views.

2. Should the Commission deem it not necessary to present an initiative on submitting the new psychoactive substance to control measures, such an initiative may be presented to the Council by one or more Member States, preferably not later than six weeks from the date on which the Commission presented its report to the Council.

3. The Council shall decide, by qualified majority and acting on an initiative presented pursuant to paragraph 1 or 2, on the basis of Article 34(2) (c) of the Treaty, whether to submit the new psychoactive substance to control measures.

Article 9

Control measures taken by Member States

1. If the Council decides to submit a new psychoactive substance to control measures, Member States shall endeavour to take, as soon as possible, but no later than one year from the date of that decision, the necessary measures in accordance with their national law to submit:

(a) the new psychotropic drug to control measures and criminal penalties as provided under their legislation by virtue of their obligations under the 1971 United Nations Convention on Psychotropic Substances;

(b) the new narcotic drug to control measures and criminal penalties as provided under their legislation by virtue of their obligations under the 1961 United Nations Single Convention on Narcotic Drugs.

2. Member States shall report the measures taken to both the Council and the Commission as soon as possible after the relevant decision has been taken. Thereafter this information shall be communicated to the EMCDDA, Europol, the EMEA, and the European Parliament.

3. Nothing in this Decision shall prevent a Member State from maintaining or introducing on its territory any national control measure it deems appropriate once a new psychoactive substance has been identified by a Member State.

Article 10

Annual report

The EMCDDA and Europol shall report annually to the European Parliament, the Council and the Commission on the implementation of this Decision. The report will take into account all aspects required for an assessment of the efficacy and achievements of the system created by this Decision. The Report shall, in particular, include experience relating to coordination between the system set out in this Decision and the pharmacovigilance system.

Article 11

Pharmacovigilance system

Member States and the EMEA shall ensure an appropriate exchange of information between the mechanism set up by means of this Decision and the pharmacovigilance systems as defined and established under Title VII of Directive 2001/82/EC and Title IX of Directive 2001/83/EC.

Article 12

Repeal

The Joint Action on New Synthetic Drugs of 16 June 1997 is hereby repealed. Decisions taken by the Council based on Article 5 of that Joint Action shall continue to be legally valid.

Article 13

Publication and taking effect

This Decision shall take effect on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 10 May 2005.

For the Council
The President
J. KRECKÉ

(Acts adopted under Title VI of the Treaty on European Union)

COUNCIL FRAMEWORK DECISION 2004/757/JHA

of 25 october 2004

laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(e) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Whereas:

(1) Illicit drug trafficking poses a threat to health, safety and the quality of life of citizens of the European Union, and to the legal economy, stability and security of the Member States.

(2) The need for legislative action to tackle illicit drug trafficking has been recognised in particular in the Action Plan of the Council and the Commission on how best to implement the provisions of the Amsterdam Treaty on an area of freedom, security and justice [3], adopted by the Justice and Home Affairs Council in Vienna on 3 December 1998, the conclusions of the Tampere European Council of 15 and 16 October 1999, in particular point 48 thereof, the European Union's Drugs Strategy (2000-2004) endorsed by the Helsinki European Council from 10 to 12 December 1999 and the European Union's Action Plan on Drugs (2000-2004) endorsed by the European Council in Santa Maria da Feira on 19 and 20 June 2000.

(3) It is necessary to adopt minimum rules relating to the constituent elements of the offences of illicit trafficking in drugs and precursors which will allow a common approach at European Union level to the fight against such trafficking.

(4) By virtue of the principle of subsidiarity, European Union action should focus on the most serious types of drug offence. The exclusion of certain types of behaviour as regards personal consumption from the scope of this Framework Decision does not constitute a Council guideline on how Member States should deal with these other cases in their national legislation.

(5) Penalties provided for by the Member States should be effective, proportionate and dissuasive, and include custodial sentences. To determine the level of penalties, factual elements such as the quantities and the type of drugs trafficked, and whether the offence was committed within the framework of a criminal organisation, should be taken into account.

(6) Member States should be allowed to make provision for reducing the penalties when the offender has supplied the competent authorities with valuable information.

(7) It is necessary to take measures to enable the confiscation of the proceeds of the offences referred to in this Framework Decision.

(8) Measures should be taken to ensure that legal persons can be held liable for the criminal offences referred to by this Framework Decision which are committed for their benefit.

(9) The effectiveness of the efforts made to tackle illicit drug trafficking depends essentially on the harmonisation of the national measures implementing this Framework Decision,

[1] OJ C 304 E, 30.10.2001, p. 172.
[2] Opinion of 9 March 2004 (not yet published in the Official Journal).
[3] OJ C 19, 23.1.1999, p. 1.

HAS DECIDED AS FOLLOWS:

Article 1

Definitions

For the purposes of this Framework Decision:

1. 'drugs': shall mean any of the substances covered by the following United Nations Conventions:

   (a) the 1961 Single Convention on Narcotic Drugs (as amended by the 1972 Protocol);

   (b) the 1971 Vienna Convention on Psychotropic Substances. It shall also include the substances subject to controls under Joint Action 97/396/JHA of 16 June 1997 concerning the information exchange risk assessment and the control of new synthetic drugs [1];

2. 'precursors': shall mean any substance scheduled in the Community legislation giving effect to the obligations deriving from Article 12 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988;

3. 'legal person': shall mean any legal entity having such status under the applicable national law, except for States or other public bodies acting in the exercise of their sovereign rights and for public international organisations.

Article 2

Crimes linked to trafficking in drugs and precursors

1. Each Member State shall take the necessary measures to ensure that the following intentional conduct when committed without right is punishable:

(a) the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of drugs;

(b) the cultivation of opium poppy, coca bush or cannabis plant;

(c) the possession or purchase of drugs with a view to conducting one of the activities listed in (a);

(d) the manufacture, transport or distribution of precursors, knowing that they are to be used in or for the illicit production or manufacture of drugs.

2. The conduct described in paragraph 1 shall not be included in the scope of this Framework Decision when it is committed by its perpetrators exclusively for their own personal consumption as defined by national law.

Article 3

Incitement, aiding and abetting and attempt

1. Each Member State shall take the necessary measures to make incitement to commit, aiding and abetting or attempting one of the offences referred to in Article 2 a criminal offence.

2. A Member State may exempt from criminal liability the attempt to offer or prepare drugs referred to in Article 2(1)(a) and the attempt to possess drugs referred to in Article 2(1)(c).

Article 4

Penalties

1. Each Member State shall take the measures necessary to ensure that the offences defined in Articles 2 and 3 are punishable by effective, proportionate and dissuasive criminal penalties.

Each Member State shall take the necessary measures to ensure that the offences referred to in Article 2 are punishable by criminal penalties of a maximum of at least between one and three years of imprisonment.

2. Each Member State shall take the necessary measures to ensure that the offences referred to in Article 2(1)(a), (b) and (c) are punishable by criminal penalties of a maximum of at least between 5 and 10 years of imprisonment in each of the following circumstances:

(a) the offence involves large quantities of drugs;

(b) the offence either involves those drugs which cause the most harm to health, or has resulted in significant damage to the health of a number of persons.

[1] OJ L 167, 25.6.1997, p. 1.

3. Each Member State shall take the necessary measures to ensure that the offences referred to in paragraph 2 are punishable by criminal penalties of a maximum of at least 10 years of deprivation of liberty, where the offence was committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union [1].

4. Each Member State shall take the necessary measures to ensure that the offences referred to in Article 2(1)(d) are punishable by criminal penalties of a maximum of at least between 5 and 10 years of deprivation of liberty, where the offence was committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA and the precursors are intended to be used in or for the production or manufacture of drugs under the circumstances referred to in paragraphs 2(a) or (b).

5. Without prejudice to the rights of victims and of other bona fide third parties, each Member State shall take the necessary measures to enable the confiscation of substances which are the object of offences referred to in Articles 2 and 3, instrumentalities used or intended to be used for these offences and proceeds from these offences or the confiscation of property the value of which corresponds to that of such proceeds, substances or instrumentalities.

The terms 'confiscation', 'instrumentalities', 'proceeds' and 'property' shall have the same meaning as in Article 1 of the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

Article 5

Particular circumstances

Notwithstanding Article 4, each Member State may take the necessary measures to ensure that the penalties referred to in Article 4 may be reduced if the offender:

(a) renounces criminal activity relating to trafficking in drugs and precursors, and

(b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:

(i) prevent or mitigate the effects of the offence,

(ii) identify or bring to justice the other offenders,

(iii) find evidence, or

(iv) prevent further offences referred to in Articles 2 and 3.

Article 6

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the criminal offences referred to in Articles 2 and 3 committed for their benefit by any person, acting either individually or as a member of an organ of the legal person in question, who has a leading position within the legal person, based on one of the following:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person;

(c) an authority to exercise control within the legal person.

2. Apart from the cases provided for in paragraph 1, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of any of the offences referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in any of the offences referred to in Articles 2 and 3.

Article 7

Sanctions for legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6(1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

(a) exclusion from entitlement to tax relief or other benefits or public aid;

(b) temporary or permanent disqualification from the pursuit of commercial activities;

(c) placing under judicial supervision;

[1] OJ L 351, 29.12.1998, p. 1.

(d) a judicial winding-up order;

(e) temporary or permanent closure of establishments used for committing the offence;

(f) in accordance with Article 4(5), the confiscation of substances which are the object of offences referred to in Articles 2 and 3, instrumentalities used or intended to be used for these offences and proceeds from these offences or the confiscation of property the value of which corresponds to that of such proceeds, substances or instrumentalities.

2. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6(2) is punishable by effective, proportionate and dissuasive sanctions or measures.

Article 8

Jurisdiction and prosecution

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 2 and 3 where:

(a) the offence is committed in whole or in part within its territory;

(b) the offender is one of its nationals; or

(c) the offence is committed for the benefit of a legal person established in the territory of that Member State.

2. A Member State may decide that it will not apply, or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in paragraphs 1(b) and 1(c) where the offence is committed outside its territory.

3. A Member State which, under its laws, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over and to prosecute, where appropriate, an offence referred to in Articles 2 and 3 when it is committed by one of its own nationals outside its territory.

4. Member States shall inform the General Secretariat of the Council and the Commission when they decide to apply paragraph 2, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

Article 9

Implementation and reports

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 12 May 2006.

2. By the deadline referred to in paragraph 1, Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. The Commission shall, by 12 May 2009, submit a report to the European Parliament and to the Council on the functioning of the implementation of the Framework Decision, including its effects on judicial cooperation in the field of illicit drug trafficking. Following this report, the Council shall assess, at the latest within six months after submission of the report, whether Member States have taken the necessary measures to comply with this Framework Decision.

Article 10

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 11

Entry into force

This Framework Decision shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Done at Luxembourg, 25 October 2004.

For the Council
The President
R. VERDONK

Report on the evaluation of the transposition and impacts of the Framework Decision 2004/757/JHA on drug trafficking

Final Report
March 2013

Justice 72

European Commission- Directorate-General for Justice

More information on the European Union is available on the Internet (http://europa.eu).

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1.0 Introduction

This report is a programme of research to evaluate the effectiveness and impact of the existing Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, which was adopted by the Council in 2004. It established minimum rules relating to the constituent elements of the offences of illicit trafficking in drugs and precursors, so as to allow a common approach at EU level to the fight against trafficking.

The Framework Decision (FD) defines crimes linked to trafficking in drugs and precursors. The personal consumption is not covered by the definition of Article 2 FD 2004/757/JHA. Moreover the FD contains a provision on incitement, aiding and abetting and attempt (Article 3). Article 6 provides that Member States take necessary measures to ensure that legal persons can be held liable for all offences defined in the FD, if they are committed for their benefit.

Member States are obliged to take measures necessary to ensure that the offences are punishable by effective, proportionate and dissuasive criminal penalties. Beside this general obligation, minimum maximum levels of sanctions are provided for (Article 4). Beside the basic offence, the large quantity of drugs, harm to health and the commission of the offences within the framework of a criminal organisation are provided for as aggravating circumstances (Article 4 (2), (3) and (4)). Member States may provide that under particular circumstances penalties may be reduced (Article 5).

The 2009 “Report from the Commission on the implementation of the Framework Decision on the implementation of Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking” (COM [2009] 669 final) indicated that implementation of the FD was not completely satisfactory. There were differences in the transposition of crimes linked to trafficking in drugs and precursors which were not implemented by all Member States to the full extent.

This report is based on 27 Member States’ reports drafted by national experts in the Member States who are correspondents of the European Criminal Law Academic Network (ECLAN). Basis for these reports was a questionnaire sent to the national experts at the beginning of October 2011. National reports had to be finished until beginning of November. In December 2011 the national experts were asked to answer several additional questions (the questionnaires see in the Annex). These reports focused on identifying the national legal regimes regarding drug trafficking legislation, focusing particularly on the implementation of the FD, but also on the legal framework around the implementation legislation.

This report summarises analysis undertaken across these country reports to provide an assessment of the:

- functioning and impacts of the current FD in all Member States and, extrapolating from this, at the EU level;
- legal provisions on trafficking in each Member State including identification of strengths and gaps; and
- functioning of judicial and law enforcement co-operation.

This section focuses on providing an overview across the Member States. A number of additional information sources which provide the specific details of the situation in each Member State are accompanying this report. Specifically, overview tables summarising the situation in each country are provided and copies of the completed country reports are available as separate documents alongside this report.

2.0 Transposition of the Framework Decision 2004/757/JHA

2.1 Implementation procedure

The implementation of the FD did not create major challenges for Member States. Article 9 FD provides that the provisions of the FD had to be transposed into national legislation by 12 May 2006. Twelve Member States (BE, DE, EE, FR, HU, IE, IT, LU, LV, MT, SI, UK) did not amend their drug trafficking legislation because of the FD, since their legislation was – according to the opinion of the Member States – in accordance with the minimum requirements of the FD. FR did not amend its law, although there is no criminal provision on trafficking in precursors (FR had already objected to the inclusion of the term "precursors" in the text of the FD). BG, CZ, ES and PT only introduced the liability of legal persons, for which not only the FD, but many other legal acts were the reason. Eleven Member States (AT, CY, DK, FI, GR, LT, NL, PL, RO, SE, SK) amended their national drug laws; in most of them only small amendments were made. In some Member States the provisions on drug trafficking were in compliance with the FD, but provisions on trafficking in precursors did not exist or did not comply with Article 2 (1) (d) (AT, CY, FR). Not all Member States which had to amend their laws managed to do so before 12 May 2006 (AT, CY, CZ, FI, GR, NL, PL, SK). In most of the Member States, amendments were made within weeks of the deadline. In EE, however, the Ministry of Justice is currently drafting a law to implement Article 6 (2) FD.

Delays or difficulties in transposition were reported only in limited cases. Major issues in this respect were:

- **Coordination between Government Departments:** Since drug policy does not only concern criminal law, but also health law, in some Member States more than one ministry had to deal with this topic. The complexity of the internal administrative structure in Member States required coordination between the various Government Departments being responsible for drugs policy (AT, CY, PL).
- **Limited resources in the Government Departments:** In some Member States timely transposition of the FD was prevented due to resourcing, specifically, not enough qualified staff in the Ministry of Justice to draft the laws given the need for other European and international legal acts to be transposed (EE, GR).
- **Lengthy parliamentary and political debates** on how to implement the FD into national law (AT, LT).
- **Tight transposition deadline** set out in the FD (NL).
- **'Leniency'** with regard to the transposition of FDs as an instrument of the Third Pillar (PL).
- **Liability of legal persons:** The need to establish a liability of legal persons brought significant changes in some Member States' legislation and caused long and fundamental debates not only with regard to drug trafficking (CZ, ES, SK).

2.2 Definition of "drugs"

The definition of "drugs" in Article 1 FD refers to the United Nations Conventions, i.e. the 1961 Single Convention on Narcotic Drugs and the 1971 Vienna Convention on Psychotropic Substances. It also includes the substances subject to controls under Joint Action 97/396/JHA of 16 June 1997 concerning the information exchange risk assessment and the control of new synthetic drugs. Due to these other international obligations it could be expected that the definitions of most Member States would comply with the definition it the FD.

In all Member States the definition of "drugs" does indeed correspond with the definition of Article 1 FD. In AT, BE, BG, CZ, DK, FI, HU, IE, LU, LV, RO, SE the definitions refer to the UN Conventions as the FD. Some of these Member States concretize these general definitions by listing the substances in governmental decrees.

Other Member States (CY, DE, EE, FR, GR, IT, LT, MT, NL, PL, PT, SI, SK, UK) chose another way of transposing the definition and do not provide a concise definition of drugs, but instead foresee lists of prohibited substances, which are either amended according to international obligations by the parliament or by decrees of the government. In these lists all substances covered by the UN Conventions are contained.

The Spanish Penal Code does not contain a definition of "drugs", but only mentions "toxic drugs, narcotics and psychotropic substances". This is interpreted by the Spanish courts that any of the substances covered by the International Conventions ratified by Spain shall be covered. Therefore also the Spanish legislation is in compliance with **Article** 1 (1) FD.

It can be concluded that in all Member States the **definition of "drugs"** corresponds with the definition of Article 1 (1) FD. Even if not all national provisions refer to the UN Conventions from 1961 and 1971 and the EU Council Regulation, it seems that all laws comply with Article 1 (1) FD.

2.3 Trafficking in drugs

2.3.1 Definition of offence

Article 2 FD contains definitions of offences linked to trafficking drugs and precursors which list several activities concerning drugs.

In all Member States the definitions of Article 2 (1) (a)-(c) have been transposed into national law. Most Member States' laws already encompassed criminal offences as defined in the FD; therefore a transposition of the FD was not regarded necessary. In AT, FI, GR, LT, NL, PL and SE the law was amended to transpose Article 2 (1) to (3) into national law, but there were only minor changes in law. In BE, BG, CY, CZ, DE, DK, EE, ES, FR, HU, IE, IT, LU, LV, MT, PT, RO, SI, SK, UK it was not regarded necessary to amended legislation to implement the definition of offences.

Not all Member States took all activities listed in Article 2 FD into their laws or used the same wording as the FD, but the existing definitions and terms imply these activities. In AT, BE, CY, FI, GR, HU, IE, IT, LU, LV, MT, NL, PT, RO, SE, UK the laws mention all or nearly all activities in their laws.BG does not mention the activities of preparation, offering, offering for sale, sale, delivery on any terms whatever, brokerage, dispatch, dispatch in transit, transport and purchase of drugs. The Czech legislation does not contain the manufacture, extraction, preparation, distribution, delivery on any term whatsoever and brokerage. The German law does not explicitly mention the cultivation of opium poppy, coca bush or cannabis plant, but these acts are considered punishable according to the German law. In DK the manufacture, extraction, preparation, offering, offering for sale, distribution, brokerage, dispatch and transport are not explicitly mentioned. In EE the terms of production, extraction and preparation are missing, but covered by "manufacture", the terms offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation are missing are covered by the terms "illegal trafficking" and

"mediation". The Spanish Code does not specifically mention "offering", but it is seen as a kind of "promotion". In FR the extraction, delivery, brokerage, dispatch and cultivation is missing, but thanks to a generic legal wording it has the same scope as the FD. In LT the terms "manufacture", "extraction", "preparation", "offering", "delivery", "brokerage", dispatch", "importation" and "exportation" are missing. In PL doubts remain whether the activities "extraction" and "production" are properly reflected in the national law. In SI the extraction, preparation, offering, distribution, delivery, dispatch, brokerage, importation or exportation, the cultivation of opium poppy, cocoa bush or cannabis plant and the possession or purchase of drugs with the view conduct any of the activities listed in Article 2 (1) (a) FD are missing, but should be covered by a general clause. In SK the activities "offering" and "growing" are not listed, but should be covered by other terms. Offering is prosecuted as an attempted offence. Now, the debate is ongoing considering future possible revision of the law as to widening the range of activities covered by this provision to eliminate its shortcomings.

However, all of these Member States emphasize that the interpretation of the wording is so broad that all activities are covered.

Concluding, the Member States did not take all activities into their national laws, but their terms seem to be broad enough to cover all activities listed in Article 2 (1)-(3) FD. In several laws the terms "production", "manufacture", "extraction" and "preparation" are not used all together, but the terms "production" or "manufacture" are used in a wider sense covering all of these activities. In the legislation of many Member States the term of possession is so far-reaching that it covers most of the activities mentioned in the FD, since the possession is a prerequisite for all of these activities.

2.3.2 Possession and personal use

2.3.2.1 General aspects

The FD explicitly excludes trafficking in drugs and precursors from the scope of the FD when it is committed by its perpetrators exclusively for their own personal consumption. **In this respect, most of the Member States (AT, BE, BG, CY, DE, DK, FI, FR, GR, HU, IE, LT, LU, MT, NL, PL, RO, SE, SK, UK) go further and provide that also the possession of drugs is a criminal offence, even if it is intended for personal consumption.** In some of the Member States lower penalties are foreseen for the possession for the personal use or this circumstance influences the concrete penalty or is a reason to drop the case. In CZ, EE, ES, IT, LV, PT, SI the possession for personal consumption is an administrative offence.

Personal consumption as such is a punishable offence in BE, CY, FI, FR (by the Public Health Code), GR, IE, LU, RO, and SE. It is not a criminal offence in AT, BG, CZ, DE, DK, EE, ES, IT, LV, LT, MT, NL, PT, SI, SK, UK. This does not always mean that it is cannot be punished, however. In several States the consumption per se is not punishable, but the possession is and consumption is not possible without possession, therefore the consumer is punished due to the possession, as whether or not the possession of the drug is intended for personal is irrelevant.

In some Member States the question of punishment of personal use is regulated in procedural law: e.g. in BE there is a guideline for prosecutors not to prosecute, if the perpetrator is an adult, does not cause any public nuisance, is not a problematic user and was found with a "user quantity" of cannabis. Some states provide lower penalties, if the personal use is intended (e.g. AT, CY, CZ, EE, FR, HU, NL, RO, SI, SK), or the fact that drugs are intended for personal use can influence the concrete penalty as a mitigating factor (e.g. BE, BG, DE, CY).

2.3.2.2 Criteria for distinction between possession and drug trafficking

The distinction between possession/personal use and drug trafficking is relevant for the implementation of the FD, which excludes activities according to Article 2 FD from the scope of the FD when they are

committed exclusively for the own personal consumption and refers for this distinction to the national laws. In Member States' laws two criteria can be found to make this distinction.

One group of Member States refers to the **quantity or amount of drugs**: In some Member States there are rules in the Criminal Code. In others such a statutory distinction between trafficking and personal use is missing, but relevant for the courts are the amount of drugs, moreover if customers are identified and if there is any organised crime group involved. In AT the amount of drugs and other circumstances (e.g. if customers can be found) are relevant. In BE a "user quantity" of cannabis can lead to a non-prosecution. In CZ the distinction is established by the Criminal Code which defines what is a quantity "greater than small" and makes a distinction between different types of drugs (e.g. cannabis 15 grams of dry matter, heroin 1,5 gram heroin, more than 4 tablets of ecstasy or more than 0,4 gram of powdery of crystalline substance). In DK – according to an instruction of the director of public prosecutions – the quantity of drugs is relevant. In EE the quantity is considered as large, if the quantity of a narcotic drug or psychotropic substance is sufficient for causing drug intoxication to at least ten persons. In FI it depends, if a person only has a small amount of drugs in his possession. In GR the distinction is established on the quantity of drugs possessed or used and it is a small amount he addiction of the offender. In IE the distinction is made according to the amount of drugs involved and their value.

In LT the differentiation between possession and trafficking is mainly made on the basis of quantity (small, large, very large), and if the quantity is very large, this is a presumption that these drugs are not used for personal consumption. Also in LV, NL and PL it is possession for personal use, if it is a small amount. In PT the concept of possession for personal consumption is defined by law as "a quantity not exceeding the quantity required for 10 days' average individual consumption". But even where it is assessed beyond doubt that the quantity kept by a person exceeds the one required for 10 days, it can be proven that it was for personal consumption only.

In SE the offence definition covers everything from private consumption of cannabis to international trafficking of dangerous drugs; depending on the type and quantity of narcotics the penalties are lower. In SK the maximum quantity for personal use must not exceed three times the usual single dose for personal consumption. In UK the distinction between drug trafficking and possession/personal use is up to the judge and one relevant element is the quantity of drugs trafficked.

The other criterion is the **intention of the offender**: In BG the criterion for the distinction is the existence or lack of intention of the offender to distribute the drugs. In CY and IT the aim of the possession is relevant. In ES the Penal Code only punishes the possession with "the intention to traffic". Courts have elaborated the evidence that proves the intention, e.g. the possession of an important quantity of drugs, quantity that depends on the kind of substance, its purity, the usual quantity that the holder consumes, etc.; the possessor has not to be an addict or a habitual consumer. In RO the distinction is made strictly relying on the subjective element, that the perpetrator acts with the intent to use the drugs for personal consumption (which causes problems, that's why it is suggested to introduce another element as e.g. the quantity of drugs). In SI the relevant factor is the purpose to resell the drugs.

In FR the distinction is based on both the intent of the offender and the quantity of drugs. In DE it depends on whether the drugs are consumed immediately. In MT the law does not specify the factors and it is decided by the courts on a case-by-case basis.

In HU there is no distinction between consumption and trafficking, but a distinction between "consumer type conducts" (e.g. cultivation of drugs) and "commercial type conducts" (drug trafficking), which is made on basis of the criminal activities. Consumer type conducts attract a lower level of sanctions. In LU the distinction is made according to the respective gravity.

2.3.2.3 *Trafficking to finance personal use*

The circumstance that drugs are **trafficked to finance the personal addiction** (street trafficking) is considered in some countries. In AT, BE, GR, HU and PT lower penalties are foreseen for this case. In CY and IE it is considered as a mitigating factor by the courts in sentencing; thereby the court takes also the quantity and other circumstances of the case into account; the burden of proof lies on the accused to demonstrate that he was committing the offence in order to finance his addiction. See also infra pp. 28, 71 ff.

2.4 Trafficking in precursors

Article 2 (1) (d) FD obliges Member States to ensure that the manufacture, transport or distribution of precursors, knowing that they are to be used in or for the illicit production or manufacture of drugs, is punishable. All Member States except FR and MT provide for criminal provisions on precursor trafficking. In MT there is no specific concept of "precursor" chemicals. The law instead has a long schedule of banned substances on which the chemical appears or not.

All Member States except FR and MT appear to define precursors as demanded in the FD (Article 1 (2) FD). 15 Member States (AT, BE, BG, CY, DE, DK, ES, FI, GR, HU, LV, PL, RO, SE, SK) provide for a general definition like Article 1 (2) FD. 10 Member States (CZ, EE, IE, IT, LT, LU, NL, PT, SI, UK) contain lists of substances either in the law or in governmental regulations. The Czech report mentions that the scope of the term precursor is unclear; it is particularly unclear whether it also covers medicine containing precursors (e.g. medicine containing pseudoephedrine).

Concerning the offence of precursor trafficking, there are some Member States which treat precursor trafficking and the trafficking in illicit drugs in the same way by penalizing the same activities (BE, BG, CZ, IE, LU, SI, SK); other Member States provide special provisions on precursor trafficking (AT, CY, DE, EE, ES, FI, GR, HU, IT, LV, LT, NL, PL, PT, RO, SE).

Problems are identified in the following Member States:

- A special situation is DK, where before a provision already existed before the FD which – according to the opinion of the Danish government – criminalized all types of offences defined in Article 2 (1) (d) FD. Therefore, it was not considered necessary to amend the provisions in Danish legislation. Danish law contains a broad provision on trafficking in drugs (Section 191 Penal Code), combined with the general provisions on criminal attempt and/or participation. It is required that the precursors are suited for manufacturing large quantities of illicit drugs or particularly dangerous drugs. The Commission's doubts that this system is not in line with the FD, particularly with respect to Article 3 which requires that the attempt of Article 2 (1) (d) is also punished, are not considered sensible by the national expert. Compared to Article 2 (1) (d) FD a limitation to the manufacturing of large quantities or particularly dangerous drugs is not foreseen in the FD. However, it is not totally clear whether Article 3 with regard to precursor trafficking is also totally fulfilled.
- In FR the manufacture, processing, provision or export of precursors is not a criminal offence. These activities are only allowed for persons with a "license" or special declaration issued by the Minister for Industry. A failure to comply with these obligations can lead to various sanctions, fines, penalties and license revocations, but no criminal punishment is foreseen.
- In IT the manufacture of precursors is not contained in the definition of offence and neither is it covered by the other mentioned activities.
- MT has no concept of "precursor" chemicals, but the law contains a long schedule of banned substances on which many of the precursor chemicals appears. For such substances a criminal provision on illicit selling and dealing exists. The activities of "manufacture" and "transport" are missing however.
- The Dutch legislation does not contain definitions of offences linked to precursor trafficking. But in the Act on Prevention of Abuse of Chemical Products a criminal offence for the breach of the Community Regulations 273/2004 and 111/2005 is foreseen.

Some Member States' provisions require the intent or the knowledge that the precursors will be used for production or manufacturing of illicit drugs (AT, ES, FI, GR, LV, PT, SE) for them to apply. In other Member States it is sufficient that the activity related to precursors is carried out without seeking to obtain a license or without notifying the competent authorities in the Member State (e.g. Ministry of Health) (BE, HU).

Some Member States go further than the provisions in the FD: Several Member States provide for additional activities related to precursors than foreseen in the FD. The following activities are included:

- Import (BE, DE, EE, GR, HU, IE, PT, RO),
- Export (BE, DE, EE, HU, IE, PT, RO),
- Possession (CZ, DE, GR, PT, RO, SI, SE),
- Storage (BE, LV, LT)
- Buying or getting control in other ways over precursors (DE).

This is explained partly as some States treat precursors and drugs the same. On the other hand political will in the Member States result in additional provisions, even if there is no international obligations, since the UN Conventions provide the same activities as the FD.

In general it can be said that the impact of Article 2 (1) (d) FD has not been very important, since most Member States already had similar provisions. In some Member States the provisions were amended, but there are several Member States which go further than the FD regarding activities concerning precursors.

2.5 Incitement, aiding and abetting and attempt (Article 3 FD)

2.5.1 Incitement, aiding and abetting

According to Article 3 FD each Member State has to take the necessary measures to make incitement to commit, aiding and abetting or attempting one of the offences referred to in Article 2 a criminal offence. Regarding incitement, aiding and abetting, there are different systems in the various Member States which are regulated in general criminal law provisions and which are not specifically designed for drug and precursor offences. In principle there are two different systems. On the one hand, some systems differentiate between principal offenders and accomplices (e.g. DE, EE, and LU), other countries meanwhile operate a system where all participants to the criminal offence are perpetrators who are in principle treated equally (AT, DK, FI, IE, IT, SE). The FD does not require certain prerequisites, Member States just have to apply their own system of incitement, aiding and abetting to the offences of drug and precursor trafficking.

In all Member States the rules on incitement, aiding and abetting contained in the general criminal law provisions (general part) are applied to the offences of trafficking in drugs and precursors. Therefore all Member States' laws are in compliance with Article 3 FD concerning incitement, aiding and abetting.

2.5.2 Attempt

The FD requires that the attempt of offences referred to in Article 2 FD shall be a criminal offence. Member States may, however, exempt from criminal liability the attempt to offer or prepare drugs referred to in Article 2 (1) (a) and the attempt to possess drugs referred to in Article 2 (1) (c). There are differences between legal systems in the Member States in how they deal with attempt. In some Member States the rules of attempt, which are provided for in general criminal law provisions (general part), apply to all criminal offences. In other States they only apply to certain criminal offences which are explicitly foreseen. Problems can arise in states which do not automatically criminalize attempt (if this attempt fulfills certain prerequisites provided by the law), as attempt is only punishable in the case of serious offences.

AT, BG, CZ, DK[1], EE, ES, GR, HU, LT, LU, LV, MT, NL, PL, SK provide rules on attempt that are applicable to all criminal offences, therefore they are automatically applicable to drug and precursor offences, too. The situation in other counties is as follows:

- In BE, DE, FR, IT attempt to commit a felony is always punishable, but in the case of misdemeanors the attempt is only punishable if this is foreseen in the applicable offence. In BE this is not the case for drug offences, whereas it is foreseen for offences regarding precursors. There may be cases, therefore, where Belgian law does not fully comply with Article 3 FD, if drug trafficking offences are not crimes. In DE for offences mentioned in drug law it is strictly stipulated that the attempt of these offences is punishable. It is also stipulated that the attempt of trafficking in precursors is punishable. Thus, German law is in accord with Article 3 FD. In FR the law states that the attempt of drug trafficking offences is punishable. In IT the provisions on attempt are not applicable to misdemeanors, but all offences of drug and precursor trafficking are felonies.
- In PT and SI attempt is only punishable, if the corresponding full offence is punishable with imprisonment of more than three years or if there is a provision explicitly providing for the punishment of attempt. Most drug and precursor offences are punishable with imprisonment for more than 3 years. For trafficker-consumers or cases where there is an abuse of role by a physician or a pharmacist, attempt is explicitly criminalized. However, where the “trafficking is of a lesser gravity”, incitement, and cultivation of certain plants is for personal consumption attempt is not criminalized. As far as personal consumption is concerned this is legitimate in the light of Article 2 (2) FD, but it seems inevitable to conclude that Portuguese law does not fully comply with the FD. In SI this is no problem with drug trafficking offences, since the penalties foreseen are higher than three years.
- In CY, IE, SE and UK the punishability of the attempt of drug and precursor offences is foreseen in the drug laws.
- In FI Article 3 of the FD concerning attempt led to changes in the Criminal Code. Attempt now has the same sentencing guidelines as a completed offence and it is considered as one form of a drug related criminal offence. Finland established an entirely new provision (CC 50:4a), according to which abetting or attempting to abet an aggravated drug offence is considered a criminal act. FI also criminalized attempt to cultivate, attempt to transport or to have transported drugs, attempt to manufacture and attempt to abet drug related offences, in order to make the criminalisation in relation to attempt more coherent.
- In RO attempt is punished only when the law provides it. It is provided that all attempts regarding drug trafficking offences are punishable, but in crimes linked to trafficking in precursors the attempt is not punishable.

[1] Concerning the problem of precursor trafficking see *supra p. 6*.

In conclusion, **not all of the Member States completely fulfill the FD regarding attempt of drug and precursor trafficking offences, which is caused by the different systems of attempt.** AT, BG, DK[2], EE, GR, HU, IT, LV, LT, LU, MT, NL, PL, SK, ES provide that the rules on attempt are applicable to all criminal offences, therefore, they are automatically applicable to drug and precursor offences, too. Each of the other Member States has its own, slightly different approach on the conditions for criminalization of attempt. Generally speaking, they foresee that in cases of misdemeanors the law has to explicitly foresee the criminalization of the attempt. In BE and RO this leads to a situation where an attempt of drug and precursor trafficking is not punishable in all cases and in PT attempt in cases of trafficking of a lesser gravity and concerning incitement are not criminalized.

2.6 Penalties

2.6.1 General aspects

Special problems had already been identified in the report from 2009 referring to penalties**. In this respect, remarkable differences between Member States' legislations and between FD's provisions and Member State provisions can be identified.** According to the FD each Member State shall provide for effective, proportionate and dissuasive penalties. For the crimes linked to trafficking in drugs and precursors criminal penalties of a maximum of at least between one and three years of imprisonment shall be provided for (Article 4 (1) FD). If a drug trafficking offence involves large quantities of drugs or the offence either involves those drugs which cause most harm to health, or has resulted in significant damage to the health of a number of persons penalties of a maximum of at least between 5 and 10 years of imprisonment shall be foreseen (precursors are excluded) (Article 4 (2) FD). If the such an offence is committed in the framework of a criminal organisation, penalties of a maximum of at least 10 years of imprisonment shall be provided for (Article 4 (3) FD). If the offence of trafficking in precursors is committed within the framework of a criminal organisation, Article 4 (4) FD provides for a maximum penalty of at least between 5 and 10 years of deprivation of liberty.

In (nearly) all Member States the penalties foreseen in the law in principle comply with the provisions of the FD. The Belgian report indicates that the penalties provided for cannabis offences could not be in compliance with Article 4 (1) FD, since they are too low. Since several Member States have not transposed all aggravating circumstances, there are Member States' provisions on penalties which are not all over in compliance with Article 4 (2)-(4) FD (for more details see infra). **As the 2009 Report indicated, most of the Member States provide significantly higher penalties than the FD. Moreover the system of criminal penalties in most Member States is more differentiated than the one in the FD.** In most States there are various levels of sanctions depending on different activities and different factors. The great differences between the Member States' sanctioning systems can be seen in the very different penalties foreseen in the Member States.

In this respect it must also be considered that legislation is difficult to compare, since it is not enough to only take into account the sanctions foreseen for the specific offences, but also other provisions (e.g. suspended sentences, conditional release, measures of diversion) and penalties which are imposed in practice. It is known that there are big disparities in sentencing practice (see chapter 3).

If we only look at the maximum sanctions, for which the FD provides for minimum levels, the differences are obvious. These are differences which certainly do not only exist concerning drug trafficking, but which are caused by different criminal law systems and policies.

[2] Concerning the problem of precursor trafficking see *supra p. 6.*

Regarding drug trafficking the following maximum possible penalties (including also aggravating circumstances foreseen in national laws) are foreseen:

- Life imprisonment: AT, CY, EE, FR, GR, HU, IE, LT, LU, MT, SK, UK
- more than 20 years: IT, PT, RO
- 15 -20 years: BE, CZ, DK
- 10-15 years: BG, DE, ES, LV, NL, PL, SI
- 10 years or less: FI, SE

Regarding precursor trafficking the following maximum penalties are foreseen:

- Life imprisonment: GR, LT, SK, UK
- 15-20+ years: DK, IT, LU, PT
- 10-15 years: BE, BG, DE, IE, SI
- 5-10 years: CZ, EE, ES, FI, HU, LV, NL
- 5 years or less: AT, CY, PL, RO, SE

No provisions on precursor trafficking: FR, MT

Table 2.1 Overview on penalties

MS	Drug trafficking	Aggravating circumstances	Precursor trafficking
AT	Imprisonment: - 1 year (psychotropic substances)/-5 years (drugs) Fines: max. 1,8 Mio € (day fines)	Large quantity: - 15 years Crim. Org.: 10-20 years, life imprisonment	Imprisonment: -1 year Large quantity: - 5 years
BE	Imprisonment: 3 mths - 5 yrs. Fine: 1.000-100.000 € Cannabis offences: less stringent (not in compliance with FD)	Harm to health: 5-10 years, fine 1.000-100.000 € Crim. Org.: - 20 years (at least 10 years) (against minors: 15-20 years)	Imprisonment: 2-5 years Fine: 3.000-10.000 € Crim. Org.: 5-10 years Other aggravating circumstances: -15 years
BG	Imprisonment: 2-8 years (high risk drugs), 1-6 years (risk drugs), installations, materials for production: 3-12 years Fines up to 50.378 €	Across the border: - high risk drugs: 10-15 years, fines max. 50.378 € - risk drugs: 3-15 years, fines max. 100.755 € Crim. Org.: 5-15 years	Imprisonment: 3-12 years, fines 50.378 € Crim. Org.: 5-15 years, fines 50.378 €
CY	Class A, B: Imprisonment up to life imprisonment Class C: imprisonment -8 yrs.	Classes of drug depending on harm to health: imprisonment up to life imprisonment Crim.org.: particularly serious offence, not other penalties	Imprisonment: - 2 years Fine: max. 10.000 €
CZ	Imprisonment: 1-5 years Fines: max. 1,355.360 € (day fines)	Substantial extent: 2-10 years Large extent: 8-10 years Harm to health: 8-12 years Serious bodily harm: 10-18 years Crim.Org.: 10-18 years	Imprisonment: up to 5 years Fines: max. 1,355.360 € (day fines) More serious forms: 2-10 years
DE	Imprisonment: - 5 years Fines: max. 1,8 Mio € (day fines)	Commission for gain: 1-15 yrs. Health danger: 1-15 yrs. Death, gangs etc.: 2-15 yrs. Crim. Org.: 2-15 yrs.	Imprisonment: - 5 yrs. Fines: max. 1,8 Mio € (day fines) Crim. Org.: 1-15 yrs.
DK	Imprisonment: -10 years Fines: no max. penalty (day fines)	Quantity: - 16 yrs. harmful drugs: -16 years Fines: no max. penalty	Imprisonment: -10 years Fines: no max. penalty Other aggravat. circumst.: -16 yrs

MS	Drug trafficking	Aggravating circumstances	Precursor trafficking
EE	Small quantity: imprisonment -3 years Fines: max. 500 daily rates	Large quantity: - 10 years Crim. Org.: 6-20 yrs, life imprisonment Other crim. offence: 6-20 yrs, life imprisonment	Imprisonment: - 3 yrs/ 5 yrs By a group: 2-10 yrs. Fines: max. 500 daily rates
ES	Imprisonment: 1-3 years, Fines: up to 3 times the value of drugs	Harm to health: 3-6 years Severe harm to health: 6-9 years Crim. Org.: 10-15, severe harm to health: 9-12 years Super aggravating circumstances: 6-13½ years Fines: up to 4 times the value of drugs	Imprisonment: 3-6 years (crim. Org.: 6-9 years) Fines: up to 3 times the value of precursors
FI	Imprisonment: -2 years Fines: no max. penalty (day fines)	Large quantity: 1-10 years Crim. Org.: 1-10 years Fines: no max. penalty	Imprisonment: - 2 years Fine Crim. Org.: 4 months-6 yrs.
FR	Drug trafficking: - 10 years, fines: max. 750.000 € Production: -20 years, fines: 7,500.000 €	Crim. Org.: -30 years, life imprisonment Fines: max. 7,500,000 €_	---
GR	Imprisonment: at least 10 yrs. Fines: 2.900-290.000 €	With other crimes: at least 15 yrs, fines, etc.: 15.000-440.000 € Crim. Org.: at least 10 yrs. Habitually and professionally acting: life sentence, fine 29.412-588.235 €	Imprisonment: at least 10 yrs. Fines: 2.900-290.000 €
HU	Consumer typed conduct: imprisonment: - 5 years Commercial typed conduct: imprisonment 2-8 years Fines: max. 347.850 € (day fines)	Substantial quantity: Consumer typed c.: 5-10 yrs Commercial typed c: 5-20 yrs, life imprisonment Crim. Org.: - 20 years Fine: max. 347.850 €	Imprisonment: - 5 yrs Fine: max. 347.850 € Crim. Org.: -10 yrs.
IE	Possession, importation: - life imprisonment Use, cultivation, supply etc.: - 14 years Fines: unlimited	High value of drugs: minimum sentence of not less than 10 years Harm to society: minimum sentence of not less than 10 years Fines: unlimited	Imprisonment: - 14 yrs. Fines: unlimited
IT	Imprisonment: 6-20 years Fines: 26.000-260.000 €	Quantity and harm to health: -30 years Crim. Org: at least 10 years; promotion, direction, organisation of Crim. Org: at least 20 years Fines: up to 433.333 €	Imprisonment: 4-16 years/3-8 years/-4 years (depending on category of substance) Fines: 15.000-150.000 €/6.000-60.000 €/-2.000 €
LT	Imprisonment: 2-8 years Fines: 37.650 €	Large quantity: 8-10 years Very large quantity: 10-15 years Crim.Org.: -life imprisonment Fines: 37.650 €	Imprisonment: - 4 years Large quantity: 3-6 years Crim.Org.: -life imprisonment Fines: 18.825 €
LU	Imprisonment: 1-5 years Fines: 500-1,250.000 €	Harm to health: 5-10 years, fine 1.250-1,250.000 € Crim. Org.: 15-20 years, fines: 1.250-1,250.000 € Death of minor: -life imprisonment	Imprisonment: 1-5 years Fines: 500-1,250.000 € Crim. Org.: 15-20 years, fines: 1.250-1,250.000 €
LV	Imprisonment: -5 years/-10	Large amounts of drugs: 8-15 yrs.	Imprisonment: 1-3 years

MS	Drug trafficking	Aggravating circumstances	Precursor trafficking
	years Fines: max. 22.857 € community service	Serious consequences: 8-15 yrs. Crim. Org.: 8-15 years	(purpose of sale: 3-10 years) Fines: max. 22.857 € Group of persons: 5-10 years
MT	Possession: imprisonment 1-10 years; transfer/sale/manufacture: 4-30 years Cultivation: -life imprisonment Fines: max. 116.468 €	To minors: 5-10 years Caused death: 15-20 years, life imprisonment	No specific provision on precursor trafficking If chemical is on a list of banned substances: imprisonment: -life imprisonment
NL	"Hard drugs": selling/supply: imprisonment - 8 yrs. Import/export - 12 years "Soft drugs": - 2 years/- 6 years Fines: max. 760.000 €	Harm to health: 5-10 years, fines 1.250-1,250.000 € Crim. Org.: - 8 yrs. Fines: max. 760.000 €	Imprisonment: - 6 years Fines: max. 760.000 €
PL	Manufacture etc.: - 3 years, Import etc.: - 5 years Placing on market: 6 mths-8 yrs Fines: max. 245.454 € (day fines)	Considerable quantity: -12 years Fines: max. 368.181 €	Imprisonment: -5 years Fines: max. 245.454 €
PT	Imprisonment: 4-12 yrs. (5-15 yrs., if acted contrary to authorisation) Fines: max. 180.000 € (day fines)	Crim. Org.: max. 25 years	Imprisonment: 2-10 years (3-12 years) Crim. Org.: max. 25 years
RO	"Risk" drugs: Imprisonment: 3-15 yrs. "High risk" drugs: 10-20 yrs. International drug trafficking: "risk" drugs: 10-20 yrs, "high risk" drugs: 15-25 yrs.	Harm to health: extension of penalty by max. 5 years	Imprisonment: 1-5 years
SE	Imprisonment: - 3 years Fines: max. 22.600 € (day fines)	Gross narcotic offence: 2-10 years Fines: max. 22.600 €	Imprisonment: - 2 years Fines: max. 22.600 €
SI	Imprisonment: 1-10 years	Under aggravating circumstances: 3-15 years Crim. Org.: 3-15 years	Imprisonment: 1-10 years Under aggravating circumstances: 3-15 years Crim. Org.: 3-15 years
SK	Imprisonment: 4-10 years Fines: max. 331.930 €	Aggravating circumstances (e.g. grievous bodily harm): 10-15 years/20-25 years and life imprisonment Dangerous grouping: 20-25 years or life imprisonment Fines: max. 331.930 €	Imprisonment: 4-10 years Dangerous grouping: 20-25 years or life imprisonment Fines: max. 331.930 € Crim. Org.:
UK	Imprisonment: class A: max. life imprisonment, Class B, C: - 14 years Fines: unlimited Community penalties	Large scale importation: 7 yrs. and above Value more than 1 Mio £: 12-14 years Fines: unlimited	Imprisonment: - life imprisonment Fines: unlimited

2.6.2 Imprisonment

In 12 Member States life imprisonment is provided for the most severe cases, but there are differences in which cases this is. In nine of these countries this is the case when the offences are committed in the framework of a criminal organisation (AT, CY, EE, FR, GR, IT, MT, SK, UK), in six Member States this is foreseen for trafficking of large quantities of drugs (CY, GR, HU, IE, SK, UK), in three if drugs cause most harm to health, in one for habitually and professionally acting (GR), in one if drug trafficking comes together with other criminal offences (EE) or if it causes the death of a minor (LU).

Regarding the basic offence of Article 2 FD, Article 4 (1) FD provides for a maximum penalties of at least one to three years. The Member States' provisions vary regarding maximum penalties between less than one year and life imprisonment. **Only one Member State (BE) does not fully comply with these requirement**, since it provides sanctions lower than one year for certain offences of cannabis trafficking. Six Member States (AT, EE, ES, FI, PL, SE) provide for maximum penalties between one and three years, nine Member States (AT, BE, CZ, DE, HU, LU, LV, NL, PL) up to five years, in twelve (BG, CY, DK, FR, HU, LT, LV, MT, NL, PL, SI, SK) up to ten years, in five (IE, NL, PT, RO, UK) up to 15 years and in eight (CY, FR, GR, IE, IT, MT, RO, UK) more than 15 years (see table 2.2.).[3]

For trafficking in precursors (Article 2 (1) (d)), **all Member States which have provisions on precursor trafficking the penalties[4] comply with the FD**. Although the level of penalties in the Member States is in general lower for precursor trafficking than for trafficking in drugs (the FD provides the same penalties for the basic offences), 19 Member States provide for higher imprisonment penalties than foreseen in the FD. Eleven Member States (BE, CZ, DE, EE, HU, IT, LT, LU, PL, RO, SK) provide maximum imprisonment penalties up to five years, five Member States (DK, IT, NL, PT, SI) up to ten years, three Member States (BG, IE, PT) up to 15 years and three Member States more than 15 years (see table 2.3 on maximum levels of sanctions for trafficking in precursors).

Since the FD "only" contains minimum maximum levels of sanctions, higher sanctions are admissible. Few Member States had to raise their penalties to bring their legislation in compliance with the FD. As penalties in many Member States were higher before the adoption of the FD, this was not a reason for them to amend their legislation with regard to the level of imprisonment sentences. **As a consequence legislative disparities between the Member States remain and the FD does not have an approximating effect, since most Member States have not amended their penalties after the adoption of the FD.**

The Member States' reports also show how difficult – or nearly impossible – an approximation of penalties is, since the principles and concepts not only of drug law, but also in criminal law are very different in the various Member States.

Regarding drug law, there are Member States which foresee high penalties in their criminal provisions (e.g. GR), others have lower penalties, but all of them report that their system works well (e.g. PT). Therefore the Member State reports do not allow any conclusion that penalties in drug law are too high or too low in the Member States to combat drug trafficking successfully.

It must be considered that criminal law systems are very different and that the pure penalty provided in the law are not the only relevant factor how harsh the sentences imposed by the national courts are.

[3] Several Member States are mentioned more often than once, since they have transposed the activities of Article 2 FD in more than one provision and different penalties are foreseen (e.g. if different actions are treated differently as possession and selling or if "soft drugs" and "hard drugs" are treated differently).

[4] In FR trafficking in precursors is no criminal offence; in MT there are no specific provisions on precursor trafficking, but depends on if a chemical is on a list of banned substances.

Table 2.2 Maximum levels of sanctions (imprisonment) for trafficking in illicit drugs

	Drug trafficking (basic offence Art. 2), (FD: min/max of at least 1 to 3 years)						Large quantities of drugs (FD: min/max 5 to 10 years)					Harm to health (FD: min/max 5 to 10 years)					Criminal organisation (FD: min/max of at least 10 yrs)					Other aggrav. circumstances				
Yrs.	< 1[5]	1 - 3	- 5	- 10	- 15	> 15	< 5[6]	5-10	- 15	- 20	> 20	< 5[7]	5-10	- 15	- 20	> 20	<10[8]	- 10	- 15	- 20	> 20	< 10	- 10	-15	- 20	> 20
AT		X	X					X	X			-	-	-	-	-		X	X		X*		X			
BE	X[9]		X				-	-	-	-	-		X						X	X			X	X	X	
BG				X			-	-	-	-	-			X					X					X		
CY				X		X*					X*		X			X*					X*		X		X	
CZ			X					X						X	X					X			X	X		
DE			X						X					X					X					X		
DK				X						X					X		-	-	-	-	-				X	
EE		X						X				-	-	-	-	-					X*			X		X*
ES		X						X					X						X					X		
FI		X						X					X					X					X			
FR				X		X	-	-	-	-	-	-	-	-	-	-					X*		X			
GR						X*					X*					X*					X*					X*
HU			X	X				X			X*	-	-	-	-	-				X						
IE					X	X					X*					X[10]	-	-	-	-	-					
IT						X					X					X					X					X
LT				X				X	X			-	-	-	-	-					X*					
LU			X				-	-	-	-	-		X							X		X			X	X*
LV			X	X					X					X					X			X		X		
MT				X		X*	-	-	-	-	-[11]	-	-	-	-	-					X*					
NL			X	X	X			X					X				X					X				
PL		X	X	X					X			-	-	-	-	-			X							

[5] Not in compliance with Article 4 (1) FD.
[6] Not in compliance with Article 4 (2) (a) FD.
[7] Not in compliance with Article 4 (2) (b) FD.
[8] Not in compliance with Article 4 (3) FD.
[9] Only regarding certain offences of cannabis trafficking.
[10] Harm to society which includes harm to health.
[11] Only to be taken into account when determining the sentence.

	Drug trafficking (basic offence Art. 2), (FD: min/max of at least 1 to 3 years)						Large quantities of drugs (FD: min/max 5 to 10 years)					Harm to health (FD: min/max 5 to 10 years)					Criminal organisation (FD: min/max of at least 10 yrs)					Other aggrav. circumstances				
PT					X		-	-	-	-	-				X						X					
RO					X	X	-	-	-	-	-				X	X				X	X					
SI				X			-	-	-	-	-	-	-	-	-	-			X					X		
SE		X						X				-	-	-	-	-	-	-	-	-	-					
SK				X						X	X*				X	X*					X*			X	X	
UK					X	X*					X*	-	-	-	-	-					X*					
TOT	**1**	**6**	**9**	**12**	**5**	**8**	**0**	**9**	**5**	**2**	**7**	**0**	**6**	**4**	**5**	**6**	**1**	**2**	**8**	**5**	**12**	**3**	**6**	**9**	**5**	**4**

Legend:

"< ": less than … years of imprisonment

"- 5": maximum penalty between more than 3 years and 5 years

"- 10": maximum penalty between more than 5 years and 10 years

"- 15": maximum penalty between more than 10 years and 15 years

"- 20": maximum penalty between more than 15 years and 20 years

">": more than … years of imprisonment

"X": sanction foreseen in the Member State

"-": not provided in national legislation

"*": Life imprisonment is foreseen in the Member State

Notes:

The table shows the maximum level of sanctions (imprisonment) foreseen by the legislation of the Member States. If there are more "X" in one category per Member State this means that there is more than one provision to implement the FDs and that there are different penalties foreseen (e.g. lower penalties for possession than for – international – drug trafficking; different penalties for different types of drugs – lower penalties for cannabis than for "hard" drugs as heroin).

Table 2.3 Maximum levels of sanctions (imprisonment) for trafficking in precursors

	Precursor trafficking (Article 2 (1) (d)) (FD: min/max of at least 1 to 3 years)						Criminal organisation (FD: min/max at least 5 to 10 yrs)						Other aggrav. circumstances					
Yrs.	< 1[12]	1-3	- 5	- 10	- 15	> 15	< 5[13]	-5	- 10	- 15	- 20	> 20	-3	- 5	- 10	- 15	- 20	> 20
AT		X					-	-	-	-	-	-	X	X				
BE			X						X									
BG					X					X						X		
CY		X					X											
CZ			X						X						X			
DE			X							X						X		
DK				X[14]			-	-	-	-	-	-					X	
EE			X				-	-	-	-	-	-			X			
ES		X							X						X			
FI		X							X									
FR	-[15]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
GR						X*						X*						X*
HU			X						X									
IE					X		-	-	-	-	-	-						
IT			X	X		X						X						
LT			X									X*			X			
LU			X								X						X	X
LV		X							X						X			
MT	-[16]	-	-	-	-	-	-	-	-	-	-	-						
NL				X					X					X				
PL			X				-	-	-	-	-	-						
PT				X	X							X						
RO			X				-	-	-	-	-	-						
SI				X						X						X		

[12] Not in compliance with Article 4 (1) FD.
[13] Not in compliance with Article 4 (4) FD.
[14] Punishable as attempt to drug trafficking, therefore same penalties as drug trafficking.
[15] No criminal offence.
[16] No specific provisions on precursor trafficking, but depends on if a chemical is on a list of banned substances.

SE		X					-	-	-	-	-	-						
SK			X									X*				X	X	
UK						X*[17]						X*						
TOT	**0**	**6**	**11**	**5**	**3**	**3**	**1**	**0**	**7**	**3**	**1**	**6**	**1**	**2**	**5**	**4**	**3**	**2**

Legend:

"< ": less than … years of imprisonment
"- 5": maximum penalty between more than 3 years and 5 years
"- 10": maximum penalty between more than 5 years and 10 years
"- 15": maximum penalty between more than 10 years and 15 years
"- 20": maximum penalty between more than 15 years and 20 years
">": more than … years of imprisonment
"X": sanction foreseen in the Member State
"-": not provided in national legislation
"*": Life imprisonment is foreseen in the Member State

Notes:

The table shows the maximum imprisonment penalties in the Member States. If there are more "X" in one category per Member State this means that there is more than one provision to implement the FDs and that there are different penalties foreseen (e.g. if different actions are treated differently as possession and trafficking).

[17] There are no special provisions on trafficking in precursors, but lists of drugs.

2.6.3 *Financial penalties*

2.6.3.1 Financial penalties regarding individuals

The FD does not provide financial penalties for individuals, but provides only imprisonment penalties for individuals. For legal persons fines which can have a criminal or non-criminal nature are foreseen.

Whilst in the FD no financial penalties for individuals are foreseen, **25 Member States (all except of RO and SI) provide financial penalties in cases of illicit drug or precursor trafficking** (see table 2.4). CY provides it only for precursor trafficking, AT, FR, MT and PT provide it only for drug trafficking. In all Member States financial penalties for individuals are of a criminal nature. However, **this does not mean that there is a homogenous picture of financial penalties in the Member States**.

RO and SI do not provide financial penalties for illicit drug trafficking, since financial penalties are not seen as appropriate for illicit drug trafficking offences which are considered dangerous. According to the Romanian and the Slovenian law, fines are usually considered milder and are only provided for petty offences. Therefore in both countries financial penalties are not regarded appropriate for illicit drug trafficking offences.

Great differences can be identified in the maximum amount of financial penalties. As table 2.4 shows the maximum of penalties for cases of drug trafficking is between 22.600 € (SE) and an unlimited amount (DK, ES, FI, UK). Looking at these figures it is necessary to explain that these figures are difficult to compare, since they are very dependent from the different systems of financial penalties.

In ten Member States (AT, CZ, DE, DK, EE, FI, HU, PL, PT, SE) a **system of day fines** is foreseen for financial penalties. This means that the judge imposes a certain number of day fines and the amount of the daily rate depends on the income and property of the offender. The total fine is the product of the number of days and the amount of the daily rate. In such a system it is the aim of the financial penalty to reduce the standard of living for the offender to the minimum living wage and the level of the penalty is adapted to the financial situation of the offender. The number of daily rates is determined on the basis of the seriousness of the offence and the extent of guilt of the offender (weighing aggravating and mitigating circumstances) in the same way as for the extent of imprisonment sanctions. In these countries (e.g. AT, CZ, DE, DK, PT) the maximum penalties are mostly purely theoretical, since they are only applied to very rich offenders, whereas the total fines for poor people are quite low.[18]

In the other Member States (BE, BG, CY, ES, FR, GR, IE, IT, LT, LU, LV, MT, NL, SK, UK) systems of financial penalties are provided which foresee **absolute amounts for financial penalties**. In these countries the basis for the determination of the financial penalty differs and is not always clear. Whereas in some countries the financial situation of the offender is also considered (BG, IT), in other Member States the value of drugs is referred to (ES, CY, GR, LU), the sort of drugs (UK) or the quantity of drugs (CY). In other Member States there is no fixed system to determine the "correct penalty", but only the seriousness of the crime and the guilt of the perpetrator are relevant (BE, FR, IE, IT, LT, LV, MT, NL, SK). In these systems there is more scope of discretion for the judge than in day fine systems, where the judge can determine the number of day fines due to the seriousness of the offence, but the amount of the day fine depends on the financial situation of the offender.

Due to these different systems it is **difficult to compare these maximum penalties**, since in a day fine system the high penalties are often not the amounts which are possible to impose, whereas in a system of absolute amounts theoretically also very high penalties can be imposed.

[18] E.g. in Austria the daily rate for a person with a net income of 1.500 €/month is around 30 €; therefore the maximum fine for such a person is around 11.000 €; for unemployed persons the daily rate often is the minimum amount of 4 € which leads to a maximum fine of 1.440 €.

Another essential difference between the Member States is that **in twelve Member States (AT, BG, CY, DE, DK, EE, FI, HU, LT, LV, PT, SE) financial penalties are foreseen as alternative to imprisonment, whereas in 13 Member States (BE, CZ, ES, FR, GR, IE, IT, LU, MT, NL, PL, SK, UK) they can be imposed cumulatively with imprisonment.** These groups are not the same as the ones with or without a day fine system. There are two Member States (CZ, PL) which have a day fine system and provide a cumulative imposition of imprisonment sentences and fines; on the other hand there are four States (BG, CY, LT, LV) which do not provide a day fine system and where fines are alternatives to imprisonment.

The two different systems can have important consequences, since it seems that in systems which provide an accumulation the financial penalty could also be seen as a form of compensation for the gains made from the criminal activities, even if this is not the primary aim (examples for this are ES, where the amount of the fine depends on the worth of the drugs, and CZ, where a financial penalty can be imposed if an individual gained a financial profit). In systems where financial penalties are foreseen as alternative for short-term imprisonment the financial penalty is a less severe penalty than imprisonment and imposed due to the *ultima ratio* principle to avoid the imprisonment of an offender. It is worth to mention that in DE a cumulative application of imprisonment and financial penalties would be seen as violation of the principle of legality.

In several Member States (explicitly mentioned by AT, CY, DE, DK, EE, FI, HU, LT, NL, PT, SE) **financial penalties are only foreseen for or only applied to minor offences**. This means cases where only little quantities of drugs are trafficked or only possessed (for own consumption) and no additional aggravating circumstances exist. There are criminal law systems (like in AT, DE, SE) where fines are only foreseen as alternative to imprisonment up to one year (in other states up to three years). The fines are regarded as less severe and less intensive penalties and are therefore used in the field of minor criminality. In these Member States imprisonment are foreseen and applied in practice for more severe cases. This is not only the case in Member States where financial penalties are an alternative to short imprisonment, but also in Member States where fines can be imposed together with imprisonment (e.g. NL). In most of these Member States it seems unlikely that financial penalties are an effective and deterrent instrument against large scale trafficking, but in those cases only imprisonment are regarded adequate. In these Member States the legal tradition exists that financial penalties for individuals are limited and are not appropriate to be used against large scale criminality.

2.6.3.2 Relationship between financial penalties and confiscation

In AT, BE, BG, CY, DE, DK, EE, ES, FI, FR, GR, HU, IE, IT, LT, LU, MT, NL, PL, PT, SE, SK there is **no relationship between financial penalties and confiscation of assets**, since they have completely different purposes. Whereas the financial penalty is determined on the basis of the fault of the offender and has the punitive purpose of (special and general) prevention as reaction to a criminal act, confiscation (in some countries forfeiture) is aimed at reversing the achieved enrichment resulted from a criminal act and take away the financial gain from a criminal act not regarding the extent of fault of the perpetrator. If confiscation/forfeiture is not seen as a penalty, there is no problem that financial penalties and fines are imposed together.

Completely different is the situation in CZ where the question of confiscation is closely connected with financial penalties. Financial penalties can be imposed when an individual gained or intended to gain a material profit. In UK fines are taken into account when identifying the total available amount which may be confiscated. In LV the amount of confiscated proceeds of crime is taken into account when financial penalties are imposed.

2.6.3.3 Financial penalties regarding legal persons

All Member States except GR allow for financial penalties as sanctions against legal persons. In 22 Member States these sanctions are of criminal nature (AT, BE, CY, CZ, DK, EE, ES, FI, FR, HU, IE, LT. LU, LV, MT, NL, PL, PT, RO, SI, SK, UK). In BG, DE, GR and IT they are of an administrative nature. In SE they have a non-criminal nature.[19]

In four Member States (AT, IT, PT, SI) a system of day fines is foreseen for the determination of the financial penalty, in all other States absolute amounts are provided for. The maximum penalties are very different – between 120.000 € and 37.5 M € (see Table 2.4). In IE and UK there is no limitation to the amount of the penalty. In ES, HU and SI the maximum amount depends on the worth of the drugs, respectively on the gain out of the offence.

For legal persons financial penalties are the most important penalty. In cases where legal persons are sentenced in drug trafficking cases, always financial penalties are applied (BE, FR, IT, MT, NL, RO, UK). In the majority of Member States financial penalties against legal persons are not used in cases of illicit drug trafficking, since legal persons are not punished for drug trafficking offences.

2.6.3.4 Summary and conclusions

Looking at financial penalties in drug trafficking legislation of the Member States, we see a very heterogeneous picture. There are **several very different models of financial penalties**.

In 25 from the 27 Member States at least in some cases of drug and precursor trafficking according to Article 2 FD financial penalties are foreseen (only RO and SI do not provide financial penalties in cases of drug trafficking). Since the FD 2004/757/JHA does not contain any provisions on financial penalties there has been no approximation of legal provisions on financial penalties in the Member States. Although in all Member States which provide financial penalties for drug and/or precursor trafficking the nature of these penalties is a criminal one, there are completely different systems and different levels of maximum financial penalties in the Member States. The extent of financial penalties is not only a question of criminal policy, but also connected with level of income and the standard of living in a State, since financial sanctions are in a relation to the financial potential of the citizens.

However, not only are the maximum amounts of penalties completely different, but also the systems of financial penalties are fundamentally different. Whereas ten Member States have a system of day fines, 15 have other systems to determine financial penalties in drug and precursor trafficking. 13 Member States provide for their imposition together with imprisonment, in twelve Member States they are foreseen as alternative to (in most cases) lower imprisonment. Therefore in several countries financial penalties are only foreseen or used for minor offences, whereas in countries where they are imposed together with imprisonment, they are also imposed in cases of more serious offences. Depending on the different systems of financial penalties the maximum amounts differ very much.

Considering this, **an approximation of financial penalties seems to be more difficult than the approximation of imprisonment penalties**. Indeed in some member States it seems to be impossible, since these systems are not only applied in drug trafficking law, but in all parts of criminal law.

[19] SE has a form of non-criminal sanction, the “corporate fine” (företagsbot) that can be imposed on a “business” (näringsidkare) when a crime is committed in the course of business. However, this is not a form of strict liability.

Table 2.4 Financial penalties in cases of trafficking in drugs and precursors

	Individuals								Legal persons						
	Maximum penalty Drug trafficking	Maximum penalty Precursor trafficking	Max. penalty Aggravating circumstances	Day fines?	Nat-ure	cum./ alt.	Used in practice	Added value	Maximum penalty Drug trafficking	Max. penalty Precursor trafficking	Aggravating circumstances	Day fines?	Nature	Used	Added value
AT	1,800.000 €[20]	-	-	yes	Crim.	alt.	Rarely	no	1,000.000 €	550.000 €	1,800.000 €	yes	Crim.	no	no
BE	100.000 €	10.000 €	100.000 €	no	Crim.	cum.	yes	yes	120.000 €	120.000 €	480.000 €	no	Crim.	yes	yes
BG	50.378 €	50.378 €	100.755 €	no	Crim.	alt.	yes	no	511.292 €	511.292 €	511.292 €	no	Admin.	-	no
CY	-	10.000 €	10.000 €	no	Crim.	alt.	yes	no	-	10.000 €	10.000 €	no	Crim.	no	no
CZ	1,354.360 €[21]	1,354.360 €	-	yes	Crim.	cum.			37.105.751 €[22]	37.105.751 €		no	Crim.		
DE	1,800.000 €[23]	1,800.000 €	-	yes	Crim.	alt.	Rarely	no	1,000.000 €	1,000.000 €	-	no	Admin.	-[24]	
DK	No max. penalty	No max. penalty	No max. pen	yes	Crim.	alt.	yes[25]		No max. pen.	No max. pen.	No max. pen		Crim.	no	no
EE	500 daily rates[26]	500 daily rates	-	yes	Crim.	alt.	Occa.	yes	16,000.000 €	16,000.000 €	16,000.000 €	no	Crim.	no	yes
ES	Depending on worth of drugs (up to 3x)		4x worth	no	Crim.	cum.	yes	no	Dep. on worth (up to 5x)	-	Dep. on worth (up to 5x)	no	Crim.		
FI	No maximum penalty			yes[27]	Crim.	alt.	yes		850.000 €	850.000 €	850.000 €	no	Crim.	no	no
FR	7,500.000 €	-	7,500.000 €	no	Crim.	cum.	yes		37,500.000 €	-	37,500.000€	no	Crim.	yes	-
GR	290.000 €	290.000 €	588.235 €	no	Crim.	cum.	yes		-	-	-	-	Adm./ civ.	-	-
HU	347.850 €	347.850 €	347.850 €	yes	Crim.	alt.	Occa.	no	Three times the gain, but minimum 1590 €			no	Crim.	no	no
IE	unlimited	unlimited	unlimited	no	Crim.	cum.	rarely	no	unlimited	unlimited	unlimited	no	Crim.	rarely	no
IT	260.000 €[28]	150.000 €	433.333 €	no	Crim.	cum.	yes	no	1,549.000€[29]	1,549.000 €	-	yes	Admin.	yes	yes

[20] Only for minor cases. System of daily fines: max. 360 daily rates between 4 € and 5.000 € depending on financial situation of perpetrator, therefore this maximum amount is purely theoretical.

[21] System of daily fines: max. 930 daily rates between 100 (3,71 €)and 50000 CZK (1.855 €) depending on financial situation of perpetrator, therefore this maximum amount is purely theoretical. The system of penalties is general, i.e. applicable to any crime under the Penal Code.

[22] New law adopted in October 2011 established criminal responsibility of legal persons, including criminal responsibility for drug trafficking and precursor trafficking. Theoretically, extremely high financial penalties (over 1 billion CZK) are possible but they are purely theoretical. There is no practical experience with the application of the law in practice yet.

[23] Only for small cases. System of daily fines: min. 5 and max. 360 daily rates between 1 € and 5.000 € depending on financial situation of perpetrator, therefore this maximum amount is purely theoretical.

[24] There is no data available on the frequency of legal persons sentenced to pay financial penalty in drug related crimes. Still it can be said that administrative financial penalty for legal persons is in general only used rarely.

[25] But not for serious of drug trafficking.

[26] The court shall calculate the daily rate of a pecuniary punishment on the basis of the average daily income of the convicted offender. Financial penalty is applicable only for Illegal trafficking or mediation of small quantities (i.e. sufficient for causing drug intoxication to less than ten people) of narcotic drugs or psychotropic substances, or illegal manufacture, acquisition or possession of small quantities of narcotic drugs or psychotropic substances with the intention of trafficking.

[27] Relative to the offender's solvency.

[28] In IT financial penalties are imposed together with imprisonment sentences.

	Individuals								Legal persons						
	Maximum penalty Drug trafficking	Maximum penalty Precursor trafficking	Max. penalty Aggravating circumstances	Day fines?	Nat-ure	cum./ alt.	Used in practice	Added value	Maximum penalty Drug trafficking	Max. penalty Precursor trafficking	Aggravating circumstances	Day fines?	Nature	Used	Added value
LT	37.650 €[30]	18.825 €	37.650 €	no	Crim.	alt.	yes	yes	1,882.530 €	1,882.530 €	1,882.530 €	no	Crim.	no	no
LU	1,250.000 €[31]	1,250.000 €	1,250.000 €	no	Crim.	cum.	yes	yes	750.000 €	750.000 €	750.000 €	no	Crim.		
LV	22.857 €	22.857 €	-	no	Crim.	alt.	yes	no	2,857.142 €	2,857.142 €	-	no	Crim.	no	
MT	116.468 €	-	-	no	Crim.	cum.	yes	no	116.468 €	-	-	no	Crim.	yes	no
NL	760.000 €[32]	760.000 €	760.000 €	no	Crim.	cum.[33]	yes	yes	760.000 €	760.000 €	760.000 €	no	Crim.	yes	yes
PL	245.454 €	245.454 €	368.181€	yes	Crim.	cum.	yes	yes	1,136,363 €[34]	1,136,363 €	1,136,363 €	no	Crim.	no	no
PT	180.000 €[35] 120.000 €[36]	-	-	yes	Crim.	alt.	rarely	no	18,000.000 € 2,400.000 €	-	22,500.000 €	yes	Crim.		
RO	-	-	-	-	-	-	-	-	220.000 €	150.000 €	Plus 1/4	no	Crim.	yes	no
SI	-	-	-	-	-	-	-	-	200 times the damage/gain			yes[37]	Crim.	no	no
SE	22,600 €	22,600 €	22,600 €	yes	Crim.	alt.	yes	no	1,130,000 €	1,130,000 €	1,130,000 €	no	Non-crim.	no	no
SK	331.930 €[38]	331.930 €	331.930 €	no	Crim.	cum.	yes	no	1,660.000 €	1,660.000 €	1,660.000 €	no	Crim.	no	no

[29] Legal persons can be held liable only with regards to the activities provided for in Article 74, DPR No. 309/1990 entitled "Criminal organization aimed to trafficking in illicit drugs and psychotropic substances".

[30] In LT the financial penalty for individuals among all criminal acts of drug trafficking are foreseen only for small cases and for the cases of the cultivation of opium poppy, coca bush or cannabis plant.

[31] In LU Financial penalties are foreseen for all type of cases. Financial penalties can be imposed alone or together with imprisonment. For legal person financial penalties can be applied together with other penalties (e.g. confiscation of property, exclusion from participating in public tenders, dissolution of the legal person).

[32] Financial penalties can go up to 760,000 Euros, which also goes for individual persons specifically in cases of drug trafficking. Both individual persons and legal persons can be sentenced to fines, but individuals will face these penalties only in minor cases, whereas they are sentenced to imprisonment in more serious ones.

[33] According to Dutch law a cumulation is possible, but in practice they are mostly used as alternatives.

[34] In any case not higher than 3% of income generated in the material year.

[35] Legal maximum of 360 days (Article 47(1) CC), at the maximum daily rate of 500 € (Article 47(2)), as a fine replacing sentences of imprisonment for one year (Article 43 CC allows the courts to replace terms of imprisonment not exceeding one year for a fine when the actual execution of imprisonment is not required to prevent the commission of further offences). It can be applied to a very limited number of cases, due to the fact that, in principle, sentences not exceeding one year imprisonment can be applied only in relation to (i) trafficking of a lesser gravity of (ii) "soft" drugs (cannabis, etc.).

[36] Maximum of 240 days at the maximum daily rate of 500 €, applicable as an autonomous penalty to trafficking of a lesser gravity in the alternative to imprisonment of up to two years. Application is very rare, not only also because of the limited number of cases to which it can be applied in the abstract (please see previous note), but also because the (less grave) cases which could attract its concrete application usually involve defendants in situations of hardship, where the application of a fine would hardly make sense. Hence, those cases are preferably dealt with through other non custodial sanctions (eg., suspension of the execution of imprisonment accompanied by treatment – in case of drug addiction –, community service, etc.).

[37] The Act on liability of legal persons for criminal offences does not provide fines for specific criminal offences.
There is only a general provision on how to punish legal persons for certain criminal offences using the analogy with Criminal Code (i. e. "If the punishment is more than 3 years of imprisonment, the minimum fine for legal person is 50.000 EUR and the maximum fine is 200x the damage/gain.")

[38] Under Slovak law a financial penalty can be imposed under Section 56 of the Criminal Code within a range from 160,- € to 331.930,- € to any perpetrator who gained or sought to gain a financial benefit by committing crime, this might involve also drug trafficking cases. Since illicit drug trafficking is always qualified as felony, the personal liberty restricting penalty must always be determined and a financial penalty can be imposed concurrently. In respect to legal persons only two protective measures can be imposed under the Criminal Code, one of them being forfeiture of monetary sum, for the purpose of the study this can be considered a financial penalty.

	Individuals								Legal persons						
	Maximum penalty Drug trafficking	Maximum penalty Precursor trafficking	Max. penalty Aggravating circumstances	Day fines?	Nat-ure	cum./ alt.	Used in practice	Added value	Maximum penalty Drug trafficking	Max. penalty Precursor trafficking	Aggravating circumstances	Day fines?	Nature	Used	Added value
UK	unlimited[39]	unlimited	unlimited	no	Crim.	cum.	yes		unlimited	unlimited	unlimited	no	Crim.	yes	

Legend:

"-": not provided in national legislation

Occa.: Occasionally

Cum./alt.: Are financial penalties imposed together with imprisonment sentences (cumulative) or are they an alternative to imprisonment sentences?

Notes:

This table shows the maximum levels of financial penalties for trafficking in illicit drugs and precursors in the Member States. Depending on the system of financial penalties (absolute amounts or system of day fines) these are either amounts which are explicitly provided in national laws or the product of the maximum daily fines and the highest number of days foreseen for the offence.

The table is divided into two main parts, one concerning individuals, the other concerning legal persons. The first three columns in every part show the maximum financial penalties for trafficking in drugs (1), in precursors (2) and under aggravating circumstances (3).

The fourth column indicates whether there is a system of day fines – meaning that the judge imposes a number of daily rates and the amount of the daily rates depends on the income and solvency of the offender – or the financial penalties are determined as an absolute amount.

The fifth column shows the nature of the penalty: criminal, administrative or civil.

In the sixth column it is shown whether financial penalties are (only) foreseen as alternative to (particularly low) imprisonment (alt.) or whether they must or can be imposed together with imprisonment (cum.).

The seventh column shows whether financial penalties are used in cases of drug and precursor trafficking. The eight columns contain estimation of whether an added value is seen in financial penalties and whether they are regarded deterrent.

If there is a "-" in a field, this means that such a provision does not exist in the Member State.

If there is nothing in a field, this means that information is not available, either since there are no statistics or it is not possible to get any estimation by interviewees (in some cases – particularly concerning criminal liability of legal persons – the provisions in the Member States are so new, that there have been no practical experiences until now).

[39] In the UK, the penalties for drug trafficking offences depend on the venue of the trial and the class of the drug (http://www.cps.gov.uk/legal/d_to_g/drug_offences/).

2.6.4 Aggravating circumstances

2.6.4.1 General aspects

The FD provides in Article 4 (2) the following circumstances as aggravating circumstances for the offences referred to in Article 2 (1) (a), (b) and (c) (drug trafficking offences):

- the offence involves large quantities of drugs;
- the offence either involves those drugs which cause the most harm to health, or has resulted in significant damage to the health of a number of persons.

For these cases the Member States shall provide for criminal penalties of a maximum of at least between 5 and 10 years of imprisonment. If the offence is committed in the framework of a criminal organisation, penalties of a maximum of at least 10 years of imprisonment shall be provided for. If an offence linked to precursor trafficking is committed within the framework of a criminal organisation and the precursors are intended to be used in or for the production or manufacture of drugs under the circumstances referred to in paragraphs 2(a) or (b), criminal penalties of a maximum of a least between 5 and 10 years of deprivation of liberty shall be foreseen.

Regarding aggravating circumstances the provisions of the FD have not been transposed to the full extent by all Member States. Only ten Member States (CY, CZ, DE, ES, FI, GR, IT, LV, NL, SK) have transposed all aggravating circumstances provided for in the FD, eight of them (CZ, DE, ES, FI, GR, IT, LV, SK) also fulfil the requirements regarding the level of penalties in all cases. Since the FD provides that the aggravating circumstances change the range of penalties, only these Member States are seen as in full compliance with the FD which provides that the aggravating circumstances change the range of penalties.

2.6.4.2 Quantity of drugs

19 Member States (AT, CY, CZ, DE, DK, EE, ES, FI, GR, HU, IE, IT, LT, LV, NL, PL, SE, SK, UK) foresee the quantity of drugs as an aggravating circumstance that influences the range of penalties. It is not foreseen as an aggravating circumstance which influences the range of penalties in BE, BG, FR, LU, MT, PT, RO, SI. But in BE, FR, LU, MT, PT and SI the quantity is an aspect which influences judges' discretion in sentencing. With respect to quantity various ways of defining a large quantity are applied. There is no common understanding as to what is a large quantity. In BG not the quantity, but the value of the drugs are relevant: There is a differentiation between "large amount" and "particularly large amount"; the criterion is the monetary equivalent of the crime's object.

The penalties foreseen in the 19 Member States, which have such a provision, are all in compliance with Article 4 (2) FD. Since in the other Member States the maximum penalties for the basic offence are at least five years (or higher), the penalties are in compliance with Article 4 (2) FD in all Member States are.

2.6.4.3 Harm to health

The aspect of harm to health as aggravating circumstances is only contained in the drug trafficking legislation of 17 Member States (BE, BG, CY, CZ, DE, DK, ES, FI, GR, IE, IT, LU, LV, NL, PT, SK, UK). It is not foreseen as an aspect which influences the range of penalties in AT, EE, FR, HU, LT, MT, PL, SE, SI, UK. In AT, EE, FR, LT, SI and UK these aspects are taken into account in sentencing. Some Member States have lists with different categories of drugs, which are more or less dangerous (NL). In UK the purity of drug is relevant for sentences.

Regarding the maximum penalties all Member States which provide this aggravating circumstance, foresee penalties which are in compliance with Article 4 (2) FD. In AT, FR, HU, LT, MT, SI and UK the maximum penalties for the basic offence are so high that they are in compliance with the FD. In EE, PL

(for some activities) and SE the maximum penalties are lower than five years and do not comply with the FD.

2.6.4.4 Commission in the framework of a criminal organisation

Even the fact that the offences are committed within the framework of a criminal organisation is not foreseen as an aggravating factor in all Member States.

Regarding illicit trafficking in drugs, it is contained in AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, GR, HU, IT, LT, LU, LV, MT, NL, PL, PT, RO, SI, SK and UK. Unlike the FD the Member States do not require the offence to involve large quantities of drugs, or drugs that cause the most harm to health. But it is not foreseen in DK, IE and SE. In those Member States which contain this aggravating circumstance, there are big differences concerning penalties. Nine States provide for penalties up to life imprisonment (AT for leaders, CY, EE, FR, GR, LT, MT, SK, and UK) and three other States a maximum penalty of more than 20 years. Five Member States provide imprisonment up to 20 years, eight up to 15 years. Two Member States provide a maximum penalty of up to ten years. NL foresees a maximum penalty of less than ten years and insofar does not fulfil the requirements of the FD. Since the penalties in DK and IE foreseen for the basic offence are high enough, the penalties comply with Article 4 (3) FD, SE does not.

Regarding precursors trafficking in the framework of a criminal organisation, only 18 Member States provide such provisions (BE, BG, CY, CZ, DE, ES, FI, GR, HU, IT, LT, LU, LV, NL, PT, SI, SK, UK). All of them except CY foresee maximum penalties of more than five years and fulfil the FD. Nine Member States' laws (AT, DK, EE, FR, IE, MT, PL, RO, SE) do not contain a provision regarding precursor trafficking and organised crime. In DK, EE, IE, PL and RO the maximum penalties applying to basic offences of trafficking in precursors are five years and higher, so these penalties comply with the ones in Article 4 (4) FD.

2.6.4.5 Relationship between the implementation of the Framework Decision and the law on participation in a criminal organisation

Due to international agreements and European legislation, such as the United Nations Convention against Transnational Organized crime and the Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime[40], the majority of the Member States foresee specific provisions on the participation of individuals in criminal organisations. Concerning the relationship between the aggravating circumstances foreseen in Article 4 (3) and (4) FD and the implementing national laws on participation in a criminal organisation, the following groups of Member States can be distinguished:

1. In BG, GR, RO, SK and UK drug trafficking offences are often related to criminal organisations and offenders are usually (also) prosecuted under the provisions on participation in criminal organisations.
2. In most Member States there are specific provisions on the participation in criminal organisations (AT, BE, EE, DE, FI, HU, IE, IT, LV, LT, MT, PT, SI, ES), but it is an exception that an offender is also prosecuted under the law on participation in a criminal organisation beside the offence of drug trafficking (AT, BE, EE, DE, FI, HU, IE, LV, LT, PT, SI, ES). The reasons for that are that it is much more difficult to prove participation in a criminal organisation instead of drug trafficking and/or it is not seen as necessary, since the penalties for drug trafficking are higher than for participation in a criminal organisation. Several interviewees say that the provisions on criminal organisations are unclear and difficult to apply (FI).
3. In PL, the majority of high profile cases including drug trafficking are connected with other forms of organized crime. Thus, they are prosecuted primarily on the basis of the provisions foreseen against organized crime.

[40] OJ, no. 300, 11/11/2008, p. 42.

4. In many Member States the commission of drug trafficking in the framework of a criminal organisation is an aggravating circumstance (e.g. AT, BE, CY, CZ, HU, LU, NL, ES; for more details see *supra*).
5. In DK and SE there are no provisions on criminal organisations. In SE the legislator extended the scope of attempt and preparation for a number of offences instead of introducing provisions on criminal organisations.

This means that **in most Member States specific provisions on participation of individuals in a criminal organisation exist beside the provisions on trafficking in illicit drugs. But apart from five Member States these provisions are rarely used in cases of drug trafficking due to difficulties to apply them** (particularly to prove the participation). If the participation in a criminal organisation is difficult to prove, this may also have the effect that the aggravating circumstance of commission of a drug trafficking offence in the framework of a criminal organisation is rarely applied, since also this requires the prove of participation in a criminal organisation.

2.6.4.6 Other aggravating circumstances

Beside the aggravating circumstances provided in the FD, Member States' laws contain a great variety of other aggravating factors. There are Member States which have a long list of such circumstances; others do not have any additional aggravating circumstances which change the range of penalties (HU, LT, NL, PL, and SE). In the following they are divided into groups. Not all of them have the same significance for large scale drug trafficking. They are arranged according to their importance for large scale trafficking.

Possession or use of dangerous means (6 Member States):

- possession of a knife or other weapon (UK);
- use of violence, force, firearms or offensive weapons (CY, DE, ES, LV, IT).

Offences committed for commercial gain, meaning it is committed repeatedly with the intent to earn money (6 Member States):

- the offence is committed for commercial gain (AT, DE, PT);
- commission with purpose of large proprietary gain (CZ, EE, FI).

Serious consequences (9 Member States):

- the offence has caused the death, serious bodily or mental injury, material damage on a large scale (DE, LU, LV, MT, SK)
- the substances or preparations have been decomposed, altered or adulterated, by way of manipulation or mixture, hence increasing the risk to the life or the physical integrity of others (ES, PT, RO);
- purity of drugs (MT);
- exposing others to danger (UK).

Commission of a drug trafficking offence together with other offences (4 Member States):

- the offence is committed by a person who has committed a criminal offence related to drug-trafficking or a theft, robbery, illegal import or export of narcotic drugs or psychotropic substances (EE);
- the offender is involved in other illegal activities which are facilitated by the commitment of the offence (CY, DK, and LU).

Recidivism (5 Member States):

- repeated convictions within a certain period of time (BE, PT, SK),
- under the conditions of dangerous recidivism (BG);
- the offender commits again a particularly serious crime (punishable by at least 10 years) (CZ);

Specific offenders (6 Member States):

- it is committed by a civil servant (entrusted with preventing or punishing such offences), priest, doctor, social worker, teacher, professor or educator (BG, ES, PT, SI),
- the offence was committed in the exercise of his duties by a medical doctor, a pharmacist or any other professional expert on health matters, a member of the staff of the prison service or the probation service, a member of the staff of the postal, telegraph, telephone or telecommunications services (BG, GR, PT);
- the accused holds a public office or a position and the offence is related to that office or position (CY)
- the offender is involved in other organised criminal activities of international dimension (PT).

Specific addressees or special place where the trafficking is committed (19 Member States):

- the drugs have been delivered or were addressed to children, minors or mentally handicapped persons, to a woman with a child (AT, BE, CY, CZ, ES, DE, FI, FR, GR, IT, LU, LV, MT, PT, SI, SK, UK);
- delivery of drugs to a person undergoing drug addiction treatment (SK), to people who are susceptible to persuasion or coercion (UK) or to prisoners (UK);
- the offence is committed in prisons or police detention centres, welfare centres, in schools, universities, military establishments, rehab centres or near such places or foundations or other places where pupils or students are met for educational, sporting, social or other activities (CY, EE, ES, FR, IT, MT, PT, SI, UK);
- the distribution of drugs in restaurants, discotheques or similar places frequented by children or young people (DK);
- commitment in establishments open to public (ES, SI)
- commitment in public (BG).

Manner of commission (9 Member States):

- Use of ships, merchants or aircrafts as means of transport (ES);
- commission in a group of persons (LV) or by a criminal gang (AT, DE, PT);
- commission in an unscrupulous manner (FI);
- simulation of international commerce operations between companies in order to commit drug trafficking (ES);
- use of persons (courier) under the age of 18 or who suffer from a mental disease in order to commit the trafficking (ES, SI, UK);
- offering of drug substances to get sexual services from a drug addict (IT);
- the substances have been distributed by a large number of persons (PT).

2.6.5 Mitigating circumstances

According to **Article 5 FD** Member States may take the necessary measures to ensure that the penalties may be reduced, if the offender:

- renounces criminal activity relating to trafficking in drugs and precursors, and
- provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to
  - ► prevent or mitigate the effects of the offence,
  - ► identify or bring to justice other offenders,
  - ► find further evidence, or
  - ► prevent further offences referred to in Articles 2 and 3.

Eleven Member States (BE, EE, ES, FR, GR, HU, IT, LU, LV, MT, RO) provide for a so-called "leniency notice", as stipulated in Article 5 FD, in their drug laws and foresee a **reduction of the penalty or even the possibility for the prosecutor to cease the proceedings against the perpetrator.** Not all of these regulations provide for exactly the same and all the requirements as Article 5 FD. The reason for that is that none of the Member States has amended its legislation in this respect as a result of the FD.

Other Member States take these aspects into account in other ways. Some States take them into account when **determining the sentence** (AT, CY, CZ, DE, DK, IE, LT, NL, PL, PT, SI, SK, UK). In many Member States even the minimum threshold for punishment may be undercut. However, in AT, CZ, NL and SI this norm does not really have an effect in practice because of the very rigid prerequisites for its application and because of the fact that the prosecutor initially cannot assure the lower sanction in exchange for co-operation. In AT, BG and LT lower penalties or even the possibility to drop the case completely are foreseen, if the offence is committed in the framework of a **criminal organisation** or criminal association. **The requirements differ in the various Member States and do not completely comply with the ones in the FD.**

Regarding **other mitigating circumstances** the national legislation differs widely.

In some national laws there are additional mitigating circumstances which change the range of penalties:

- In several Member States it is a mitigating circumstance that the offender commits the offence for the purpose to finance his/her personal addiction (AT, BE, GR, HU, PT).
- In IT facts of “minor entity” due to the means, characters or circumstances of the action or quantity or quality of the narcotic substances lead to a reduced range of penalty.
- In LV lower penalties are foreseen, if a person voluntarily withdraws from the offence or who voluntarily gives back drugs.
- In a similar way in PT a reduction of penalties is provided for if the offender has voluntarily given up his activity, has moved away or considerably diminished the danger resulting from his activities.
- In most Member States lower penalties are provided for minors, but this normally does not only apply to drug trafficking offences, but to all criminal offences.

Furthermore there are many mitigating factors which influence the determination of a penalty by the judge. For these factors see infra pp. 70 f.

Table 2.5 Aggravating and mitigating circumstances

	Aggravating circumstances in FD				Other aggravating circumstances in national laws						Mitigating circumstances	
	Quantity of drugs Art. 4 (2) (a)	Harm to health Art. 4 (2) (b)	Crim. Organ. Drugs Art. 4 (3)	Crim. Organ. Precursors Art. 4 (4)	Commercial gain	Use of dangerous means	Specific addressees	Specific offenders	Serious consequences	Together with other offences	Transposition of Art. 5 FD	Financing personal use (national law)
AT	X		X		X		X					X
BE		X	X	X			X				X	X
BG		X	X	X				X				
CY	X	X	X	X		X	X	X		X		
CZ	X	X	X	X	X		X					
DE	X	X	X	X	X	X	X		X			
DK	X	X					X			X		
EE	X		X		X		X				X	
ES	X	X	X	X		X	X	X	X		X	
FI	X	X	X	X	X		X		X			
FR			X				X				X	
GR	X	X	X	X			X	X			X	X
HU	X		X	X							X	X
IE	X	X										
IT	X	X	X	X		X	X				X	
LT	X		X	X								
LU		X	X	X			X		X	X	X	
LV	X	X	X	X		X	X		X		X	
MT			X				X				X	
NL	X	X	X	X								
PL	X		X									
PT		X	X	X	X		X	X	X	X		X
RO		X	X						X		X	
SI			X	X			X	X				
SE	X											
SK	X	X	X	X		X	X		X			

	Aggravating circumstances in FD				Other aggravating circumstances in national laws						Mitigating circumstances	
	Quantity of drugs Art. 4 (2) (a)	Harm to health Art. 4 (2) (b)	Crim. Organ. Drugs Art. 4 (3)	Crim. Organ. Precursors Art. 4 (4)	Commercial gain	Use of dangerous means	Specific addressees	Specific offenders	Serious consequences	Together with other offences	Transposition of Art. 5 FD	Financing personal use (national law)
UK	X		X	X			X		X			
TOT	**19**	**17**	**24**	**18**	**6**	**6**	**19**	**6**	**9**	**4**	**11**[41]	**5**

Explanatory remarks:

Use of dangerous means: e.g. arms, knifes, weapons
Specific addressees: e.g. minors, pupils (schools), prisoners or trafficking in specific places as e.g. schools, universities, hospitals, medical centres, military establishments, prisons.
Specific offenders: e.g. doctors, pharmacists, trainers, teacher
Serious consequences: e.g. death, particular risk for life or physical integrity, e.g. by manipulation and mixing of drugs.
Together with other offences: coincidence of several offences

[41] Not all provisions of these Member States exactly comply with the ones in the FD. Other Member States take these aspects into account when determining the sentence.

2.7 Confiscation

According to Article 4 (5) FD, each Member State shall take the necessary measures to enable the confiscation of substances which are the object of drug and precursor trafficking offences, instrumentalities used or intended to be used for these offences and any proceeds from these offences, including confiscation of property to the value of any proceeds, substances or instrumentalities.

A horizontal EU legal instrument exists, the Framework Decision 2005/212/JHA of the Council of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property[42], covering the confiscation of instrumentalities, proceeds and property of corresponding value.

In most Member States confiscation provisions already existed before the FD, therefore they did not amend their legislation or only small amendments were carried out. All Member States have confiscation provisions, but there are different legal techniques used to transpose these provisions as the following summary shows. Some Member States have special provisions for drug offences, in many States, however, the general rules of criminal law and criminal procedure also apply for drugs.

- AT provides for the confiscation of drugs and instrumentalities in drug laws. For proceeds from these offences and other mentioned proceeds the provisions on forfeiture are applied.
- In BE specific provisions on confiscation in the case of drug trafficking exist which enable the confiscation of vehicles, apparatus and instruments and objects that were meant for the commitment of the punishable offenses or that are the subject of it, even if they are not in the property of the offender. General provisions on confiscation are laid down in the Criminal Code, for example, the confiscation of the generated profits.
- Bulgarian Penal Code provides a particular measure of forfeiture in favour of the State covering objects and instrumentalities of the crime, the possession of which is forbidden. The proceeds of the crime are also confiscated by the State if they do not have to be returned or restored. Where they are not available or have been disposed of, an equivalent amount is adjudicated.
- In CY the confiscation provisions of Article 4 (5) FD were implemented in 2007 into the Laws on Covering up and Confiscation of Income from certain criminal acts and it provides the confiscation of drugs, instrumentalities and proceeds which are the result of illicit drug trafficking.
- The CZ provides for two pillars: It provides as “sanctions” the confiscation/forfeiture of property, objects (used or intended to be used for criminal activity) or other property/material value and alternative values. These sanctions (except confiscation/forfeiture of an object or another property/material value) are only permitted for more serious forms of drug trafficking and precursor related crimes. Additional “protection measures” also exist which cover the seizure of an object or other material value from a person who did not individually commit a crime, but the object in question was used for criminal activity or was obtained as a result of a criminal activity.
- In DE the confiscation of drugs themselves and of the tools used for the commission of the crime are foreseen; courts also have to forfeit assets that are proceeds of crimes.
- In DK it was not considered necessary to amend the existing rather broad and wide reaching provisions on confiscation. Any object related to the perpetration of drug trafficking offences may be confiscated. The Director of Public Prosecution has issued guidelines to this effect.
- In EE the confiscation of the object used to commit an intentional offence and of equipment is provided for; and also under certain circumstances, if they belong to a third person. Moreover it is possible to confiscate a part or all of the criminal offender’s assets, if they belong to the offender at the time of the judgment.

[42] See also Report from the Commission pursuant to Article 6 of the Council Framework Decision of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities and property (2005/212/JHA), COM (2007).

- In ES the Criminal Code includes confiscation provisions for drugs, narcotics and psychotropic substances, precursors and instrumentalities used for these offences or proceeds from these offences, except where it belong to bona fide third parties. The confiscation of property is also possible, to the value of any proceeds, substances or instrumentalities.
- In FI the Criminal Code was in compliance with FD and states that instruments, supplies or substances used in the commission of an offence or obtained for that purpose and assets shall be subject to forfeiture by the State.
- In FR confiscations are part of the additional penalties perpetrators of crimes related to drug trafficking do incur. They may affect all the assets the convicted person has the ownership of or the assets he has the possession of, subject to the rights of the *bona-fide* owner. Confiscation also affects the instrumentalities which were used or intended for the commission of the offence or things which are a product of the offence.
- In GR the provisions on confiscation were already contained in the Criminal Code and in Drug Law, therefore, no need for a new provision arose. The court has to order the confiscation of all items deriving from the action, their purchase price, movable and immovable assets, and transportation means and of all items used or destined for the commitment of the offence independently from if to whom they belong.
- HU provides for the confiscation of objects a) which are actually used or intended to be used as an instrument for the commission of a criminal act, or b) for which the criminal act was committed. Financial gain or advantage resulting from criminal activities obtained by the offender in the course of or in connection with a criminal act, shall be subject to civil forfeiture.
- In IE the Court has to determine whether the person convicted has benefited from drug trafficking and the amount to be recovered before making a confiscation order requiring the person concerned to pay that amount. In respect of substances, the legislation deals with forfeiture; in respect to proceeds, the Irish Legislation provides for confiscation orders.
- In IT confiscation is an automatic compulsory measure with regard to the substances which are the object of offences. Moreover the confiscation of instrumentalities used for drug offences and of proceeds from these offences without prejudice, in principle, to the rights of third parties is provided in the Criminal Code. According to Article 12-sexies of Law No. 356/1992: in the case of conviction of the perpetrator, the confiscation of money, goods or other utilities whose licit origin the perpetrator is not able to demonstrate is always ordered.
- In LV the confiscation of property which is criminally acquired can be a form of punishment or an additional measure; a so-called “special confiscation” covers the requirements of Article 4 (5) FD.
- According to the Lithuanian Criminal Code an instrument or a means to commit a crime or as the result of a criminal act is a property which is a subject of confiscation and all kinds of property directly or indirectly received from a criminal act are treated as the result of the criminal act.
- Luxembourgish legislation rules that all substances that qualify as illicit drugs are to be confiscated and proceeds from illicit trafficking in drugs or property the value of which corresponds to that of such proceeds, are to be confiscated.
- MT provides in the Criminal Code that in every case of a conviction, all articles in respect of which the offence was committed shall be forfeited to the Government, and such forfeited articles shall, if the court orders, be destroyed or otherwise disposed. There are also special additional provisions for forfeiture of the entire immovable property in which the offence took place.
- According to the Dutch government, Article 4 (5) did not necessitate any specific legislative action, because the legislation on confiscation in the Criminal Code has already complied with the requirements. The provision on the confiscation of proceeds of crimes gives extensive possibilities to recover any financial benefits. Substances and instrumentalities used or intended to be used to commit crimes are in practice mostly seized and confiscated.
- In PL confiscation measures may be ordered in the event of a custodial sentence for the drug trafficking offences. In such cases courts shall order the forfeiture of the object of the offence as well as the objects and tools that served or were intended for the commission thereof, even if they did not

belong to the perpetrator. Furthermore, the forfeiture of items directly derived from an offence is foreseen.

- In PT the forfeiture of instruments, of property or rights relating to the facts, gains and other benefits and extended confiscation are foreseen in the Drug-Law.
- In RO special provisions for drugs exist: Drugs and other goods having been the object of drug offences shall be confiscated, and, if they cannot be found, the convicted person can be forced to pay their equivalent in cash. Money and assets shall also be confiscated; amounts resulting from selling confiscated goods and confiscated money, shall be transferred to the state budget.
- In SI narcotic drugs and the means of their manufacture and means of transport with a specially adapted space for the transport and storage of drugs or illicit substances shall be seized.
- In SK forfeiture of items is foreseen when sentencing the perpetrator of the criminal offence involving illicit drug trafficking. Moreover the c*onfiscation of Items, if there is a* need to forfeit items not belonging to the offender, or belonging to him in cases where the offender has not been convicted. Since September 2011 the obligatory imposition of forfeiture of property related to illegal manufacture of narcotic and psychotropic substances, poisons or precursors, their possession and trafficking is provided for in the Criminal Code.
- The Swedish legislation contains provisions on the confiscation of (i) narcotic drugs (and precursors), (ii) the equivalent in money value of the narcotics, (iii) proceeds from the various narcotic offences, (iv) various forms of payment in connection with such narcotic offences, unless it is manifestly unreasonable to do so, and (v) tools and other property used in the commission of the crimes ('instrumentalities'), if it is necessary to prevent future crime.
- In the UK the provisions on confiscation were not incorporated, since corresponding provisions in the Proceeds of Crime Act, which sets out the powers of the courts in dealing with illicit drug trafficking offenders and their finances, were already in force.

The country overview shows that **all Member States have enacted provisions on confiscation in their domestic legal orders, covering largely the confiscation of drugs, instrumentalities and property/proceeds. Most of them did not change their legislation due to the FD 2004/757/JHA**, but due to other obligations, particularly the FD 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instrumentalities and Property. All Member States provide the confiscation not only of the objects of offences (illicit substances), but also of instrumentalities used or intended to be used for these offences and proceeds from these offences. **Differences can be seen between the techniques used** to transpose the confiscation provisions. In a number of Member States, confiscation provisions are included in specific statutes on drugs, allowing for the confiscation of: both drugs and instrumentalities (AT, BE, BG, PL, SI), drugs only (DE, IT, LU), drugs, instrumentalities or proceeds (ES, FI, GR, RO, SE, UK); benefit from drug trafficking (IE), or property (SK). As far as there are no special provisions in drug law, the provisions in general criminal law are applied to illicit drug trafficking offences. It seems that this does not make a substantial difference, since confiscation measures for drugs are not fundamentally different from measures for other offences. To transpose the provision national regulations on confiscation and forfeiture are used.

2.8 Jurisdiction

2.8.1 General remarks

According to Article 8 (1) FD the Member States shall provide for jurisdiction over the offences referred to in Arts. 2 and 3 where:

- the offence is committed in whole or in part within its territory (a);
- the offender is one of its nationals (b); or
- the offence is committed for the benefit of a legal person established in the territory of that Member State (c).

All Member States provide for jurisdiction according to the territoriality principle, meaning that if the offence is committed in whole or at least partially in their national territory they have jurisdiction over that offence. **Thus, the requirement of Article 8 (1) (a) FD is fulfilled by all Member States.**

The following section will therefore focus on Article 8 (1) (b) and (c) FD and the question of jurisdiction for offences **committed outside national territories.** In regard to Art 8(1) (b) and (c) if the offence is committed outside their territories, Member States may decide that they will not apply them or only in specific cases or circumstances (Article 8 (2) FD). If a Member States decides so, it shall inform the General Secretariat of the Council and the Commission about their decision to do so (Article 8 (4) FD).

Art 8(3) FD provides that a Member State which, under its laws, does not extradite its own nationals, shall take the necessary measures to establish its jurisdiction over and to prosecute, where appropriate, an offence referred to in Arts 2 and 3 when it is committed by one of its own nationals outside its territory. According to the Report from the Commission from 2009 this provision no longer serves any purpose since the introduction of the European arrest warrant.

Since the FD 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States does not foresee that own nationals are not surrendered, in principle it is true that this provision should have lost its significance. Moreover illicit trafficking in narcotic drugs and psychotropic substances is an offence listed in Article 2 FD 2002/584/JHA, for which it is foreseen that they give rise to surrender without verification of the double criminality of the act, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years. However, it is not sure that Member States transposing the FD on the European arrest warrant did not foresee ways not to surrender own nationals (see e.g. Sections 5 and 7 Austrian Act on judicial cooperation in criminal matters with the Member States of the EU).

2.8.2 Extra-territorial jurisdiction

2.8.2.1 General remarks

Article 8 (1) (b) and (c) FD provide extra-territorial jurisdiction without any other requirements as e.g. double criminality or the infringement of State's interests. **16 Member States** foresee jurisdiction for offences where the offender is one of its nationals without any further requirements and therefore fully comply with Article 8 (1) (b) FD: **BE, BG, CZ, EE, ES, FI, GR, HU, LT, LV, MT, PL, RO, SI, SK and UK.** The legislation of **AT, CY, DE, DK, HU, IE, IT, LU, NL, PT, SE is not in overall compliance with Article 8 (1) (b), since further prerequisites are required** (e.g. double criminality). However, **AT, DE and FR made use of Article 8(2) FD and informed the Commission pursuant to Article 8 (4) FD** that if the offence was committed outside their territories, their jurisdiction in regard to Article 8 (1) (b) FD only applies if certain additional prerequisites are met. Insofar their laws comply as well with Article 8 (1) (b) FD.

2.8.2.2 *Member States' legislation*

The Member States foresee the following requirements for the **establishment of extra-territorial jurisdiction:**[43]

- AT: (1.) If the offence committed is punishable regarding to Sections 28a SMG (drug trafficking offences punishable with a maximum penalty of at least three years), 31a SMG (Trafficking of psychotropic substances – offences punishable with a maximum penalty of at least one year) and 32 Abs 3 SMG (unlawful handling with precursors – offences punishable with a maximum penalty of at least one year), and Austrian interests are concerned or the offender cannot be extradited. (2.) If the offender is Austrian or a foreigner who commits the offence abroad and is caught in Austria, and if the offence is punishable under the laws of the country where the criminal act has been committed.
- BE: If the offence is committed by a Belgian or a person with its primary residence in Belgium.
- BG: (1.) If the perpetrator is a Bulgarian national. (2.) If the perpetrator is a foreign citizen and the interests of the Republic of Bulgaria or of Bulgarian citizens have been affected.
- CY: (1.) If the offence was committed by a citizen of the Republic of Cyprus and the offence is punished in the Republic with imprisonment which exceeds two years and the act or omission is also an offense according to the law of the country in which it was committed. (2.) If any person commits an offence concerning illegal trafficking of dangerous drugs.
- CZ: (1.) Personality principle has been applied. (2.) In a limited way there is application of principle of protection of interests of the Czech State.
- DE: (1.) If the perpetrator is a German citizen and the act is an offence in the state where this offence has been committed. (2.) If the victim is a German citizen and the act is an offence in the state where this offence has been committed. (3.) For cases of illicit distribution of drugs (sale or purchase of drugs as part of drug trafficking) universality principle applies, but according to case-law there must be a relation between the offence and the Federal Republic of Germany.
- DK: If there is double criminality.
- EE: (1.) If such act constitutes a criminal offence pursuant to the penal law of Estonia and is punishable at the place where the act was committed. If in the place where the act was committed, it does *not* constitute a criminal offence, one of the following prerequisites apply: - the act has to be committed against a citizen of Estonia or a legal person registered in Estonia, or - the offender is a citizen of Estonia, or a third country national who has been detained in Estonia and is not extradited. (2.) If the punishability of the act arises from an international agreement binding Estonia; or if according to the penal law of Estonia, the act is a criminal offence in the first degree *and* if such act causes damage to the life or health of the Estonian population, interferes with the exercise of state authority or the defense capability of Estonia, or causes damage to the environment.
- ES: (1.) In the field of drug trafficking, if the perpetrators are Spanish citizens. (2.) In the field of drug trafficking, if the perpetrators are aliens, but Spanish victims exist or if there is any relevant connection link to Spain.
- FI: (1.) If the offender is Finnish and there is double criminality. (2.) Since drug trafficking falls under the category of international offences, Finnish law applies to an offence committed outside of Finland where the punishability of the act, regardless of the law of the place of commission, is based on an international agreement binding on Finland or on another statute or regulation internationally binding on Finland. This principle of universality means in practice that Finnish criminal law is applicable to narcotic offences also in situations where the offence is not punishable in the place of commission. Narcotic offences fall under the category of international offences.
- FR: (1.) Any felony committed by a French national outside the territory of French republic. (2.) Misdemeanors committed by a French national outside the territory of France, if the misdemeanor is punishable under the legislation of the country in which it was committed. (3.) Any felony, as well as to any misdemeanor punished by imprisonment, committed by a French or foreign national outside

[43] The enumerations in the following paragraphs show different possibilities on how extra-territorial jurisdiction may be established in the Member States.

the territory of French Republic, where the victim is a French national at the time the offense took place.

- GR: Greek penal laws apply to natives and aliens independent from the laws of the place of commitment for actions committed abroad related to illegal trafficking of narcotic medicines.
- HU: (1.) Hungarian law shall be applied to any conduct of Hungarian citizens abroad, which are deemed criminal in accordance with Hungarian law. (2.) Hungarian law shall be applied to any act committed by non-Hungarian citizens in a foreign country, if it is deemed a felony in accordance with Hungarian law and is also punishable in accordance with the laws of the country where committed.
- IE: legislation is in place relating to acts outside the State which provides that any person who aids, abets, counsels or induces the commission in a place outside the State of an offence punishable under a corresponding law in force in that place shall be guilty of an offence under Irish drug trafficking legislation.
- IT: Italian citizen can be prosecuted for criminal acts committed abroad, under the condition of the presence of the alleged offender on Italian territory. If the offence is punishable by a custodial sentence or a detention order for a period of less than three years, the request of the Ministry of Justice or the complaint of the offended person are also required.
- LT: (1.) Citizens of the Republic of Lithuania and other permanent residents of Lithuania shall be held liable for offences committed abroad. (2.) Universal jurisdiction for offences related to possession of narcotic or psychotropic, toxic or highly active substances.
- LU: If the perpetrator is a Luxembourgish citizen and if the offence is criminalized in Luxembourg and in the country where the offence has been committed.
- LV: (1.) If the perpetrator is a Latvian citizen or a non-citizen or foreigner who has a permanent residence in Latvia. (2.) If a foreigner do not has a permanent residence permits, it has to be a serious crime which has been directed against the Republic of Latvia or against the interests of its inhabitants. (3.) In case of international binding agreements, no further prerequisites are required for the establishment of jurisdiction.
- MT: (1.) Any person who in Malta aids, abets, counsels or procures the commission in any place outside Malta of any offence punishable under the provisions of any corresponding law in force in that place commits an act according to Chapter 101 of the Laws of Malta. Furthermore, persons who conspire with another one or more person in Malta for committing such an offence, or do any preparatory act, as well commit acts that constitute offences against Chapter 101 of the Laws of Malta. (2.) Malta has jurisdiction over any person being a citizen of Malta or a permanent resident in Malta, who in any place outside Malta does any act which, if committed in Malta, would constitute an offence of selling or dealing in a drug against Chapter 101 of the Laws of Malta.
- NL: (1.) If offences committed by Dutch nationals abroad, while retaining the condition of double criminality. (2.) Jurisdiction concerning the preparation, advancement or attempt of, or the complicity in the import or export (relative to the Netherlands) of substances mentioned in list I of the Narcotic Drug Offences Act is not limited to Dutch nationals and not subjected to a double criminality test.
- PL: If the perpetrator is a Polish citizen.
- PT: (1.) Portuguese criminal law shall apply to facts committed by Portuguese nationals abroad, as long as (i) the offender is found in Portuguese territory; (ii) the facts also constitute a criminal offence under the law of the *locus delicti*, unless no entity exerts the *ius puniendi* over that place; and (iii) the facts constitute an “extraditable offence” but extradition did not take place. (2.) Portuguese law is applicable to drug offences committed outside Portuguese territory, where: (a) The offender is a foreigner, provided that s/he is found in Portugal and is not extradited; (b) offences have been committed on board a ship against which Portugal has been authorised to takes measures. (3.) Jurisdiction over extraditable offences committed abroad, when extradition is actually requested but cannot be granted. (4.) Portuguese criminal law is also applicable on the basis of the extraterritorial grounds of jurisdiction that are established in international treaties or conventions binding on the Portuguese state.
- RO: (1.) Current law: if offences perpetrated outside Romanian borders, by a Romanian citizen or by a person without citizenship which resides in Romania. (2.) New Criminal Code: if the act is

considered an offence by the law of the country on which territory it was committed, except the offence is punished by the Romanian law with life imprisonment or imprisonment over 10 years.

- SE: The following circumstances have to be met: - the perpetrator has to be a Swedish citizen, a person domiciled in Sweden, any citizen of the Nordic countries present in Sweden or any other foreigner found in Swedish territories, - the offence has to be punishable under Swedish law with imprisonment of at least six months, - the principle of double criminality has to be fulfilled, and - the Swedish penalty must not be more severe than the one imposed under the law of the place where the offence has been committed.
- SI: (1.) If a Slovenian citizen commits (any) criminal offense abroad. (2.) If a foreign citizen commits a criminal offence in a foreign country, but against Slovenia or its citizen. (3.) If a foreign citizen commits a criminal offence in a foreign country against third country or its citizen and has been apprehended in the territory of the Republic of Slovenia and was not extradited.
- SK: (1.) If the act is committed by Slovak nationals and permanent residents elsewhere. (2.) If a Slovak national is affected and double criminality principle applies. (3.) If drug related offences are committed outside of the territory of the Slovak Republic by an alien who has not his/her permanent residence on the territory of the Slovak Republic.
- UK: A person commits an offence if in the UK he assists in or induces the commission in any place outside the UK of an offence punishable under the provisions of a corresponding law in that place. Where a person resides outside the UK, there are extradition treaties with various States that allow for suspects to be brought to the UK to stand trial.

2.8.2.3 Conclusions

12 Member States (AT, CY, DE, ES, FI, GR, IE, LT, MT, NL, PT and SK) have separate provisions for drug trafficking offences in order to establish extra-territorial jurisdiction over nationals. If this is the case, **many States do not foresee further prerequisites** in order to establish jurisdiction. However, some States do foresee additional prerequisites, as for example double criminality (IE) or that the interests of the state have to be touched (AT).

If there are no separate provisions for drug trafficking cases, often **the following prerequisites for the establishment of extra-territorial jurisdiction over nationals** are foreseen:

- the act has to be criminalized in the Member State establishing jurisdiction and in the state where the offence has been committed (principle of double criminality; this prerequisite is foreseen in AT, CY, DE, DK, FI, FR (if it is only a misdemeanor), LU, MT, NL, PT, SE and UK);
- the offense must be punishable with a certain minimum penalty (CY, FR, SE);
- the alleged offender has to be present in the country (IT, PT).

If the offender is *not* a national of the Member State, but a **foreign national** the following prerequisites may apply in order to establish extra-territorial jurisdiction:

- the interests of the Member State establishing jurisdiction have to be affected (BG, CZ, LV);
- the victim of the offence has to be a national of the Member State (DE, EE, FR, SI, SK);
- principle of double criminality (EE, HU, MT, SK, UK).

2.8.3 Habitual residents

Article 8 (1) (b) FD only refers to nationals concerning jurisdiction. Due to the mobility of people in Europe, nationality is not the only ground to establish jurisdiction, but jurisdiction could also be linked to the circumstance if a person has his/her habitual residence in this Member State. Several Member States foresee **extra-territorial jurisdiction for habitual residents**, if the offence was committed outside their territory, either **without any further requirements** (BE, FI, GR, LV, LT, MT, NL, SK) or **under certain conditions** (AT, BG, CY, DK, ES, IE, SE, UK). DE, EE, FR, HU, IT, LU, PL, PT, SI **do not have** jurisdiction over habitual residents, if the offence was committed outside their country. However, in some of these countries jurisdiction is possible due to the universality principle (DE). FR – although an explicit provision on habitual residents is missing – provides for jurisdiction if any felony or misdemeanor punished with imprisonment is committed by a foreign national outside the territory of France, where the victim is a French national at the time the offence took place. **CZ** has jurisdiction over **stateless people** with permanent residence in the Czech Republic and **RO** has jurisdiction over habitual residence **without citizenship.**

To conclude, the following remarks can be made. BE, DK, FI, GR, LV, MT, SK and UK do not differentiate between citizens and habitual residents at all when it comes to the question of establishing jurisdiction if the offense was committed outside the country. The following countries treat their nationals and habitual residents equally in cases of drug trafficking offences committed outside their territories: AT, BG, CY, DE, ES, IE, LT and NL. In SE slightly different rules apply for establishing extra-territorial jurisdiction over habitual residents than over citizens. SE has jurisdiction over habitual residence, if the offence is punishable under Swedish law with imprisonment of at least six months.

2.8.4 Jurisdiction in relation to legal persons

The following Member States foresee jurisdiction, if the offence is committed for the benefit of a legal person established in the territory of that Member State (Article 8 (1) (c) FD): BE, BG, CZ, ES, FI, GR, LT, LU, LV, MT, PL, PT, RO, SI, SK and UK. Thus, these Member States are fully compliant with Article 8 (1) (c) FD. In the following Member States jurisdiction is only provided for under certain conditions (for example double criminality): AT, CY, DK, FR and NL. In DE, EE, HU, IE and IT jurisdiction in relation to legal persons is limited to the territoriality principle. In SE no rules on jurisdiction over legal persons exist at all. However, seven Member States (AT, DE, DK, EE, HU, FR and SE) informed the Commission of their decision to limit their jurisdiction in case of Article 8 (1) (c) FD. Insofar, these Member States are as well in compliance with Article 8 (1) (c) FD.

In seven Member States (CY, ES, FR, IE, LV, NL, SK) legal persons are treated the same way as natural persons, meaning that the same provisions for establishing jurisdiction apply.

Jurisdiction in relation to legal persons is provided for as follows in the countries:[44]

- AT: (1.) If the criminal act is committed in Austria (Section 12 VbVG). (2.) If the offence committed is punishable regarding to Sections 28a SMG (drug trafficking offences punishable with a maximum penalty of at least three years), 31a SMG (Trafficking of psychotropic substances – offences punishable with a maximum penalty of at least one year) and 32 Abs 3 SMG (unlawful handling with precursors – offences punishable with a maximum penalty of at least one year) and if Austrian interests are touched. (3.) If the legal person committing the offence is situated in Austria and the offence is punishable under the laws of the country where the criminal act has been committed.
- BE: If the offence is committed for the benefit of a legal person established in the territory of Belgium.
- BG: If the legal persons which benefited from offences relating to drug trafficking are established on its territory.

[44] The enumerations in the following paragraphs show different possibilities on how to establish jurisdiction over legal persons in the Member States.

- CY: There is no specific legislation regarding jurisdiction over legal persons.[45]
- CZ: If an offence was committed abroad by a citizen of another state or by a stateless person without permanent residence in the Czech Republic under the condition that the activity was made for the benefit of a legal entity which is established in the Czech Republic.
- DE: If the offence was committed within the territory of the Federal Republic of Germany and on ships or planes with German flagship. The nationality of the offender is not relevant.
- DK: Jurisdiction is foreseen in all types of cases where there is jurisdiction in relation to individuals, which requires in cases of extra-territoriality double criminality.
- EE: If the offence is committed in whole or in part within the Estonian territory.
- ES: Legal persons are treated the same as natural persons.
- FI: If the offence is committed by a Finnish citizen abroad and the offence is punishable also in Finland or if the offence is directed in Finland.
- FR: Legal persons are treated the same as natural persons.
- GR: The same rules on jurisdiction as for natural persons apply to legal persons of which the office or the head offices of the legal person to the interest of which the violations of the drug law have been committed are in Greece.
- HU: If the offence is committed in Hungary.
- IE: Jurisdiction for legal persons is the same as for natural persons.
- IT: Legal persons, which are established on the Italian territory, can only be held liable, if the drug trafficking offence is committed within the framework of a criminal organization characterized by this purpose.
- LT: Principle of territoriality and of universality applies.
- LU: In principle rules applicable to natural persons also apply to legal entities. Jurisdiction is established, if at least one main element of the respective offence has been committed within its territory or if drug trafficking offences that are committed for the benefit of a legal person established in Luxembourg.
- LV: Jurisdiction for legal persons is the same as for natural persons.
- MT: Criminal action for an offence against the provisions of article 83A Criminal Code (liability of legal persons) may be prosecuted in Malta notwithstanding that the organization of persons is based or pursues its criminal activities outside Malta.
- NL: Legal persons are treated in the same way as natural persons.
- PL: If an act is committed abroad, the jurisdiction belongs to a regional court in the region where the registered seat of a collective entity is located, and in cases of a foreign legal person, the registered seat of its representative in the Republic of Poland.
- PT: Jurisdiction over acts committed abroad by or against a legal person headquartered in Portuguese territory.
- RO: Legal persons can be held criminally responsible for offences committed for their benefit.
- SI: (1.) Jurisdiction over offences committed within the territory of the Republic of Slovenia by a domestic or foreign legal person. (2.) Jurisdiction over offences committed abroad against the Republic of Slovenia, its citizens, or domestic legal person by a domestic or foreign legal person provided that this legal person has its seat (registered office) in the Republic of Slovenia or carries out its activities in the Republic of Slovenia. (3.) Jurisdiction over offences committed against foreign country, foreign citizens, or foreign legal person by domestic legal person.
- SK: Extra-territorial jurisdiction like for natural persons without any further requirements.
- UK: It is an offence to engage in or be concerned with the production, supplying, exporting, importing, storing or manufacturing an illicit drug whether in the UK or elsewhere.

[45] If there are no special rules for jurisdiction over legal persons, please refer to the preceding chapter on extra-territorial jurisdiction.

2.9 Liability of legal persons

2.9.1 General remarks

According to Article 6 FD each Member State shall take the necessary measures to ensure that legal person can be held liable for any of the criminal offences referred to in Arts. 2 and 3 committed for their benefit by any person, acting either individually or as a member of an organ of the legal person in question, who has a leading position within the legal person, based on one of the following:

- a power of representation of the legal person;
- an authority to take decisions on behalf of the legal person;
- an authority to exercise control within the legal person.

Moreover legal persons shall be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of any drug and precursor trafficking offences for the benefit of that legal person by a person under its authority. **Since these obligations are also contained in other EU legal acts, several Member States had already introduced the criminal liability of legal persons before the requirements of the FD.**

2.9.2 Member States' legislation

Twenty country reports (AT, CY, DE, DK, ES, FI, FR, GR, HU, IE, LT, LU, LV, MT, NL, PL, PT, RO, SI, UK) state that their legislation complies with Article 6 FD. However, the following countries are not compliant with Article 6 FD due to the following reasons:

- **BE** foresees that if the legal person is held responsible solely by reasons of actions of an identified natural person, then only one person – either the legal or natural one – will be condemned. This is not in line with Article 6 (3) FD which states that the criminal proceedings against natural persons who are perpetrators, instigators or accessories in any of the offences referred to in Arts. 2 and 3 FD should continue.
- **BG** foresees criminal liability only for explicitly listed serious transnational crimes, including drug and precursor trafficking. Thus, not all offences of Arts. 2 and 3 FD are covered.
- **CZ** have introduced only limited responsibility of legal persons, as it refers only to an enumerated catalogue of criminal acts, in which drug trafficking is included. However, the new law – which came into force on January 1, 2012 – does not cover specific precursor-related crimes and the promotion of drug use.
- In **EE** legal persons can be held liable only for unlawful handling of large quantities of narcotic drugs or psychotropic substances. There is no criminal liability of legal persons for the cultivation of opium poppy, coca bush or the cannabis plant. There is also no criminal liability of legal persons in cases of Article 6 (2) FD. The Ministry of Justice is currently drafting an amendment to overcome this lacuna.
- In **IT** the liability of legal persons is not sufficiently transposed. Italian law foresees liability of legal persons only for certain offences, namely for "Criminal organizations aimed at trafficking in illicit drugs and psychotropic substances". The administrative responsibility of legal persons arises only for offences committed for its own interest or advantage by individuals who are representatives, directors or managers of the company or of one of its organizational units that has financial and functional independence; by individuals who are responsible, also *de facto*, for managing or controlling the company; by individuals who are managed or supervised by an individual in a top position.
- In **SE** there is a form of non-criminal sanctions, the "corporate fine" that can be imposed on a **"business"** when a crime is committed in the course of business, but this is not a form of liability in the sense of Article 6 FD. Further, not all kinds of legal persons are covered, as it refers only to "businesses".

- **SK** only foresees two protective measures, the confiscation of a monetary sum and the confiscation of assets, as kind of liability for legal persons.

Article 6 FD does not require criminal responsibility; therefore non-criminal sanctions are also sufficient to fulfil the requirements of the FD. The ways in which the liability is transposed, is therefore different in the various Member States. AT, BE, CY, CZ, DK, EE, ES, FI, FR, HU, IE, LT, LU, LV, MT, NL, PL, PT, RO, SI, SK and UK provide for a **criminal liability**. BG, DE and IT provide for **administrative penalties**, GR administrative and **civil sanctions**. SE foresees a concept of so called **"corporate fines".**

As sanctions for legal persons, which shall be effective, proportionate and dissuasive, the Member States my provide for criminal or non-criminal **fines** and **other sanctions,** such as exclusion from entitlement to tax relief or other benefits or public aid, temporary or permanent disqualification from the pursuit of commercial activities, placing under judicial supervision, a judicial winding-up order, temporary or permanent closure of establishments used for committing the offence, the confiscation of substances, instrumentalities or property.

The wide majority of Member States do foresee **fines** as a sanction for legal persons. However, GR does not provide for fines at all and CY does not provide fines for drug trafficking, only for precursor trafficking offences and PT conversely does not provide for fines for precursor trafficking, but for drug trafficking offences. More details regarding fines see table 2.4.

As regard to **other sanctions**, the situation in the Member States is as follows:

- **BE** provides for confiscation measures, the decomposition of the entity, the prohibition to carry out an activity that is part of the corporate purpose, the indefinite closure of one or more entities and publication or dissemination of the decision.
- **CZ** provides for sanctions other than fines, but did not specify which ones.
- **EE** foresees the possible compulsory dissolution of legal persons in certain cases.
- **ES** foresees the temporary or permanent disqualification from the pursuit of commercial activities, the closure of establishments used for committing the offence and the exclusion from entitlement to tax relief or other benefits or public aid.
- In **FR** additional penalties are provided for: dissolution, prohibition to exercise one or more activity, placement under judicial supervision, permanent closure or closure of an establishment for a period up to 5 years, disqualification from public tenders, prohibition to make a public appeal for funds, prohibition to draw cheques, confiscation, posting a public notice of the decision or disseminating the decision in the written press or using any form of communication to the public by electronic means.
- **GR** foresees the permanent prohibition of exercising commercial activity as a possible additional penalty.
- **HU** provides for the eliminations of the legal person and the abridgement of business.
- **IE** provides further sanctions such as the winding up of a company and the restriction or disqualification of directors.
- **IT** foresees other sanctions as disqualification, confiscation and the publication of the sentence.
- **LT** provided for the restriction of operation of the legal entity and the liquidation of the legal entity.
- Beside fines **LU** provides for the confiscation of property, the exclusion from participating in public tenders and the dissolution of the legal person.
- In **LV** liquidation, limitation of rights, confiscation of property, monetary levy and compensation for harm are foreseen.
- In the **NL** and **PT** legal persons can be dissolved.
- In **PL** the following additional sanctions may be imposed: forfeiture; ban on promotion or on advertising of conducted business activities; ban on products that are manufactured or sold and ban on services that are provided or benefits that are offered; ban on using grants, subsidies or other

forms of financial support from public aid; ban on using aid of international organisations that the Republic of Poland is a member of; ban on competing for public contracts; ban on carrying a specific core or auxiliary business activity; public announcement of the judgment.

- **RO** foresees complimentary penalties as winding up, the temporary suspension of all or some of activities of the legal person, the temporary closure of establishments used for committing the offence, the exclusion from participation to public acquisitions procedures and the publication of the sentence. In SI the seizure of property and the termination of the legal person and security measures (publishing of judgment, disqualification from pursuit of certain activities) are provided for.
- In **SI** the seizure of property or the termination of the legal person is possible under specific circumstances. Further, the following security measures are possible: publishing of the judgment and disqualification from pursuit of certain activities. In case of a guilty verdict the legal person may be even banned from working.

2.9.3 Summary

Despite most of the Member States introducing provisions on the liability of legal persons during the last few years, there are differences between the models of corporate liability in the Member States' legislations.

In the majority of cases, the rules on the liability of legal persons pre-existed or were not introduced to specifically or exclusively implement the FD (AT, BE, BG, CY, DE, DK, ES, FR, HU, IE, LU, LV, MT, NL, PT, RO, SI, UK).

The majority of Member States have adopted rules imposing criminal liability on legal persons (AT, BE, CY, CZ, DK, EE, ES, FI, FR, HU, IE, LT, LU, LV, MT, NL, PL, PT, RO, SI, SK and UK). The legislation of BG, DE and IT provides for **administrative liability;** GR foresees **administrative and civil liability.** SE foresees a concept of so called **"corporate fines".**

The main sanction is the imposition of fines, which is foreseen in almost all Member States except GR and only partly foreseen in CY and PT. **Further sanctions** include:

- dissolution (EE, FR, GR, HU, IE, LT, LU, LV, NL, PT (if used predominantly for a criminal purpose), RO, SI);
- prohibition to exercise business activities (BE, ES, FR, LT, PL, RO, SI);
- disqualification of directors (IE);
- exclusion from tenders (LU, PL, RO);
- ban on advertising (PL);
- ban from grants/public subsidies (PL);
- confiscation (IE, IT, LU, LV, RO, SK);
- publication of sentence (BE, FR, IT, PL, RO, SI).

2.10 Impact of the Framework Decision on national legislation

In twelve Member States (BE, DE, EE, FR, IE, IT, HU, LU, LV, MT, SI, UK) the FD did not influence the national legislation. **The reason for the missing impact of the Framework in all of these Member States is that the existing provisions were regarded in compliance with the FD; any amendments of national provisions were not seen as necessary.** Most of these States give reason for this that they have implemented all international conventions on drug trafficking and the FD did not go further than these conventions.

In AT, BG, CY, CZ, DK, ES, GR, FI, LT, NL, PL, PT, RO, SE, SK, the FD had only a limited value and had no major impact on the national legislation, since most of the national provisions were already regarded in compliance with the FD. The amendments made due to the FD had only marginal significance in legislation and practice; in BG, CZ, ES, PT and SK the most important change was the establishment of a liability of legal persons, but this was influenced by many other legal acts.

The **most significant amendments** which were made **due to the FD** in the Member States:

- In AT, DK, GR, LT and NL penalties for certain offences were raised to fulfil the requirements of Article 4 FD, they concerned either “soft drugs” or precursors.

- On the other hand in ES and RO the sanctions were reduced in order to respect the principles of proportionality and subsidiarity (recital 4 of the FD).

- Some Member States (CY, RO, SE) introduced new provisions on precursor trafficking or amended their legislation.

- In AT additional actions regarding purchasing, possession, transport and distribution with the intent to bring drugs into sale. Moreover different provisions were established for cases someone uses drugs only for his personal consumption and lower penalties were provided.

- In GR aggravating circumstances of a large quantity and harm to health were established. In AT the commission of such offences in the framework of a criminal organisation was introduced in national drug law.

- After the adoption of the FD AT, BG, CZ, ES, GR, LT, PT, RO, SK a liability of legal persons was introduced (but not only because of this FD, but also due to other international legal acts).

- In several Member States the provisions on extra-territorial jurisdiction (particularly for legal persons) were amended as a consequence of the FD (RO, GR).

Even if the FD had no discernible effect on legislation and prosecutions and convictions**, some experts consider that the added value of the FD is as a reference and standard setter for agreed minimum standards on criminal acts and penalties in drug trafficking, and the identification of a common approach to these minimum standards throughout all Member States.**

Several Member States’ reports see it positive that the FD focuses on more serious forms of illicit drug and precursor trafficking and does not oblige the Member States to establish minimum incriminations regarding consumption and acquisition or possession for personal consumption. It is seen positive that the FD gives the possibility to the Member States to keep their criminal provisions, particularly for street trafficking and personal use.

2.11 Overall compliance of Member States' legislation with Framework Decision 2004/757/JHA

2.11.1 Overview

In table 2.6 it can be seen that in twelve Member States (BE, DE, EE, FR, IE, IT, LU, LV, MT, PT, SI, UK) there were no legislative acts to transpose the FD. 15 Member States changed their legislation, whereupon three of them (BG, CZ, PT) "only" introduced a liability of legal persons, which was not only a consequence of the FD, but an obligation through other legal acts of the EU and other international conventions. Also in most of the other Member States only small amendments were made.

Most of the Member States argued that non-transposition was because national laws were already in compliance with the FD when it came into force. Looking at the actual compliance of Member States' laws with the FD, the picture is a bit more complex. It is interesting that actually only laws of five Member States (DE, ES, FI, GR, LV) are in total compliance with all mandatory provisions of the FD.

Most Member States' laws are in line with the FD, and in most cases there are only small differences between the FD and the Member States' provisions (particularly regarding the definition of drugs and precursors, the definition of crimes, incitement and attempt, the penalties foreseen in Article 4 (1), the liability of legal persons and the territoriality principle). It therefore stands out that concerning aggravating circumstances, only eight Member States (CZ, DE, ES, FI, GR, IT, LV, SK) both provide all aggravating circumstances contained in the FD in their laws, and have penalties in compliance with the FD.

Since in several Member States (BE, BG, DK, FR, HU, LT, MT, PL, PT, SI, UK) the penalties for the basic drug trafficking offences are so high that they also fulfil minimum maximum penalty of the aggravating circumstances, the penalties are in compliance with the FD, but an explicit aggravating circumstance is missing.

The situation is different for precursor trafficking. There are two Member States (FR, MT) which do not have provisions directly transposing the basic offence (whereas in FR there is no criminal provision on precursor trafficking, in MT there is a list of banned substances where certain precursors are contained), there are eight other Member States (AT, CY, DK, EE, IE, PL, RO, SE) which do not foresee provisions for precursor trafficking in the framework of a criminal organisation or do not provide penalties which are in compliance with Article 4 (4) FD. This means that the provisions on precursor trafficking have not been totally transposed by ten Member States.

Regarding the facultative provisions of the FD there is significantly less compliance of national provisions with the FD. The facultative mitigating circumstance provided in Article 5 only has been transposed in ten Member States (BG, EE, ES, FR, HU, IT, LU, LV, MT, RO). This means that in this respect the FD had nearly no impact, since most of the mentioned Member States already had such provisions before the FD. Also the provisions of Article 8 (1) (b) and (c), which the Member States can decide not to apply, were only transposed by 16 Member States; seven Member States informed the Council and the Commission that they do not apply them.

2.11.2 Conclusion

The FD in most Member States had no or no significant impact. In most reports it is emphasised that the **legislation was (nearly) in compliance with the FD, so that a great impact could not be expected**. From most of the reports it can be concluded that there were no greater problems before the FD which could be solved by the FD.

Most problems in prosecution of illicit drug trafficking offences do not occur in substantive law which is subject of the FD, but have procedural or practical reasons (see infra pp. 49 ff).

Problems existing in substantive law (particularly definition of large quantity, distinction of trafficking and personal use/consumption) have not been solved by the FD. Therefore if in national legislation such a problem existed, it still exists after the FD. Insofar most Member States' reports do not see any significant improvements through the FD, since problems, which existed in the national laws, were not solved by the FD.

Table 2.6 Compliance of Member States' legislation with Framework Decision 2004/757/JHA

	Transp.	Def. drugs / precursors		Def. Crimes		Incitement / attempt		Penalties					Mit. Circ.	Legal pers.	Jurisdiction			
	Yes/no	Art. 1 (1)	Art. 1 (2)	Art. 2 (1)(a)-(c)	Art. 2 (1)(d)	Art. 3 (1)	Art. 3 (2)	Art. 4 (1)	Art. 4 (2)(a)	Art. 4 (2)(b)	Art. 4 (3)	Art. 4 (4)	Art. 5	Art. 6	Art. 8 (1)(a)	Art. 8 (1)(b)	Art. 8 (1)(c)	Overall Compl.
AT	Yes	X	X	X	X	X	X	X	X		X			X	X	***	****	
BE	No	X	X	X	X	X	[46]	[47]		X	X	X	X	**	X	X	X	
BG	Yes*	X	X	X	X	X	X	X		X	X	X		**	X	X	X	
CY	Yes	X	X	X	X	X	X	X	X	X	X	[48]		X	X			
CZ	Yes*	X	[49]	X	X	X	X	X	X	X	X	X		**	X	X	X	
DE	No	X	X	X	X	X	X	X	X	X	X	X		X	X	***	****	X
DK	Yes	X	X	X	[50]	X[51]	X[52]	X	X	X				X	X		****	
EE	No	X	X	X	X	X	X	X	X		X		X	**	X	X	****	
ES	Yes*	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
FI	Yes	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X
FR	No	X		X	[53]	X	X	X			X		X	X	X	***	****	
GR	Yes	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
HU	No	X	X	X	X	X	X	X	X		X	X	X	X	X	X	****	
IE	No	X	X	X	X	X	X	X	X	X				X	X			
IT	No	X	X	[54]	[55]	X	X	X	X	X	X	X	X	**	X			
LT	Yes	X	X	X	X	X	X	X	X		X	X		X	X	X	X	
LU	No	X	X	X	X	X	X	X		X	X	X	X	X	X		X	
LV	No	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
MT	No	X	[56]	X	[57]	X	X	X			X		X	X	X	X	X	

[46] There might be cases of drug trafficking which are not crimes where attempt is not punishable.
[47] Only regarding certain offences of cannabis trafficking not in compliance with the FD.
[48] Although Cyprus has a corresponding provision, the foreseen penalty is not in compliance with Article 4 (4) FD.
[49] The exact scope of the term precursor remains unclear, namely whether it covers also medicines containing precursors or not.
[50] There are doubts whether Denmark fully complies with Article 2 (1) (d) FD and / or Article 3 FD as they have to combine their listed activities with the general provisions on criminal attempt and/or participation ofthe Penal Code.
[51] With regard to precursors trafficking doubts remain if Denmark fully complies with Article 3 FD, see also p. 6.
[52] See supra..
[53] France does not criminalize trafficking in precursors at all.
[54] Italian legislation does not include the activity "preparation".
[55] The term "manufacture" is missing.

	Transp.	Def. drugs / precursors		Def. Crimes		Incitement / attempt		Penalties					Mit. Circ.	Legal pers.	Jurisdiction			
	Yes/no	Art. 1 (1)	Art. 1 (2)	Art. 2 (1)(a)-(c)	Art. 2 (1)(d)	Art. 3 (1)	Art. 3 (2)	Art. 4 (1)	Art. 4 (2)(a)	Art. 4 (2)(b)	Art. 4 (3)	Art. 4 (4)	Art. 5	Art. 6	Art. 8 (1)(a)	Art. 8 (1)(b)	Art. 8 (1)(c)	Overall Compl.
NL	Yes	X	X	X	X	X	X	X	X	X	[58]	X		X	X			
PL	Yes	X	X	X[59]	[60]	X	X	X	X		X			X	X	X	X	
PT	Yes*	X	X	X	X	X	[61]	X		X	X	X		X	X		X	
RO	Yes	X	X	X	X	X	[62]	X		X	X		X	X	X	X	X	
SE	Yes	X	X	X	X	X	X	X	X					**	X		****	
SI	No	X	X	X	X	X	X	X			X	X		X	X	X	X	
SK	Yes	X	X	[63]	X	X	X	X	X	X	X	X		**	X	X	X	
UK	No	X	X	X	X	X	X	X	X		X	X		X	X	X	X	
TOT	**15 yes 12 no**	**27**	**24**	**25**	**22**	**27**	**24**	**26**	**19**	**17**	**23**	**17**	**11**	**20**	**27**	**16**	**16**	**5**

[56] In Malta there is no concept of "precursor" chemicals. The law has a long schedule of banned substances on which the chemical appears or not.
[57] The terms “manufacture” and “transport” are missing.
[58] Although The Netherlands has a corresponding provision, the foreseen penalty is not in compliance with Article 4 (3) FD.
[59] Doubts remain whether the activities “extraction” and “production” are properly reflected in Polish law.
[60] Activities “transport” and “distribution” are missing.
[61] In regard to cases of “trafficking of a lesser gravity” (Article 25(b) DL 15/93) and concerning incitement (Article 29 DL 15/93) Portuguese law does not comply with the FD.
[62] The attempt regarding crimes linked to trafficking precursors is not punishable under Romanian law.
[63] Slovak legislation does not include the activities „cultivation“ and „offering“.

Legend:

X These countries foresee a corresponding provision in their national legislation which fully complies with the FD.

* In these countries the law was only amended with regard to the liability of legal persons and the FD 2004/757/JHA was not the only reason

** Liability of legal persons has been established, but not all cases of Article 6 and 7 are covered.

*** These Member States are not in full compliance with **Article 8 (1) (b) FD,** but informed the Commission that they decided to limit / waive their jurisdiction in accordance with Article 8 (2) FD.

**** These Member States are not in full compliance with **Article 8 (1) (c) FD,** but informed the Commission that they decided to limit / waive their jurisdiction in accordance with Article 8 (2) FD.

Explanatory remarks:

This table shows if Member States' legislation is compliant with the FD 2004/757/JHA or not. It shows as well the cases in which Member States are only partly compliant with a provision of the FD and explains what is missing. If there is no "yes or no", "tick", "endnote" or "star" in the box, the Member State does not foresee a corresponding provision at all. Overall compliance in the last column means that the Member State's legislation complies with all mandatory provisions of the FD.

3.0 Application of the legislation transposing the Framework Decision

The following sections examine how the provisions of the FD work in practice and what the legal and practical problems and obstacles encountered in the anti-drug trafficking provisions are.

3.1 Application of the Framework Decision provisions in practice

3.1.1 Overview

The provisions implementing the FD into national laws are applied and used in all countries. There is no Member State's report which says that the provisions of the FD or the provisions transposing the FD are not applicable.

In BE, DE, EE, FR, HU, IE, IT, LV, PT, MT, SI, UK the FD was not transposed by an amendment of national law into the national legislation. Therefore it did not change anything for practitioners who apply the same national laws as before the FD.

In several Member States which have not implemented the FD by specific legal acts and their legislation, since their legislation was regarded in compliance with the provisions of the FD, many practitioners were not aware of the FD and the FD has not been used as a source of interpretation for national law (BE, FR, HU, LV, SI, UK).

Even in the Member States where the FD was implemented, many practitioners have not noticed that the amendments of legislation were caused by the FD and are not conscious that they apply provisions transposing the FD (CZ, BG, NL, PL, SK). In other Member States the FD is known, but practitioners are only interested in national law. The laws transposing the FD are not interpreted according to the FD. In all cases this has the consequence that the FD is not used as a source of interpretation for national law.

However, practitioners say that the provisions which serve as transposition of the FD are applied in practice. There are no significant problems with the application of these provisions by the public prosecution services and courts.

3.1.2 Specific problems

In Member States where the FD has not been transposed by implementation acts (e.g. since national provisions were regarded in conformity with the FD), there have been no problems with the application of the provisions which are seen as in compliance with FD and therefore are implementing the FD (BE, CY, DK, ES, LU, PT, SE, SI, SK). Also Member States which transposed the FD into national laws do not see a lot of problems with these legal provisions.

In general, no problems could be identified which are directly caused by the FD. In a few Member States there are some problems which are linked to provisions of the FD. They can be divided into those which are primarily of legal nature and those which are of merely practical nature.

Legal problems:

- **Large quantity as referred to in Article 4 (2) (a) FD and value of drugs:**

Member States transposed this issue in different ways or already had different provisions in their legislation. In several States problems have been identified how this term can be interpreted and applied in national legislation (AT, BG, CZ, EE, LT). There are countries which do not only provide one term of "large quantity", but additionally terms of "particularly large quantity" and "very large quantity" (AT, BG – in BG not as aggravating circumstance, but only as factor influencing sentencing). The problem is to find criteria for such a determination. In some countries the purity, in other the weight (CY, DK, GR, LV, NL) or a combination of both are relevant (see AT, DE [quantity of the active ingredient], EE [sufficient to intoxicate at least ten people], ES, FI [including the dangerousness of drugs], IT, LT, SE [in principle weight, sometimes purity], UK), other Member States refer to the value of drugs (BG, IE, SK [price of a single dose for a habitual user on the black market x number of trafficked doses]). But also the estimation of the value of drugs causes problems and makes it difficult to subsume acts under certain criminal definitions of crime (SK). Practitioners miss a mechanism of calculating the value of drugs in prosecuting drugs related crimes. The problem of the value of drugs not only causes problems with the objective determination, but also with regard to mens rea (IE, where a new law resolved this problem).

- **Penalties:**

In ES the penalties provided in the FD is seen as problematic by practitioners. Due to very narrow ranges of penalties, the ranges often are very severe. Practitioners see the necessity to impose lower penalties than the ones foreseen in the FD, making use of the proportionality principle. Also in LT practitioners regard the bottom limits of the penalties as too high. This makes it difficult to take into account all relevant circumstances when determining the concrete penalty.

- **Attempt:**

In FI the attempt to cultivate and the attempt to abet a drug offence were criminalized due to the FD. On the one hand this is seen positive, since before this it was necessary to argue the amount of dried plants actually produced, which now is not necessary. However, practitioners find it problematic to prove attempt in comparison to fully completed criminal acts.

- **New chemical drugs and precursors:**

Criminal organisations are permanently developing new drugs and precursors (particularly synthetic drugs), but legislation is developing more slowly and lists of illegal substances are not up-dated in time. In some cases this is why trafficking in new substances cannot be prosecuted or makes it difficult to fight effectively against drug trafficking (BE, CZ, LV, NL, PT).

- **Definition of "precursors":**

Differences in the interpretation of the definition of "precursor" exist. In particular, there are doubts whether medicines containing pseudoephedrine can be considered as "precursors" or not (CZ). In LV "Precursor" is seen as a very broad term and in practice there are problems to determine whether a certain substance is a precursor or not.

- **Definition between trafficking and consumption:**

In CY, GR, HU, PT, RO the distinction between trafficking and consumption is seen as problem. Although this is a problem of national laws, it is connected with the FD, since the FD in Art 2 (2) refers to national laws regarding personal consumption, which is per se not covered by the FD. In national laws this distinction is important for the question whether the possession of drugs is not punishable or lower penalties are provided. In CY the definition of limits on quantities for personal use has caused some problems. In RO such limits of quantity are missing and this is seen as problem. In PT this is an essential question, since the pure possession for consumption is no criminal offence.

- **Definition of offences:**

In FR it makes problems (e.g. for jurors) to distinct between transport, retention, offer, sale and acquisition of drugs.

Practical problems:

- **Criminal organisations**

Criminal proceedings on illicit drug trafficking are usually conducted against persons who directly participated in illicit drug trafficking as transporters, but it is difficult to find and prosecute the leaders of these organisations. This has the consequence that these organisations continue to work (LT, NL). In other Member States it is also regarded as difficult to ascertain and then prove that the offense was committed within a criminal organisation (AT, FI).

- **Confiscation**

Practical problems are identified in some Member States concerning confiscation. On the one hand, there are problems with searching and identifying the assets of drug trafficking offences for the purpose of confiscation. That means that assets cannot be confiscated (LT, LU).

- **Evidence gathering**

In several Member States there are practical and procedural problems linked with evidence gathering (BG, FI, HU, RO). It is quite easy to get evidence on drug use, but it is difficult to get evidence on drug trafficking and find the traffickers of drugs. Therefore law enforcement authorities use special investigation techniques like undercover agents and principal witnesses (RO). Defence lawyers criticize this technique, since these witnesses cannot always be heard in the trial (RO; similar problems also in AT).

- **Problems of trans-border drug trafficking and cooperation:**

Some Member States mention the trans-border dimension of drug trafficking offences as a main problem in prosecution.

Several Member States' reports (BE, SI, UK) mention the problem of gathering evidence in cases where suspects reside outside the Member State jurisdiction or evidence from other countries is required before prosecution can proceed. In such cases it is difficult to get evidence and legal assistance form other Member States (UK, SI). Moreover there are problems with the admissibility of evidence in the case it is received from another Member State. This is primarily a problem where there are strict exclusionary rules (SI).

There are also problems in investigating the crime, namely those related to the efficiency of police work which at times is affected by a lack of staff, tools and equipment (AT, DE).

3.1.3 Conclusion

Since the FD in most Member States has not lead to important amendments of national legislation, in 12 Member States it had no consequences in national law. As a consequence, practitioner experiences of the provisions of the FD are rare. This confirms the impression that the FD did not have a significant impact on the practice in prosecution of drug trafficking offences. Practitioners apply national laws, but mostly only learn about EU law if this leads to fundamental changes in national laws.

The problems mentioned by national practitioners are not problems which were caused by the FD, but which had already existed before the establishment of the FD. **The FD did not cause new problems, but neither could it solve the existing problems.**

Most practitioners are not really aware of the existence of the FD. This is no wonder in Member States where the law has not been amended to implement the FD. And also in States where the amendments were little, the FD was not really recognized by practitioners who apply the national law. Of course, this lack of awareness of the FD can cause a problem with the duty to interpret the national law in accordance with the FD[64], which is only possible, if national practitioners are aware of the EU legal act which is implemented by national legislation.

There are no problems which were caused by the establishment and transposition of the FD into the Member States' legislation. All problems identified by the national correspondents are problems which existed in some way before. Since the problems still exist, it can be concluded that the FD could not solve these problems. The reason is that on the one hand many problems do not lie in the substantive provisions, but in procedural law (particularly gathering of evidence) and in the work of law enforcement authorities (investigation and prosecution of drug offences is very expensive, exchange of evidence between Member States). On the other hand, concerning problems in substantive law the FD in some areas refers to national solutions as e.g. regarding the distinction between personal consumption and trafficking or when it is a large quantity. The reason for the latter is that the FD is a compromise between the Member States and it is therefore a characteristic of the FD to give Member States areas where they have the freedom to decide themselves how to implement it.

The term "large quantity" is not clearly defined. For that reason it must be interpreted either by national legislators or the national courts. Several Member States identify problems in the interpretation of this term. The different definitions of "large quantity" in the Member States can cause differences in prosecution and sentencing, since the higher penalties are applied for different quantities of drugs.

Practitioners in AT, BG, BE, CY, CZ, DE, DK, EE, ES, FI, HU, IE, IT, LT, LU, LT, LV, MT, PL, PT, SE, SI, SK, UK do not see any improvements in investigations, prosecution and convictions for illicit drug trafficking cases due to the FD. They neither see a negative effect of the FD. Most of them see no changes in application of narcotic offence legislation. The main reasons are seen in the circumstance that the main problems regarding drug trafficking are of practical nature and that most national laws were to a large extent in compliance with the FD (AT, BE, BG, CZ, DE, EE, ES, HU, IE, IT, LU, MT, PL, PT, SI, UK). (No comment on that: FR)

A positive effect of the FD is seen in RO and GR, where the FD motivated the national authorities to fight against drug trafficking on a European level. This is also indicated by an increase of the number of investigations, prosecutions and convictions in comparison before 2004. Some Member States' reports mention the establishment of a liability of legal persons which was introduced after establishing the FD. But all States mention that the FD was not the only reason for the introduction, and in most Member States already existed at the time of the establishment of the FD.

[64] See ECJ 16 June 2005, Case C-105/03 (Pupino).

3.2 Interpretation of the Framework Decision by courts

In most Member States the interpretation of the provisions of the FD did not cause a problem, since in most States the courts did not recognize the transposition of the FD or the FD did not change the interpretation of the existing laws (BE, CZ, DE, DK, EE, FI, FR, IE, IT, LU, LV, MT, NL, PL, PT, RO, SI, UK).

Most problems which were indicated by national practitioners were not caused by the FD, but already existed when the FD came into force. However, the FD did not solve these problems.

In only a few countries there were some interpretation problems which were not only caused by the FD, but which are relevant for the application of the FD):

Aggravating circumstances:

- Quantity of drugs:
  - ► In several Member States the courts had to define what is a "large quantity" of drugs and had to search concepts when a large quantity is reached and exceeded and higher penalties are to be applied (AT, EE, HU,). In the mentioned Member States this was not a problem caused only by the FD, but already existed before. The problems have been partially solved in national law by the national (Supreme) courts.

  - ► The Swedish Supreme Court specified both quantity and harmfulness as aggravating circumstances and emphasized that also other circumstances must be given due consideration. This has the effect that also the circumstance that an offence is committed in the framework of a criminal organization is seen as aggravating factor which enables higher sanctions, although there is no explicit provision.

- Definition of offences:
  - ► Courts have an important role in the interpretation of offences established in the FD. Since not all Member States transposed all activities listed in the FD, it depends on the interpretation of the courts to include all of them. This problem is explicitly mentioned by SE, where the Report from the Commission from 2009 stated that the Swedish legislation lists only parts of the definition of offences in the FD. The Swedish report explains that the Swedish provisions are so broad and the interpretation is so wide that all activities fall within the scope of the Swedish provisions.

Criminal activities: Regarding the term "cultivation" of cannabis plants, in BE it was unclear whether owning a plant without harvesting its leaves was indeed "cultivation". This issue is now solved through case law of the Court of Cassation. This court decided that the ownership of plants in itself was an offence.

Personal use: In the jurisprudence of some Member States the distinction between personal consumption and trafficking is a subject of interpretation: In AT the term "personal use" of drugs (Article 2 (2)) is interpreted in a way that not only the "real" personal use of the drug by the offender falls under this term, but also if someone gives to another one drugs for his/her personal use, if the person offers it without taking money for it. In GR the law sets a quantitative limit above which the drugs are not merely for own use. Also PL, PT and RO mention problems with the differentiation between possession/personal use and trafficking.

3.3 Procedural data

The following table 3.1 shows statistical data from Member States concerning drug trafficking offences, as far as they are available. It must be emphasised that this data is difficult to compare, since the criteria when a case is registered in a Member State is quite different. Even the data within one and the same Member State is difficult to compare, since the way of counting differs (e.g. on the one hand cases (= criminal acts) and on the other hand suspects are counted). Moreover there are Member States where only one offence is counted, even if the offender has committed more offences (e.g. theft and a drug trafficking offence). To compare these data therefore would not be serious. In several Member States data is not available.

There are not big fluctuations in the figures of the Member States. If there are fluctuations, this primarily is an indication on how intensive police investigated in drug offences. Since drug trafficking is an offence where the number of cases predominantly depends on the activity of the police, such data very much depends on the work of law enforcement authorities.

Where data is available for a period of 5 years, there are no clear trends that police reports or convictions for the illicit trafficking of drugs are increasing or declining significantly. It does not appear, from this data alone, that the transposition and application of the FD had a marked effect.

In twelve Member States (BE, BG, CZ, FR, IE, LV, PL, RO, SK, ES, SE, UK) there is a trend that the number of drug offences increased between 2005 and 2010, in AT it declined. In three Member States (EE, DE, NL) no clear trend is visible, the figures fluctuated. In four Member States the number of police reports increased, whereas the number of convictions decreased (FI) or remained constant (IT, PT, SI). In HU the number of police reports decreased, whereas the number of convictions increased (and the number of diversionary measures declined). It seems to be clear that these developments are primarily caused by the practice of national law enforcement authorities (perhaps also by different developments of the drug trafficking situation in the Member States), but not by the implementation of the FD.

Table 3.7 Profile of cases per Member State

MS	Year	Reports to police	Cases prosecuted	Cases indicted	Convictions[65]	Diversion[66]
AT (all drug related offences)	2005 2006 2007 2008 2009 2010	25.041 [67] 24.008 24.166 20.043 22.729 23.853	*No data available*	*No data available*	6.128 [68] 5.795 5.437 4.291 3.928 4.363	452 [69] 507 540 638 624 733
BE (all drug related offences)	2005 2006 2007 2008 2009 2010	39.482 [70] 40.421 44.549 46.173 47.726 41.485 (cases)	*No data available*	35.093 [71] 33.874 39.058 40.843 40.659 37.835 (persons)	*No data available*	*No data available*
BG [72] (drug trafficking offences only)	2005 2006 2007 2008 2009 2010	*No data available*	- - 3.438 2.999 3.671 3.686 (offences where pretrial prosecution was initiated)	- - 2.142 1.926 2.227 2.409 (persons referred to court)	 1.463 1.576 1.816 2.108 (persons convicted)	*No data available*
CY		*No data available*	*No data available*	*No data available*	*No data available*	*No data available*
CZ [73] (drug trafficking + precursors related offences)	2005 2006 2007 2008 2009 2010	*No data available*	- - - 1.660+236 [74] 1.970+207 -	- - - 1.534+224 1.820+195 -	- - - 1.125+72 1.134+79 -	*No data available*
DK [75] (all drug related offences)	2005 2006 2007 2008 2009 2010	- - - - 16.670 -	*No data available*	*No data available*	- - - - 11.014 -	- - - - 478 - (conditional non-prosecution)
EE [76]	2005	1.081				*No data*

[65] Under convictions the number of convictions which have the force of res iudicata is understood.

[66] Diversionary measures like therapy instead of penalty, community service or conditional non-prosecution.

[67] *Ministry of Interior Affairs, Federal Bureau of Criminal Investigation, Unit 3.5* (ed.), Annual Report about criminality regarding to addictive drugs in Austria 2005 – 2010; *Austrian National Institute for Public Health System*, Report drug situation 2010.

[68] *Ministry of Justice*, Sicherheitsbericht 2009; *Statistik Austria*, Kriminalstatistik 2005 – 2010; *Austrian National Institute for Public Health System*, Report drug situation 2010, 154 chart A 13.

[69] *Ministry of Justice*, Sicherheitsbericht 2009; *Statistik Austria*, Kriminalstatistik 2005 – 2010; *Austrian National Institute for Public Health System*, Report drug situation 2010, 154 chart A 13.

[70] Veiligheid en Criminaliteit, Beleidsgegevens 2000 - 2011 Trimester 1, http://www.polfed-fedpol.be/crim/crim_statistieken/stat_2011_trim1_nl.php.

[71] Jaarstatistiek College van Procureur-Generaals, available at: http://www.om-mp.be/sa/jstat2010/n/home.html.

[72] The data is based on Activities report of the Prosecution for 2010. www.prb.bg. More detailed statistics data is available in the National report to the EMCDDA for Bulgaria: 2010, page 77 - 89, which can be found on the webpage of EMCDDA.

[73] Yearbook of the Ministry of Justice.

[74] The first figures is the number of drug trafficking cases, the second the number of offences related to precursor trafficking.

[75] *Kriminalitet 2009*, p. 13-30.

MS	Year	Reports to police	Cases prosecuted	Cases indicted	Convictions[65]	Diversion[66]
(drug trafficking offences)	2006 2007 2008 2009 2010	893 1.345 1.444 942 837	720 795 1.110 930 899	709 836 1.105 838 800	 436 562 419 485	*available*, mostly applied on small amount drug trafficking offences
FI (all drug related offences)	2005 2006 2007 2008 2009 2010	14.425 [77] 13.317 15.448 15.482 18.524 19.724	3.534 [78] 3.162 3.099 3.318 3.463 4.045	*No data available*	3.359 [79] 3.103 2.897 2.909 3.326 -	*No data available*
FR [80] (all drug related offences)	2005 2006 2007 2008 2009 2010	*No data available*	*No data available*	*No data available*	36.624 35.523 38.055 42.469 46.603 -	*No data available*
DE [81] (all drug related offences)	2005 2006 2007 2008 2009 2010	*No data available*	58.630 58.892 64.237 68.519 67.025 62.404 (no difference between prosecution and incitement)	58.630 58.892 64.237 68.519 67.025 62.404	51.472 52.165 57.116 61.256 59.432 55.391	*No data available*
GR [82]	2005 2006 2007 2008 2009 2010	 13588 pers.	*No other relevant data available*			
HU [83] All drug related offences	2005 2006 2007 2008 2009 2010	7.626 6.740 4.676 5.464 4.828 5.789	7.041 5.676 3.854 4.623 4.323 5.209	2.007 1.963 1.594 1.868 1.552 1.910	1.977 2.386 2.343 2.318 2.200 2.287	4.412 3.362 1.521 1.614 1.591 1.844

[76] Data from: Ministry of Justice. Criminality in Estonia – 2010 (in Estonian language). Available: http://www.just.ee/orb.aw/class=file/action=preview/id=54700/KuritegevusEestis2010_web.pdf.

Remark: The data of reported crimes may be lower than number of prosecutions and number of prosecutions lower than number of indictments because procedure takes time and the cases reported in previous year quite often get prosecuted in next year and cases prosecuted in previous year get indicted next year.

[77] Statistics Finland.

[78] Statistics provided by the State Prosecutor Metsäpelto.

[79] Statistics Finland, also see Kainulainen, 2010, p. 392.

[80] *Annuaire statistique de la justice, années 2005, 2006,2007,2008 et 2009" – "Statistical Yearbook of justice, years 2005, 2006,2007,2008 and 2009"- available on the website* http://www.justice.gouv.fr).

[81] Federal Statistical Office, Fachserie 10 Reihe 3 2005 - 2010, p. 48 ff.

[82] Data from the Ministry of Justice, Transparency and Human Rights, and the Central anti-drug coordinative unit-national intelligence unit in the Ministry of Citizen Protection.

[83] Uniform Police and Prosecution Criminal Statistics (ENYÜB), Remark: The higher number of convictions than indictment is explained by the fact that convictions refers to the number of perpetrators whereas indictments refers to the number of cases.

MS	Year	Reports to police	Cases prosecuted	Cases indicted	Convictions[65]	Diversion[66]
IE [84] (all drug related offences)	2005 2006 2007 2008 2009 2010	13.322 14.233 18.554 23.405 21.983 -	8.295 8.961 11.723 14.374 13.498 -	*No data available*	4.229 4.504 5.468 5.255 4.805 -	*No data available*
IT (all drug related offences)	2005 2006 2007 2008 2009 2010	*No data available*	31.249 [85] 32.807 35.238 35.097 36.277 39.053 (reports from police to judicial authority)	*No data available*	22.318 [86] 22.903 24.852 26.436 22.412 10.722 (2010 provisional)	No diversionary measures applied in cases of drug trafficking due to the principle of mandatory prosecution
LV [87] (drug trafficking offences only)	2005 2006 2007 2008 2009 2010	1.057 1.021 1.470 2.446 2.321 2.189	516 355 693 1.188 - 1.223	*No data available*	115* 159* 116* 163* 196* 170	*No data available*
LT [88]	2005 2006 2007 2008 2009 2010		No other relevant data available	820 964 1.215	937 1.186 1.402	
LU [89]	2005 2006 2007 2008 2009 2010	1.201 2.574 (police force, activity)	*No other statistical data available*			
MT		*No data available*	*No data available*	*No data available*	*No data available*	*No data available*
NL [90] (drug trafficking offences)	2005 2006 2007 2008 2009 2010	19.385 20.000 19.465 18.670 18.715 21.175		8.845 9.490 8.505 8.495 8.110 7.105	8.460 8.885 7.900 7.825 7.435 6.475	

[84] Central Statistics Office http://www.cso.ie/px/pxeirestat/Statire/SelectVarVal/Define.asp?maintable=cja02.

[85] "Relazione annuale al Parlamento 2005 - 2011, sull'uso di sostanze stupefacenti e sulle tossicodipendenze in Italia", available at http://www.politicheantidroga.it/progetti-e-ricerca/relazioni-al-parlamento/relazione-annuale-2011/presentazione.aspx, p. 312.

[86] "Stato delle tossicodipendenze ai sensi del Decreto del Presidente della Repubblica 9 ottobre 1990, n. 309 - Dati nazionali - Anno 2007 - 2010", available at http://www.giustizia.it/giustizia/it/mg_1_14_1.wp;jsessionid=AEF7A6CB5C62802F5B8E23B657078DEF.ajpAL02?facetNode_1=0_10&facetNode_2=3_1_4&previsiousPage=mg_1_14&contentId=SST650483.

[87] Data from the Information Centre of the Ministry of the Interior and the Ministry of Justice.

[88] Unofficial statistical information collected by the Office of the Prosecutor General, the data about the Articles 259, 260 and 261 of the CC in the periods of 2008.01.01-2008.12.31; 2009.01.01.-2009.12.31 and 2010.01.01 – 2010.12.31.

[89] Police Force of Luxembourg ("*Police Grand-Ducale*"), Activity Report 2010, p.14.

[90] Centraal Bureau voor de Statistiek, Den Haag/Heerlen 26-10-2011 (table generated by the rapporteurs from statistical data available at www.cbs.nl).

MS	Year	Reports to police	Cases prosecuted	Cases indicted	Convictions[65]	Diversion[66]
		(all drug related offences)		(only drug trafficking offences)	(only drug trafficking offences)	
PL	2005 2006 2007 2008 2009 2010		18.194[91] 20.772 19.056 19.340 20.260 20.832		18.345 [92]	
PT [93] (all drug related offences)	2005 2006 2007 2008 2009 2010	5.565 5.425 5.202 5.424 6.348	2.243 2.338 2.499 2.305 2.000 - (no difference between prosecution and indictment)	2.243 2.338 2.499 2.305 2.000 -	1.625 1.731 1.896 1.813 1.684 -	No data available on the criminal offences relevant here
RO [94] (all drug related offences)	2005 2006 2007 2008 2009 2010	2.305 2.396 2.749 3.727	1.344 1.076 2.960 2.575 2.906 3.360	712 613 749 891 676 1.099	632 574 521 454 676 -	Only applicable to consumption offences
SK (drug trafficking offences only; * all drug related offences)	2005 2006 2007 2008 2009 2010	830 *[95] 296 355 415 478 454	833 *[96] 266 414 469 560 532	625* [97] 332 319 309 353 335	375 [98] 300 319 372 433 490	*No data available*
SI [99] (drug trafficking offences)	2005 2006 2007 2008 2009 2010	707 849 795 935 1.035	611 709 667 826 901	415 509 450 572 674	348 335 324 335 366	No diversionary measures applied (sentences are too high)

[91] Data made available by the Police.

[92] Statistical data obtained from the Ministry of Justice, on file with the Author.
Some data is also available in 2010 Report of European Monitoring Centre for Drugs and Drug Addiction, see http://www.emcdda.europa.eu/attachements.cfm/att_142526_EN_PL-NR2010.pdf.

[93] Instituto da Droga e da Toxicodependência – 2010 National Report (2009 data) to the EMCDDA, by the Reitox National Focal Point. Portugal: New Development, Trends and in-depth information on selected issues, cit., p. 111.

[94] Data for 2005 – 2009 from Agenția Națională Antidrog, *Raportul Național privind situația drogurilor în România, 2006 – 2010; Data for 2010 from* Ministerul Public, Parchetul de pe lângă Înalta Curte de Casație şi Justiție, Direcția de Investigare a Infracțiunilor de Criminalitate Organizată şi Terorism, *Raport de activitate 2010*, p. 23-24.
Remark: There are more indictments than reports to the police in 2007 because of pending police work from the year before.

[95] Data obtained from the Presidium of the Police Force, Remark: The number of prosecutions can be higher than the number of cases reported to the police because prosecution refers to perpetrators and reports to the police refer to cases and there can be more than one person involved in a case.

[96] Data obtained from the General Prosecutor's Office.

[97] Data obtained from the General Prosecutor's Office.

[98] Data obtained from the Ministry of Justice, Remark: The number of convictions in a year can be lower than the number of prosecutions. The reason is the time that proceedings last, for example a person convicted in 2010 might already have been charged in 2008.

[99] Statistical Office of the Republic of Slovenia, http://pxweb.stat.si/pxweb/Database/Demographics/Demographics.asp (25. 10. 2011).

MS	Year	Reports to police	Cases prosecuted	Cases indicted	Convictions[65]	Diversion[66]
ES [100] **(all drug related offences)**	2005 2006 2007 2008 2009 2010	*No data available*	*No data available*	*No data available*	 11.320 11.713 12.575 12.492	*No data available*
SE	2005 2006 2007 2008 2009 2010	25.917 [101] 30.322 30.405 33.226 34.161 38.304			8.161[102] 8.222 - - 9.501 -	
UK [103] **(all drug related offences)** (England and Wales only)	2005 2006 2007 2008 2009 2010	178.479 194.233 229.913 243.536 235.596 -	- - - 56.953 61.639 -	*No data available*	- - - 40.079 47.637 -	*No data available*

3.4 Penalties

3.4.1 Imposed imprisonment penalties

Some difficulties were experienced in securing data on sanctioning practice. In most Member States there are no statistics on imposed penalties linked with certain criminal offences. If data exists it cannot robustly be compared, since the categories used are very different. Since there is nearly no statistical data (official statistics are only available in DE, DK, FI, HU, LT, LV, PL, RO, SI), the following information is mostly based on estimations or practitioners. Most interviewees say that it is difficult, and purely speculative to attempt to give concrete information on imposed sanctions. The reason for this is that the determination of a penalty is a specific process in every single case and it is difficult to treat one case as the other. There are many factors which influence sentencing. These are not just the aggravating and mitigating factors already mentioned, but also whether the offender is a first offender or a recidivist, the age of the offender and his/her behaviour in general. Moreover there are significant differences and quite high heterogeneities in sentencing practice in one and the same Member State. However, in a short term study like this, it is difficult to determine hard figures on that, since this would require that in every Member State a certain number of representative cases would be investigated. Therefore the following remarks and the table can only give ideas of sentencing practice in single Member States.

It seems that in most Member States, all available sanctions are applied. But there are differences between the Member States: In some Member States mostly unconditional imprisonment is imposed (e.g. EE) or conditional suspension is excluded (RO) or minimum penalties exist (e.g. GR), in others suspended sentences (e.g. PT, SI) are very common (PT: 50 %, SI: 70%). In several countries fines are also imposed as well as the imprisonment sentence, but in other countries fines are the only sanction imposed (particularly for consumption). Confiscation also seems to be quite common. Beside classical penalties, diversionary measures are applied in some states, e.g. referral to therapy (AT), community

[100] Instituto Nacional de Estadística, Tables in the national report have been provided by Dr. *Giménez-Salinas Framis*.
[101] Based on *Kriminalstatistik* 2005–2010.
[102] Based on Table 2 of *Narkotikastatistik 2009*. No data are available for 2007 and 2008 as statistics are published every third year from 2007 onwards.
[103] Chaplin, R., Flatley, J., and Smith, K. (eds. 2011) *Crime in England and Wales 2010/11: Findings from theBritish Crime Survey and Police Recorded Crime (2nd edition).* London: Home Office.

service. The data that was collected on penalties is presented in Table 3.2 below. For financial penalties see Table 2.4.

Table 3.8 Penalties by Member State

MS	Imposed penalties	Level of sanctions
AT	Imprisonment in almost all cases; forfeiture Outside criminal law: Possibility to lose the driving license, the passport, the permission to carry weapons and the permission to run a business.	Prison sentence up from max. penalty of one year up to life imprisonment sentences, if the convicted person is a leading figure in a criminal organization and deals with high quantities of drugs. Very rigid sentencing practice.
BE	Imprisonment (conditional or unconditional), community service, financial sanctions, specific sanctions like publication of judgment, temporary or indefinite disqualifications	Average sentences (Antwerp): • Selling of drugs: 1 year imprisonment; • Trafficking of cocaine: 4 years imprisonment, if committed within the framework of a criminal organisation: 10 years • Levels of sanctions vary very much between the different districts.
BG	Imprisonment, fines, confiscation of vehicles and other means served for transportation of the drugs	Cour de Cassation (examples): International drug trafficking cases: • penalties of deprivation of liberty for the term of 13 years, together with a fine of 100 000 BGN and confiscation of the vehicle for trafficking of 38 kg of heroin • penalties of deprivation of liberty for the term of 5 years and confiscation of the vehicle for trafficking of 24 kg of heroin 'Internal drug trafficking': • imprisonment for 2 years, respectively 3 years and a fine of 5000, respectively 7 000 BGN to two persons accused for possession of 2,14 gram heroin • imprisonment for 2 years and a fine of 5 000 BGN for possession of 1276 g heroin, 14 g hashish, 9 g amphetamine; • - imprisonment for 4 years and 11 months and fine of 80 000 BGN for possession of 1200 g heroin
CY	Imprisonment, confiscation	No data available. Authorities are very strict with regard to drug related offences: Possession of class A und B: life imprisonment, class C: 8 years
CZ	imprisonment, confiscation/forfeiture, fines, ban of professional activity (e.g. pharmacists), deportation (regarding foreign citizens)	drug-related offences are treated "more strictly" than other offences with the same range of potential imprisonment; frequently, **sanction in the upper half of the potential imprisonment scale** are imposed
DE	Imprisonment sentences, fines, confiscation	Imprisonment sentences in 2010: Cultivation, fabrication, trafficking, importing, exporting: 6-9 mths.: 199; 9 mths-1 yr: 127; 1-2 yrs: 180, 2-3 yrs: 45; 3-5 yrs: 38; 5-10 yrs:12; 10-15 yrs: 3 Possession, trafficking of substantial amount: 6-9 mths: 294; 9 mths-1yr: 549; 1-2 yrs: 2855; 2-3 yrs: 823; 3-5 yrs: 599; 5-10 yrs: 142; 10-15 yrs: 7 *More details see national report, pp. 19, 20*
DK	Imprisonment, fines	Sales/smuggling: 372/118 were unconditional imprisonment sentences, 51/6 were conditional sentences/probation, 1/0 was a fine, 3/2 were conditional non prosecution, and 16/3 were other types of sanctions. In 159/37 cases, defendants were acquitted.

MS	Imposed penalties	Level of sanctions
		The unconditional imprisonment sentences amounted to a number of 96/18 up to 6 months, 107/24 up to 1 year, 84/13 up to 2 years, 72/32 up to 5 years, 22/20 up to 8 years, 1/9 up to 12 years, and 0/2 over 12 years.
EE	Imprisonment, fines, confiscation	Mostly **unconditional imprisonment** is applied, quite often in the range of **5 – 10 years** of imprisonment **Small quantities:** minimum penalty is pecuniary punishment, maximum 3 years imprisonment. **Large quantities:** minimum penalty is 1 year imprisonment. **Criminal organisation or for the purpose of large proprietary gain** (more than 27 802 Euros): up to life imprisonment.
ES	Imprisonment, fines	The *applied* sanctions **correspond to the very detailed legal regulation** –and there is in addition, due to the legal sentencing provisions, **very small space for differences between different courts** because of the Spanish sentencing system, which is strictly bound to specific and general legal provisions on sentencing.
FI	Sanctions imposed in 2009 (all drug offences): Imprisonment (633), Conditional imprisonment (581), Fines (2079), Waivers of punishment (33)	Average level of sanctions in narcotic offence cases 2009: imprisonment 4,4 months; conditional imprisonment: 4,1 months; Average level of sanctions in aggravated narcotic offence cases 2009: imprisonment: 41,7 months, conditional imprisonment: 15,8 months
FR	Imprisonment sentences, fines, confiscation	Sentence depends on the hierarchical level of involvement in drug trafficking
GR	Imprisonment, fines, confiscation	For drug trafficking: at least **10 years** of **imprisonment** and a fine of up to EUR 290,000 (Article 20). Article 21: if accused is an employee whose work entails dealing with drugs or if the trafficking of drugs is also enabling the commitment of other crimes → penalty of at least **15 years**.
HU	Besides **i**mprisonment it is frequent that fine is executed. Besides that confiscation is being carried out very frequently. Sub-penalties: on the basis of the Criminal Code depending on the heaviness of an action and considering the personality of the criminal.	Imprisonment for crime of misuse of narcotic drugs in 2010: 6 mths or less: 19, suspended 116 6 mths – 1 year. 37, suspended 166 1-2 yrs: 61, suspended 128 2-3 yrs: 43 3-5 yrs: 79 5-8 yrs: 48 8-10 yrs: 1 *More details see in national report, p. 18.*
IE	Imprisonment, confiscation	**Possession for sale or supply of more than € 13,000 of drugs:** estimation that this charge has carried an **average sentence of 6/7 years** imprisonment. One **data base** which recorded a random sample of these cases in the years 2007 to 2010 period recorded an average sentence of **8.68 years.** However this data, comprising 45 cases, **included** three **exceptional sentences** which were 25/30 years, which if excluded would render the average sentence at 7.4 years, which is consistent with the estimate of interlocutors interviewed.
IT	**imprisonment** and **financial penalties** In relation to the facts of "minor entity" committed by a drug addicted person, the Judge can apply the sanction of **community service.**	With reference to the **main crimes l**inked to trafficking in drugs, the range of the sentence of imprisonment is **from six to twenty years;** the range of the fine is from **€ 26.000 to € 260.000.**

MS	Imposed penalties	Level of sanctions
	Specific **additional penalties** as prohibition of expatriation and the withdrawal of driving license for a period not exceeding three years The main **administrative sanctions** applied by the Prefect are: suspension of the driving license or of the firearms license, suspension of passport, the withdrawal of residence permits given to foreigners for tourist purposes; the person concerned are also systematically invited to attend drug rehabilitation programs. *No precise statistics on sentences available*	
LT	Penalties imposed in 2009 in illicit drug trafficking cases: imprisonment: 475, fines: 446, arrest: 189, liberty restriction: 95, community service: 23 **Diversionary measures:** rarely imposed (mostly for juvenile offenders): 2008: 13 persons (7 of them were juveniles), 2009: 27 persons (20 of them were juveniles)	Average of imposed imprisonment penalties for crimes related to possession of narcotics or psychotropic substances: 2010: 5 years 11 months 2009: 6 years 2008: 5 years 2 months 2006: 4 years 8 months *Data from Ministry of Justice, details national report pp. 17 ff.*
LU	imprisonment; in cases of first offenders: instruments of parole are generally applied; in case of recidivists: they have to serve their sentence; in cases of minors as perpetrators (Article 22 CC): sentence can be replaced by work, which is accomplished in the general interest	*No data available.*
LV	Imprisonment, limitation of rights, fines, confiscation	Penalties for drug trafficking within the framework of a criminal organisation 2010: Up to 1 year: 30 1-3 years: 73 3-5 years: 61 Fine: 1 *More details see Annex 2 of the national report.*
MT	Imprisonment, fines, either solely or together with imprisonment probation orders, confiscation	Average penalty for serious drug trafficking: 10-15 years (with or without a financial penalty)
NL	no exact information	Depends rather on role of the suspect in the criminal organisation than on the amount of drugs.
PL	Penalties imposed by Polish courts **vary**. According to an interviewed Judge from District Court in Kraków, the most frequently used penalty is **deprivation of liberty;** however in over 50 % of cases the execution of the sentence is **suspended. Fiscal penalties** are often imposed too.	Penalties for all drug offences in 2010: 1 mth: 94, suspended: 56 2-5 mths: 2633, suspended: 2395 6 mths-1 yr: 7094, suspended: 6496 1-2 yrs: 2717, suspended: 2122 2-5 yrs: 358, suspended: 100 5-8 yrs: 18
PT	For 2004-2009:	Difficult to define the average sanction, disparities between the

MS	Imposed penalties	Level of sanctions
	Suspended imprisonment: 50%. Actual imprisonment: 29%. Fine (autonomously, not cumulatively with other penalties): offenders convicted for consumption.	rural and urban regions. Estimation: 4-5 years imprisonment for drug trafficking, sometimes suspended
RO	Imprisonment, fines, confiscation	**Previously,** penalties imposed were very severe (approx. **10 years,** almost all convictions involved "high risk" drugs). **Last years,** level decreased (10 years or more only when offender was previously convicted or when high quantity is involved); today usually about 3 years. Still, **no conditional suspension** is ordered. Official data for drug trafficking 2011: 2-5 yrs: 403; 5-10 yrs: 541; 10-15 yrs: 1218; 15-20 yrs: 49; more than 20 years: 2 pers.
SE	Imprisonment, fines (only private consumption), confiscation	**mid-range narcotic offence:** standard length of prison sentence is imprisonment for 1 year **serious cases:** maximum possible penalty (10 years) is imposed on a rather regular basis
SI	Imprisonment; often conditional sentences are also applied. No fines	**Mild sentences passed** (about half of the sentence a convict would get in Germany or Italy); more than **70%** get **conditional sentences;** one quarter gets **1-2 years** imprisonment, one fifth of defendants is convicted to **3-6 months** of imprisonment. Sanctions for illicit drug trafficking: • Conditional sentences: 187 pers. • - 30 days imprisonment: 1 • 1-6 months imprisonment: 67 pers. • 6 mths-1 year: 1 • 1-2 yrs: 69 • 2-3 yrs: 9 • 3-5 yrs: 6 • 5-10 yrs: 3 • 10-15 yrs: 1
SK	deprivation of personal liberty, forfeiture of items, prohibition of certain activities (disqualification) and protective measures of confiscation of items	Mostly custodial sentence ranging from 4 up to 10 years in less severe cases of illicit drug trafficking.
UK	Imprisonment, confiscation	import, export, supply, production: Class A: - life imprisonment Class B, C: - 14 years Possession: Class A: - 7 years Class B: - 5 years Class C: - 2 years

3.4.2 Application of financial penalties

Concerning the application of financial penalties there are three groups of Member States:

- On the one hand there are States where financial penalties are not or only rarely used in cases of illicit drug trafficking (AT, DE, DK, IE, PT). If they are used, they are only used for minor drug related cases.
- In EE, HU, LU financial penalties are used occasionally in regard of less severe offences. In HU financial penalties are mostly used for consumers, but not for drug traders.
- On the other hand, in some Member States financial penalties are used regularly as in BE, BG, CY, EE, ES, FI, FR, GR, IT, LT, LV, MT, NL, PL, SE, SK, UK, but in most of these States only for cases which are not considered to be serious in terms of value and amount of drugs, mostly in cases of possession or street trafficking (CY, SE, FI).

No information: CZ (no financial penalties: RO, SI).

Added value of financial penalties:

- Practitioners in AT, BE, BG, CY, DE, DK, ES, HU, IE, IT, LV, MT, PT, SE do not regard financial penalties as a deterrent nor appropriate in cases of illicit drug trafficking. Imprisonment and the possibility to confiscate proceeds are regarded as much more of a deterrent.
- In most countries financial penalties are seen as mild sanctions, which are not adequate for cases of illicit drug trafficking. If financial penalties are seen useful, then only for minor drug offences, but not for cases of drug trafficking (BE, CY, DE).
- But some Member States' reports mention the problem of financial penalties in drug trafficking cases – particularly in cases of minor offences – that the perpetrators have no money and cannot pay the penalty (BE, BG, ES). And this leads to the result that the imprisonment for failure to pay a fine has to be enforced.
- In EE, LT, LU, NL, PL practitioners think that financial penalties are of added value and useful and can be regarded as deterrent in most cases. (No information from CZ, DK, FI, FR, GR, UK)
- It is interesting that the actual use of financial penalties and the evaluation of their effectiveness differ independently from the system of financial penalties.
- There are Member States with a day fine system where fines are regularly imposed in cases of drug trafficking, and there others with the same system, where this is not the case.
- Also the circumstance whether financial penalties can be imposed together with an imprisonment sentence or only as an alternative to imprisonment does not seem to have influence on the actual use of financial penalties.

However, in most Member States financial penalties are not used for large scale trafficking and are not seen as adequate sanctions to react on such grave criminal offences. If financial penalties are used for drug trafficking, this is primarily the case in small cases of illicit drug trafficking. It is not seen as useful to impose financial penalties in large scale trafficking cases, since they are not regarded as a strong enough deterrent. In such cases imprisonment is preferred in most of the Member States.

Under these circumstances a harmonisation of financial penalties within the EU seems to be difficult. On the one hand the differences between the Member States seem bigger and more complicated than the differences between imprisonment. On the other, taking into account that most Member States – if they use them – only use financial penalties for small trafficking cases (possession, street trafficking), it is doubtful whether this is an appropriate sanction for trans-national drug trafficking offences.

3.4.3 Aggravating circumstances used in practice

Particularly important for the determination of penalties (imprisonment as well as financial penalties) is the consideration of aggravating and mitigating factors. In contrast to the aggravating circumstances mentioned in chapter 2.6.4 of this report, which change the range of penalties, these factors do not influence the range of penalties, but are considered by the judge determining the concrete sentence in a case. However, there are factors which can both influence the range of penalties and the sentencing by a judge.

There are a great number of factors which influence sentencing in the concrete case. Since in the Member States the list of such factors is not exhaustive, the following examples can only demonstrate the most important factors mentioned in the national reports:

- In AT the most common aggravating circumstances are dealing with high quantities of drugs, if the offence is committed within the period of probation, if the offence is committed within periods of therapy, if the offender has committed such crimes before, if the offences have been committed for a long period of time.
- In BE aggravating circumstances which are often applied in practice are the age of the person against whom the crime was committed, if committed within a criminal organisation, if the offence has caused damage to health, type of drug, quantity of drugs, etc.
- In BG the following aggravating circumstances are most relevant: previous convictions of the offender for the same type or similar offence; the quantity and type of the narcotic substance outside the scope of its assessment as an element of the legal qualification of the offence(for example where it exceeds the criteria 'large amount' and 'particularly large amount'); the way of transporting the drugs, for example if they are hidden in specially designed hiding places, belts etc.); drugs' purity, the high percentage of active substance' complicity of other persons, more specifically minors, whom the offender might have involved in the crime; the period of possession or other negative effect on the crime object.
- In CZ the possible benefit of the drug trafficking (significant or substantial benefit) is an important factor influencing the sentencing; committed the offense using someone’s distress, vulnerability, dependence of subordination; caused greater damage or other greater damaging result; gained greater profit by the criminal activity; committed the offence as an organiser or as a member of or organised group or criminal conspiracy.
- In CY the following aggravating circumstances are applied in practice: the involvement of organised criminal groups, the involvement of the accused in other illegal activities, which are facilitated by the commitment of the offense; the use of force, firearms or offensive weapons or objects during the commitment of the offense; the fact that the accused holds public office or position and the offense committed is related to that office or position, the victimisation or exploitation of minors or of persons who suffer from mental disorder or illness; the fact that the offense was committed in prisons or police detention centre or place or foundation under the control; supervision or care of the Director of Social Welfare or near such places or foundations or other places where pupils or students are met for educational, sporting, social or other activities.
- The relevant aggravating factors in DE are: highly morally objectionable selling methods; professional practice, substantial amount of drugs, involving highly dangerous drugs; offences committed over prolonged period of time; more than one offence; job position (e.g. doctor) in case there is a connection between job and offence; prior criminal record of the offender.
- In DK it is considered an aggravating circumstance in sentencing that the offence was planned or part of extensive criminality. Aggravating circumstances (amongst others) are: self-interest or other base motives; commission of the offence with peculiar cruelty, or degradation of the victim; commission of the offence knowingly against a person who is less than 18 years of age, pregnant, in an advanced age, in need of assistance or has a severe mental disorder; commission of the offence against a person who is in a service, financial or family-related dependent relationship with the offender; commission of the offence during a state of emergency or state of war; commission of the offence by

taking advantage of a public accident or natural disaster; commission of the offence in a manner which is dangerous to the public; causing of serious consequences; commission of the offence in order to facilitate or conceal another offence; commission of the offence by a group; taking advantage of an official uniform or badge in order to facilitate commission of the offence.

- In ES as aggravating circumstances are taken into account in cases of drug and precursor trafficking: the dangerousness of the substance, the high degree of wrongfulness of the conduct, the high degree of blameworthiness of the offender.
- In FI following aggravating circumstances are relevant in practice: the criminal activity is systematic; the offence is done as a member of an organised group, organised for committing serious crimes; the crime is done for a reward; the criminal motive is based on race, skin colour, origin, nationality or ethnic descent, religion or conviction, sexual orientation or disability or other such motive; and the offender's previous criminal activity, if the similarities between the previous and new crimes or otherwise show that the offender has an apparent disregard for the law's prohibitions and instructions.
- In FR various factors are considered, particularly the quantity of drugs and the harm to health.
- In GR the most aggravating circumstance, which is punished by life imprisonment and an increased money penalty, is the commitment of drug trafficking offences due to habit or professionally. Similarly, for trafficking cases which advance the use of drugs by minors or concern large transactions of drug quantities.
- Hardening circumstances in HU are: the organisation, the commitment of other crime during the scope of penalty process, committing crimes as a lifestyle for a long period of time, quantity of drugs lots of times exceeding the low level of substantial quantity drugs (basically, the Hungarian CC acknowledges three categories: small quantity, basic quantity and substantial quantity), the crime committer initiates other people to commit crime as well, using and abusing addict persons and in the case of some courts the type of drug also matters (heavy drugs), though this distinction usually is uncharacteristic of the practice of courts.
- In IE the following factors are particularly relevant: role of the offender; quantity of drugs; type of drugs; prior criminal record of the accused; profit motive.
- The main aggravating circumstances applied in case of illicit drug trafficking in IT are: the large quantity of drugs involved; the adulteration of drugs or psychotropic substances increasing their harmfulness; the numbers of offenders (three or more persons acting in concert); the promotion or organisation of the offence committed in concert with other persons; the transfer of drugs to minors; the incitement of a drug addict or of a person under the responsibility of the defendant, to commit the offence; offence perpetrated by an armed or masked person; offers of drug substances aimed at obtaining sexual services from a drug addict; offers of drug substances close to or inside schools, barracks, prisons, hospitals or medical centres for drug addicts.
- The aggravating circumstances that mostly occur in the illicit drug trafficking cases in LT are: previous convictions; complicity; mastership; serious consequences of the committed crime.
- In LU aggravating circumstances are defined by statutory law in an exhaustive manner. The law differentiates between circumstances that find their justification in certain aspects of the offence itself and such that find their justification in the person of the perpetrator. Relevant factors are the length of the time period during which the offence has been committed, the quantity of drugs and the perpetrator’s social background and specific situation.
- In LV such a circumstance as "the criminal offence was committed repeatedly or constitutes recidivism of criminal offences" and "the criminal offence was committed out of a desire to acquire property" are the typical ones in drug-trafficking criminal cases.
- In MT aggravating circumstances are the amount and purity of drugs, recidivism, participation in a criminal organisation, as well as when the offence takes place in or within 100 metres of the perimeter of a school, youth club, or youth centre; the offer and supply of drugs to minors, to a woman with child.
- In NL participating in a criminal organisation; recidivism; and the suspect’s attitude in court versus the first offender are the most important aggravating circumstances.
- In PL participation in organised crime and domestic or international gangs is particularly important.

- In PT the following aggravating circumstances have been taken into particular consideration in 92% of the convictions: in the case of trafficking in drugs / precursors, the dangerousness of the substance and the high degree of wrongfulness of the conduct; in the case of trafficking-consuming, the high degree of blameworthiness of the offender.
- In RO aggravating circumstances are: commission of the offence in exercise of a position implying the exercise of public authority; offender is member of the medical staff or has powers in drug control; supply or offer of drugs to a minor, a mental patient, a person included in a therapeutic program, or the action has been committed in a medical educational or military facility or institution, in a detention facility or in schools; the use of minors with a view to committing the offence; the mixture of drugs with other substances that increased the risk to human life and integrity.
- In SE the quantity and harmfulness of drugs and the commitment in the context of organised crimes are considered as aggravating circumstances.
- In SI the quantity of drugs and harm to health are the most important aggravating factors in practice. Moreover the role of the offender in a criminal organisation is relevant. Prior convictions are an important circumstance in sentencing too.
- In SK the involvement in the commission of several criminal offences and previous convictions for any crime are particularly important aggravating factors.
- In UK quantity of drugs; the high level of purity; previous convictions; presence of weapons and the supply at street level to minors are the major aggravating factors.

Summarising, as can be seen in Table 3.9, **the most important aggravating factors which are considered by the national courts in cases of illicit drug trafficking are the quantity of drugs, the type and dangerousness of drugs and recidivism or previous convictions**. The quantity of drugs can influence the range of penalties as well as the concrete sentencing if the quantity is, for example, significantly more than a “large quantity”. Relevant factors in several Member States are also the commission in the framework of a criminal organisation or of a gang, if the commission had serious consequences as death or harm to health and the coincidence with other criminal acts. Regarding street trafficking the most important aggravating factor is to whom and where the drugs have been given (particularly to minors is an aggravating circumstance).

Table 3.9 Aggravating factors typically used in practice in cases of drug trafficking offences

	Quantity of drugs	Type and dangerousness of drugs	Recidivism/previous convictions	Serious consequences (death, harm to health)	Duration of commission of offence	Criminal organisation	Commission by a group/gang	Use of force, arms, cruelty	Way of transportation and commission	Wrongfulness of conduct	Highly morally objectionable methods	Several offences/ other illegal activities	Position of the offender (doctor, teacher)	Specific addressees (e.g. minors)	Profit motive	Professional and habitual conduct
AT	X		X		X											
BE	X	X		X		X								X		
BG	X	X	X		X				X							
CY						X		X				X		X		
CZ			X	X			X							X	X	
DE	X	X	X		X						X	X	X			
DK			X									X				
EE				X			X	X				X		X		
ES	X	X							X	X						
FI			X				X		X						X	
FR	X			X												
GR	X													X		X
HU	X	X							X					X		
IE	X	X	X												X	
IT	X	X					X	X					X	X		
LT			X	X			X									
LU	X				X							X				
LV			X												X	
MT	X		X			X								X		
NL			X			X										
PL	X					X	X									
PT		X								X						
RO		X											X	X		
SE	X	X				X										
SI	X		X	X		X										
SK			X									X				
UK	X	X	X					X						X		
TOT	**16**	**11**	**14**	**6**	**4**	**7**	**6**	**4**	**4**	**2**	**1**	**6**	**3**	**10**	**4**	**1**

Explanatory remarks:

Specific addressees: e.g. minors, pupils (schools), prisoners or trafficking in specific places as e.g. schools, universities, hospitals, medical centres, military establishments, prisons.
Specific offenders: e.g. doctors, pharmacists, trainers, teacher
Serious consequences: e.g. death, particular risk for life or physical integrity, e.g. by manipulation and mixing of drugs.

3.4.4 Mitigating circumstances used in practice

As already mentioned supra under chapter 2.6.5 there are mitigating circumstances which change the range of penalties and such which are to be considered by the judge determining the sentence. This section deals with the most important mitigating factors which influence the sentencing by a judge; mitigating circumstances which change the range of penalties are no more mentioned, since this is a decision by the legislator.

As already said for aggravating factors, there are a great number of factors which influence sentencing in the concrete case and in most Member States the list of such factors is not exhaustive. Therefore the following factors are the most important factors which are mentioned by the national reports. Most of them are not specific for drug trafficking, but these are the ones which most frequently influence sentencing in cases of illicit drug trafficking.

These are:

Behaviour of the offender after commission of the offence:

- Confession (AT, BG, DE, EE, ES, HU, LT, LV, PT, SK);
- Remorse (BE, BG, CY, GR, IE, LV, NL, RO, UK);
- Cooperation of the offender with investigative authorities and court (AT, BE, BG, CY, CZ, DE, DK, GR, IE, IT, MT, PL, SK);
- Honest behaviour during the trial (RO);

Personal circumstances of the offender:

- Lack of previous convictions (AT, BG, CZ, ES, HU, IE, LT, NL, PL, PT, UK) or/and the perpetrator's good conduct before committing the offence (BG, RO)
- The offender is a juvenile or young adult (AT, BE, BG, CY, FI, HU, IT, LT, LU, MT, NL, RO)
- The person trafficking in drugs is addicted to drugs herself/himself (AT, BE, BG, CY, DE, GR, HU, ES, MT, UK).
- Serious disease of the offender (BG, DE, UK);
- Personal circumstances and reasons for commitment of the offence (for example illness of a relative, for whose medical treatment significant financing is required; difficult personal situation; difficult economic condition, pregnancy) (BG, CY, EE, ES; IE, LT).
- Very small quantity, low purity or less dangerous type of narcotic drugs (AT, BG, CY, DE, HU, IE, IT, LT, PL, UK).
- aggravated family situation (BG, CZ);
- Social and/or familiar background (LU) and integration (ES, PT) of the offender;
- Employment of the offender (BG);
- The offender has made a therapy and/or she/he is an ex-addict (ES, LU, PT);
- The offender is a national resident (BE).

Circumstances and consequences of the offence:

- The offence did not cause serious consequences (LT) or prevention of harmful consequences (EE, FI);
- The offence was only attempted and not finalised (AT, FI)
- Minor role of the offender during commission of the offence (FI, SI);

Reasons for the commission of the offence:

- Offender under influence, threat, pressure or influence of other persons or of the buyer (CY, DE, EE, FI, UK);
- Trafficking to finance personal use (CY, IE);
- A strong humane compassion or other exceptional and unexpected temptation, the plaintiff's exceptionally considerable contribution or other equivalent circumstance, that has diminished the offenders capability of abiding the law (FI);
- The offence has been committed for the purpose of personal use (DE, GR).

Regarding mitigating factors (see table 3.10) **there is a great variety of circumstances which can get relevant for drug trafficking cases in the Member States**. The commitment for the purpose of personal use has no relevance for this study, since the FD excludes trafficking for the personal consumption of the perpetrator from its scope of application. Circumstances which lie in the behaviour of the offender after the commitment of the offence have great relevance. **The most important mitigating factors for courts sentencing in cases of illicit drug trafficking are the cooperation with law enforcement authorities, confession and remorse.** Moreover **the personal circumstances of the offender plays an essential role in sentencing**: First of all the lack of previous convictions (no criminal record), then the young age (juveniles, young adults) which can lead to lower penalties as well as it can be respected in sentencing as mitigating factor (not only for drug trafficking offences, but in general). Moreover the personal and social situation of the offender plays a significant role in the sentencing process. In many Member States the addiction of the offender is a mitigating factor or leads to lower penalties, whereas in EE or SI the addiction of the offender does not influence the sentence.

Table 3.10 Mitigating factors typically used in practice in cases of drug trafficking offences

	Confession	Remorse	Cooperation with authorities	Lack of previous convictions	No serious consequences	Addiction of the offender	Young age of the offender	Personal situation of the offender	Pressure / threat / influence	To finance personal use	Attempt	Therapy	Others
AT	X	X	X	X		X	X				X		
BE		X	X			X	X						X
BG	X	X	X	X		X	X	X					
CY		X	X			X		X	X	X			
CZ			X	X			X	X					
DE	X		X			X			X				
DK													
EE	X				X			X	X				
ES	X			X				X				X	
FI					X		X		X		X		X
FR			X										
GR		X	X			X							
HU	X			X		X	X						
IE		X	X	X		X		X		X			
IT			X			X	X						
LT	X			X	X	X	X	X					
LU							X	X		X		X	
LV	X	X											
MT			X				X						
NL		X		X									
PL			X	X		X							
PT	X			X				X				X	
RO		X		X			X						X
SE													
SI													X
SK	X		X										
UK		X		X	X	X		X	X				
TOT	**10**	**10**	**13**	**12**	**4**	**12**	**11**	**10**	**4**	**3**	**2**	**3**	**3**

Explanatory remarks:

Others: Offender is national resident (BE). Honest behaviour in trial (RO). Strong humane compassion or other exceptional and unexpected temptation (FI). Minor role of the offender during commission of the offence (SI).

3.4.5 Conclusion

Concluding, **there is no homogenous picture concerning the imposition of penalties in the Member States**. It can be seen that there are so many factors which influence sentencing that it is difficult to evaluate sentencing only regarding the penalties foreseen in the laws. Beside aggravating and mitigating circumstances, which influence the range of penalties or the sentencing by the judge, drug laws provide for different systems of criminal reactions, as diversionary measures, conditional and unconditional penalties, the possibility to make a therapy instead of going to jail, and the possibilities of conditional release.

AT can be mentioned as one example: AT provides for life imprisonment in severe cases of drug trafficking (for leaders of criminal organisations trafficking with drugs). But there are several other instruments which enable to finish the criminal procedure without punishing or to impose lower penalties. On the one hand, in most of the cases of drug trafficking (even if it is a large quantity of drugs) there are lower penalties in the case the offence is committed to get money for buying drugs for the own consumption. On the other hand, diversionary instruments (therapy instead of penalty) are foreseen, not only in cases of personal consumption, but also – under certain conditions – in cases of trafficking in larger quantities of drugs, if the offender is addicted. And there is the possibility of reprieve of sentences penalties up to three years imprisonment, if the convicted is addicted and makes a health therapy. This example shows that national legal provisions on sentencing are much more differentiating and complicated as foreseen in the FD. Since these systems are very different in the Member States, it is understandable why the FD was a minimum compromise which did not have big effect on sanctioning systems.

Many interviewees explained that it is extremely difficult to generalise the level of sanctions and sentencing, since every sentence is influenced by various factors and depends very much on the individual case. If and how many aggravating or mitigating circumstances are applied, depends on many individual factors and cannot be said in general.

3.4.6 Sentencing guidelines

Sentencing guidelines do not exist in the majority of Member States AT, BG, CY, CZ, DE, EE, ES, FR, GR, HU, IE, IT, LT, LU, LV, MT, PL, PT, RO, SE, SI, SK.

Sentencing guidelines for judges exist in NL, FI and UK.

In the NL sentencing guidelines are used by the courts as a starting point in the determination of penalties, and are optional. Subsequently the specific circumstances of the case are used to mitigate or aggravate the sentence. The sentencing guideline for drug offences differentiate three types of drugs couriers. The first category is called the ‘pack-donkey’ (in this case a person has trafficked drugs under the influence of three possible factors: poverty, dominance of a criminal organisation or personal and social circumstances, e.g. for example a necessary medical treatment or the care for children). The second category is called ‘standard’. In this case the suspect has less acceptable reasons for the drug trafficking (Earning a lot of money in a short amount of time is the most important reason for these perpetrators). The third category concerns the ‘organisation’. In this case the suspect is part of a criminal organisation for which he transports drugs on a regular basis. The respondents notice significant differences in the sentences according to the category into which a person is classified. So the category can be an important mitigating or aggravating circumstance. Furthermore, the sentencing guidelines for judges differentiate between the amount of drugs which have been trafficked or dealt with and the number of plants that have been found in a cannabis cultivation site. The categorising as described above is more significant for the sentence than the amount of drugs.

In FI a quality report done by experts in 2006 has aimed to harmonize sentencing for drug related offences. The guidelines for sentencing are based on that report. However, they are only guidelines available to the courts. They are in no sense to be regarded as absolute; courts are not bound by the guidelines, although they do set out the framework for sentencing. Depending on the kind and quantity of drugs these guidelines provide for certain sentences (for details see national report pp. 13 f.). If a drug trafficking offence is committed within the framework of a criminal organisation, it will be regarded as an aggravated drug offence. An offence may however also be considered aggravated based on other criteria, e.g. a significant amount or an extremely dangerous type of drug. If a crime is committed as a member of an organised criminal group, this may be considered as an aggravated circumstance. However, courts are only bound by the minimum and maximum penalty stated in the legislation concerning the offence in question. Judges also take into account certain mitigating and aggravating circumstances provided for in the Criminal Code

In UK a new drug offences definitive guideline will come into effect from 27 February 2012 and will apply to all drug offences by offenders aged 18 and over regardless of the date of their offence. The guideline covers the following offences: importation, supply, production, permitting premises to be used and possession. All drugs from class A to C are covered by the guideline, which will be used for sentencing in both the Crown Court and magistrates' courts. Sentencing guidelines are based on current legislation for criminal offences, since the Sentencing Council does not have the power to create legislation or change current maximum sentences for offences. According to the guidelines the court should in a first step determine the offender's culpability (role in the case) and the harm caused. Then the court should use the corresponding starting point to reach a sentence within one of the defined categories. The court should then consider further adjustment within the category range for aggravating or mitigating features. In cases where the offender is regarded as being at the very top of the 'leading' role it may be justifiable for the court to depart from the guideline. The court should take account of any potential reduction for a guilty plea. In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

Sentencing guidelines for prosecutors are provided for in BE, DK, NL.

In BE prosecution offices have internally created guidelines as to define which sentence they will request before the court. These guidelines amongst others take into account the extent of the trafficking, the kind of drug, whether or not the offences were committed in the framework of a criminal organisation, the concrete role of the offender. Efforts have been undertaken by the judiciary to create common guidelines, but this was not successful (as so many circumstances have to be taken into account on a case to case basis).

In DK the Director of Public Prosecutions has issued an instruction for prosecutors regarding sentencing pleas in drug cases: 1. If certain drugs exceed certain amounts, the provision on organized smuggling or sale has to be applied (e.g. in case of cannabis the amount has to exceed 10□15 kg, in case of khat 500 kg, raw opium 500 gram, morphine base 100 gram, heroin 50 gram, cocaine 25 gram, amphetamine 50 gram, and ecstasy 150□200 tablets). 2. With regard to the distinction between possession for own use and possession for distribution, the criteria are stipulated to be (e.g. cannabis 10 gram, marihuana 50 gram, heroin/cocaine/morphine 0.2 gram). 3. Concerning trafficking and possession with regard to trafficking, it follows from the guidelines that an offence involving more than 50 gram of cannabis or 10 tablets shall be punished by an imprisonment sentence. 4. The quantity of drugs is also relevant with respect to the distinction between Section 191 (1) and (2). 5. The penalty for selling of small quantities of heroin and cocaine for a first□time offence will normally be: 1–2 deals: 10 days imprisonment; 3–4 deals: 14–20 days imprisonment; 5–10 deals: 30–60 days imprisonment; 11 deals or more: minimum 3 months imprisonment.

Beside guidelines for the courts, in the NL there are guidelines for the prosecution which have been made on the basis of the implementation of the FD. They give directions for the intensity of the investigation and

prosecution and directions for the sentence claim. Moreover, the prosecution guidelines offer impunity to anyone who conforms to a norm about which the guideline indicates that no prosecution should follow. For instance, the guideline on drug trafficking (*Aanwijzing Opiumwet*) holds that possession of a maximum of five cannabis plants should not be prosecuted in case the perpetrator, immediately following the discovery of his possession, parts with his possessions. Prosecutors basically have to stick to these guidelines. Generally speaking, these guidelines have a substantial practical relevance. This includes the sentencing stage, because judges often follow the sentence demanded by the prosecution, or tend not to deviate too much from them. In general, exceptional circumstances allow the prosecution to deviate from their own prosecution guidelines, but this deviation must be explained, otherwise the court must hold the prosecution inadmissible.

As a result it can be emphasised that in most Member States sentencing guidelines do not exist and do not fit into the system of criminal sanctions, since it is a principle that the courts are free in determining the penalties and make their decision independently from any other influences. Even in those States which have sentencing guidelines they are not binding, but give the judge the possibility to decide in another way in the concrete case. Insofar the differences between Member States with and such without sentencing guidelines do not seem to be so significant, since even if there are no guidelines, the practice develops principles for sentencing, although they are not written down.

3.4.7 Time in jail

Even more difficult to answer is the question of how long offenders are actually in jail, since the practice of early release differs even within the Member States (e.g. AT, DE). The national experts were asked for estimates of the actual time in jail, when he/she commits one of the following offences:

a. trafficking offence involving 1 kg of heroin/cocaine and/or 10 kg of cannabis;
b. trafficking offence involving 10 kg of heroin/cocaine and/or 100 kg of cannabis;
c. the previous trafficking offences committed within the framework of a criminal organisation.

The figures in the table below are **only rough estimates by the national experts or interviewees** and should not be taken as absolute. There is no statistical data available on this subject. If there are no further details given, all figures relate to the actual jail time. Note, that some Member States only provided estimates on imposed sentences by the court. Several interviewees replied that it is impossible to give any estimates, since the answer depends on the single case. The figures may only be regarded as indication of trends, but are not based on scientific studies which would require much more time.

Table 3.11 Time in jail I

MS	Time in jail for trafficking offence involving 1 kg heroin/cocaine or 10 kg cannabis	Time in jail for trafficking offence involving 10 kg of heroin/cocaine or 100 kg of cannabis	Time in jail for trafficking offence committed within the framework of a criminal organisation
AT	**Prosecutor:** 1 kg heroin/cocaine: approximately **1 year** of prison sentence If larger amounts are involved, **each kilogram increases** the prison sentence **for about a year.** **Early release** is possible (under certain circumstances) after serving half of the prison time and after two thirds. **Little use in drug trafficking offences!** If first time offender early release often after serving 2/3 of prison sentence)	see previous answer	guilt of the offender more serious than in previous cases → higher sentence and as a result longer jail time
BE	*The estimates provided refer to concrete sentences:* - Defence lawyer: **20 months** of imprisonment - Judge: a **suspended** sentence of **9 months** of imprisonment + a heavy fine + confiscation of the proceeds - Prosecutor: **1 month-1 year** imprisonment + heavy fine + confiscation of the proceeds	*The estimates provided refer to concrete sentences:* - Defence lawyer: **4 years** of imprisonment - Judge: **12 months** of imprisonment + a heavy fine + confiscation of the proceeds - Prosecutor: **3 months-18 months** + a heavy fine + confiscation of the proceeds	*The estimates provided refer to concrete sentences:* - Defence lawyer: respectively **3 years** and **5 years** of imprisonment - Judge: **2 years** of imprisonment + a heavy fine + confiscation of the proceeds - Prosecutor: **3 months-18 months** + a heavy fine + confiscation of the proceeds
BG	no estimates possible	no estimates possible	no estimates possible
CY	- 1 kg of heroin/cocaine: time in jail **up to 12 years** - 10 kg of cannabis: time in jail **up to 15 years**	- 10 kg of heroin/cocaine: time in jail for **20-23 years** - 100 kg of cannabis: time in jail **up to 20 years**	no estimates possible
CZ	no estimates possible	no estimates possible	no estimates possible
DE	estimates of imposed sentence of interviewed practitioners: **2-4 years** early release possible after half of the sentence was served and after two-thirds of sentence was served	no estimates possible	no estimates possible
DK	- 1 kg of heroin/cocaine: **approx. 5 years** imprisonment sentence, eligible for parole after two thirds time (but parole is not granted automatically) - 10 kg of cannabis: **10-12**	- 10 kg of heroin/cocaine: **8-9 years** imprisonment sentence, eligible for parole after two thirds time, but parole is not granted automatically	heroin/cocaine: **1-2 years added**

MS	Time in jail for trafficking offence involving 1 kg heroin/cocaine or 10 kg cannabis	Time in jail for trafficking offence involving 10 kg of heroin/cocaine or 100 kg of cannabis	Time in jail for trafficking offence committed within the framework of a criminal organisation
	months imprisonment sentence, eligible for parole after two thirds time (but parole is not granted automatically)	- 100 kg of cannabis: **1-2 years** imprisonment sentence, eligible for parole after two thirds time, but parole is not granted automatically	
EE	**5 years**	**12 years**	**12 years**
ES	- more than 300 gr. heroine, 750 gr. cocaine: sentence ranges from **6-7 ½ years** imprisonment - more than 2,5 kg cannabis: maximum sentence may range from **3-4 ½ years** of imprisonment **Early release** is possible (but not mandatory) after serving three fourths of the prison term.	no estimates possible	- sentences of **9-12 years** imprisonment for ordinary members referring to substances that cause severe harm to health - sentences of **4 ½ years** for substances that do not cause this severe harm - sentences **up to 15 years** prison if the convict is a leader of this organisation **Early release** is possible (but not mandatory) after serving three fourths of the prison term.
FI	*Note: this data is taken from (non-binding) sentencing guidelines for the court:* Heroin: - more than 1 kg: more than **7 years** imprisonment sentence Cocaine: - 200 g-1 kg: **3-5 years;** - 1-2 kg: **5-7 years** Hashish: - 3-10 kg: **1 ½ years-3 years** - 10-50 kg: **3 years-5 years**	*Note: this data is taken from (non-binding) sentencing guidelines for the court:* Cocaine: - more than 2 kg: more than **7 years** of imprisonment sentence Hashish: - 50-100 kg: **5 years-7 years** more than 100 kg: more than **7 years**	no estimates possible
FR	- 10 kg cannabis (first-time offender): **1 year** imprisonment sentence *(Judgment of High Court of Marseille)*	no estimates possible	no estimates possible
GR	**7-8 years**	**10-15 years**	**up to 20 years**
HU	no estimates possible	no estimates possible	no estimates possible
IE	no estimates possible	no estimates possible	no estimates possible
IT	no estimates possible	no estimates possible	no estimates possible
LT	no estimates possible	no estimates possible	imposed sentences from 4 years to 20 years
LU	Estimates of practitioners *not taking into account of any specific aspects of the case:*	Estimates of practitioners *not taking into account of any specific aspects of the case:*	Estimates of practitioners *not taking into account of any specific aspects of the*

MS	Time in jail for trafficking offence involving 1 kg heroin/cocaine or 10 kg cannabis	Time in jail for trafficking offence involving 10 kg of heroin/cocaine or 100 kg of cannabis	Time in jail for trafficking offence committed within the framework of a criminal organisation
	around **1-3 years** of imprisonment sentence	around **3-4 years** of imprisonment sentence	*case:* around **15-20 years** of imprisonment sentence
LV	no estimates possible	no estimates possible	no estimates possible
MT	no estimates possible	no estimates possible	no estimates possible
NL	**7-12 months**	**4-5 years**	no estimates possible
PL	no estimates possible	no estimates possible	no estimates possible
PT	between **3 ½ and 5 years** in jail (sentence: 6 years, conditional release possible when ½ of the penalty is executed, and mandatory when the execution reaches 5/6 of the total term)	Estimates by prosecutor/defense lawyer: 10 kg cocaine/heroine: sentence of 8-10 years imprisonment, conditional release is possible when ½ of the penalty is executed, and mandatory when the execution reaches 5/6 of the total term, large quantity of drugs trafficked might also delay the moment of conditional release	applicable penalty would be aggravated by ¼ in its minimum and maximum limits
RO	no estimates possible	no estimates possible	no estimates possible
SE	no estimates possible	no estimates possible	no estimates possible
SI	**1-5 years**	**4-10 years**	- 1kg of heroin/cocaine and/or 10 kg of cannabis: from **4 year to 10 years;** - 10kg of heroin/cocaine and/or 100 kg of cannabis: from **7-8 year to 15 years,** (each depending on role within organisation (courier, middle manager, boss))
SK	Rough estimate by judge: **13 ½ years**	Rough estimate by judge: **15 years**	Rough estimate by judge: **17 years**
UK	- 1 kg of heroin/cocaine: **5 years** or above (R v Aramah 76 Cr. App. R 190, R v Bilinski 9 Cr. App. R.(S) - 10 kg of cannabis: **2 years** imprisonment **on an early guilty plea** (R v Hartramp 2009 EWCA Crim. 109)	- 10 kg of heroin/cocaine: around **10 years** (R v Hall 2010 EWCA Crim 917) - 100 kg of cannabis: around **5 years** (R v Delargy 2007 EWCA Crim 1079, R v Chalkley 2011 EWCA Crim 611, R v Smith 2010 EWCA Crim 71)	no estimates possible

As an overall conclusion, **the Member States' reports indicated that most of the interviewed experts had problems to answer these questions as the sentence and the subsequent jail time of an offender depends on a wide range of factors**: not only on the **type and amount of drugs**, but also on the **purity** of the drugs, on **the offender** herself/himself, on the **circumstances** of the commitment of the offence and **other factors**. Generally speaking the sentence depends on all respective aggravating and mitigating circumstances foreseen in the Member States. The **actual jail time** resulting of the sentence **depends very much on the provisions of the Member States on early release** and if these provisions are used in the case of drug trafficking.

As a very careful result, it can be said that there are big differences between the Member States. E.g. the estimations for trafficking of 1 kg of heroine/cocaine or 10 kg cannabis reach from less than one year (NL) jail time to 13 1/2 years of time in jail (SK). The estimates for trafficking 10 kg heroin/cocaine or 100 kg cannabis reach from four to five years (NL) to ten to 15 years (GR) time in jail. In some states the time in jail for trafficking in heroin/cocaine is longer than for trafficking in cannabis or the imposed sentence for trafficking in heroin/cocaine is higher than for trafficking in cannabis, even in cases where the amount of cannabis is significantly higher (1kg heroin or cocaine/10 kg cannabis or 10 kg heroin or cocaine/100 kg cannabis) than the amount of heroin/cocaine. In other states the quantity of drugs is not taken into account at all (HU), therefore the quantity makes no difference.

Table 3.12: Time in Jail II

MS	Trafficking offence involving 1 kg heroin/cocaine	Trafficking offence involving 10 kg cannabis	Trafficking offence involving 10 kg heroin/cocaine	Trafficking offence involving 100 kg cannabis	Trafficking offence committed within criminal organisation
AT	1 year∗		10 years∗		
BE	9 months∗	9 months∗	12 months∗	12 months∗	2 years∗
BG					
CY	< 12 years	< 15 years	20-23 years	< 20 years	
CZ					
DE	4 years∗	2 years∗			
DK	5 years∗	10-12 months∗	8-9 years∗	1-2 years∗	1-2 years added to foregoing estimates∗
EE	5 years	5 years	12 years	12 years	12 years
ES	6-7 ½ years∗	3-4 ½ years∗			9-12 years∗[104] < 15 years∗[105]
FI	5 years∗ (cocaine)	3 years∗	> 7 years (cocaine) ∗[106]	7 years∗	
FR		1 year∗[107]			
GR	7-8 years	7-8 years	10-15 years	10-15 years	< 20 years
HU					
IE					
IT					
LT					4 -20 years∗
LU	1-3 years∗	1-3 years∗	3-4 years∗	3-4 years∗	15-20 years∗
LV					
MT					
NL	7-12 months	7-12 months	4-5 years	4-5 years	
PL					

[104] For ordinary members of criminal organisations.
[105] For leaders of criminal organisations.
[106] For trafficking involving more than 2 kg cocaine.
[107] In case of a first-time offender.

MS	Trafficking offence involving 1 kg heroin/cocaine	Trafficking offence involving 10 kg cannabis	Trafficking offence involving 10 kg heroin/cocaine	Trafficking offence involving 100 kg cannabis	Trafficking offence committed within criminal organisation
PT	3 ½ - 5 years	3 ½ - 5 years	8-10 years∗		
RO					
SE					
SI	1-5 years	1-5 years	4-10 years	4-10 years	4-10 years[108] 7-15 years[109]
SK	13 ½ years	13 ½ years	15 years	15 years	17 years
UK	5 years∗	2 years∗	10 years∗	5 years∗	

Legend:

"<": up to

">": more than

∗ Those figures refer only to sentences imposed by courts and not to the actual jail time.

Explanatory remarks:

Where a figure is missing, estimates of actual jail times or imposed sentences were not possible. Please consider that the given figures are only rough estimates by interviewees or national experts. In case of more than one estimate, the estimate of the judge was taken or – if there was no information from whom the estimates were stemming – the approximate average of the mentioned figures. For more estimates, please refer to the detailed table on time in jail.

[108] For trafficking involving 1 kg heroin/cocaine or 10 kg cannabis.

[109] For trafficking involving 10 kg heroin/cocaine or 100 kg cannabis.

3.4.8 General conclusion sanctions

Generally it can be said that **the study confirms that there are quite big differences in sentencing practice in the Member States**. This concerns both the sentencing practice by the courts imposing a criminal sanction and the actual time in jail. **This is not only a topic of drug trafficking law**, where Member States obviously follow different strategies. But foremost it is a general topic which depends on the different criminal law systems and criminal law policies. Sanctioning systems in many Member States have a long tradition and are the result of a long development.

For the effectiveness of a criminal law system it is important that criminal offences are prosecuted and that criminal sanctions are actually imposed. The study does not indicate that this is not the case in drug trafficking cases in the Member States.

3.5 Jurisdiction

An essential aspect for transnational crimes like illicit trafficking of drugs is the jurisdiction which is regulated by Article 8 FD. Since both the importation and exportation of drugs are offences, transnational trafficking of illicit drugs will mostly be punishable not only in one State, but in two or more Member States. As mentioned above, Article 8 FD extends the jurisdiction over the territoriality principle, where the offender is a national or where the offence is committed for the benefit of a legal person established in the territory of that Member State. In the following sections it is considered, what consequences these provisions have in practice, whether there are negative or positive conflicts of jurisdiction and how they are solved (e.g. how often Eurojust is involved). This is a general problem in criminal law in Europe, but one which is particularly relevant for illicit trafficking of drugs where often more than one Member State will be involved.

3.5.1 Positive conflicts of jurisdiction

Only evidence from reports from BE, BG, DE, DK, EE, ES, GR, MT, NL, SK are included here as in the other Member States' reports positive conflicts of jurisdiction are not mentioned.

It must be taken into account that this data is often gathered from interviewees who have their own view and experiences. As an example, in SK there are parallel proceedings and conflicts of jurisdiction, but they are solved without greater problems. A similar situation can be seen in EE, FI and LT. Whereas in EE it was reported that there are often positive conflicts of jurisdiction, the Finnish and Lithuanian reports do not report about any positive conflicts of jurisdiction.

Due to the fact that every instance of international trafficking in drugs is both an import and an export of drugs, it is clear that there are positive conflicts of jurisdiction. But it seems that these conflicts are regularly solved by direct communication between the Member States' authorities. According to Eurojust stakeholders it is very likely in cases of drug trafficking that positive conflicts of jurisdiction arise, whereas it is less likely that negative conflicts arise, as drug trafficking is per se a transnational activity and in most Member States criteria for extra-territorial jurisdiction are foreseen.

3.5.2 Negative conflicts of jurisdiction

AT (very seldom), BE, BG, DE, DK, GR, MT (rare) report negative conflicts of jurisdiction in respect of the illicit trafficking of drugs. The other Member States do not mention any as either the interviewees did not know about any cases or there is no information about this readily available.

3.5.3 Solving conflicts of jurisdiction

When there are (positive or negative) conflicts of jurisdiction, it is interesting to review how they are solved, since negative conflicts of jurisdiction can lead to an offender not being prosecuted in any Member State and positive conflicts of jurisdiction can lead to problems of *ne bis in idem.*

3.5.3.1 *Direct contacts between public prosecutors and transfer of proceedings*

Many conflicts of jurisdiction seem to be solved by **bilateral consultations** and **direct contact** between the public prosecution services and a **transfer of the criminal procedure** to another Member State (BE, DK, EE, FR, NL, PL, SK). This might be one reason why many interviewees do not report the existence of any "conflicts". Where these consultations occur, they are either ad hoc consultations concerning a certain case (e.g. DK) or routine consultations (e.g. PL). In DK, where conflicts occur, there are agreements made so that cases are handled under the jurisdiction that carries the most weight or are processed on the basis of mutual legal assistance. EE reports that proceedings are often transferred to the country where the majority of evidence is located. This direct contact between public prosecutors is preferred, because it is easier and faster than other instruments. On the other hand, there is a danger reported by some interviewees that these decisions are not always transparent, since they are made without the existence of robust criteria. The Spanish report, for example, mentions that some conflicts of jurisdiction were solved by opting for the state which presents the best conditions to reach a conclusion.

One issue which appears in drug trafficking cases, but also in others, is **how to concentrate the proceedings** in one country, when a proceeding needs to be transferred from one jurisdiction to another. Eurojust identified several problems in this field, such as the validity of the evidence obtained in one Member State being used in another. Evidence obtained from wire tapping was given as an example here.

3.5.3.2 *Role of Eurojust*

The role of **Eurojust** in cases of conflicts of jurisdiction is seen very differently by the Member States. There are Member States which use Eurojust regularly in cases of jurisdiction conflicts (AT, FI, UK), others use it sometimes (BE, DK, IE, NL, SK) or rarely (DE). Then there are a group of States which, according to the knowledge of the interviewed experts, do not or have not yet used Eurojust to solve conflicts of jurisdiction (BG, CZ, EE, FR, HU, LT, LV, PT, RO, SI, UK).[110] According to Eurojust themselves, they play an important role in solving conflicts of jurisdiction. Where they issue an opinion they highlight that most of the time the Member States follow this recommendation, although it is – currently – not binding.

A recent study by Eurojust involved an **assessment of 50 drug trafficking cases** which were referred to them from September 2008 until end of August 2010 to assess the added value of Eurojust in these cases. In these 50 cases there were **35 actual or potential conflicts of jurisdiction**. In 16 of these 35 cases three states were involved, in ten cases two states were involved, in seven cases four states were involved, in one case five states were involved and also in one case six states were involved. The solution for these conflicts was – in most cases – not the concentration of proceedings, as in 29 cases the investigations **continued as independent proceedings.** In six cases there was a proposition to transfer the proceeding and in three of these six cases the states came to an agreement. In another two cases the proposal for concentration was not acceptable. In the last case the proposal was to transfer just one part of the case, but the proposal was again not accepted by the Member States. As a final conclusion, it can be said, that only in **three** out of these 35 cases the **proceedings were actually transferred.**[111]

[110] For the role of Eurojust in cooperation in general please refer to chapter 4.2.1.

[111] Data was provided by Eurojust during an interview on 18/02/2012.

3.5.4 "Forum shopping"

Seven Member State reports (BE, DK, EE, FI, NL, SI, ES) identified cases of so-called "forum shopping" meaning that in cases of conflicts of jurisdiction, the jurisdiction of a certain Member State is chosen lower level requirements for investigation or where the harshest sanctions are foreseen. Examples include:

- According to the Belgian report there is the tendency to choose as a prosecuting country the country which applies the harshest penalties.
- The Finish report mentions an example which sometimes happens: The defendant had arranged a lorry containing drugs (hashish) from Holland to Sweden. Following a Eurojust decision, the case was handled in Finland, as Finland foresees higher penalties for hashish than the Netherlands.
- The Slovenian report cites a defence attorney who pointed out that police and prosecution services do "forum shopping". When they collect evidence, they choose the jurisdiction where the standards of protection of defendants are lower.
- The Spanish report quotes a prosecutor who says that the conflicts of jurisdiction are solved "by opting for the state which presents the best conditions for the case coming to a good end".

From the point of view of a public prosecutor, this approach is understandable, but from the point of view of the accused, this is problematic. If EU instruments extend the jurisdiction of Member States – it seems necessary that the rules for conflicts of jurisdiction are established.

Forum shopping is also imaginable in the way that criminals chose a certain Member States for their criminal activities. With them choosing States where the provisions against drug trafficking are not as strong as in other Member States. However, according to Eurojust stakeholders no evidence could be found in their assessments that this actually happens.

3.5.5 "Ne bis in idem"

Some seven Member States (BE, CZ, DK, HU, NL, PT, SI) report problems of *ne bis in idem* in cases of illicit trafficking of drugs. Since drug trafficking cases are typical trans-border offences, it is clear that one and the same act can lead to duplicate prosecutions in various Member States. In one state, prosecution is stated for the export of the drugs, in the other State for the import (see ECJ C-436/04 Van Esbroeck). This can lead to the consequence that a prosecution in another Member States is not allowed due to the principle of *ne bis in idem.* In most of the other states, *ne bis in idem* problems are avoided by cooperation between the judicial authorities.

The Belgian report mentions two other cases which caused *ne bis in idem* problems: (1) prosecution of drug trafficking in one country and the prosecution of the offence of money laundering in another; (2) drug runner already convicted abroad for trafficking of drugs, who is also prosecuted in another country for membership of criminal organization committing drug offences.

The Hungarian report sees a danger of *ne bis in idem,* for example, when two branches of the same criminal group are involved in parallel proceedings in different States. In one case, two States wanted to interview the same individual under investigation in both States. Through cooperation (German authorities gave the necessary evidence proving that to Hungary), this problem was solved.

3.5.6 Conclusions

Far-reaching provisions of extra-territorial jurisdiction are useful to guarantee that offences are prosecuted in at least one country. On the other hand, it must be considered, that they can cause problems of double jeopardy and "forum shopping" on the other hand. Moreover far-reaching jurisdiction provisions can, but not always necessarily, have consequences of inefficiency. If public prosecution offices are overloaded with work or think it is not necessary to prosecute because law enforcement authorities of other Member States would prosecute, this could have the consequence that – although there are far-reaching rules on jurisdiction – offences are not ultimately prosecuted. This means that if far-

reaching jurisdiction rules are established, it is necessary to provide rules for conflicts of jurisdiction which are binding for the Member States and for a (EU) institution which is competent to make binding decisions on jurisdiction.

3.6 Confiscation

3.6.1 Application of confiscation provisions

In principle, in all Member States the confiscation measures are applied regularly in almost all cases of trafficking in illicit drugs. Since there aren't statistics on confiscation in all Member States, it is not very clear what objects are actually confiscated. In principle, it seems that all objects foreseen in the FD are confiscated in the Member States.

According to the national reports, it can be stated:

- Drugs which are objects of trafficking are confiscated in all Member States. In some Member States not a confiscation, but forfeiture is provided for (e.g. BG). For details of quantities of confiscated drugs see the reports from AT, BE, DK, FI, GR, LV, PL, PT, RO, SK, ES, UK.
- Instrumentalities are confiscated in AT, BE, BG (forfeiture), CY, CZ, FI, FR, DE, EE, GR, HU, IE, IT, LT, LU, NL, PT, RO, SE, SI, SK.
- Proceeds are mostly confiscated in AT, BE, BG, CY, CZ, DE, EE, FI, FR, GR, HU, IE, IT, LT, LU, LV, MT, NL, PT (seldom), RO, SK (introduced in 2011), SE, SK.[112]

The following problems were identified by national correspondents:

- The interviewed Belgian prosecutor identified some problems with trans-border confiscation of proceeds of offences. The procedure to be followed sometimes would be very cumbersome.
- In CZ full confiscation of property is rather rare, since there are problems with evidence collection. Therefore confiscation or seizure of specific property items are significantly more common and frequently also include immovable property used for cultivation of drug-producing plants.
- In DE full confiscation is only allowed if the principal or secondary participant owns or has the right to the objects at the time of the decision or if objects pose danger to the general public or used for the commission of criminal act.
- In FI it is seen as problematic that confiscation measures are applied by the police and that a defence lawyer is never present during the confiscation procedure.
- The Dutch report mentions that confiscation is difficult to realize due to the lacking investigation capacity and expertise needed.
- The Slovenian report highlights difficulties with the confiscation of proceeds, since it is difficult to prove how much of the property was obtained by illicit drug trafficking. A new law – Act on confiscation of property of illegal resource – has been just passed in November 2011. It introduces reversed burden of proof and addresses specifically these problems, but is not yet in power.
- In the UK no actual objects are confiscated. A confiscation order is for a monetary amount which is determined by the monetary amount which the Court determines the defendant has benefited from the offence and also the value of the available assets of the defendant. The defendant then has to liquefy his assets to satisfy the Order. Only when the defendant's time to pay has elapsed, the Court will then consider appointing an Enforcement Receiver, who will set about seizing and forcing the sale of assets.

[112] Not all Member States' reports differentiated between drugs, instrumentalities and proceeds, these lists only contain the Member States where data is confirmed by Member States' reports.

3.6.2 Rights of third parties

In most States the rights of third parties in confiscation proceedings are respected (AT, BE, CY, CZ, DE, DK, ES, FR, GR, HU, LU, LV, PT, SE).

Special aspects were identified in the following Member States:
In BE sometimes problems arise especially regarding cars (if the owner of the car lends the car to the offender). In DE a person uninvolved with the crime is entitled to compensation for the deprivation, if his/her property was erroneously deprived. In EE the confiscation of assets of a third person is an exception and only admissible under certain requirements. In FI tools, accessories and material that belong to another than the actual offender may be confiscated only if they belong to an accessory to the crime or to a person, on behalf of whom or with whose permission the crime was committed. Assets that have been transferred to another person after the crime was committed may also be forfeited, if he knew that the assets were related to a crime or he had justifiable reason to suspect this, or if he received it as a gift or without compensation. Other Member States provide legal means for third parties (e.g. FR, GR). In RO other goods as drugs are only confiscated, if they belong to one of the perpetrators. In PT problematic aspects are seen in cases where the trafficker lives together with someone who is unaware of his/her activity and his/her property is confiscated.

3.6.3 Conclusion

In principle, in all Member States confiscation measures are applied in the vast majority of cases of illicit trafficking in drugs. According to the national reports it appears that provisions are available in Member States to confiscate all objects foreseen in the FD, although a detailed analysis is difficult, since there are no statistics on confiscation in the Member States. There is evidence that drugs as the objects of illicit trafficking are confiscated in all Member States, although some Member States operate the principle of forfeiture. In terms of instrumentalities and proceeds most Member States' reports confirm that these objects are also confiscated. In some countries there are problems in collecting evidence and proving how much of the property is illegally obtained. In the majority of Member States, the rights of victims and third parties in confiscation proceedings are respected.

3.7 Summary

The provisions which serve as transposition of the FD are **applied in practice** and in principle **practitioners do not see any significant problems with the application and interpretation** of these provisions implementing the FD. Since several Member States have not implemented the FD 2004/757/JHA by specific legal acts and their legislation was already in compliance with the provisions, many practitioners in certain Member States (BE, BG, CZ, FR, HU, SI, SE, UK) are not even aware of the existence of the FD. Some common legal issues arising in the application of the FD include: the difficulty in categorising offences in terms of the quantity and the value of drugs involved; distinguishing between possession and personal use; the definition and criminalisation of precursors, and the interpretation of "criminal organisation". Most of these problems of definition already existed before the FD. In most States the courts did not recognize the transposition of the FD or the FD did not change the interpretation of their existing laws.

Overall, it is difficult to gather and compare **statistical data** from Member States concerning trafficking offences. Where data is available, there are **no clear trends** that police reports or convictions for the illicit trafficking of drugs are increasing or declining significantly. It does not appear, from this data alone, that the application of the FD had a marked effect on the investigation and prosecution of drug trafficking cases.

Regarding the **imposition of penalties** in the various Member States, there is no homogeneous picture. There are many factors influencing sentencing practice in Member States. As such the penalties foreseen in law do not provide a wholly accurate picture of the spectrum of penalties used in the cases of drug trafficking. Beside aggravating and mitigating circumstances which influence the range of penalties or the sentencing by the judge, there are other sanctions available (e.g. diversion, conditional or unconditional penalties, making a therapy instead of jail, conditional release).

In most Member States there are no statistics on **imposed penalties.** If data exists it often cannot be compared robustly, since the categories used vary. It appears, however, that in most States, all available sanctions in the FD are applied. Most commonly used are custodial sentences. In 18 Member States (BE, BG, CY, DK, EE, ES, FI, FR, GR, IT, LT, LV, MT, NL, PL, SE, SK, UK) financial penalties are regularly used in practice, but in several States only for minor cases as an alternative to imprisonment.

Aggravating circumstances were identified across Member States which affect the actual sentence given. Common examples include:

- Quantity, type, purity and dangerousness of drugs.
- The status of the convicted individual in terms of whether they hold previous convictions or are under probation or other sanction when the offence was committed (recidivism).
- The involvement of criminal organisations or other illegal gangs connected to the trafficking offence.
- The level and nature of risk to the individual in terms of harm to health etc.
- Exploitation or victimisation of others in the process of committing the offence, especially if minors or other vulnerable groups are involved.
- The circumstances of the offence e.g. whether it was committed in a state of emergency or committed on or near official premises or in the vicinity of schools, hospitals etc.

The most important and most frequently used **mitigating factors** which influence sentencing in the Member States are:

- Compliance or co-operation with authorities in ongoing investigations.
- Remorse or admission of guilt.
- Lack of previous convictions.
- Personal circumstances and situation of the offender (e.g. addiction, age).
- Acceptance of therapy or support.
- The centrality of the role of the individual in the offence.

The research findings demonstrate that the FD has had a **limited effect regarding approximation of sentencing.** This is because strategies tackling illicit drug trafficking differ significantly between individual Member States, and more generally Member States adopt different systems of sentencing in criminal law. The research findings have confirmed that individual Member States approach sanctioning in a variety of ways, which is not only influenced by drug trafficking law, but is influenced by differing criminal law systems and criminal law philosophies. The findings from the consultation process would therefore suggest notable differences on the length of sentences imposed for drug trafficking offences across Member States.

Sentencing guidelines for judges only exist in NL, FI and UK (England and Wales) and for prosecutors in BE, DK and NL. Where sentencing guidelines exist for judges, they are not binding. Therefore, the differences between Member States that have sentencing guidelines and those that do not are not significant.

Since there are no statistics on the **actual time spent in prison** in Member States, general conclusions are difficult to draw. It seems to be obvious that the actual time spent in prison can vary within and between Member States due to many different factors, e.g. the purity of drugs, the level of penalties, personal circumstances of the offenders, provisions on suspended sentences and policies of early release.

In principle, in all Member States, **confiscation measures** are applied in the vast majority of cases of illicit trafficking in drugs. It appears that provisions are available in Member States to confiscate all objects foreseen in the FD. There is evidence that drugs as the objects of illicit trafficking are confiscated in all Member States, although some Member States operate the principle of forfeiture. In the majority of Member States, the rights of victims and third parties in confiscation proceedings are respected.

Only some Member States mentioned the incidence of – positive or negative – **conflicts of jurisdiction** in applying the provisions of the FD. According to Eurojust's experiences given the extended scope of national jurisdictions and willingness to prosecute drug trafficking offences, positive rather than negative conflicts of jurisdiction are most likely to arise. If there are conflicts of jurisdiction typically, they are solved by bilateral consultations (direct contact between the public prosecution services). Subsequently sometimes the criminal procedure is transferred to another Member State (BE, DK, FR, NL, PL, SK) or the proceedings are independently continued in the Member States. In the latter, this can have the consequence that the transnational dimension of a case is not always prosecuted, only the national aspects. Some Member States (AT, FI, UK BE, DK, IE, NL, SK, DE) also use the help of Eurojust in order to solve conflicts of jurisdiction. According to Eurojust themselves they play an important role in solving conflicts of jurisdiction, as they can issue a (non-binding) recommendation on which Member State conducts the proceeding. Some national respondents mentioned cases of *ne bis in idem* and cases of prosecutorial "forum shopping" (meaning that in cases of conflicts of jurisdiction the jurisdiction of a certain Member State is chosen based on where the requirements for investigation are lower or where the harshest sanctions are foreseen).

4.0 Cooperation between Member States and Member States and EU bodies

4.1 General aspects

The national reports concluded that **cooperation is essential in drug trafficking cases and generally works well, although the degree of cooperation certainly varies**. Some Member States (SE, FI, EE and LU) highlighted very good cooperation with their neighbouring countries. Some countries pointed out specific problems in individual cases, in particular with The Netherlands (e.g. EE, FR, BE), if only small quantities of drugs are involved.

As already addressed in the chapter on jurisdiction, there is large consensus between national experts (e.g. in AT, BE, FR, PL, SI) and as well as interlocutors from Eurojust and Europol, that the functioning of cooperation relies mainly on **personal contacts** between representatives of national authorities, as this quickens and increases cooperation. Such relationships are based on the reciprocal trust that the representative from one Member State will help the representative from the other Member State, if s/he helps her/him.[113]

4.2 Involvement of EU bodies

4.2.1 Eurojust

4.2.1.1 General aspects and cooperation between Eurojust and Member States

One of the main objectives of Eurojust is to combat drug trafficking. This is illustrated by the fact that approximately 20% of Eurojust-cases are drugs related.[114] Several countries (AT, IT, NL, PL, PT, SK and ES) mentioned Eurojust as an important actor in the field of cooperation. SI and FR, on the contrary, mentioned that their prosecutors tend to avoid cooperation through EU bodies because it seems to be too time-consuming. Instead, they prefer to communicate directly with the respective person from the other national authority. As already mentioned in the chapter on jurisdiction, the Member States thus see the role of Eurojust quite differently.

According to Eurojust interlocutors, Eurojust can also play an important role in order to help the establishment of personal contacts between representatives of national authorities. Through so called **coordination meetings,** where the Member States may agree on a common strategy, Eurojust is able to bring relevant actors of the national authorities together and thus helps to establish such contacts more easily.

[113] Europol interlocutor (interview done on 27/10/2011).

[114] Eurojust interlocutors (interview done with Pedro Pérez Enciso and Ioana Van Nieuwkerk on 18/01/2012).

4.2.1.2 *Requests for assistance in drug trafficking cases*[115]

At the request of a Member State, Eurojust will inter alia assist the competent authorities of the Member State in ensuring the best possible coordination of investigations and prosecutions. Between July 2004[116] and 17 January 2012, 1458 drug trafficking cases were registered at College level. There are an increasing number of registered cases, up to 116 cases in 2005 to 242 in 2011. Table 4.1 shows the total of registered drug trafficking cases per year. An overview of the countries requesting assistance within the period between July 2004 and 17 January 2012 is shown in Table 4.2. The top five requesting countries are IT, FR, NL, SE and DE. It must be kept in mind that this table does not show the full picture of drug trafficking cases, as only the requesting countries appear in the table. The requested country – the country from which the requesting country seeks assistance – does not appear in this statistics. However, Table 4.3 shows the requested states.

Table 4.12 Total registered drug trafficking cases

YEAR	Total
2004	19*
2005	116
2006	162
2007	207
2008	218
2009	228
2010	254
2011	242
2012	12**
Grand Total	**1458**

* from July 2004 to December 2004

** until 17.01.2012

Table 4.13 Table N: Total requesting countries

COUNTRY	Total
COLL	1
AT	37
BE	41
BG	23
CY	3
CZ	64
DE	105
DK	38
EE	21
EL*	23
ES	54
FI	35
FR	149
HU	17
IE	7
IT	165
LT	22

[115] The following data and tables were provided by Eurojust on 31/01/2012.

[116] There is no data before July 2004, as the Eurojust Case Management System is only active since then.

COUNTRY	Total
LU	15
LV	14
MT	17
NL	144
PL	41
PT	96
RO	30
SE	110
SI	91
SK	7
UK	88
Grand Total	**1458**

* Greece (Hellas)

Table 4.14 Requested countries

ES	407
NL	338
IT	210
DE	202
UK	135
FR	131
BE	130
PL	64
PT	49
EL*	37
AT	32
CZ	32
DK	30
BG	27
SE	27
LT	24
HU	19
IE	18
LU	18
SL	18
SK	15
EE	13
RO	11
CY	10
FI	7
LV	7
MT	6

* Greece (Hellas)

4.2.2 Europol

4.2.2.1 General aspects

Europol is the European Union's law-enforcement organisation handling criminal intelligence. Its aim is to improve the effectiveness of, and cooperation between the competent authorities in the EU Member States in preventing and combating serious international organised crime, especially illicit drug trafficking and terrorism.[117] Europol's remit does not include only the territory of the European Union, but also areas outside the EU which have a significant impact upon it.[118]

One of the key issues in law enforcement activities and crucial to all Europol activities is **analysis.** Analysts at Europol help to identify missing links in cross-border EU investigations. They work with subject-focused analysis work files (AWFs) to provide information to ongoing operations in the Member States.[119] The current structure of the AWFs is based on a holistic point of view rather than concentrating on particular commodities. However, four AWFs are still commodity based; thus, Europol has a cocaine work file, a heroin work file, a cannabis work file and a synthetics work file. Overall Europol has twenty seven different work files covering all forms of organised crime including drug trafficking.[120] The structure of the AWFs is in the process of being reformed, so that Europol eventually will have two AWFs, one covering organised crime and another one covering terrorism. Within each of those AWFs there will be a number of focal points looking at particular areas.[121]

4.2.2.2 Cooperation between Europol and Member States

Several Member States see **Europol** as an important EU body in the field of police cooperation (AT, IT, NL, PL, PT, SK and ES). The Netherlands pointed out that Europol is an important partner of the Public Prosecutor's Office in investigations involving synthetic drugs. Furthermore, Europol's AWFs are considered to be especially useful (NL). Slovenia and France, to the contrary, again mentioned that their prosecutors tend to avoid cooperation through EU bodies because it seems to be too time consuming.

4.3 Main issues in cooperation between Member States in drug trafficking cases

In summary, the following **problems** could be identified:

- Delays in the execution of requests of Mutual Legal Assistance
- The non-admissibility of evidence obtained in other Member States
- Conflicts of jurisdiction and difficulties in the transfer of proceedings[122]
- Difficulties in the areas of confiscation and asset recovery
- Difficulties in the field of controlled deliveries
- Difficulties in the work of Joint Investigation Teams.

[117] EMCCDA-Europol cooperation, Joint publications on illicit drugs, European Monitoring Centre for Drugs and Drug Addiction (2009).
[118] Europol interlocutor (see Footnote 113).
[119] European Police Office, Europol review 2010 – General Review on Europol Activities (2011) p. 14.
[120] Europol interlocutor (see Footnote 113).
[121] Europol interlocutor (see Footnote 113).
[122] Problems relating to conflicts of jurisdiction and transfer of proceedings are addressed in chapter 3.5.

4.3.1 Mutual Legal Assistance

Due to modern technologies new forms of Mutual Legal Assistance such as video surveillance and interception of telecommunication have emerged. The problems reported by national experts and Eurojust interlocutors mainly refer to these new forms. The reason for problems is the fact that – according to Eurojust interlocutors – in many Member States the implementation of Mutual Legal Assistance instruments is not satisfactory. Also BG, GR and IT explicitly mention that their countries still use traditional mutual legal assistance instruments.

4.3.2 Admissibility of evidence

Regarding the use of evidence, a distinction can be made between countries which foresee very few exclusions on improperly obtained evidence and where the court has general discretion on which evidence is admitted (e.g. AT, DE, EE); and countries which have quite strict rules concerning the use of improperly obtained evidence (e.g. GB, IT). In most countries the use of evidence obtained in another Member State is subject to the rules of admissibility set by their national laws (e.g. PT, RO). Therefore evidence from Member States where procedural standards are lower are often not accepted in other Member States. SI report problems concerning the use of evidence stemming from **covert investigation measures** of other Member States where the procedural standards are lower. The use of evidence in a case of an **agent provocateur** is forbidden in almost every Member State (e.g. AT, LU, BG, PT, RO and SK). According to defence lawyers in Slovenia, the prosecution is intentionally choosing to obtain evidence in Member States where it is easier to apply covert investigation measures.

4.3.3 Confiscation and asset recovery

According to Eurojust, cooperation in the field of asset recovery and confiscation is especially difficult as the systems in the Member States differ greatly. At the moment Eurojust has very limited experience with cases in the field of confiscation; only in eight cases, which were referred to Eurojust, these issues were discussed. However, confiscation and asset recovery are important fields in order to combat crimes with financial backgrounds, as for example drug trafficking, especially if it is linked to a criminal organization. Tackling is one of the key issues in the fight against them, as otherwise members of criminal organizations would be very quickly replaced by other ones.

4.3.4 Controlled deliveries

4.3.4.1 General aspects

Controlled deliveries are transports of traffic restricted or illegal goods where the public prosecution service is not obliged to prosecute ex officio. It is a legal technique for identifying persons involved in drug trafficking offences as well as in illicit trafficking of other prohibited articles, such as arms and ammunitions. AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, GR, HU, IT, LT, LU, MT, NL, PL, PT, RO, SE, SK and UK foresee explicit provisions in their laws on controlled deliveries. FR, IR, LV and SI, to the contrary, do not foresee such provisions.

Many countries reported that cooperation between investigation-teams in cases of controlled deliveries work very well (e.g. AT, CY, HU and PT). In 2009, Portugal took part in 23 controlled deliveries, where 132.358,23 grams of drugs (mainly cocaine) were seized and at least 33 suspects were arrested. GR provided an overview table of conducted deliveries in 2010 and the first half of the year 2011 and of the quantity of drugs seized thereby. In 2010, Greece participated in 18 controlled deliveries. The Irish police interlocutor pointed out that the issue of controlled delivery would need strict binding rules at EU level.

The following **major problems** could be identified in the area of controlled deliveries:

The details of the provisions vary, especially with regards to the **decision making process.** In many states an authorisation by a judicial authority is needed, whereas in other states an authorisation by a police authority is sufficient. Eurojust interlocutors pointed out that an effective execution of a controlled delivery is only possible if fast decisions are taken by the respective authorities and therefore it is crucial to know who the competent authorities in the different Member States for the decision making process are. Central contact points in the Member States could also provide faster communication. FI reported problems with controlled deliveries if more than two states are involved, as decision making processes vary substantially between different countries.

Another issue with controlled delivery is the **substitution of drugs** for other substances. Although the possibility of substituting drugs is foreseen in International Conventions, many Member States did not implement it. This fact might hamper the possibility of having a controlled delivery. A similar problem is that in some states it is mandatory for the authority to have a **complete picture of the whole route** of the controlled delivery, whereas in other Member States it is not.

4.3.4.2 Provisions on controlled deliveries in the Member States

The relevant provisions on controlled deliveries in **AT** are laid down in Sections 71 and 72 of the Federal Act on judicial cooperation in criminal matters with the Member States of the European Union (EU-JZG). This law rules the **judicial cooperation in criminal matters with Member States of the EU,** particularly the instruments of mutual recognition. A controlled delivery through Austria may only be approved, if the acts which are the basis for the controlled delivery or the foreign criminal proceeding, comply with the requirements to issue a European arrest warrant *and* if the clarification of such criminal offences or the discovery of a person who has been essentially participating in the commission of the criminal offence is supported (Section 72(2) EU-JZG). Under certain circumstances (danger for life or health of a person, if the controlled deliveries infringe the prohibition of an agent provocateur, or if the further observation of the transport and the seizure in the other state does not seem to be guaranteed), the controlled delivery **must be prohibited.** A controlled delivery in most cases is **executed by the criminal police** who therefore need an **authorisation from the public prosecution service.** A controlled delivery has to be organised in such a way that the police have full access to the suspects and goods anytime. Furthermore, there are also provisions for controlled deliveries in the **Act on Security Police.** There are no provisions foreseen in the Code of Criminal Procedure.

Belgian law regulates controlled deliveries as an investigative measure in national and transnational cases. When a transnational element is present and a request for a controlled delivery was sent, Belgian judicial authorities find the necessary legal basis in the Belgian laws implementing instruments on Mutual Legal Assistance. In national cases, a Royal Decree (of 9 April 2003; Article 4) on investigative techniques offers the legal framework for the execution of this investigative technique.

In **BG** the **Supreme Prosecutor's Office of Cassation** has exclusive competence to rule on requests for mutual assistance requiring the use of a controlled delivery and to send such requests to other countries. Controlled deliveries are **special intelligence means** and the evidence gathered as a result of a controlled delivery is subject to national assessment if this evidence may form the basis of a conviction.

CY regulates controlled deliveries in its **Crime Suppression** (Controlled Delivery and other Special Provisions) **Law 3(1)/1995,** which was drafted in accordance with the provisions in Article 11 of the UN Convention against the Illicit Traffic of Narcotic Drugs and Psychotropic Substances 1988.

In **CZ** controlled deliveries are regulated in Section 87b (in connection of section 87a) Penal Procedural Code (law no. 141/1961 Coll., as amended) where the Code explicitly mentions narcotic and psychotropic substances and precursors among the items which can be contained in a delivery subjected to the specific (controlled) regime.

In **DE** controlled deliveries have to be authorized by the office of the prosecution (Section 163 f (3) Code on Criminal Procedure). In case of an imminent danger, the police authorities are able to make decisions but they have to report to the office of the prosecution immediately. In general a long term observation may only be arranged if there is evidence of a crime of certain heaviness.

In **DK** there is no specific legislation on controlled deliveries but in 2002 the Danish Ministry of Justice has issued guidelines on cross-border controlled deliveries. According to them, requests must be sent to the national police authority.

EE reports that controlled deliveries have been authorized by a **judge.**

ES foresees provisions in its Constitution and in the Code of Criminal Procedure. According to that, the public prosecutor is competent to authorise a controlled delivery.

In **FI** controlled deliveries fall under Section 1(2) point 6 of the **Law on legal assistance in criminal matters.** This law regulates “other types of legal aid for the handling of a criminal matter”. The police, customs and border authorities’ cooperation on a national or general level is directed by their own law.

In **GR,** the following authorities participated in controlled deliveries conducted within 2010 and 2011 and or submitted requests for controlled deliveries: Police, Customs, Coast Guard, Financial and Economic Crime Unit, Attica Security Division/Drug Enforcement Sub-Division.

In **HU,** the **police** are responsible for executing controlled deliveries. Authorisation has to be sought from the **police** if no undercover detective is involved or from the **public prosecutor** if an undercover detective is involved.

Article 9 of **Italian** Law No. 146/2006 allows **police** and **customs** officers to omit or delay acts with a view to finding relevant evidence or identifying persons involved in the commission of drug and precursor offences and to take legal action against them. The police have to report to the **public prosecutor** who also supervises the police.

In **LT,** provisions on controlled deliveries are provided in Article 13 **Law on Operational Activities** and in Articles 159 (Simulation of a criminal act) and 160 (secret surveillance) **Code of Criminal Procedure.** According to the Law on Operational Activities it shall be **prohibited** to conduct controlled deliveries if they pose a direct danger to human life or health or possibly result in serious consequences. The Code of Criminal Procedure foresees that secret surveillances or simulations of criminal acts may only take place in regard to **crimes** and if a **pre-trial judge,** upon request by the public prosecutor, **authorises** such investigation measure. In any case, the incitement of a person to commit a criminal act is prohibited.

In **MT,** controlled deliveries are regulated by Article 30C of Chapter 101 of the **Laws of Malta** and Article 435E of Chapter 9 of the **Criminal Code.** In the Criminal Code more far-reaching provisions are implemented, which provide the following:

- The **Attorney General** may authorise the **executive police** or the **customs authorities** to allow a controlled delivery to take place.

- The Attorney General may also authorise a **person under the supervision** of the executive police to acquire or procure an illicit or suspect consignment of drugs.

- In addition, the Attorney General may authorise the competent **authorities of another country** to conduct jointly with or under the supervision of the executive police conducted deliveries in Malta.

PL has four legal foundations for controlled deliveries – the Act on Police of 6 April 1990, the Act on Border Guard of 12 October 1990, the Act on Internal Security Agency and Intelligence Agency of 24 May 2002 and the Act on Customs Service of 24 July 1999. Therefore the police commander, the board commander, the chief of internal security service or the Minister for public finances are competent for the authorisation.

In **PT,** controlled deliveries are governed by Article 160-A **Law on international cooperation in criminal matters.** According to that the **Public Prosecution's Office** may authorise the **criminal police,** on a case-by-case basis to refrain from any action within the context of cross-border investigations, for the purpose of establishing, in co-operation with one or more foreign states, the identity and criminal responsibility of the greatest possible number of perpetrators of an offence. The **Portuguese member of Eurojust** may also authorise and coordinate controlled deliveries in agreement with a competent national authority or at its request. Controlled deliveries may be applied for **any extraditable offence,** with respect to any kinds of goods and money. The participation of **foreign** authorities must be authorized by the Minister of Justice.

Article 20 **Romanian** Law No. 302/2004 on international judicial cooperation in criminal matters foresees that controlled deliveries may only be **authorised by the Office of the Prosecutor** established at the Romanian Supreme Court, with or without the total substitution of the drugs or precursors. The Romanian authorities may also authorise controlled deliveries on Romanian territory by foreign authorities. There, the rules provided by the Romanian legislation (Article 20) apply. Romanian authorities may also request another Member State to authorise a controlled delivery on its territory, if all rules of Romanian law are fulfilled.

SE regulates international controlled deliveries in the Act on certain forms of International Cooperation in Criminal Investigations (2003:1174). The controlled delivery has to be approved by a prosecutor.

SK provides for controlled deliveries in Section 111 **Code of Criminal Procedure.** A warrant for a controlled delivery has to be issued by the **presiding judge** or, before commencement of the criminal prosecution or in the preliminary hearing by the **public prosecutor.** The execution lies within the competence of the **police** in cooperation with **customs** administration authorities. The police shall **terminate** a controlled delivery, if the consignment creates a serious danger to life or health, significant damage to assets, or if there is a serious risk that it will not be possible to further the monitoring of such consignment.

The **UK** does not foresee specific provisions on controlled deliveries. HM Revenue and customs and SOCA/ACPO have an agreement in place to manage all instances involving controlled deliveries across UK frontiers. If the controlled delivery transcends into the area of the Immigration and Passport Agency and the Border and Immigration Agency, these agencies as well have to be consulted.

4.3.4.3 Conclusive remarks

Some Member States (AT, FI, PT and RO) have regulated the instrument of controlled deliveries in a **separate law on judicial cooperation** in criminal matters. CZ, DE, ES, LT and SK foresee respective provisions in their **Codes of Criminal Procedure**, MT in its **Criminal Code.** Austria and Lithuania foresee additional provisions on controlled deliveries in **security laws.** As already mentioned, the details of the provisions vary, especially in regard to the decision making process. In the majority of the Member States (AT, BG, DE, ES, HU (if an undercover agent is involved), IT, MT, PT, RO, SE and SK) the **public prosecutor** has to authorise a controlled delivery. Some States as EE and LT however require the authorisation of a **judge** and in DK, HU (if no undercover agent is involved) and PL (partly) authorisation has to be sought from the respective **police authority.** The **execution** of a controlled delivery lies mainly within the competence of the police, but in some states also within the competence of the custom authorities (GR, IT, PL, SK) and the coast guard (GR).

4.3.5 Joint investigation teams (JITs)

Several countries have very positive experiences with JITs as they have emerged as a very effective tool in cooperation (BE, DE, EE, FI, FR, MT, SK, SI, ES, NL and UK). BE and ES said that JITs should be enhanced and considered as model examples for future cooperation measures. AT, DK, LT, RO, SE and PT reported limited experiences with JIT. PT specifically mentioned that experiences with JIT are perceived as rather negative, particularly due to the leadership of such teams. In BG, CY, CZ, IT, GR, HU, IR, LV, LU and PL – according to the interviewees of the national experts – up to now no JIT (or no JIT in cases of drug trafficking offences) have been created.

Eurojust interlocutors reported that in **2011**, Eurojust was involved in **eight** JITs which were associated with drug trafficking. It is expected that in the coming years, Eurojust will be involved in more JITs, as a JIT has the possibility to get European funding, if Eurojust is involved. Further, according to the new Eurojust decision[123], which entered into force in June 2011, the competent authorities in the Member States have to inform Eurojust of the setting up of a JIT and its results.[124] So far three notifications on the setting up of a JIT in drug trafficking cases have been received by Eurojust.[125]

[123] COUNCIL DECISION 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime.
[124] If the JIT has been established in accordance with Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union or with Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams, Eurojust has to be informed.
[125] Please note that all figures on JITs are of a preliminary nature, as they have to be double checked with the National Desks of Eurojust.

4.4 Summary

Since illicit trafficking in drugs and precursors typically has a trans-national dimension, cooperation between Member States and between Member States and EU bodies is essential for an effective prosecution of such offences. The national reports concluded that cooperation generally works well, although the degree of cooperation certainly varies. The functioning of cooperation relies mainly on bilateral contacts, especially on personal contacts, as this accelerates and increases cooperation. This observation was also confirmed by stakeholders. AT, IT, NL, PL, PT, SK and ES mentioned Eurojust and Europol as important actors in the field of cooperation. In contrast, some Member States (FR and SI) indicated that their national authorities tend to avoid cooperation through EU bodies due to concerns over resources and time.

All Member States provide for criminal penalties for cases of drug trafficking which in principle are high enough to enable Mutual Legal Assistance and Mutual Recognition of criminal decisions. Although not restricted to cases concerning the illicit trafficking in drugs key problems regarding cooperation between Member States exist including: delays in the execution of requests of Mutual Legal Assistance; the non-admissibility of evidence obtained in other Member States; conflicts of jurisdiction and difficulties in the transfer of proceedings; problems enacting confiscation in other Member States; difficulties in the field of controlled deliveries; problematic experiences of Joint Investigation Teams.

It can be concluded that the implementation of Mutual Legal Assistance instruments in the Member States is on the whole not satisfactory. One issue closely related to Mutual Legal Assistance is the admissibility of evidence in criminal proceedings. Some evidence could be found that admissibility of evidence is problematic in cases which have used covert investigation measures, which are used intensively in cases of drug trafficking. In most States the use of evidence obtained in another Member State is subject to the rules of admissibility set by their national laws and therefore evidence from Member States where the procedural standards are lower sometimes is not accepted. Another important issue relates to the Member States' provisions on controlled deliveries. Although the large majority of States foresee explicit provisions in their laws[126], the details of the provisions vary. This leads to difficulties in the execution of controlled deliveries.

[126] However, FR, IR, LV and SI, do not foresee provisions on controlled deliveries in their laws.

5.0 Summary of the results

Drawing on the findings presented in the previous chapters, this section provides a complete summary of the findings of the research.

5.1 General impact

The research conducted for this study shows that no major changes were introduced in national legislation in any of the 27 Member States in order to transpose and implement the FD 2004/757/JHA. Twelve Member States did not amend their drug trafficking legislation at all. Some 15 Member States made small amendments in order to comply with the FD. In four of these States the amendment merely concerned the introduction of a provision on the liability of legal persons, which was not only required by this FD, but also by other European and international legal acts. In the main, the laws of most Member States were already consistent with the FD, since the Member States had already implemented the UN Conventions on drug trafficking, or at least Member States argued that their legislation would comply with the FD. However, the legislation of only five Member States (DE, ES, FI, GR, LV) is in complete compliance with all provisions of the FD.

The general attitude of practitioners is that the FD had no significant impacts on the practice of prosecutions, convictions and sentencing. In most Member States the FD was not acknowledged to have brought any improvements. Therefore, the added value of this instrument was limited.

5.2 Transposition of the Framework Decision 2004/757/JHA

5.2.1 General impact

Overall, the implementation of the FD did not create major challenges for Member States. Delays or difficulties in transposition were rarely reported. Synthesis of the Member State level research suggests that in general, the impact of the FD on the Member States' legislation has been very limited.

In four Member States (AT, DK, GR, NL) penalties for certain offences were raised while others introduced new provisions on precursor trafficking. Other States amended their legislation in other ways: ten Member States (AT, BG, CZ, ES, FI, GR, LT, LU, PL, PT, SI) , as reported above introduced provisions relating to liability of legal persons but not necessarily due to the FD, but due to other international and European legal acts.

5.2.2 Definitions

In terms of the **definitions** of "drugs" and "precursors" and the offences linked to trafficking in drugs and precursors, the laws of most of the Member States are consistent with the FD. Differences to the FD can be found more in the details of the provisions rather than in fundamental considerations of the national legislators. It can be concluded from the Member State level research that in all Member States the **definition of "drugs"** used in national legislation corresponds with the definition of Article 1 (1) FD, even though not all national provisions refer to the UN Conventions from 1961 and 1971. The **definitions of "precursors"** in nearly all Member States also comply with the definition stipulated in Article 1 (2) FD. The implementation of this latter provision rarely caused problems. Exceptional examples included CZ where the exact scope of the term precursor remains unclear, namely whether it also covers medicines containing precursors. FR does not criminalise trafficking in precursors at all and in MT there is no concept of "precursor" chemicals as such; the law rather contains a long schedule of banned substances within which precursor chemicals appear.

In nearly all Member States the **definitions of offences under Article 2 (1) (a)-(c) FD (trafficking in drugs)** have been transposed into national law either explicitly or implicitly. Sometimes Member States do not list all **activities** mentioned in Article 2 FD, but often certain terms imply other activities as well. Exceptions were evident again; Italian legislation does not cover the activity of "preparation" and SK does not include the terms "cultivation" and "offering" in their laws. Commonly, most of the Member States (AT, BE, BG, CY, DE, DK, FI, FR, GR, HU, IE, LT, LU, MT, NL, PL, RO, SE, SK, UK) go even further than the FD, with legislation providing for possession of drugs as an offence, even if in many cases it is intended for personal consumption. The fact that the FD excluded activities committed by perpetrators exclusively for their own personal consumption from its scope was welcomed by several Member States' correspondents.

Most differences to the FD in terms of definitions can be detected in the offences regarding **trafficking in precursors (Article 2 (1) (d) FD).** All Member States except FR provide for criminal provisions on **precursor trafficking** in some form. However, there are missing elements in some Member States, as the "manufacture" of precursors is missing from IT legislation and in MT the terms "manufacture" and "transport" are missing. Similarly Polish laws do not cover "transport" and "distributing". Thus, IT, MT and PL do not completely comply with Article 1 (2) (d) FD. For DK doubts also remain as to whether its legislation fully complies with the FD in this area, as they have to combine their listed activities with the general provisions on criminal attempt and/or participation in order to cover the whole range of activities mentioned in Article 1 (2) (d) FD. In general, however, the impact of Article 2 (1) (d) FD has not been significant, since most Member States already had similar provisions in place and these existing provisions already went further than the FD on activities concerning precursors.

5.2.3 Incitement, aiding, abetting and attempt

Concerning **incitement, aiding and abetting**, the laws of all Member States are in compliance with Article 3 of the FD. The respective provisions are typically found in general criminal laws, each with its own characteristics. The different systems concerning the criminalization of **attempt** could be seen as potentially problematic in complying with the FD. For example, in those States which do not provide that rules on attempt are applicable to all criminal offences, but foresee that attempt is only punishable either in cases of serious offences (crimes) or if the law explicitly criminalizes the attempt. In BE and RO this leads to a situation where attempt in cases of offences linked to illicit trafficking in drugs and precursors are not punishable in all cases and in PT attempts in cases of illicit trafficking that are of a lesser gravity and concerning incitement are not criminalized.

5.2.4 Sanctions

In general, there is far-reaching compliance between penalties foreseen in Member States' laws and the provisions in the FD. The FD only contains provisions on **custodial penalties;** however, some 25 Member States (all Member States *except* RO and SI) have additional provisions for **financial penalties** in their legislation demonstrating another area where Member States go beyond the scope of the FD.

Regarding the **basic offence of illicit trafficking in drugs** outlined in Article 2 FD the **custodial penalties** in nearly all Member States comply with the provisions of the FD. Only in one Member State (BE) do some cases of cannabis trafficking deviate from imprisonment penalties. The maximum imprisonment sentences available in most Member States (except EE, ES, FI, SE) are in fact significantly higher than the level foreseen in the FD (where the maximum minimum penalty is between one and three years). Eight Member States (CY, FR, GR, IE, IT, MT, RO, UK) provide imprisonment penalties of more than 15 years for the basic offence of drug trafficking.

The penalties available in Member States for **precursor trafficking** again largely comply with the FD. Although the level of penalties in the Member States is, in general, lower for precursor trafficking than for illicit trafficking in drugs, 19 Member States (BE, BG, CZ, DE, DK, EE, GR, HU, IR, IT, LT, LU, NL, PL, PT, RO, SI, SK, UK) provide for higher imprisonment penalties than foreseen in the FD.

The FD did not provide for **financial penalties** for individuals, but only for legal persons and so it was not the intention for it to have an approximating effect in this area. In 25 Member States (all except RO and SI) financial penalties are foreseen for individuals at least for some offences of drug and precursor trafficking covered by Article 2 FD. However, this does not, by any means, suggest that there is a homogenous picture of financial penalties across Member States. There are in fact much greater differences between Member States in respect of financial penalties than is seen for custodial sentences. Although in all Member States which provide financial penalties for drug and/or precursor trafficking the nature of these penalties is a criminal one, there are completely different systems of administrating financial penalties and different levels of maximum financial penalties available in the Member States. Whereas ten Member States (AT, CZ, DE, DK, EE, FI, HU, PL, PT, SE) have a system of day fines, 15 (BE, BG, CY, ES, FR, GR, IE, IT, LT, LU, LV, MT, NL, SK, UK) have systems of absolute amounts of financial penalties. In 13 Member States (BE, CZ, ES, FR, GR, IE, IT, LU, MT, NL, PL, SK, UK) it is possible to impose them together with custodial sentences whereas in twelve Member States (AT, BG, CY, DE, DK, EE, FI, HU, LT, LV, PT, SE) they are foreseen as an alternative to (in most cases) lower custodial sentences. Therefore in several countries financial penalties are only foreseen or used for minor offences, whereas in countries where they are imposed together with custodial sentences they are also imposed in cases of more serious offences.

The provisions of the FD in respect of **aggravating circumstances** which influence the penalties available have not been transposed to the full extent by all Member States. Article 4 FD provides higher ranges of penalties for certain aggravating circumstances. 19 Member States foresee the issue of a **large quantity of drugs (Article 4 (2) (a) FD)** as an aggravating circumstance and, in addition, the penalties comply with the ones required by the FD (maximum of at least between 5 and 10 years). 13 Member States (AT, CY, DE, DK, GR, HU, IE, IT, LT, LV, PL, SK, UK) provide higher sentences than required in the FD (six Member States provide life imprisonment). In the Member States where such a provision is not foreseen, the maximum penalties for the basic offence are at least five years and therefore the penalties are in compliance with Article 4 (2) FD.

17 Member States refer to **harm to health (Article 4 (2) (b) FD)** as an aggravating circumstance. Again the penalties differ very much. All Member States which provide this aggravating circumstance provide penalties which comply with the FD. While six Member States (BE, CY, ES, FI, LU, NL) have established maximum penalties between 5 and 10 years of imprisonment, all the others provide for higher imprisonment penalties (three up to life imprisonment). In those Member States where this aggravating circumstance has not been established (except EE, PL and SE) the maximum level of imprisonment sentences provided for the basic offence complies with the level of penalties foreseen in Article 4 (2) FD.

The aggravating circumstance of **trafficking in drugs committed within the framework of a criminal organisation (Article 4 (3) FD)** is foreseen in 24 Member States (all Member States except DK, IE, SE). Some Member States differentiate between leaders and members of criminal organisations and provide for higher penalties for leaders. With the exception of NL all Member States provide maximum imprisonment sentences of ten years and more, in twelve Member States (AT, CY, EE, FR, GR, IT, LT, MT, PT, RO, SK, UK) the maximum sentence is more than twenty years (in nine Member States up to life imprisonment). It can be concluded that nearly all Member States (22) have higher maximum penalties for this case than those contained in the FD. The three Member States which do not have specific provisions on the commission of drug trafficking in the framework of a criminal organisation provide penalties for the basic offence or for trafficking of large quantities of drugs which comply with Article 4 (3) FD.

Regarding **precursor trafficking** there are fewer Member States which have established provisions on trafficking **in the framework of a criminal organisation.** Some 18 Member States (BE, BG, CY, CZ, DE, ES, FI, GR, HU, IT, LT, LU, LV, NL, PT, SI, SK, UK) have established such provisions and 17 of them provide penalties which comply with the ones foreseen in Article 4 (4) FD (maximum of at least between five and ten years of imprisonment, only CY provides less than five years)

Beside the aggravating circumstances foreseen in the FD Member States provide a set of additional aggravating circumstances which are applied. They include: commercial gain (6 MS); possession or use of dangerous means (6 MS); specific consumers of the illicit trafficking; e.g. minors, prisoners (19 MS); position of offenders (e.g. teachers, doctors) (6 MS); serious consequences (9 MS) or a concurrence with other offences (4 MS).

The provisions on **mitigating circumstances** in the FD are **not mandatory** for the Member States. Eleven Member States (BE, EE, ES, FR, GR, HU, IT, LU, LV, MT, RO) have, however, established provisions in their drug legislation according to which the range of penalties available is reduced where the offender cooperates with the authorities. In other Member States this circumstance is taken into account by the judge when determining the penalty in the specific case. The requirement for a reduction in penalties differs between the Member States' provisions and the provisions of the FD. In this regard the approximating effect of the FD has been very limited.

5.2.5 Confiscation

In most Member States **confiscation** provisions already existed before the FD, therefore these Member States did not amend their legislation or only small amendments were made. All Member States have confiscation provisions as required in the Framework Decision, but principally due to other obligations, particularly the Framework Decision 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instrumentalities and Property. Differences are evident in how confiscation provisions have been transposed. All Member States provide for confiscation not only of the objects of offences (illicit substances), but also of instrumentalities used and proceeds from these offences.

5.2.6 Jurisdiction

All States provide for **jurisdiction** according to the territoriality principle. In contrast, for the establishment of extra-territorial jurisdiction most Member States foresee additional prerequisites, for example double criminality, and thus are not in full compliance with Article 8 (1) (b) FD. In respects of legal persons, a variety of provisions on how to establish jurisdiction are foreseen in the different States. To date seven Member States (AT, DE, DK, EE, HU, FR and SE) have used Article 8 (2) FD and have informed the Commission about their intention to waive or limit their jurisdiction in cases of Article 8 (1) (b) and (c). Several Member States have jurisdiction on habitual residents either without any further requirements (BE, FI, GR, LV, LT, MT, NL, SK) or under certain conditions (AT, BG, CY, DK, ES, IE, SE, UK).

5.2.7 Liability of legal persons

All 27 Member States have provisions on **liability of legal persons.** However, there are many differences between the systems of corporate liability and sanctions foreseen for legal persons. In twenty Member States the legislation concerning liability of legal persons is in compliance with Article 6 FD. The other Member States (BE, BG, CZ, EE, IT, SE, SK) have established liability of legal persons, but these provisions do not cover all cases which according to Article 6 FD, should be covered Some 22 Member States provide a criminal liability of legal persons and five (BG, DE, GR, IT, SE) a non-criminal (administrative/civil), which is admissible according to the FD.

As sanctions for legal persons nearly all Member States provide for financial penalties. Other sanctions are also foreseen e.g. the exclusion from entitlement to tax relief or other benefits or public aid; the exclusion from participating in public tenders; temporary or permanent disqualification from the pursuit of commercial activities; judicial supervision; temporary or permanent closure of establishments used for committing the offence or the liquidation of the legal entity.

5.3 Application of the Framework Decision

5.3.1 General evaluation

In general, there were **no significant problems** reported with the application of the provisions by the public prosecution services and courts. The **interpretation** of the provisions of the FD did not lead to major problems in most Member States, since many national courts did not recognize the transposition of the FD or the FD did not change the interpretation of the existing laws. However, some interpretation issues arose in defining what constitutes a large quantity of drugs; what constitutes possession and how it is different from exclusive personal use; what constitutes cultivation of drugs and what constitutes a serious offence to allow an aggravating circumstance to be applied; the definition and criminalisation of precursors, and the interpretation of "criminal organisation".

Due to a lack of statistical data concerning trafficking offences it is difficult to analyse the effect of the FD on the prosecution of drug trafficking cases. However, it does not appear, from this data alone, that the application of the FD had a marked effect.

5.3.2 Sentencing practice

There are differences in how the provisions of the FD work in practice in individual Member States in terms of the actual penalties given and served. A range of aggravating and mitigating circumstances were also reported to come into play.

Some difficulties were experienced in securing data or estimates from practitioners on imposed penalties or time in jail. In most Member States statistical data does not exist and most interviewees reported that it is very difficult to give concrete information on those issues as they depend on a variety of factors and on each individual case.

If data exists, it cannot often be robustly compared, since the categories used are again very different. Overall, there is no homogenous picture concerning the imposition of penalties in the Member States. In reality, there are a large number of factors which influence sentencing, and it is difficult to evaluate sentencing practice merely based on those penalties that are foreseen in laws.

It appears, however, that in most States, all available sanctions in the FD are applied. Most commonly used are custodial sentences. In 18 Member States financial penalties are also regularly used in practice, but in several States only for minor cases as alternative to imprisonment. Beside custodial penalties, diversionary measures are applied in some states, e.g. referral to therapy, community service. The different approaches of Member States in sanctioning are not only influenced by drug trafficking law, but more generally by differing criminal law systems and criminal law philosophies. Thus, the FD has had a limited effect regarding approximation of sentencing.

Common examples of **aggravating circumstances** which are **often used in practice** include: (i) quantity, type, purity and dangerousness of drugs; (ii) recidivism; (iii) involvement of a criminal organization; (iv) harm to health; (v) exploitation of minors and other vulnerable groups; (vi) offences committed near official premises, hospitals or schools. Examples of **mitigating circumstances often applied by judges** are: (i) compliance or cooperation in ongoing investigations; (ii) remorse or admission of guilt; (iii) lack of previous convictions; (iv) level and circumstance of the offence; (v) personal circumstances of the offender; (vi) acceptance of therapy or support; (vii) centrality of the role of the individual in the offence.

5.3.3 Confiscation

In principle, in all Member States, confiscation measures are applied in the vast majority of cases of illicit trafficking in drugs and precursors. It appears that provisions are available in Member States to confiscate all objects foreseen in the FD. There is evidence that drugs as the objects of illicit trafficking are confiscated in all Member States, although some Member States operate the principle of forfeiture. In the

majority of Member States, the rights of victims and third parties in confiscation proceedings are respected.

5.3.4 Jurisdiction

As regards the **application of provisions of jurisdiction,** Member States do report only rare positive or negative conflicts of jurisdiction. The reason for this is that conflicts are regularly solved by direct communication between the respective Member State's authorities and criminal proceedings are subsequently transferred to another Member State or continued as independent proceedings. Eurojust stated that (positive) conflicts of jurisdiction arise in drug trafficking cases due to it being a transnational offence in nature and due to the fact that most Member States foresee quite wide ranging provisions for extra-territorial jurisdiction. Several Member States mention problems with the *ne bis in idem* and report cases of so called forum shopping (meaning that in cases of conflicts of jurisdiction the jurisdiction of a certain Member State is chosen based on where the requirements for investigation are lower or where the harshest sanctions are foreseen).

5.4 Cooperation between Member States and Member States and EU bodies

Since illicit trafficking in drugs has typically a trans-national dimension, cooperation between Member States and between Member States and EU bodies is essential for an effective prosecution of such offences. The national reports concluded that cooperation generally works well, although the degree of cooperation certainly varies. The functioning of cooperation relies mainly on bilateral contacts, especially on personal contacts, as this accelerates and increases cooperation. Several Member States mentioned Eurojust and Europol as important actors in the field of cooperation. In contrast, some Member States mentioned that their national authorities tend to avoid cooperation through EU bodies due to concerns over resources and time.

All Member States provide for criminal penalties for cases of drug trafficking which in principle are high enough to enable Mutual Legal Assistance and Mutual Recognition of criminal decisions. Although not restricted to cases concerning the illicit trafficking in drugs, key problems regarding cooperation between Member States exist including: delays in the execution of requests of Mutual Legal Assistance; the non-admissibility of evidence obtained in other Member States; conflicts of jurisdiction and difficulties in the transfer of proceedings; difficulties in the area of confiscation in other Member States; difficulties in the field of controlled deliveries; difficulties in the work of Joint Investigation Teams.

Annex 1: List of interviewees

External Stakeholders – Total number of interviews: 7

- Pedro Pérez Enciso and Ioana Van Nieuwkerk – Eurojust
- Michael Carlin – DG Justice
- Brendan Hughes - EMCDDA
- Neil Tolman - Europol
- Steven Malby - UNODC
- Adrianna Miekina - DG Home
- Claire Scharf-Kroener – DG Enterprise

Member State Level Research – Total number of interviews: 178

Austria (4 interviewees)

- Leading prosecutor Hon.-Prof. Dr. Fritz Zeder, Head of Unit IV. 2 (Criminal matters and cooperation in the field of multilateral criminal affairs) in the Federal Ministry of Justice, national drug coordinator
- Prosecutor Mag. Jörgen Santin, dealing with organized crime, especially drug trafficking, criminal court Vienna
- Judge Mag. Helene Gnida, specialist in criminal cases dealing with drug offences and drug trafficking, criminal court Vienna
- Counsel for the defence/lawyer Dr. Roland Kier, experienced expert in the field of drug offences and drug trafficking cases, Vienna

Belgium (13 interviewees respective offices)

- Maarten Collette: Orde van Vlaamse Balies (Flemish bar association), Brussels
- Serge de Biolley: member of the Permanent Representation of Belgium to the Council of the European Union - "Justice and home affairs"
- Tom Decaigny: lawyer at the bar of Antwerp and Teaching assistant at the Vrije Universiteit Brussel - Criminal law and criminal procedure
- Alexander Hoefmans: civil servant at the Ministry for Justice, Directorate-General Legislation, Fundamental Rights and Freedoms
- Anne Bouflette: Referendary at the Court of First Instance of Hasselt
- J.M. Jeurissen: Judge at the Court of First Instance of Hasselt
- J. Van Gronsveld, Registrar at the Court of First Instance of Hasselt
- The prosecutors offices of Antwerp, Mechelen, Hasselt, Gent and Tongeren*
- The College of Prosecutor Generals, Brussels

*Due to the unity of the prosecutor offices in Belgian law, it was requested not to explicitly mention the names of the prosecutors who were interviewed.

Bulgaria (5 interviewees)

- Mrs Mariana Lilova - prosecutor, National Member for Bulgaria at Eurojust
- Mrs Ivanka Kotorova - prosecutor, International Cooperation Unit, Supreme Prosecution's Office
- Mrs Nevena Grozeva - judge, Sofia Court of Appeal
- Mr Borislav Petkov - acting head of International Cooperation Unit, Ministry of Justice
- Mrs Ralitza Ilkova - defence lawyer

Cyprus *(8 interviewees)*

- Stelios Serghides, Head of YKAN (Anti-Drugs Unit of the Cyprus police)'s Prevention Unit
- Alexandros Alexandrou, YKAN (Anti-Drugs Unit of the Cyprus police)'s Prevention Unit
- Daniel Myller (Anti-Drugs Unit of the Cyprus police)
- Efie Kyprianou, Anti-drugs Council
- Nasia Fotiou, Anti-drugs Council
- Theano Mavromoustaki, Law Office of the Republic of Cyprus.
- Yiannis Polychronis, Criminal lawyer
- Michalis Deilinos, Criminal lawyer

Czech Republic (6 interviewees)

- Ministry of Justice (Michael Švarc and Lucie Kresslová, from Department of International Penal Law, experts in international cooperation in penal law, involved in the evaluation of the compatibility of the FD with Czech penal law + consultation with head of the department)
- Ministry of Interior: Sylvie Reterova (Security Law Unit)
- Police Presidium: Lt.Col. David Kutenek, Section of National Drug Headquarters (experience both with policy coordination and with investigation of concrete cases)
- High Public Prosecutor's Office in Prague (Vrchní státní zastupitelství v Praze): dr. Jaroslava Novotná (public prosecutor, experience with concrete cases + her office acts, in capacity of public prosecutor, as the appellate body in more serious forms of drug offences)
- Prague Municipal Court: Dr. Alexandr Šotolář. Judge with experience both with appellate cases of less serious drug offences and the first instance cases of more serious cases of drug related crimes. In addition, Dr. Šotolář was also a consultant of the Ministry of Justice during preparation of new Penal Code.

Denmark (4 interviewees)

- Deputy Director, statsadvokat Jesper Hjortenberg, Eurojust
- Head of International Division, kontorchef Morten N. Jakobsen, Ministry of Justice
- Public Prosecutor, politiadvokat Jens Rasmussen, Copenhagen Police
- Attorney of Law, advokat Henrik Stagetorn, chairman of the Danish Association of Defence Lawyers

Estonia (5 interviewees*)

- Ministry of Justice, Criminal Policy Department, Head of International Judicial Co-operation Division
- Office of the Prosecutor General, State Prosecutor (drug cases)
- Office of the Prosecutor General, State Prosecutor (international co-operation)
- Office of the Prosecutor, Chief State Prosecutor, Head of Prosecution Department.
- lawyer, Law-office – "Tehver & Partners"

*As there were very trusting relationships with the interviewees and the interviewees expressed their opinions very openly, it is very important not to make their names public in any further analysis or publication.

Finland (6 interviewees)

- Defence lawyer Markku Fredman , Partner and Attorney at law at Law Firm Fredman & Månsson
- State Prosecutor Leena Metsäpelto, Office of the Prosecutor General
- State Prosecutor Ritva Sahavirta, Office of the Prosecutor General, former Finnish national representative at Eurojust
- Civil Servant and Doctors of Law Heini Kainulainen, The National Research Institute of Legal Policy (operates under the Ministry of Justice), Drug Researcher at the Criminological Research Unit
- District Court Judge Eero Nikkarinen, District Court of Helsinki
- Detective Superintendent Risto Lohi, National Bureau of Investigation / Crime Investigations / Organised Crime

France (13 interviewees)

1. TGI et Cour d'Appel de PARIS

- Vice-président chargé de l'instruction, Juridiction Inter-Régionale Spécialisée (JIRS) – Tribunal de Grande Instance (TGI) de Paris
- Président de la Chambre de l'instruction – Cour d'Appel de Paris

2. Ecole nationale de la magitsrature (ENM) Paris

- Ancien Juge d'Instruction (JI) Marseille, Magistrat chargé de mission au Département International

3. TGI de BOBIGNY

Parquet

- Secrétaire général du parquet, Vice Procureur
- Procureur de la république Adjoint (PRA) Bobigny, en charge de la division des affaires criminelles et de la délinquance organisée (DACRIDO)
- Vice-Procureur, chef de la section criminalité organisée

Siège

3. Secrétaire général adjoint de la Présidence
4. Vice-présidente coordinatrice de la 13ème chambre, spécialisée dans le traitement des ILS

4. Autres TGI

- Procureur de la République Adjoint, ancien Vice-Procureur JIRS Marseille, (Nicolas BESSONNE)
- Procureur de la République Adjoint , ancien substitut général à la CA d'Aix (Pierre CORTES)

5. Ministère de la Justice et des Libertés DACG

- Magistrat chargé du Bureau de la Lutte contre le Crime Organisé, le Terrorisme et le Blanchiment (BULCO), en nom et représentation du service

6. Avocats

- Avocat au barreau de Créteil, pénaliste

7. Magistrat étranger Italien

- Substitut à la DDA (District anti-mafia au Parquet de Naples – Italie) (Vincenzo D'ONOFRIO)

Germany (7 interviewees)

- Dr. Leo Teuter, Criminal defense lawyer in Frankfurt a.M.
- Dr. Carsten Paul, Chief Judge at the district court Marburg
- Dr. Kurt Sippel, Public prosecutor at the district court Marburg
- Prof. Dr. Dieter Rössner, University professor for criminology and criminal law at the University of Marburg
- Two employees of the state criminal police office of Hesse (LKA), narcotics related crime division
- Benedikt Welfens: Senior prosecutor, deputy to the National member for Germany at Eurojust

Greece (5 interviewees)

- Mr. Dimitrios Koulaxidis, Judge by the Court of First Instance of Athens, Greece.
- Mr. Dimitrios Zimianitis, Public Prosecutor by the First Instance, Athens, Greece
- Ms. Konstandia Gazeta, Public Officer, Ministry of Justice, Transparency and Human rights, Gen. Direct. of Legislative coordination & special international legal relations - Sector of Legislative coordination & special international legal relations
- Mr. Marios Sakelarios, Defence lawyer
- Mr. Lefteris Tamvakos, Police Captain, Police Officer, Central anti-drug coordinative unit-national intelligence unit – Ministry of Citizen Protection

Hungary (4 interviewees)

- Krisztián Gáva, dr.; Under-secretary at Office of the Minister of State for Justice, Ministry of Public Administration and Justice
- Ágnes Frech, dr.; Leader of the Criminal College at Municipal Court of Budapest
- Lajos Korona, dr.; Prosecution Service of the Republic of Hungary

- Andrea Pelle, dr.; lawyer, Head of Legal Aid Service at Hungarian Civil Liberties Union

Ireland (7 interviewees)

- Judge of the Circuit Court- Criminal Matters
- Senior Officials (2) – Department of Justice & Equality
- Barrister- State prosecutor- 12 years experience
- Barrister - Criminal Defence- 9 years experience
- Academic – Lecturer- Chair, Irish Penal Reform Trust
- Member - Garda National Drugs Unit

Italy (5 interviewees)

- Risposte a cura del DOTT. ANDREA URSINO, Sostituto Procuratore della Repubblica presso la Direzione Distrettuale Antimafia di Catania
- Risposte del CONS. LUIGI LOMBARDO, Magistrato componente della Direzione Distrettuale Antimafia di Catania
- Risposte a cura del CONS. GIORGIO FIDELBO, Magistrato – Corte di Cassazione
- Risposte a cura del CONS. GIACOMO PAOLONI, Magistrato – Corte di Cassazione
- Risposte a cura del Dott. SERGIO BARBIERA, Procura della Repubblica presso la Direzione distrettuale Antimafia di Palermo

Latvia (9 interviewees)

- The Ministry of Justice – Ms Evita Miezane (Legal Adviser, Criminal Law Department), Mr Karlis Kleinbergs (Legal Adviser, Court Policy Department
- The Ministry of Interior (specialists from the Legal Department of the Ministry, as well as specialists from law enforcement body – the State Police
- The Prosecutors Office – Mr Ivars Zubulis (Head of the Prosecutors Office on Fight against Narcotic Offences, Ms Dace Trusinska (Deputy Head of the Prosecutors Office on Fight against Narcotic Offences), Ms Una Brenca (The Prosecutors General Office, Head of Division on International Cooperation)
- Mr Janis Rozenbergs – Sworn Advocate
- Mrs Diana Hamkova – Docent, Dr.iur., the University of Latvia, Criminal Law Division

Lithuania (10 interviewees)

- Jūratė Radišauskienė, prosecutor, Department of the organized crime and corruption, Vilnius Region Prosecutor Office
- Aivaras Alimas, prosecutor, Department of the organized crime and corruption, Vilnius Region Prosecutor Office
- Rolandas Jurkevičius, prosecutor, Department of the organized crime and corruption, Vilnius Region Prosecutor Office
- Audronė Gaublienė, prosecutor, 5th department of the crimes investigation, Vilnius Prosecutor Office
- Tomas Krušna, chief prosecutor, Criminal proceedings department, Prosecutor General Office (international cooperation in criminal cases)
- Prof., dr. Jonas Prapiestis, judge, chairman of the Chamber of Criminal cases, Supreme Court of Lithuania
- Antanas Klimavičius, judge, Chamber of Criminal cases, Supreme Court of Lithuania
- Dr. Andželika Vosyliūtė, legal adviser, Chamber of Criminal cases, Vilnius Region Court
- Doc., dr. Remigijus Merkevičius, defense lawyer, advocate
- Rolandas Tilindis, former prosecutor (Prosecutor General Office), former member of *Eurojust*, legal adviser; current position: defence lawyer

Luxembourg (5 interviewees)

- Nathalie Jung, Vice-President, District Court of Luxembourg, President 12th Criminal law Chamber, ("*Tribunal d'arrondissement de Luxembourg*")
- Sophie Hoffmann, Ministry of Justice
- Nicky Stoffel, Attorney at ETUDE STOFFEL cabinet d'avocats, specialized in drug law offences
- Jeannot Nies, First Advocate General ("*Premier Avocat Général*"), Prosecutor General's Office of Luxembourg ("*Parquet Général du Grand-Duché de Luxembourg*")
- Steve Schmitz, Judicial Police ("*Police Judiciaire*")

Malta (4 interviewees)

- Dr Jose' Herrera, MP, Deputy House of Representative (Parliament), Malta
- Dr Leonard Caruana, Criminal Lawyer
- Ms Susann Shaw
- Empirical research conducted with the Attorney-General's Office, Executive Police and the Criminal Court Registry

Netherlands (6 interviewees)

- Ms. M.A.C.L.M. Bonn (MB), senior adviser, Legislation Department, Ministry of Security and Justice
- Ms. P. Burgers (PB), judge, former investigative judge, Haarlem District Court
- Mr. W. Morra (WM), lawyer at Coumans & Van Gaalen lawyers, Leiden
- Ms. F. van der Plas (FP), Law Enforcement Department, Ministry of Security and Justice
- Mr. A.C.M. Rutten (AR), judge, Haarlem District Court
- Mr. C.J.W.M. van Spierenburg (CS), public prosecutor at the National prosecutor's office, 's-Hertogenbosch

Poland (6 interviewees)

- Piotr Kosmaty, Prokurator Prokuratury Okręgowej w Krakowie delegowany do ProkuraturyApelacyjnej w Krakowie [Public Prosecutor at the Regional Prosecutors Office, seconded to the Appeal Prosecutor in Cracow], interview conducted on 17th October 2011
- Krzysztof Chodak, Judge, District Court in Kraków, interview conducted on 17th October2011
- Aleksandra Sołtysinska, Judge, Regional Court in Kraków, interview conducted on 17th October2011
- Piotr Kubaszewski, Public Interest Law Actions Program, Helsinki Foundation for Human Rights, Poland, interview conducted on 31st October 2011
- Mikołaj Pietrzak, Advocate, Pietrzak & Sidor Chambers, interview conducted on 7th November
- Barbara Wilamowska, Coordinator of the Ministry of Justice for the National Programme of Counteracting Drug Addiction, interview conducted on 7th November 2011

Portugal (10 interviewees)

- Mr. Euclides Dâmaso Simões, District Prosecutor-General (Judicial District of Coimbra); National Contact Point of the EJN; former Director of the DIAP-Coimbra (Department for the Investigation and Prosecution of Criminal Offences – *Departamento de Investigação e Acção Penal*)
- Mr. Vítor Guimarães, Deputy Prosecutor-General; Director of the DIAP-Coimbra; former Director of the Judiciary Police – Porto
- Mr. Jorge Leitão, Senior Prosecutor; DIAP-Coimbra
- Mrs. Ângela Pinto Bronze, Senior Prosecutor; Criminal Court Prosecutor (Coimbra)
- Mrs. Fernanda Jarmela, Senior Prosecutor; Criminal Court Prosecutor (Coimbra)
- Mr. José Nabais, Senior Prosecutor; Advisor of the District Prosecutor-General for Criminal Matters; former Court Prosecutor
- Mrs. Alexandra Alves, Deputy Prosecutor; DIAP-Coimbra; Responsible for the investigation and prosecution of all drug trafficking in the judicial area of Coimbra
- Mr. António Pedro Nogueira, Judge, 2ª Vara de Competência Mista (Court for Civil and Criminal Matters), Vila Nova de Gaia
- Mr. José Jacob Simões, Defence Lawyer; President of the Deontological Council – District of Coimbra of the Portuguese Lawyers' Bar
- A former advisor of the Ministry of Justice, who had direct contact with the transposition of Framework-Decisions in 2003-2004, but asked not to be identified

Romania (5 interviewees)

- Cristina Rotaru, Ph.D., Judge – Criminal Division of the Romanian Supreme Court; associate professor, Faculty of Law, University of Bucharest; former Romanian Judicial Network Contact Point, Court of Appeal level
- Florin Mornăilă, Public Prosecutor – Directorate for Investigating Organized Crime and Terrorism, Cluj Territorial Service
- Eugen Iordăchescu, lawyer – coordinating partner, "Iordăchescu, Udrescu & Associates" Law Firm, Cluj-Napoca
- General (Chestor) Sorin Oprea - Director of the Romanian National Anti-Drug Agency, Bucharest
- Rodica Mitroiu – Chief of the Precursors Service, Romanian National Anti-Drug Agency, Bucharest

Slovakia (7 interviewees)

- Doc. JUDr. Jozef Čentéš, PhD., deputy head of the Criminal Department of the General Prosecutor's Office
- JUDr. Alica Kováčová, PhD., deputy head of the International Department of the General Prosecutor's Office
- JUDr. Radovan Kajaba, prosecutor specialized in the field of drug related criminal offences, District Public Prosecution Office Bratislava V.
- Anonymous judge specialized in criminal matters (who did not approve disclosure of his identity),
- kpt. JUDr. Tomáš Jakabovič, head of the International Department of the National Anti – Drug Unit of the Police Force
- JUDr. Mario Buksa, defense attorney specializing in criminal matters
- JUDr. Rastislav Ďurove, Ministry of Justice, Department of Legislation

Slovenia (9 interviewees)

- Andreja Lang, General Director of the Directorate for Judicial Legislation, Ministry of Justice
- Ana Bučar Brglez, Head of Division – Secretary, Mutual Legal Assistance Division, Ministry of Justice
- Katjuša Čeferin, District Prosecutor, Ljubljana division
- Manja Prezelj, District Prosecutor, Ljubljana division
- Blanka Žgajnar, Prosecutor, Special unit for prosecution of organized crime, Ljubljana (procecutor in pending case »Balkan Warrior«)
- Mag. Alja Kratovac Prokopovič, Judge, District court Ljubljana
- Mojca Zalar Kocjančič, Judge, District court Ljubljana
- Zvjezdan Radonjić, Judge, District court Ljubljana
- Dr. Marko Bošnjak, Defence attorney, Legal office Čeferin

Spain (5 interviewees)

- Gonzalo Boye Tuset, Criminal Law Lawyer at the Madrid Bar
- Ana Ferrer García, Judge, President of the Provincial Court (*Audiencia Provincial*) of Madrid
- Dr. Andrea Giménez-Salinas Framis, Researcher in Criminology, Instituto de Ciencias Forenses y de la Seguridad at the Universidad Autónoma de Madrid
- Dr. Iñigo Ortiz de Urbina Gimeno, Associate Professor of Criminal Law and Criminology (Universitat Pompeu Fabra); Special Advisor to the Minister of Justice (2009-2011)
- Javier Zaragoza Aguado, Prosecutor at the National Court (*Audiencia Nacional*), Madrid

Sweden (4 interviewees)

- Michael Hansson, prosecutor at the international prosecutor chamber in Malmö
- Fredrik Bülow, advocate (member of the Swedish Bar Association), defence counsel practising in Lund
- Per Ole Träskman, senior professor at the Faculty of Law, Lund University and expert and advisor to the Government on numerous legislative committees
- Thomas Albinsson, former police inspector, chief of surveillance, narcotics and aliens section in Malmö

United Kingdom (6 interviewees)

- Criminal lawyer (London)
- 3 Judges (1 Crown Court Judge, 1 Circuit Judge, 1 Magistrate)
- Prosecutor (London)
- Police officer (Serious and Organized Crime Agency)

Annex 2: Bibliography

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Annex 3: Questionnaires to national experts

Preparatory study for an impact assessment on a new legislative instrument replacing the Council Framework Decision 2004/757/JHA on illicit drug trafficking
Questionnaire

Drug trafficking situation in the Member States:

To what extent is illicit drug trafficking a serious problem in your Member State? *Please provide evidence from interviewees, media, statistics, research results and other material illustrating the situation.*

Transposition of Framework Decision 2004/757/JHA:

Information should be gathered from an analysis of legal texts, desk based literature review and in-depth interviews with relevant experts responsible for drafting implementation legislation and drug law experts. Please describe the national legislation in a short and precise way, give an overview/synthesis on your legislation and case law. As a starting point, use the report of the Commission from 2009.

1. When was the Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking transposed into your national legislation?

    a. Was the legislation in your country amended to implement the Framework Decision?

    b. Was the FD transposed within the set time limit?

    c. If it was late, what were the reasons?

2. Were any difficulties encountered during the transposition process? Were they of a legal, practical or political nature? What were they and why did they occur?

3. Does the definition of “drugs” in your legislation correspond with the definition of Article 1 FD? If not, why and what is the definition?

4. Have the “crimes linked to trafficking in drugs” defined in Article 2 FD completely been transposed in your MS? Has the wording of Article 2 (1) (a)-(c) been incorporated in its entity (all activities listed in Article 2 (1) (a)-(c)) into your national legislation? If not, which ones are missing and why? What are the definitions of the respective offences incorporated by you Member State?

5. In what ways have the offences linked to “precursor trafficking” according to Article 2 (1) (d) FD been implemented into your legislation? What are the definitions of the respective offences incorporated by your Member State?

6. Is Article 3 FD (incitement, aiding and abetting and attempt) completely implemented into your legislation? Please describe briefly under which conditions incitement, aiding and abetting on the one hand and attempt of the offences referred to in Article 2 FD on the other hand are punishable.

7. Which penalties (and other sanctions) are provided for offences linked to trafficking in drugs? Which penalties are provided for offences linked to precursor trafficking? Do they comply with the penalties provided for in Article 4 FD? Please describe exactly which penalties are foreseen for the drug and precursor trafficking offences.

    a. Are the elements of “quantity” and “harm to health” provided for as aggravating circumstances? What sentences are provided for?

    b. Is there legislation regarding trafficking in illicit drugs and precursors, where the offence is committed within the framework of a criminal organisation (Article 4 (3) and (4))? What sentences are provided for?

    c. Are there other elements (specific to drug trafficking or general) that influence the level of sanctions?

8. Was the system of reducing penalties in cases in which

    a. the offender renounces criminal activity relating to trafficking in drugs and precursors (Article 5 (a) FD),

    b. the offender provides the administrative or judicial authorities with information (Article 5 (b) FD) transposed into your legislation?

9. Were the confiscation provisions of Article 4 (5) FD implemented into your national legislation? In which way?

10. Have the provisions on the liability of legal persons for drug trafficking provided by Article 6 been transposed in your legal order? If not, why? If yes, is it a criminal, administrative or civil liability? Under which circumstances legal persons are responsible? Which sanctions are provided for it?

11. Does your legislation provide for jurisdiction in all cases foreseen in Article 8 FD?

    a. In which cases the Member State has jurisdiction in relation to legal persons concerning drug trafficking offences?

    b. Does the Member State have jurisdiction, if the offence has been committed outside its territory? If yes, under which conditions (the ones foreseen in Article 8 (1) (b) and (c) and/or others)?

    c. In the case of extra-territorial competence, does the Member State only have jurisdiction for nationals or also for habitual residents (if an habitual resident has committed drug trafficking offences outside the territory)?

12. Does your national legislation make a distinction between *possession/personal use* (consumption) of drugs and *trafficking* of drugs? If yes, how (what are the relevant factors for the distinction between possession/personal use of drugs and trafficking of drugs?) Is personal consumption of drugs a criminal offence in your country? Are cases of drug trafficking to finance the personal addiction (street trafficking) treated in a different way?

13. What are the main changes brought about by the implementation of the Framework Decision to pre-existing national legislation on drug trafficking? Please explain briefly the drug trafficking legislation in your Member State in general (not only focused on the Framework Decision) and the impact and added values of the Framework Decision.

Application of the legislation transposing the Framework Decision

Information should be gathered from literature reviews and consultations with practitioners (public prosecutors, judges, investigative judges (or juges d'instructions), defence lawyers, researchers), who have experience in the field of drug traffic offences and who work in this area. Please add quantitative data or statistics on drug and precursor trafficking-related prosecutions and sentencing, seizure of assets, confiscation of drugs in your Member State. If exact data is not available, please try to provide estimates and/or extrapolate what data is known.

1. Are the provisions foreseen in the Framework Decision applied in practice? Are the provisions of the Framework Decision transposed in a way that they can be applied by prosecution authorities and courts?

2. How has the implementing law been interpreted by courts, and what are the specific issues they have encountered? Please point out the main problems.

3. Referring to illicit drug trafficking statistics, please provide data on the following for the period 2005-2010 when available:

    a. How many cases are reported to the police?

    b. How many cases are prosecuted?

    c. How many cases indicted?

    d. How many convicted per year?

    e. Are diversionary measures applied in these cases of offences linked to drug and precursor trafficking?

4. What are the main problems and obstacles encountered in the anti-drug trafficking provisions?

    a. Are they of a legal or practical nature?

    b. Do they relate to specific FD provisions?

5. Which sanctions are applied in cases of illicit drug trafficking, which are not and why?

    a. Which penalties are imposed? (Please provide relevant data where available. If not, try to get estimates by the interviewees.)

b. What is the level of sanctions?

c. What are the mitigating and aggravating circumstances?

d. Which are the relevant aspects that influence sentencing, not only according to legislation, but also in practice of drug trafficking cases (e.g. previous convictions, juvenility, addiction of the offender, lack of evidence, etc)?

e. Are there sentencing guidelines for drug offences? If yes, what do they foresee?

6. How long is a person who is actually in jail in your country (respecting the possibility of early release and other aspects which are relevant in practice), when he/she commits one of the following offences:

   a. trafficking offence involving 1 Kg of heroin/cocaine and/or 10 Kg of cannabis;

   b. trafficking offence involving 10 kg of heroin/cocaine and/or 100 Kg of cannabis;

   c. the previous trafficking offences committed within the framework of a criminal organisation.

   Please ask practitioners for their experiences and estimates.

7. Did the Framework Decision improve/change the prosecution of drug and precursor trafficking or the respective sentencing practice?

   a. In general, what was the impact of the implementation of the Framework Decision on prosecutions, convictions and sentencing in drug trafficking cases?

   b. More specifically, has the Framework Decision had a positive or even negative effect on the prosecution of illicit drug trafficking? In what ways?

   c. Is this illustrated by data on prosecutions and convictions before and after the Framework Decision came into force? What are the differences?

8. What problems are seen concerning defence rights of accused persons in drug trafficking cases? Why?

9. Are confiscation measures applied to drug and precursor trafficking cases? How much is confiscated/seized? Are the rights of victims and of other third parties respected in the confiscation process?

10. Are there positive or negative conflicts of jurisdiction with respect to transnational drug trafficking offences?

    a. How have they been solved?

    b. Has Eurojust been involved (if yes, how often)?

11. Do you know about cases of “forum shopping” in cases of illicit drug trafficking? If yes, please specify.

12. Are there problems with *ne bis in idem* in cases of illicit drug trafficking in your country? If yes, please specify.

13. How does cooperation in drug trafficking cases between prosecution authorities of different Member States work? How does cooperation between national prosecution authorities and EU bodies work (Europol, Eurojust, …)? What problems are encountered with this cooperation? In particular:

    a. Do mechanisms to get evidence from another Member State concerning illicit drug trafficking work?

    b. How does exchange of information work? Is it always possible to use evidence you get from other Member States? Does this depend on the investigation measure? E.g. is it possible to use evidence from covert investigation by another Member State or information gained by an agent provocateur?

    c. How does cooperation with other Member States work in the area of controlled deliveries? Are there relevant provisions on controlled deliveries in your Member State? If yes, please explain briefly.

    d. Are there joint investigation teams and how do they work?

    e. Please explain the relevant provisions on principal witnesses in your country and their relevance for cooperation in drug trafficking cases.

    f. Please indicate any other problems of mutual legal assistance instruments in cases of illicit drug trafficking.

Relationship between the implementation of the Framework Decision and other legislative measures against drug trafficking:

1. Is it common to prosecute drug trafficking under the law on participation in a criminal organisation?

2. What is the law and judicial practice as regards drug trafficking as a money laundering predicate offence?

3. What is the law and judicial practice as regards the confiscation of proceeds from drug trafficking?'

A. Future perspectives:

Information should be gathered from practitioners (public prosecutors, judges, investigative judges, defence lawyers), researchers and stakeholders and from relevant literature.

1. Are the existing EU legal provisions sufficient to prosecute illicit drug trafficking cases effectively? What European and national level legal measures would be necessary for an effective and successful fight against illicit drug trafficking?

2. Which provisions a new EU instrument concerning criminal law on drug trafficking should contain (concerning that Article 83 of the Treaty on Functioning of the European Union only provides for the establishment of minimum rules on definition of offences and sanctions)?

3. What should be improved about the cooperation between Member State authorities in cases of illicit drug trafficking? How should the cooperation between Member States authorities and EU bodies working in the field of illicit drug trafficking be improved?

4. Should there be strict binding rules on jurisdiction in drug trafficking cases within the EU? Do we need binding decisions by an EU body (e.g. Eurojust) on which country shall have jurisdiction?

5. Which instruments to protect the fundamental and procedural rights of accused people in illicit drug trafficking cases should be contained in any new EU instrument?

6. Is there the need for a regulation on procedural aspects regarding illicit drug trafficking? Which ones?

7. Do you foresee any opposition, in your country, to the establishment of a new binding EU instrument referring to illicit drug trafficking? What opposition do you see from political parties, by human rights groups or by other NGOs? Why?

8. Are there any other observations concerning drug trafficking?

Preparatory study for an impact assessment on a new legislative instrument replacing the Council Framework Decision 2004/757/JHA on illicit drug trafficking

Additional questions

(sent to national experts in December 2012)

1. Do aggravating /mitigating circumstances influence the range of penalties or do they "only" influence sentencing by the judge?

2. Confiscation: What objects are confiscated in practice? Also proceeds, instrumentalities…? To what extent?

3. **As far as in your country financial penalties are foreseen** for illicit drug trafficking offences, could you please answer briefly the following questions (the Commission now is very much interested in that topic):

    a. What is the nature of these penalties? Are they criminal or administrative financial penalties (in relation to both individual and legal persons)?

    b. Are financial penalties actually used in cases of trafficking in illicit drugs?

    c. Are financial penalties seen as useful by practitioners? Do practitioners believe that they have an added value? Are they regarded really deterrent to crime (particularly in absence of the possibility to confiscate proceeds of crime)?

    d. What is the relationship between financial penalties and confiscation?

    e. How is the extent of these financial penalties determined in the sentencing process? Is there a system of daily fines? Is the extent of the penalty dependent from the value / amount of drugs? Is there another system of sentencing?

4. **For all:** Even if your legislation does not provide financial penalties in cases of drug trafficking, please answer the following questions briefly: How is the extent of these financial penalties determined in the sentencing process in general? Is there a system of daily fines or another system of sentencing (respecting the financial situation of the offender or not)? How are financial penalties determined? Depending on the value of the drugs?

5. If sources regarding data you mentioned in your report are missing, please add the sources.

6. If there was/is no impact of the FD (referring to questions B13 and C7 from the Questionnaire) what do you or your interviewees think are the reasons for that? In particular, were there no problems or was the FD not the right instrument to solve those problems?

Annex 4: List of national experts

	National Rapporteur
Project leaders	*Robert KERT (report)* *Andrea LEHNER (report)* *Francesca GALLI* *ECLAN - Brussels Team (Anne WEYEMBERGH)*
Austria	Christoph ZEHETGRUBER
Belgium	Paul DE HERT, Karen WEIS, Jürgen MILLEN
Bulgaria	Margarita CHINOVA, Pavlina PANOVA, Miroslava MANOLOVA
Cyprus	Costas PARASKEVA
Czech Republic	Ivo SLOSARCIK
Denmark	Jørn VESTERGAARD
Estonia	Jaan GINTER
Finland	Dan FRÄNDE, Annika SUOMINEN, Jessica HYDÉN
France	Henri LABAYLE
Germany	Florian HANSEN
Greece	Spiros KARANIKOLAS
Hungary	Imre SZABO
Ireland	Grainne FARRELLY
Italy	Giovanni GRASSO, Floriana BIANCO
Latvia	Violeta ZEPPA-PRIEDITE
Lithuania	Švedas GINTARAS, Paulius VERŠEKYS
Luxembourg	Katalin LIGETI, Martin PETSCHKO
Malta	Stefano FILLETTI
Netherlands	W. GEELHOED
Poland	Adam LAZOWSKI
Portugal	Pedro CAEIRO, Miguel COSTA
Romania	Daniel NITU
Slovakia	Anna ONDREJOVA, Matúš HARKABUS
Slovenia	Katja ŠUGMAN STUBBS, Andreja TRATNIK ZAGORAC
Spain	Manuel CANCIO MELIÁ, Mariona LLOBET
Sweden	Christoffer WONG
United Kingdom	Justice TANKEBE

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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Towards a stronger European response to drugs

1. A STRONGER EUROPEAN RESPONSE TO THE CHALLENGES POSED BY DRUGS

Illicit drugs[1] are a major threat to the health and safety of individuals and societies in the EU. Europe's drugs problem is evolving rapidly. **New and harmful psychoactive substances[2] are emerging at an unprecedented rate**. Drug traffickers change routes and methods for smuggling or for laundering the proceeds of illicit trafficking in drugs.

Drugs particularly affect young people. The use of drugs is one of the major causes of health problems among young people and is one of the most important causes of avoidable death among young Europeans. The 2011 Eurobarometer "Youth attitudes on Drugs"[3] shows that young people can easily obtain even the most harmful drugs within 24 hours. Statistics show that one person dies in Europe every hour because of drug overdose.[4] The use of the internet for selling new drugs and the rapid exchange of information on new drugs through social networks, present new challenges to current drug control policies and to traditional prevention methods.

More needs to be done to address the drug problem. Action should take place where it is more effective, in full respect of subsidiarity. The EU action should be focused where it brings more added value. **Member States are unable to contain the spread of drugs without effective cooperation:** in the internal market goods, but also crime, move freely. If one Member State bans new psychoactive substances, traders open shops in Member States where the law is more permissive. Uncoordinated clamp-downs may force traffickers to move drug production sites to neighbouring countries or to shift trafficking routes, but these measures cannot disrupt trafficking sustainably.

Over the past 15 years, the European Commission has helped develop a comprehensive and balanced EU response to drugs, in the framework of the EU Drugs Strategy (2005-2012)[5]. The two main **EU legal instruments** in anti-drugs policy, one on drug trafficking[6] and the other on the emergence of new drugs (new psychoactive substances)[7], date respectively from 2004 and 2005. However, the past few years have brought fresh challenges: new ways of trafficking drugs and chemicals used for their manufacture ("drug precursors"), the rapid emergence of new drugs and innovative distribution channels for these new substances.

In the 2010-2014 Stockholm Action Plan[8] the European Commission committed itself to measures reinforcing protection against serious and organised crime. With the **Lisbon Treaty**

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1 Illicit drugs are those psychoactive substances for which the unlicensed cultivation, production, trade and possession - other than for medical and scientific purposes - is prohibited.

2 New psychoactive substances are new narcotic or psychotropic drugs which may pose a threat to public health comparable to illicit drugs, and which emerged only recently on the market and are not banned. The large majority of these substances are synthetic.

3 European Commission, Flash Eurobarometer Nr. 330, *Youth attitudes on Drugs*.

4 EMCDDA, *2010 Annual report on the state of the drugs problem in Europe*.

5 The Commission has launched an external evaluation of the EU Drugs Strategy (2005-2012), which will be completed by the end of 2011.

6 Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, OJ L 335, 11.11.2004, pp 8–11.

7 Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances, OJ L 127, 20.5.2005, pp 32–37.

8 The European Council of 10-11 December 2009 adopted the Stockholm Programme, a comprehensive framework on initiatives in justice and home affairs. To translate these political objectives into concrete

now in place, the European response to drugs needs to be strong and decisive, addressing both drug demand and drug supply. New legislation involving the European Parliament, and implemented by the Member States, will be subject to the scrutiny by the European Commission and ultimately the Court of Justice of the European Union.

The Commission is committed to lend fresh impetus to the EU anti-drugs policy. In its proposed **Budget for Europe 2020**[9] the Commission pledges financial support to meet future challenges posed by drugs. The EU budget should focus on funding those actions that have clear added value, which include: tackling new drugs, developing innovative practices on prevention or treatment and cross-border law enforcement cooperation and training.

2. DRUG TRAFFICKING

The illicit drugs market is constantly evolving to escape controls and seizures[10]. New technologies facilitate the development of **innovative methods for smuggling** into and within the EU. Traffickers use advanced techniques to conceal drugs, for instance, by mixing liquid cocaine into commercial goods (clothes, liquids, plastic), converting it into powder cocaine in laboratories in Europe, or making it odourless. They use remote monitoring of production and storage sites. To increase resilience, traffickers diversify their business, becoming multi-drug (smuggling different drugs or illicit doping substances that have harmful effects on the health of athletes) and poly-criminal (carrying out several illicit activities).

Criminal networks change their **trafficking routes** frequently in order to circumvent controls. The growing importance of the West African route for smuggling cocaine from Latin America into Europe is proof that the networks are able to overcome controls along the Atlantic coast and points to the need for an effective European Border Surveillance System.

The European Pact on international drug trafficking adopted by the Council on 3 June 2010[11], and the forthcoming European Pact against synthetic drugs initiated by the Polish Presidency seek to improve coordination between the various initiatives launched to clamp down on drug trafficking:[12]

Drug trafficking is one of the biggest cross-border law enforcement challenges in the EU. Since 2004, **Eurojust** has dealt with more cases of drug trafficking than any other type of crime. The number of drug trafficking cases referred to Eurojust increased more than threefold over this period, from 77 to 254[13], and this trend is continuing in 2011. In 2010, around a third of operational support provided by **Europol** to national law enforcement agencies was related to illicit drug trafficking[14]. Eurojust and Europol increasingly help coordinate cross border investigations within the EU, and with third countries.

The Lisbon Treaty defines drug trafficking as one of the "***particularly serious crimes with a cross border dimension***", which justify the adoption of directives establishing minimum rules

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proposals, the Commission selected a number of key actions for adoption in 2010-2014. COM(2010) 171 final.

9 COM(2011) 500.

10 Europol, *EU Organised Crime Threat Assessment OCTA 2011*.

11 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/114889.pdf.

12 On the agenda of the Justice and Home Affairs Council of 27 and 28 October 2011.

13 Eurojust Annual Report 2010.

14 Europol, *General Report on Europol Activities 2010*.

concerning the definition of criminal offences and sanctions[15]. This is a major step forward that will make it possible for the EU to provide a **bolder response**, with stronger involvement of the European Parliament and of national Parliaments.

The existing EU legislation on drug trafficking, namely **Framework Decision 2004/757/JHA**, which provides an EU definition of drug trafficking offences and minimum rules on sanctions, is an important first step towards ensuring a European approach, but it has its **weaknesses.** The Commission's assessment of the implementation of the Framework Decision[16] has shown that this instrument has scarcely led to any alignment of national measures in the fight against drug trafficking. It has not sufficiently contributed to facilitating judicial cooperation in drug trafficking cases.

For instance, in most Member States the trafficking of chemical precursors is directly covered by the criminal law of the respective state. However, in some Member States it only falls under the offence of aiding and abetting drug trafficking. Consequently the judiciary might face obstacles in effectively prosecuting this crime. Similarly, the provisions related to aggravating circumstances (justifying high criminal punishments) set out in the Framework Decision are insufficient: they do not include all aggravating circumstances[17] listed in previous EU or UN instruments.

Common minimum rules are essential in order to establish the level of **trust necessary to enhance cooperation** among Member States' judiciaries. The entry into force of the Lisbon Treaty now enables a legal and political strengthening of this important legal instrument.

The Commission will bring forward new EU legislation, to ensure a more effective approximation of drug trafficking offences and sanctions across the EU. The new proposal would:

(1) **Target major cross-border drug trafficking** and the organised criminal networks, by exploring minimum common aggravating or mitigating circumstances.

(2) **Improve the definition of offences and sanctions**, possibly with a more detailed breakdown of sanctions.

(3) **Introduce stronger reporting obligations** for Member States on the implementation and impacts of legislation.

In addition to strong capabilities in gathering demand side data, the improvement of **data collection in the field of drug supply** is essential for assessing developments in the drugs market. The lack of indicators makes it difficult to evaluate such developments, to estimate the burden of drug-related crime on society and to assess the impact and effectiveness of drug supply reduction.

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15 Article 83(1), Treaty on the Functioning of the European Union.

16 COM(2009) 669 and SEC(2009) 1661.

17 For instance on the victimisation or the use of minors, as foreseen by Art. 3.5.(f) of the 1988 UN Convention against illicit traffic in narcotic drugs and psychotropic substances, and the Council Resolution of 20 December 1996 on sentencing for serious illicit drug-trafficking, OJ C 10, 11.1.1997, p. 3–4.

Building on the technical expertise developed at the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), **the Commission**, with the support of Europol, **will present key indicators** for the monitoring of drug markets, drug-related crime and drug supply reduction. These should help to improve the effectiveness of responses in the area of drug supply.

3. DRUG PRECURSORS

The trafficking of chemicals used for manufacturing drugs is a matter of major concern. Transforming raw opium into heroin, for instance, requires significant quantities of drug precursors. These chemical substances have various legitimate industrial uses, but they may be diverted from legitimate trade into the production of illicit drugs. They are smuggled within the EU and between the EU and different regions of the world. Bilateral agreements between the EU and trading partners on the control of drug precursors provide a strong platform for coordinating policies and exchanging information on the trafficking of drug precursors. The EU has already signed such agreements with Turkey, Mexico, Chile, United States, China and the countries of the Andean region.

To evade control, traffickers change production methods, transform drug precursors into different substances (pre-precursors) from which they are recovered at a later stage, or extract them from pharmaceutical preparations.

Any measures to prevent the diversion of drug precursors must strike a balance between **ensuring an effective control of diversion without disrupting lawful trade** in such substances. Good cooperation between authorities – including the European Medicines Agency, national health/medicines authorities, and economic players – is key in this respect.

The Commission's **assessment[18] of the implementation of EU legislation** on monitoring and control of trade in drug precursors[19] made several recommendations, including: strengthening the implementation of existing rules and possibly introducing a tougher regime for certain chemicals (such as the key precursor for heroin production, acetic anhydride) and ensuring appropriate control of pharmaceutical preparations containing substances used for the production of methamphetamine.

The Commission is examining ways to **strengthen EU rules on the control of production and trade in drug precursors** which comprise different categories of substances and reaction agents frequently used in the manufacture of narcotic drugs or psyochactive substances, and to ensure an effective and uniform implementation of these rules. It is currently assessing the impacts of several policy options, with the aim of presenting legislative proposals to increase the efficiency of rules preventing illicit diversion, while allowing legitimate trade in precursors without excessive administrative burden. Particular attention will be given to the heroin precursor, acetic anhydride, and to pharmaceutical preparations containing ephedrine and pseudoephedrine, used for the production of methamphetamine.

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18 COM(2009) 709.

19 Council Regulation (EC) No 111/2005 of 22 December 2004, OJ L 22, 26.1.2005, p. 1–10; Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004, OJ L 47, 18.2.2004, p. 1–10.

The Commission will take action to enhance international cooperation against the diversion of drug precursors. It is negotiating an agreement with Russia on drug precursors, with the aim of signing it in the coming months as a matter of urgency. Together with the Member States, the Commission will reinforce cooperation with the Latin American countries and will pursue cooperation with China, with which the EU already has such agreements.

4. CONFISCATION AND RECOVERY OF CRIMINAL ASSETS

The main motive for cross-border organised crime is financial gain. In order to be effective, any attempt to prevent and combat organised crime, including drug trafficking, must **focus on tracing, freezing, seizing and confiscating the proceeds from crime.** Organised criminal groups increasingly exploit the advantages of a Europe without internal borders to acquire assets in various EU Member States, and often hide them in third countries. They also change techniques for laundering money.

The tracking, freezing and confiscating the assets of criminal networks is a major challenge. The EU has adopted five legislative instruments (Framework Decisions) designed to deprive traffickers of their gains[20]. These **instruments have not been effective enough**. In particular, they have not enabled public authorities to confiscate large amounts of goods. A functioning network of asset recovery offices in Europe is crucial in order to weaken the financial power of criminal networks and target effectively their illicit proceeds and assets.

The Commission will propose **new, stronger EU legislation on confiscation, recovery of criminal assets and mutual recognition of freezing and confiscation orders.** The aim is to ensure more efficient seizure of the proceeds of crime and to prevent them from being re-invested in the licit economy or used to commit other crimes. The planned legislative package on confiscation and asset recovery will also cover drug trafficking. Its aim is to achieve harmonised minimum rules and to reinforce mutual trust between judicial authorities.

The Commission will review the third **anti-money laundering directive**, in order to further strengthen the EU's defences against the laundering of money generated by organised crime, including drug trafficking.

5. NEW PSYCHOACTIVE SUBSTANCES

During past years new psychoactive substances, which imitate illicit drugs, have frequently emerged in the EU. **Since 2005, Member States have reported 115 new psychoactive substances** through the EU Early Warning System[21]. They are sold in "specialised" shops or over the internet, but some are available from illicit drug sellers. To circumvent national legislation, these drugs are frequently labelled "*not for human consumption*". The speed with which they are launched on the market **challenges the capacity of the authorities to respond**.

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[20] Three Framework Decisions aim at harmonising national measures for freezing and confiscating criminal assets (2001/500, 2005/212, 2007/845) and two relate to mutual recognition of decisions of Member States to freeze and confiscate criminal assets (2003/577, 2006/783).

[21] SEC(2011) 912.

A record number of new substances (41) were reported in 2010, accounting for about one third of all substances since 2005. Two substances, BZP and mephedrone[22], were subjected to **risk assessment at EU level**, following which the Council, based on a proposal from the Commission, subjected them to **control measures and criminal sanctions**. On this basis, Member States must classify these substances as illicit drugs, introducing control measures and criminal sanctions under their legislation in compliance with the UN Conventions.

According to the 2011 Eurobarometer[23] survey, **5% of young people interviewed across the EU have used such substances**. The price of these substances (which is lower than illicit drugs) and the fact that they are "not illegal" – and therefore very easily accessible – could explain their rapid spread in many Member States. However, their toxicity and potential for dependence may pose health threats comparable to illicit drugs.

The Commission continues working closely with EU agencies to improve understanding of this problem and identify more effective answers, including in the field of prevention. The current EU legislation is inadequate for tackling this challenge. The Commission's **assessment of the functioning of Council Decision 2005/387/JHA[24]** on new psychoactive substances concluded that it has three major shortcomings:

- It is unable to tackle the large increase in the number of new psychoactive substances, because it addresses substances one by one, via a lengthy process.
- It is reactive: substances subjected to control measures are quickly replaced with new ones with similar effects.
- It lacks options for regulatory and control measures.

The Commission will propose **stronger EU legislation on new psychoactive substances.** Taking into account the rapid developments in this field and scientific evidence about the risks posed by these substances, the new proposal would:

(1) **Enhance the monitoring and risk assessment of substances**, by extending support for forensic analysis, toxicological, pharmacological and epidemiological studies.

(2) **Provide swifter and more sustainable answers** to the emergence of these substances, possibly by exploring ways to address groups of substances, notwithstanding the need to determine scientifically the harmfulness to health of the individual substance.

(3) **Enable a faster response** to the emergence of substances, including, possibly, through temporary bans on substances that pose immediate risks.

(4) **Better align laws** in the field of drug control, product and food safety, consumer protection and medicines to cover the wide variety of substances that emerge.

22 BZP in 2008 (OJ L 63, 7.3.2008, p. 45–46) and mephedrone in 2010 (OJ L 322, 8.12.2010, p. 44–45).
23 European Commission, Flash Eurobarometer Nr. 330, *Youth attitudes on Drugs*.
24 COM(2011) 430.

6. REDUCTION OF DEMAND

Various measures are in place across the EU to reduce the demand for drugs. These aim to prevent people from starting to use drugs, to avoid them becoming addicted, to reduce harmful health and social consequences of drug use, and to provide treatment, rehabilitation and social reintegration services. However, the changing patterns of drug use and the increased 'poly-consumption' of substances, such as illicit drugs in combination with alcohol or prescription medicines, is challenging current prevention and treatment methods.

While the provision of treatment has expanded in recent years, **major differences persist in the coverage and quality of drug-related services across the EU**. Around 670 000 Europeans receive substitution treatment for heroin addiction – i.e. only about half of those in need of treatment. The availability of treatment is limited in some EU countries. In certain Member States, the effectiveness of many education, prevention and treatment programmes is still not evaluated.

Measures such as needle and syringe exchange programmes which provide people who inject drugs with access to needles and syringes to prevent them from sharing injecting equipment have helped reduce the spread of HIV and other blood-borne infections among drug users. However, the success of these measures calls for sustainable and integrated strategies across the EU to prevent the spread of drug-related blood-borne infections[25].

There is a clear **need to extend and improve drug-related services**, in order to make sure that prevention works, and that those in treatment recover and reintegrate into society.

The Commission will also promote improved implementation of the key indicators in the field of drug demand reduction, to enable Member States to provide more effective services.

The Commission will help develop **minimum quality standards,** to improve the effectiveness of drug prevention, treatment and harm reduction in the EU. The aim is to set standards for quality in the delivery of drug-related services, for example prescribing a thorough planning of treatment in line with the patient's individual needs or on staff qualification requirements. These standards will be developed together with the EMCDDA, Member States and practitioners involved in drug-related services, and will take into account the different health systems and capacities across the EU.

The Commission will further support and promote **measures to reduce health and social harms associated with drug dependence**, including strengthening educational prevention and early stage support in avoiding addiction, interventions to prevent and control infections among people who inject drugs, and to prevent drug-related deaths[26]. It will continue to support measures to help rehabilitate and reintegrate drug-dependent users in society.[27] It intends to submit a second report on the implementation of the 2003 Recommendation on harm reduction[28], designed to assess the effectiveness of prevention and reduction of health-related harm associated with drug dependence.

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25 EMCDDA, *2010 Annual report on the state of the drugs problem in Europe*.

26 As outlined in the Commission communication on combating HIV/AIDS in the EU and neighbouring countries, COM(2009) 569.

27 Such initiatives will continue to be funded by EU financial programmes, including the Drug Prevention and Information Programme, the Health Programme, as well as the European Social Fund.

28 OJ L165, 03.07.2003, p. 31 – 33.

7. DRUGGED DRIVING

Many road accidents in the EU are caused by **drivers under the influence of psychoactive substances**. Studies show that driving under the influence of illicit drugs increases the risk of causing a fatal road accident. However, because data are not collected systematically at EU level, the adverse effects of drug-driving on road safety needs further study. Developing effective and proportionate responses to tackle drugged driving presents a major challenge as highlighted in the Roadmap to a Single European Transport Area[29].

The Commission is exploring possible actions at EU level to **address drugged driving,** with the aim of increasing road safety. Based on the results of the EU-financed DRUID[30] project, which has assessed the impact of illicit drugs on road safety, the effectiveness of testing devices and possible responses, the Commission will propose measures to help tackle this problem effectively. These responses could include ways of improving the reliability of devices used for road-side testing or providing appropriate training support for traffic officials.

8. INTERNATIONAL COOPERATION

The EU plays a leading role in international cooperation on illicit drugs. It is engaged in an active dialogue with the production and transit countries and provides political, financial and technical support. A stronger response to illicit drugs will require the EU to step up its engagement with neighbouring countries, with strategic partners and along the drugs routes into the EU on the basis of a balanced and comprehensive approach with full respect for human rights.

Apart from illicit drugs originating in the EU, there are two main drug routes through which drugs enter the EU. These are the "cocaine route" (from Latin America via West Africa into the EU) and the "heroin route" (from Afghanistan through either the Western Balkans or Central Asia into the EU). The EU approach to tackling illicit drugs internationally is three-fold:

Comprehensive – the Lisbon Treaty provides an opportunity for the EU to strengthen its law enforcement cooperation with third countries, to help them improve the capacity of judicial systems and to promote the rule of law, in full respect of human rights. The EU focuses on seeking long-term solutions, for example, through promoting alternative livelihoods for drug crop farmers in rural areas, in countries such as Afghanistan, and reducing demand in countries of origin and transit. The EU is committed to work closely both with transit and with producing countries, as both suffer from increasing drug use in their populations, related public health challenges as well as from weak institutional capacity to tackle the problem.

Geographical – the EU will further consolidate its "drug route" approach, which enables it to tackle the problem comprehensively from drug crops cultivation to the entry of drugs onto the EU market. **European Neighbourhood countries** (ENP) will remain a priority. Continued support will be provided to the enlargement countries on capacity-building to enable them to tackle drug trafficking and abuse, notably through the Instrument for Pre-Accession

[29] COM(2011) 144.

[30] Driving under the Influence of Drugs, Alcohol and Medicines. http://www.druid-project.eu.

Assistance (IPA). The EU will reinforce its engagement with **Latin American**[31]**, Caribbean and African** countries, as well as with relevant regional organisations, building on the success of the cooperation platforms of liaison officers in West Africa, to coordinate capacity building.

Cooperation with strategic partners – the EU will build on our engagement with strategic partners with a shared interest in tackling illicit drugs. Cooperation with the United States on Passenger Name Record (PNR) data has been particularly valuable in the fight against drug trafficking. The EU and the United States are exploring ways to establish a joint law enforcement network on drug trafficking and coordinate capacity-building projects in West Africa, Latin America and the Caribbean. The EU is intensifying efforts with the United States and Russia to reduce drug trafficking and prevent drug abuse in **Central Asia**. It is also working with international partners to improve international cooperation to tackle the drugs economy in Afghanistan, which supplies up to 90% of the world's heroin.

Further measures to strengthen international cooperation in the drug field will be considered in the context of the ongoing evaluation of the current EU Drugs Strategy and Action Plans.

9. CONCLUSIONS

The European drugs policy aims to protect and improve the well-being of society and of the individual, to protect public health, to offer a high level of security for the general public and to take a balanced, integrated approach to the drugs problem. The entry into force of the Lisbon Treaty and the dismantling of the pillar structure in EU policy making, provides new opportunities for the integration of all policy areas relevant to the drugs problem. The scale of Europe's drugs problem and its changing nature require **swift, strong and effective EU action**. The Commission is determined to scale up its response to illicit drugs and to new psychoactive substances that imitate their effects (mainly new synthetic drugs)[32], using the new opportunities provided by the Lisbon Treaty.

The Commission will present; as legislative proposals:

(1) A legislative package on drugs, proposing the revision of the Council Framework Decision on drug trafficking and the Council Decision on new psychoactive substances;

(2) Legislative proposals on drug precursors;

(3) Legislative proposals on the confiscation and recovery of criminal assets and on strengthening mutual recognition of freezing and confiscation orders;

(4) New legislative measures to combat money laundering.

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31 The COPOLAD programme provides a solid framework to continue our efforts with the Latin America countries in addressing all aspects of drug policies. Furthermore, in Latin America and the Caribbean, drug-related security issues will be addressed, in light of the growing concern in this area.

32 The first EU initiative on new psychoactive substances was a Joint Action 97/396/JHA of 16 June 1997 on the information exchange, risk assessment and the control of new synthetic drugs. New psychoactive substances are mostly new synthetic drugs but they also include organic substances. The Joint Action has been replaced by Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances.

In addition, the Commission will present:

(5) Indicators to monitor drug supply, drug-related crime and drug-supply reduction to help improve the effectiveness of supply-reduction measures;

(6) Minimum quality standards to improve drug prevention, treatment and harm-reduction services.

The Commission invites the European Parliament and the Council, civil society and other important stakeholders, to take part in a debate on effective responses to illicit drugs and new psychoactive substances. To enable all interested stakeholders to contribute to this debate, the Commission will launch an online public consultation on how best to tackle illicit drugs and the emergence of new substances that imitate them.

EUROPEAN COMMISSION - PRESS RELEASE

European Commission seeks stronger EU response to fight dangerous new synthetic drugs

Strasbourg, 25 October 2011 – The European Commission has today given a fresh impetus to anti-drugs policy by announcing an overhaul of the EU rules to fight illicit drugs, particularly new psychoactive substances, which imitate the effects of dangerous drugs like ecstasy or cocaine and are a growing problem. The EU indentified a record number of 41 such substances in 2010, up from 24 the previous year. These drugs are increasingly available over the internet and have rapidly spread in many Member States, which face difficulties in preventing their sale. More new drugs are entering the market. Over the past two years, one new substance has emerged every week. Member States cannot stop the spread of drugs alone: clampdowns at national level may simply force criminals to move drug production to neighbouring countries or to shift trafficking routes. With the Lisbon Treaty now in place, the EU has new tools to address the drugs scourge. Over the coming months, the Commission will develop clearer and stronger rules on tackling dangerous new drugs and trafficking – both of illicit drugs and chemicals used to make them.

"New synthetic drugs are becoming widely available at an unprecedented pace in Europe. In addition, drug trafficking has become one of the most important crimes committed cross-border in the European Union," said EU Justice Commissioner Viviane Reding. *"Europe's response to drugs needs to be strong and decisive. That's why we need concerted action at the EU level to disrupt the supply of drugs and reduce demand, including by means of deterrent criminal sanctions*. *Effective rules without loopholes are needed so that young people in particular do not fall into the trap of using dangerous drugs, which are a major threat to their health and well-being."*

According to a recent Eurobarometer survey, new synthetic drugs, which can be just as dangerous as banned substances, are increasingly popular with 5% of young Europeans saying they have used them. The figures are the highest in Ireland (16%), followed by Poland (9%), Latvia (9%), the UK (8%) and Luxembourg (7%). The survey reveals that across all 27 EU Member States, a large majority of 15 to 24-year-olds are in favour of banning these substances.

To tackle this increasing threat, the Commission has put forward a new approach for a stronger European response, including:

- Stronger EU legislation on **new psychoactive substances** so that the EU can provide a faster response, including the possibility of temporary bans, as well as tackling their sale over the internet;
- New EU legislation to **target cross-border trafficking in drugs by means of criminal law**: the Commission will improve the definition of offences and sanctions and introduce stronger reporting obligations for Member States;
- New EU laws to strengthen control over chemicals used for drugs production;

IP/11/1236

- More effective rules to **deprive drug traffickers of their financial gains**: in the coming weeks, the Commission will propose rules on the confiscation and recovery of assets involved in serious crime, including drug trafficking;
- More **cooperation at international level**, especially with transit and producing countries outside the EU, as well as with countries considered as major entry points for drugs in Europe.

Background

EU legal instruments in anti-drugs policy, notably on drug trafficking and the control of chemicals used to make drugs, as well as the emergence of new psychoactive substances, date from 2004 and 2005 (Council Decisions 2004/757/JHA and 2005/387/JHA). These rules now need to be updated because of recent changes in how drugs are trafficked and the emergence of new drugs.

With the Lisbon Treaty now in place, the European response to drugs can be stronger and more decisive. The Treaty defines drug trafficking as one of the "particularly serious crimes with a cross-border dimension" allowing the adoption of directives that establish minimum rules on the definition of criminal offences and sanctions (Article 83(1) of the Treaty on the Functioning of the European Union). New legislation involving the European Parliament, and implemented by the Member States, will be subject to the scrutiny by the Commission and ultimately the EU's Court of Justice.

Tackling illicit drugs trafficking and abuse requires an **integrated and coherent approach**, which joins together public health, social and education policies as well as cooperation between law enforcement authorities and international cooperation.

At least 75.5 million Europeans said they have used cannabis at least once in their lifetime, while cocaine and amphetamines have been tried by 14 million and 12 million people respectively. A recent Eurobarometer survey of young people's attitudes to drugs shows confirms that one in three young men (32%) admit having used cannabis at least once in their lifetime compared to one in five young women (20%). 57% of respondents believed they could easily obtain cannabis within 24 hours, while 22% said the same for ecstasy or cocaine.

Various means are in place across Europe to **reduce the demand for drugs** and the consequences of drug abuse. However, major differences still exist among Member States. The Commission will respond to the need to **extend and enhance drug-related services** by developing new tools to improve quality standards of drug prevention, treatment and harm reduction treatments.

Continuous **dialogue with third countries** is key to achieving concrete results in reducing the use of illicit drugs and combating drug trafficking. The EU will consolidate its external assistance and cooperation activities with crucial regions of the world (such as Latin American, Caribbean and African countries, the US, and the Russian Federation).

For more information

European Commission – anti-drugs policy:

http://ec.europa.eu/justice/anti-drugs/index_en.htm

Homepage of Vice-President Viviane Reding, EU Justice Commissioner:

http://ec.europa.eu/reding

ANNEX

Stronger EU action to tackle Europe's drug problem

In the next two years, the Commission will present:

(1) **a drugs legislative package**, proposing the revision of the Framework Decision on drug trafficking and of the Council Decision on new psychoactive substances;

(2) **legislative proposals on drug precursors**;

(3) **legislative proposals on fighting organised crime, including drug trafficking, through confiscation and asset recovery, and new measures against money laundering;**

(4) **indicators to monitor drug supply,** drug-related crime and drug-supply reduction to help improve the effectiveness of supply-reduction interventions;

(5) **minimum quality standards** to improve drug prevention, treatment and harm-reduction services.

Contacts:
Matthew Newman (+32 2 296 24 06)
Mina Andreeva (+32 2 299 13 82)

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European pact against synthetic drugs

3121st JUSTICE and HOME AFFAIRS Council meeting
Luxembourg, 27 and 28 October 2011

The Council adopted the following pact:

"1. Synthetic drugs, mainly Amphetamine Type Stimulants (ATS), pose a significant worldwide problem. In the EU, they are the second most popular type of illicit substances in terms of consumption - just after cannabis products (herbal cannabis and cannabis resin). Moreover, based on the findings of the OCTA 2011 report, it is clear that the involvement of organised crime groups in the production and distribution of synthetic drugs makes it a major concern in terms of public order as well.

2. The consumption, illicit production and trafficking in synthetic drugs continue to be a matter of concern and pose a considerably serious problem for the European Union. The EU is not only a region of consumption, as in the case of cocaine and heroin, but also a significant producer of synthetic drugs - especially of amphetamine and MDMA[1]. The EU has, therefore, a major responsibility to address synthetic drugs comprehensively and robustly.

3. The significance of the threat, its cross-border dimension and the strength of criminal groups involved, call for a more centralised, coordinated and effective operational response. This should be fully in line with the EU Policy Cycle and, where relevant, both national and EU law enforcement resources need to be combined and used in a coherent way. Europol should be seen as the designated central responsible body for the coordination of the overall effort against synthetic drugs seeking to use the relevant Analytical Work Files (AWF) to best effect, so that Member States can fully benefit from its unique ability to provide central support to cross-border investigations and to analyse intelligence.

[1] 3,4-Methylenedioxymethamphetamine - the classical active agent in ecstasy tablets

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4. All actions against organised crime groups dealing with synthetic drugs need to be combined with effective tracking, freezing and, ultimately, confiscation of the proceeds of these crimes. There should also be a wider tackling of criminal finances beyond asset recovery; e.g. attacking money laundering, disrupting and denying assets, using financial investigation as a core tool in criminal investigations. Deprivation of illegal gains should become a vital element of the fight against synthetic drugs. Full use of the existing mechanisms, such as Europol and national asset recovery offices - at their respective levels - is essential.

   An effective prevention, detection and disruption policy against the penetration of the licit economy by organised crime requires enhanced expertise from the Member States and EU agencies in the three-dimensional aspects of financial investigations (past, present and future).

   This should help in developing evidence which can be used in criminal proceedings (judicially oriented financial investigation – past), identify the extent of (transnational) criminal networks (dismantling oriented financial investigation – present), assess the nature and evolution of crime and criminal patterns (proactive and strategically oriented financial investigation – future).

5. The use of new psychoactive substances (so called "legal highs", which can pose a serious threat to public health), which are mostly synthetic, is increasing in the EU. New psychoactive substances are often sold in so called “Smart shops” and via internet shops thus becoming accessible to a wide range of potential consumers including children. They are a major challenge for the services responsible for the protection of public health, law enforcement agencies and lawmakers. Little is known about their effects but they can pose major risks to the health and life of people who use them, and more broadly to public health. Their rapid emergence and rising popularity and lack of knowledge of possible health risks before risk assessments are conducted make the growing use of new psychoactive substances a complex issue for national authorities that decide on the regulation or control of such substances. Recent analysis of drug markets in some EU countries seem to suggest that there is a dynamic relationship between the reduction in availability of some traditional illicit compounds for synthetic drugs (MDMA) and the emergence of new psychoactive substances[2].

[2] EU Organized Crime Threat Assessment OCTA 2011

6. Chemical precursors are necessary for the production of synthetic drugs. Key precursors are mainly smuggled into the EU from different regions of the world, but there are also other essential chemicals often diverted inside the EU itself. Drugs produced in the EU are later smuggled to third states. The trafficking of these drugs is in the hands of transnational organised crime groups and can only be effectively disrupted by joint efforts of the European Commission and EU Member States in close cooperation with third states. Active cooperation under the bilateral agreements between the EU and certain third countries on drug precursors is essential in this regard, as is the sharing of this information between EU Member States.

7. A new trend has emerged recently – precursors are masked through transformation into a different substance from which they can be easily recovered at a later stage, or so called pre-precursors are being used. In this respect, specific attention should be given to the risk of organised crime groups evading the relevant EU Regulations by disputing the scope or the judicial interpretation of the legal definitions in these EU Regulations[3].
A review of the legal definitions in these Regulations should be taken into consideration.

8. Although EU Member States are active and efficient in seizing illicit drug precursors, clamping down effectively on the trafficking of chemical precursors and synthetic drugs both to and from the EU requires a better sharing of information and intelligence on precursor false declaration, smuggling concealment methods, as well as stricter controls at external borders and strengthened cooperation among competent authorities of the Member States.

9. Knowledge of methods of production, and the detection and dismantling of illegal laboratories are crucial for effectively combating the illicit production of synthetic drugs. These laboratories pose a serious threat, not only to law enforcement officers but also for the environment, because of the potential risk of accidents and/or illegal disposal of chemicals stored in them. As a consequence, it is necessary to provide law enforcement agencies with specialised training that would allow for a more uniform and safe way of investigating and dismantling illegal laboratories.

10. The patterns and intensity of the production and trafficking in synthetic drugs are likely to differ from one region to another, or even from one Member State to another. In addition, the level of involvement of Member States in countering that type of crime may depend on the extent of the threat posed by synthetic drugs, the levels of perception of the threat and the available resources that may be used for this purpose. There is a need to enhance information gathering and analysis to improve understanding and monitoring of production and trafficking patterns at European level.

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[3] In particular the meaning of "any substance, including mixtures and natural products containing such substances", Regulation (EC) No. 273/2004, Article 2 (a) and Regulation (EC) 111/2005, Article 2 (a).

11. The launching of this initiative results from the European pact on countering international drug trafficking – disrupting cocaine and heroin routes that was adopted by the Council in June 2010. Point 5 of that document invites the Council, European Commission and relevant EU agencies to focus their activities in 2011 on counteracting synthetic drugs, in particular in the field of information sharing, specialised trainings and combating smuggling of precursors in close cooperation with relevant third countries.

12. All these activities to counter production of and trafficking in synthetic drugs and smuggling of precursors call for a coordinated approach by all EU Member States. Drug trafficking is undoubtedly a serious threat that has to be addressed by a joint effort including by coordinating national legislative and control measures to avoid that actions taken by one Member State have a negative impact on other Member States.

13. The pact against synthetic drugs is based on similar principles as the previous one and it is an integral part of the law enforcement aspect of the EU's anti-drug strategy and the EU drugs action plan for 2009-2012 that advocate a global balanced approach based on simultaneous reduction of supply and demand. It is a practical application of the Stockholm Programme and of the EU Internal Security Strategy adopted by the Council in 2010.

The pact against synthetic drugs is a response to the challenges and findings mentioned above. The pact includes four major areas:

i. Countering production of synthetic drugs
ii. Countering trafficking in synthetic drugs and precursors
iii. Tackling new psychoactive substances
iv. Training for law enforcement services in detecting, examining and dismantling clandestine laboratories.

The pact indicates only the main activities which should be undertaken and the objectives to be achieved by Member States, European Commission and relevant EU agencies. The implementation of the pact should be placed under supervision of the Council/COSI, in full cooperation with the European Commission as regards to drug precursors, which is an exclusive competence of the EU. Its implementation should be fully in line with the EU policy cycle for organised and serious international crime, in particular with strategic goals and operational action plans to be developed in the coming months. Other Council working parties, in particular the Horizontal Drugs Group (HDG), should be associated in the implementation of the Pact. The HDG should take the lead on actions to address new psychoactive substances. The pact should serve as an umbrella approach whereas concrete implementing measures both at the strategic and operation level shall be defined and developed within the policy cycle.

I. Countering production of synthetic drugs

I.1 The main objective of the undertaken activities is to reduce the illicit manufacturing of Amphetamine Type Stimulants (ATS) and take measures against new psychoactive substances which are harmful to physical, psychological and public health.

I.2 The European Commission is invited to periodically assess whether new chemicals should be added to the list of "non-scheduled substances" in order to better monitor their circulation and their leaking into the illicit market.

I.3 As Synthetic Drugs, including new psychoactive substances which might be harmful to health, are one of the EU's agreed Crime Priorities, the role of the Europol's Analysis Work File (AWF) Synergy should be provided with an appropriate level of support. Member States shall commit to improving information exchange relating to the illicit production of synthetic drugs and by fully using relevant Comprehensive, Operational, Strategic Planning for the Police (COSPOL) projects and through other existing instruments, including those managed by Europol.

I.4 Europol and Eurojust shall assist in the coordination of investigations/operational activities carried out by Member States related to the illicit production of synthetic drugs across the European Union involving the same precursor sources or cross-border criminal groups.

I.5 The existing system for information exchange among Member States regarding new methods of illicit production of synthetic drugs and diversion of precursors and the modus operandi of both producers and traffickers shall be improved and intensified. In case of precursors, close cooperation is needed between the competent national authorities and private operators in order to promote information exchange with the producers and the agents who sell those products.

I.6 Sound information and analysis is the key to assessing progress in the fight against synthetic drugs. There is a need to monitor efforts implemented under the pact and the effects of the activities of Member States on the synthetic drugs market. Member States should assess their national efforts against a wider European background with the assistance of the information and analysis provided by the EMCDDA in cooperation with Europol.

I.7 The European Drugs Profiling System (EDPS) and its database should be fully used to help reduce organised crime involved in the production and trafficking of illicit synthetic drugs by integrating forensic profiling in intelligence and law enforcement operations. To this end, close cooperation with Europol, as the EU agency that will host the database as of 2012, should be ensured.

II. Countering trafficking in synthetic drugs and precursors

II.1 Measures aiming to combat trafficking in synthetic drugs are based on the same principles as depicted in the European pact on disrupting cocaine and heroine routes, and comprise similar activities in particular with regard to the need for reinforced coordination, sharing of tasks and enhanced regional cooperation.

II.2 Actions in the field of drug precursors control should be seen in the context of the Council conclusions on the functioning and implementation of EU drug precursors legislation of 25 May 2010 and of the further work to review the legislation carried out by the European Commission, in order to prevent the diversion of pharmaceutical preparations containing ephedrine and pseudo-ephedrine[4] towards the production of synthetic drugs.

II.3 In cooperation with the European Commission, OLAF and the Member States' law enforcement authorities, Europol – in accordance with its mandate - is invited to intensify its cooperation with Eastern European and Asian countries in preventing the diversion of drug precursors and pre–precursors from licit trade.

II.4 The role of Liaison Officers accredited in Eastern European and Asian countries in the monitoring of the market for the illicit production and trade in synthetic drugs and the diversion of drug precursors shall be increased. For this kind of exchange of information proper communication channels, national rules and regulations as well as EU-laws are to be observed. Structural exchange of operational information or information about capacity building projects among EU Liaison Officers posted to relevant Eastern European or Asian countries with the European Commission and OLAF should be encouraged, in order to maximize synergies and avoid duplications.

II.5 Coordination of the activities of Member States, EU institutions (including OLAF) and agencies (in particular EMCDDA, Europol and Eurojust) shall be further improved. The objective is to guarantee coherence – both inside and outside of the EU – of the activities aimed at regulating or combating illicit trafficking in synthetic drugs and drug precursors.

II.6 Cooperation between competent authorities (e.g. police, customs - if allowed under national legislation) shall be strengthened, in accordance with the Council Conclusions on the contribution of the customs authorities to the implementation of the Stockholm Programme in the fight against serious and organised cross-border crime, adopted on 11 April 2011. The possibility for law enforcement agencies of setting-up of joint investigation teams[5] in order to foster cooperation in combating precursors and synthetic drugs smuggling shall be encouraged and the barriers and obstacles encountered regarding this instrument in the past decade shall be examined by COSI in cooperation with other relevant bodies. The JIT Secretariat hosted at Eurojust and its experience in the field of JITs should be further used in the JIT setting up and coordination.

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4 The issue of red phosphorus will be addressed when elaborating the Operational Action Plan on synthetic drugs in the framework of the EU policy cycle.

5 2002/465/JHA, OJ L 162, 20.6.2002, p. 1.

II.7 The situation and the needs of transit countries and countries of origin of precursors, in terms of training or capacity building, for instance, shall be taken into consideration while establishing or enhancing close cooperation with them. These elements shall be also considered in the process of drawing up EU overall policy towards third countries. This cooperation needs to be coherent and consistent with the EU external and enlargement policies and structures, as well as the EU policy on drug precursors.

III. Tackling new psychoactive substances

III.1 In recent years new psychoactive substances, mainly synthetic, have increasingly emerged on the EU market. Member States, the Commission and relevant agencies (EMCDDA, Europol, Eurojust and the European Medicines Agencies) shall intensify their efforts to rapidly and proactively monitor and assess the diffusion, composition and related health risks of these substances. Information on these new substances should rapidly circulate among national authorities, European Commission and EU agencies. Accordingly, substances that pose a threat to health should be swiftly eliminated from legal circulation, for instance as a temporary measure during the period of assessment.

III.2 Further investment should be made in identifying and developing legally sustainable approaches that effectively regulate the market for new psychoactive substances and prevent substances that pose a threat to health from entering the market.

III.3 Information exchange between Member States regarding new psychoactive substances and new distribution patterns shall be improved, by making full use and if needed reinforcing the Early Warning System.

III.4 A joint EU approach to effectively addressing the rapid spread of new psychoactive substances shall be considered, including through legislative measures.

III.5 Joint efforts should be considered to address sales and distribution of new psychoactive substances over the internet or in specialised shops.

III.6 The Council invites the European Commission to consider the revision of the existing legislative framework on the information exchange, risk assessment and control of new psychoactive substances. The revised instrument should aim to balance effectiveness of measures with a scientifically robust and rapid response.
The Commission may analyse how the relevant regulations are applied across the EU and, if necessary, take the necessary measures to ensure their coordinated application.

IV. Training for law enforcement services in detecting, examining and dismantling clandestine laboratories

IV.1 Enhancing accurate and up-to-date knowledge about the methods and approaches used by criminal organisations for the illicit production of synthetic drugs and diversion of precursors as well as information on effective methods and best practices in the detection and dismantling of illicit production facilities is key in ensuring the efficiency of activities undertaken by law enforcement agencies. It is crucial to harmonise training provided in this field so that safe and effective methods of dismantling illicit production facilities can be attained.

IV.2 Training in methods and techniques for the detection and dismantling of illicit clandestine laboratories should be provided from an international perspective and become a structural element in the training programmes of the European Police College (CEPOL) in coherence with the EU police training strategy and the future European Training Scheme policy. Experts from Member States and Europol should be involved in this process.

IV.3 A dedicated training infrastructure should be used to provide professional training for law enforcement officers. Such an infrastructure was created as part of the International Training Center for Combating Clandestine Laboratories project (co–financed by the ISEC programme)[6]."

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[6] The project comprises, among other things, reconstructed illegal drug laboratories that had been shut down in Poland and the Netherlands.

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European pact to combat international drug trafficking – disrupting cocaine and heroin routes

3018th JUSTICE and HOME AFFAIRS Council meeting
Luxembourg, 3 June 2010

"The consumption of and increased trafficking in drugs continue to be a matter of concern for all Member States of the European Union and its Institutions. It is a major concern in terms of public order and public health.

The international drug trafficking situation prompts two observations:

– Organised crime networks involved in drug trafficking are transnational. They can adapt to the counter measures taken by individual States. The most effective response is to be found at the European level.

– EU Member States are affected by drug trafficking in different ways; they can all agree to join in countering these traffickings by taking specific measures, according to their geographical location, the extent of their resources and the intensity of the threats that in particular affect them.

These observations are the grounds for the Council's decision to conclude a European pact against international drug trafficking focused at this stage on cocaine and heroin. This project is a first step which should serve in the future as a model for the fight against other categories of drugs, primarily cannabis and synthetics. It is an integral part of the law enforcement aspect of the EU's anti-drug strategy (established in 2005) and the EU action plan for 2009-2012 that advocate a global balanced approach based on simultaneous reduction of supply and demand. It is a practical application of the Stockholm programme and of the European internal security strategy adopted by the Council.
Its implementation must take place in accordance with relevant EU and national law, especially that on data protection.

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Rue de la Loi 175 B – 1048 BRUSSELS Tel.: +32 (0)2 281 8239 / 6319 Fax: +32 (0)2 281 8026
press.office@consilium.europa.eu http://www.consilium.europa.eu/Newsroom

The European pact to combat international drug trafficking shall be based on the following principles:

1. We shall be committed to reinforce political coordination between Member States, the Institutions of the European Union and the relevant European agencies, in particular with Europol and Eurojust. Our aim is to ensure coherence of action both inside and outside the European Union against drug trafficking.

2. We shall make the best possible use of our resources. We shall bring together more specialised services of Member States in operational networks, which shall be based on the existing multilateral structures for information exchange including Europol and Eurojust**,** according to their respective competences. We shall make use of existing groups of high-level experts whenever necessary.

3. We shall « share our tasks » within the European Union. In this way, groups of Member States and the Commission can unite their efforts and give priority use of their resources to the kind of combat they are best equipped for, while benefiting from the actions carried out by their partners against other forms of trafficking. For example, the experience of Member States in tackling the trafficking in cocaine in the Western route and the equivalent for those Member States in tackling the trafficking in heroin on the Eastern route should be capitalised upon.

4. We shall take into account the situation and needs of the source and transit countries and shall work in partnership with them. We shall involve the EU's major partner countries outside the EU as well as UNODC and Interpol. Accordingly, we shall take these elements into consideration when defining the European policies towards these various third countries. This cooperation should be consistent and in synergy with the EU external and enlargement policies and structures.

5. In the first instance we shall choose to focus our action against cocaine and heroin. with an increased use in some Member States Other types of drugs (synthetic drugs, cannabis) will be the object of forthcoming initiatives. A comparable initiative concerning synthetic drugs, will be launched in 2011, together with the Commission, in order to establish a common approach among the States most affected in particular in terms of information sharing and specialised training, to combat the diversion of chemical precursors and to intensify regional cooperation between Member States as well as partnership with relevant third countries. Furthermore there is a high expectation on a similar initiative on tackling cannabis will be envisaged.

6. We shall decide to combine this targeted action with a two-fold common undertaking. Within the Union we shall examine and improve where appropriate the instruments indispensable to strike at traffickers by means of their criminal earnings. We shall also support the development of comparable instruments in third countries.

7. shall be resolved to fight against drug trafficking in order to deal a severe blow against the criminal organisations that are major threats to our civil societies as well as societies of origin and transit countries, by reason of their versatility, their disposition to violence, their available resources and their trans-national nature.

8. We shall encourage Member States to closely cooperate in order to enhance external border control with a view to prevent illicit drug trafficking into the EU.

* * *

Accordingly, this European Pact shall be hinged on three main commitments:

I – Disrupting cocaine routes

- The regional information exchange centres set up in West Africa at Accra (Ghana) and Dakar (Senegal) shall become a special instrument in the combat against cocaine trafficking, as part of a common action by the European States and the EU Institutions on the Atlantic coast and the Mediterranean. In this regard:

  – their resources and their capacity to work together shall be reinforced (target: September 2010);

  – their functions shall include exchanging intelligence between partners, providing expert advice to improve the effectiveness of local investigations and supporting the assistance and cooperation policies with the transit countries in West Africa (target: as from September 2010);

  – the information exchange centres shall be linked to each other, to MAOC-N and CECLAD-M by means of a secure ICT network put into place by Europol under the authority of the Member States (target: January 2011);

  – Europol's Secure Information Exchange Network Application (SIENA) shall be used by Member States in the regional centres in the form of a SIENA terminal (target: as from January 2011);

  – in order to improve the flow of information, Europol shall liaise with the regional centres within the applicable legal framework (target: 2010-2011).

  These initiatives will be implemented keeping in mind upcoming evaluations of regional information exchange centres**.**

- Europol shall provide analytical support to the participating Member States in the regional centres under different forms:

  – On the basis of the first Organised Crime Threat Assessment – West Africa (OCTA-WA) that will be updated, if needed, strategic analysis included in the OCTA shall be made available and complemented by customised "threat notices" (OC-SCAN) (target: September 2010);

  – in parallel operational analysis shall be provided by using specific "target groups" within the existing analysis files such as AWF COLA (target: January 2011).

- Information exchange between Europol and CSDP missions in West Africa (notably EUSSR Guinea Bissau) shall be explored carefully as a way forward to support capacity building of the local authorities.

- The combat against drugs shall remain an important element of the external relations between the European Union and key countries:

  – In full coherence and synergy with EU other external policies partnerships with source countries (South and Central America) and transit countries (West Africa) and the main partners of the EU (notably the United States) shall be reinforced and their operational aspect developed (target: 2010-2012);

  – regular contacts with the relevant international information exchange structures, such as the JIATF in Key West, shall be established within the applicable legal frameworks (target: as from September 2010).

- Following the philosophy of regional partnerships and shared efforts, technical assistance to source countries (Latin America and Caribbean) and to transit countries (West Africa) shall be intensified and streamlined.
  In this regard, the strategic and concerted action to improve cooperation in combating organised crime originating in West Africa included in the action oriented paper adopted by the Council on [22-23 April 2010], as well as the EU-LAC coordination and cooperation mechanism on drugs shall be the reference framework:

  – cooperation activities led by EU States and the Commission in training to the fight against illegal drug trafficking shall be made coherent in order to avoid duplications and to cover possible gaps (target: to be effective as from 2011);

  – to this end, an ad hoc flexible and consultative mechanism shall be set up to coordinate the technical assistance activities destined to West Africa, in association with the Commission and in accordance with the conclusions adopted by the Council on 30 November 2009 (target: 2011). This should be done in full respect of the EU financial instrument's rules and procedures;

  – technical assistance activities shall meet the needs and priorities expressed by the countries of the region in the framework of the Regional action plan adopted by ECOWAS and supported by the Commission and implemented also by UNODC (target: as from September 2010).

- Improve the efforts to prevent the diversion of precursors for illicit drug production in cooperation with the Commission.

- Skills and capacity of resources in terms of information and conducting sea interception and air intervention operations shall be improved:

  – a list of the resources and funding implemented by the Member States and the EU shall be drawn up and updated on a regular basis (target: 2nd semester 2010);
  – agreements shall be sought with the relevant third countries in the region and some "flag States" to facilitate boarding procedures as provided by the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances 1988 (target: 2011-2012);
  – joint land, sea, river and air operations shall be developed (target: as from September 2010, as many operations as needed).

II - Disrupting heroin routes

- The Member States concerned by heroin trafficking shall adopt a common approach that takes into account the large variety of routes and partners involved. This common approach shall be built mainly on the Member States' liaison officers network and the EU delegations in the Balkans and other transit regions, building upon Member States and EU existing efforts:

  – the capacity and the relevance of the existing network shall be assessed according to operational needs (target: 2011);

  – the network shall be consolidated, as necessary, by the posting of additional Member States' liaison officers in the relevant third countries (target: 1st semester 2012);

  – information exchanges by liaison officers of EU Member States shall be strongly encouraged and the results, where appropriate, shared on the level of the responsible law enforcement agencies (target: as from September 2010, to be fully effective in January 2011);

  – this approach shall involve, as necessary, the existing regional law enforcement cooperation agencies, such as SECI /SELEC in Bucharest and CARICC in Almaty (Kazakhstan) (target start from September 2010).

- Operational cooperation with the third countries concerned by heroin trafficking on the Balkans and Black Sea routes as well as cooperation with Eastern European neighbouring Countries shall be intensified as much as possible:

  – the States on the Balkan route shall take part, as necessary, in the projects led by Europol and in the feeding of its Analysis Work Files (AWFs) within the applicable legal framework (target: start from September 2010);

  – controlled deliveries and the use of undercover agents shall be carried out in suitable cases and in cooperation with the relevant third countries (target: to start 2011);

  – special techniques shall be used when appropriate for the surveillance of the heroin routes in cooperation with the relevant third countries (target: 2011-2012);

- where possible and necessary joint investigations shall be conducted with the third countries concerned, if necessary within the framework of bilateral cooperation with these countries (target: 2011-2012);

- initiatives shall be carried out by the European Union to increase information and know-how exchanges between Member States and the Balkan States concerned (target: as from the 2nd semester 2010).

- In full coherence and synergy with external and enlargement policies, partnerships shall be developed with some third countries whose cooperation is deemed essential, in particular those countries with a role to play in impacting on the drugs trade at source (target: 2011-2012).

- The technical cooperation activities led by Member States and the Commission with third countries concerned by heroin trafficking in the Balkans shall be better coordinated in order to avoid duplications and to share certain investments agreed by Member States; this should be done in full respect of the EU financial instruments, rules and procedures.

  - an ad hoc flexible and consultative mechanism shall be set up to coordinate the technical assistance to the relevant third countries, in association with the Commission (target: September 2010); This should be done in full respect of the EU financial instrument's rules and procedures;

  - with this prospect in mind, a schedule of cooperation activities led by the Commission and Member States shall be set up, distributed to the Member States concerned and analysed in order to improve the European Union's overall offer of cooperation (target: 2011, regularly updated);

  - The results of ongoing European projects shall be assessed and European Projects should be supported and continued as necessary (target: 1st semester 2011, updated regularly).

- The role of Europol in the region shall be reinforced within the applicable legal framework as necessary:

  - the cooperation between Europol and the SELEC / SECI in Bucharest shall may be enhanced by Europol's making available analysis capacities and by the posting of Europol representatives at the headquarters of SECI /SELEC (target September 2010);

  - Europol shall provide analytical support to the Member States concerned, including the liaison officers network, SECI /SELEC and CARICC, on the basis of the OCTA and in the form of customized "threat notices" (OC-SCAN) (target: September 2010);

  - Europol shall supply operational analyses to the Member States concerned, including the liaison officers network, SECI /SELEC and CARICC using the specific "target groups" in the existing Analysis Work Files like the HEROIN AWF (target: start from January 2011);

- Information exchanges between Europol and the Common Security and Defense Policy missions (EUPM and EULEX Kosovo) shall be improved (target: start from 2011);

- Europol's Secure Information Exchange Network Application (SIENA) shall be used by Member States in the regional centres in the form of a SIENA terminal (target: January 2011).

- Countering the diversion of chemical precursors shall become a common priority of the Member States that are particularly involved in countering heroin:

  - Invite the Member States to support the Commission in its efforts to reinforce control and to address weaknesses identified in the European law on precursors by the evaluation report on the respective EC precursor legislation (target: end of 2011);

  - Improve the efforts to prevent the diversion of precursors for illicit drug production in cooperation with the Commission;

  - the special monitoring measures shall be continued, within the framework of the COHESION and PRISM projects (target : 2010-2011);

  - ongoing European projects, such as the EU's ISEC programme, shall be supported and continued (target : 2012).

- We reiterate the importance of an effective fight against drug trafficking, in cooperation with the EU Member States and also within the framework of the EU enlargement policy.

III – Countering the proceeds of crime

- Instruments allowing the identification of the proceeds of crime shall be reinforced within the European Union keeping in mind the ongoing evaluations:

  - Member States shall continue to take steps towards making their criminal asset recovery agencies rapidly operational, pursuant to Decision 2007/845/JAI of 6 December 2007, bearing in mind the recent financial Action Task Force best practice guidance in asset recovery and provide them with substantial means (target: end of 2010 at the latest);

  - Member States shall undertake necessary steps with a view to identifying effective means of identification of crime proceeds, (target: as from September 2010);

  - within the framework of Europol, cooperation of money laundering investigation units and other police services of the Member States dealing with money laundering should be strengthened and the added value of an informal specific network shall be examined (target: end of 2010);

– Europol Information System (IS) and Analysis Work Files (e.g. SUSTRANS) should be used to process data and intelligence pertaining in particular to money laundering clandestine financial circuits linked to drug trafficking and identification of criminal assets. (target: 1st semester 2011).

- Eurojust shall, when requested by Member States, help facilitating execution of decisions pertaining to seizure or confiscation of proceeds of crime within the EU, whenever such facilitation is useful.

- The EU should consider providing technical assistance to third countries willing to develop instruments for identification and seizure / confiscation and to adopt the necessary legislation to make them effective. This will take into account existing international initiatives (eg the UNODC/World Bank STAR initiative).

- The Member States are encouraged whenever applicable to use the proceeds of seizure/confiscation and other similar measures, in accordance with national legislation, of criminal assets generated by drug trafficking to improve the fight against drugs, as much as possible and with full respect of the budgetary competences of the Member States:

  – Common goals shall be identified for Member States to attain within the EU (target: 2011).

Following the recommendations of the COSI, the JHA Council will periodically review the state of the implementation of this pact. The said pact will also be supplemented during future presidencies by complementary actions with regard to other drugs.".

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.12.2009
COM(2009)669 final

REPORT FROM THE COMMISSION

on the implementation of Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking

[SEC(2009)1661]

1. METHODOLOGY

Framework Decision 2004/757/JHA[1] sets out to establish minimum rules relating to the constituent elements of the offences of illicit trafficking in drugs and precursors, so as to allow a common approach at European Union level to the fight against such trafficking [2].

The effectiveness of the efforts made depends essentially on the harmonisation of the national measures implementing the Framework Decision[3], and the Commission is required to assess this and to submit the present report[4]. To this end, the Commission has used the evaluation criteria usually employed to analyse implementation of Framework Decisions (practical effectiveness, clarity and legal certainty, full application and compliance with the implementation deadline)[5], as well as specific criteria such as the efficiency (practical implementation) and effectiveness (with respect to international judicial cooperation) of the Framework Decision.

By 1 June 2009, the Commission had received replies from 21 Member States[6]. This means that six Member States did not comply with the obligation in Article 9(2) of the Framework Decision to transmit information, and will not be covered in the report. These are Cyprus, Spain[7], Greece[8], Italy, Malta and the United Kingdom.

2. ANALYSIS OF NATIONAL IMPLEMENTING MEASURES

2.1. Definitions (Article 1)

In its definition of drugs and precursors, Article 1 refers to the United Nations Conventions of 1961, 1971 and 1988[9], ratified by all Member States, and to directly applicable Community legislation[10] regarding precursors.

In spite of the fact that certain Member States have not submitted their definitions (CZ, DE, HU, SI, BG), the Commission is able to conclude on the basis of the information received

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1 OJ L 335, 11.11.2004, p. 8.
2 Third recital.
3 Ninth recital.
4 Article 9.
5 See COM(2001) 771, 13.12.2001, section 1.2.2.
6 Bulgaria sent only a few extracts from the legal texts to which it refers in its reply, so its account may be regarded only as an indication.
7 Spain informed the Commission in 2006 and 2008 that the transposition measures were included in the ongoing reform of the country's Penal Code.
8 Greece informed the Commission in 2008 that a law implementing the Framework Decision would be debated in Parliament shortly.
9 The Single Convention on Narcotic Drugs of 1961 (as amended by the 1972 Protocol); the 1971 Vienna Convention on Psychotropic Substances; and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988.
10 Regulations (EC) No 111/2005 and No 273/2004, see p. 7 of the working paper.

from other Member States that Article 1 does not raise any implementation problems, since appropriate national measures were already in force.

In Article 1(3), the term "legal person" uses the standard definition employed in various Framework Decisions. Seven Member States did not send any information regarding this point (CZ, DE, LU, PT, SE, SI, SK)[11].

2.2. Crimes linked to trafficking in drugs and precursors (Article 2)

The activities described under Article 2 are the same as those listed in Article 3 of the 1988 Convention. There is a difference in scope, however, in that the Framework Decision does not apply to activities relating to personal consumption (Article 2(2)).

With respect to drug precursors, this report limits itself to trafficking-related crimes: it does not analyse penalties for violations of the provisions of Community Regulations in this area.

2.2.1. Crimes linked to trafficking in drugs (Article 2(1) (a), (b) and c))

As a general point, the wordings of Article 2 are never incorporated into the national legislation of the Member States in their entirety. It would appear that these formal shortcomings are overcome by using generic legal wordings or broad interpretations where necessary. For example, it seems that the terms "production" and "manufacture" are in practice often interchangeable, and that acts not expressly referred to in the law are punished using provisions banning possession, which is obviously a prerequisite to all types of trafficking.

Ten Member States (AT, BE, FI, HU, IE, LV, LU, NL, PT, RO) have listed all, or most, of the activities concerned in their national legislation. Four Member States (DE, EE, FR, SE) have listed only parts, but comply with the Framework Decision through the use of generic terms. Seven Member States (BG, CZ, DK, LT, PL, SI, SK) have more ambiguous legislation[12] which does not guarantee full application of the Framework Decision in a sufficiently clear and precise manner.

2.2.2. Crimes linked to trafficking in precursors (Article 2.1(d))

Pre-existing legislation in most Member States complies with Article 2(1)(d), either in that it treats precursor trafficking and drug trafficking in the same way by penalising the same activities (BE, BG, CZ, DE, SI, SK), or in that it recognises certain offences specifically involving trafficking in precursors, which is broader in scope without being directly comparable to drug trafficking (AT, EE, FI, HU, IE, LT, LU, LV, NL, PL, PT). Import, export and possession are often included under this heading (HU, IE, LU, LV, PT).

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11 BG explained that its legislation did not include a definition of a legal person.

12 See working paper, p. 9.

Since the adoption of the Framework Decision, only two Member States (RO, SE) have actually amended their legislation to comply with Article 2(1)(d).

Two Member States (DK, FR) stated that trafficking in precursors is not covered *per se* in their criminal law, but can fall within the offences of drug trafficking or aiding and abetting drug trafficking. The Commission has serious doubts about the compliance of these systems, particularly with respect to Article 3[13]; the Commission's fear is that the absence of a separate offence of precursor trafficking will prevent this trafficking from being properly recorded, particularly with respect to attempt, incitement and aiding and abetting.

While the precursor-related activities prohibited by the Framework Decision are also prohibited in national law, therefore, it has to be acknowledged that the Framework Decision has had only marginal impact.

2.3. Incitement, aiding and abetting and attempt (Article 3)

Article 3 has not caused any major implementation problems. The Commission estimates that of the 21 Member States which sent the requested information, 18 have legislation that complies with the Framework Directive[14]. Of these 18 Member States, two (FI, SE) have amended their legislation to ensure compliance and two (DE, SE) have also made use of Article 3(2).

2.4. Penalties (Article 4)

2.4.1. Standard offences (Article 4(1))

The legislation of five Member States (BG, LT, LV, NL, SE) raises problems of interpretation, owing largely to a lack of information. While the one-year minimum is always respected, maximum penalties are actually much higher in most Member States. In twelve Member States (BG, FR, HU, IE, LT, LV, NL, PL, PT, RO, SI, SK), penalties are more than twice the range proposed by the Framework Decision, meaning that there are maximum penalties of six years or more – sometimes as much as twenty years – or even life imprisonment. On the whole, legislative disparities between the Member States seem to remain unchanged.

At the same time, maximum sentences are meaningful only in the context of proceedings actually initiated and penalties actually imposed by the courts. A comparison of judicial practice in each Member State would enable an assessment of the extent to which the objective of aligning national systems has been achieved in practice.

In this context, the complexity of the Dutch system and the controversies relating to coffee shops merit particular attention. The sale of soft drugs in coffee shops is the result of a policy

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[13] DK specified that attempted attempt (sic) or aiding and abetting was punishable. FR did not make any comment.

[14] Three Member States (BG, HU, RO) did not provide sufficient information.

of highly regulated tolerance of a practice which remains a criminal offence. According to the public prosecution services' guidelines, coffee-shop transactions involving 5 grammes of cannabis per person will not be prosecuted. Dutch legislation is in compliance with Article 4(1): the tolerance policy towards coffee shops rests primarily on the principle of discretionary prosecution, an area outside the Commission's remit. However, the Framework Decision is concerned with the most serious crimes, and the Commission has particular concerns regarding the wider problem of the supply of such coffee shops by criminal networks.

The Commission thus concludes that all the national legislation of which it has been informed is formally compliant[15], but expresses regret at the heterogeneous nature of this legislation and has concerns regarding its practical application.

2.4.2. Aggravated drug trafficking offences (Article 4(2))

Of the 21 Member States which replied, 20 comply with the level of penalties required by Article 4(2)[16] . However, the range of penalties runs from 10 to 15 years. Ten Member States have established maximum sentences of ten years (AT, BE, CZ, DK, EE, FI, HU, LT, LU, SE), while eight have established maximum sentences of fifteen years (BE, CZ, DK[17], DE, HU, LT, LV, SK). Six Member States have even higher sentences (FR, HU, IE, LU, RO, SE), while four have maximum sentences ranging from five to eight years (AT, LT, NL, PL).

Eight Member States take the aspects of quantity and harm to health into account (AT, CZ, DK, DE, FI, NL SK), while eight others take only one of these aspects into account (BE, EE, HU, LT, LU, LV, PL, RO). The legislation of five Member States makes no reference to this (BG, FR, IE, PT, SI), But since in these Member States the maximum penalty applying to the basic offence is already equivalent to, or exceeds, the level required by Article 4(2), this failure to make a distinction is unimportant.

The Commission considers that Article 4(2) has been satisfactorily implemented in terms of the scale of penalties. It should be noted that penalties are often higher than those set out in Article 4(2) and that thirteen Member States have not incorporated the aspects of quantity and/or harm to health into their legislation.

2.4.3. Aggravated offences committed within the framework of a criminal organisation (Article 4(3) and 4(4))

(1) Aggravated offences involving drugs committed within the framework of a criminal organisation (Article 4(3))

Criminal law in the EU regarding drug trafficking generally takes the role of organised crime into account. Seventeen Member States (AT, BE, CZ, DE, EE, FI, FR, HU, LT, LU, LV, NL, PL, PT, RO, SI, SK) apply maximum sentences of at least 10 years for offences committed within the framework of a criminal organisation. The Netherlands has amended its narcotics

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15 For marginal reservations with respect to BG, LT, LV and SE, please see the working paper.

16 In the absence of specific information, the situation in BG is not included.

17 16 years.

legislation to expressly include offences relating to participation in a criminal organisation, in addition to the general provisions in the penal code. DK, IE and SE do not have specific provisions covering organised crime, but comply with the prescribed level of penalties. The Commission did not have enough information for three Member States (BE, LU, SI) to be able to analyse the issue of organised crime.

Unlike the Framework Decision, the Member States do not require the offence to involve large quantities of drugs, or drugs that cause the most harm to health[18].

In addition, a number of Member States have a range of different penalties that vary with the offender's role in the criminal organisation (such as member, leader or provider of finance). For the standard offence of membership, maximum sentences are generally more than 10 years. In eight Member States (BE, CZ, DE, LT, LV, NL, PT, SI) the maximum sentence is in fact 15 years or more, while in six (EE, FR, LU, PT, RO, SK) it is 20 years or more. Thus offences relating to drug trafficking within the framework of a criminal organisation are subject to much higher sentences than those established in the Framework Decision, and we can conclude that the penalty scales are respected.

(2) Aggravated offences involving precursors committed within the framework of a criminal organisation (Article 4(4))

The role of organised crime is also generally taken into account in criminal law covering precursor trafficking throughout the EU, but there are wider variations than in the case of drug trafficking.

Thirteen Member States (CZ, DE, FI, HU, LT, LU, LV, NL, PL, PT, RO, SI, SK) have legislation against precursor trafficking that takes organised crime into account. The penalties are also more severe. Five Member States (CZ, FI, HU, LV, PL) have maximum penalties of between six and ten years, while eight (DE, LT, LU, NL, PT[19], RO, SI, SK) have maximum penalties of 15 years or more[20].

It should be noted that seven Member States (AT, BE, DK, EE, FR, IE, SE) have no legislation regarding criminal organisations and precursors (or have failed to inform the Commission of such legislation)[21]. However, the maximum sentences applying to basic offences involving trafficking in precursors in the above-mentioned Member States are already at five years or more, so Article 4(4) has been satisfactorily implemented.

2.5. Confiscation (Article 4(5))

Thirteen of the 21 Member States which replied (AT, DE, DK, EE, FI, FR, LU, LV, PL, PT, RO, SK) informed the Commission of express provisions in their narcotics law regarding confiscation, while six (CZ, HU, IE, LT, NL, SI) informed the Commission of provisions in their penal codes. BE and BG have not furnished any information on such provisions. Substances which are the objects of offences are generally confiscated. For the confiscation of instrumentalities, proceeds and property of corresponding value, the Commission refers to its

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18 Only Estonia mentions the trafficking of large quantities of drugs.

19 Portugal increases the maximum 10-year sentence by a third, which makes it just under 15 years.

20 LT, LU, NL, RO and SK provide for maximum 20-year prison sentences.

21 For Denmark and France, see comments on Article 2(1)(d).

report[22] on the implementation of Framework Decision No 2005/212/JHA[23] of the Council of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property.

2.6. Particular circumstances (Article 5)

Under Article 5, Member States may have a system of reducing penalties in cases in which the offender assists the authorities. All Member States provided information on their national penalty reduction system, except BG, FI, NL and SI. In six Member States (AT, HU, LU, LV, PT, RO) a penalty reduction system for offenders cooperating with the authorities is expressly established in narcotics legislation. Several Member States make a distinction according to whether charges have already been brought, and some also provide for penalty waivers in addition to reductions. None, however, have amended their legislation as a result of the Framework Decision.

2.7. Liability of legal persons and sanctions for legal persons (Articles 6 and 7)

With respect to Article 6, the principal stumbling block is the recognition of passive liability on the part of a legal person (Article 6(2)). The legislation of ten Member States (AT, DE, DK, FI, HU, IE, LT, NL, PL, RO) complies with Article 6, but eight (BE, BG, EE, FR, LU, LV, PT, SI) did not provide enough information, particularly concerning Article 6(2). Additionally, two Member States have no legal framework establishing the liability of legal persons (CZ, SK), while Sweden's narrow interpretation of the concept of passive liability means that it does not fully comply with Article 6(2). Article 6(3) does not pose any major problems for the Member States.

As for Article 7, two Member States (CZ, SK) have stated that they do not yet have a relevant legal framework, while Luxembourg has a form of liability for legal persons which does not result in financial penalties, which is contrary to Article 7(1). Ten Member States (AT, BE, DE, FI, FR, LT, LV, PL, RO, SE) informed the Commission of legislation that formally complies with Article 7, unlike eight other Member States (BG, DK, EE, HU, IE, NL, PT, SI) which furnished no information, or insufficient information that mainly concerned the size of fines.

Only three Member States (FI, RO and SE) have amended their legislation to comply with Articles 6 and 7. The Commission draws the attention of the Member States to the lack of information received concerning implementation of the Framework Decision in respect of the liability of legal persons.

2.8. Jurisdiction and prosecution (Article 8)

All Member States accept the principle of territorial jurisdiction (Article 8(1)(a)), so the analysis will concentrate on points (b) and (c) and offences committed outside national

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22 COM(2007) 805 final, adopted on 17 December 2007.

23 OJ L, 15.3.2005.

territory. Article 8(3) no longer serves any purpose since the introduction of the European arrest warrant.

No information has been provided concerning offences committed in part on national territory, but the Commission considers, despite this, that eleven Member States (AT, CZ, DE, DK, EE, FI, FR, LT, NL, PL, SE) have legislation that is in overall compliance with Article 8. Ten Member States (BE, BG, HU, IE, LU, LV, PT, RO, SI, SK), however, did not supply the necessary information.

Six Member States (AT, DE, DK, EE, FR, SE) have informed the Commission, pursuant to Article 8(4), of their decision to apply paragraph 2, in particular stating their intention to waive or limit their jurisdiction in cases where the offence committed outside their territory was committed for the benefit of a legal person established in their territory (8(1)(c)).

Despite this, the degree of implementation remains unclear, because eight Member States (BE, BG, HU, IE, PT, RO, SI, SK) have not provided enough information concerning the implementation of paragraph 1(c), and only five (CZ, FI, LT, NL, PL) are in conformity with this paragraph.

3. OPERATION AND EFFECTS ON JUDICIAL COOPERATION

The difficulty of studying the operation of the Framework Decision and its effects on judicial cooperation lies primarily in the collection of data on judicial practice in the Member States. The Commission has relied in this respect on information from Eurojust and the European Judicial Network (EJN). On 14 November 2008, Eurojust supplied a summary of statistics on drug trafficking cases recorded by Eurojust between 1 January 2004 and 12 November 2008. The Commission also requested information from the EJN by means of a questionnaire which was sent to all its contact points[24].

3.1. Eurojust's input

During the above-mentioned period, the College of Eurojust recorded 771 drug trafficking cases, which showed a significant increase from 77 cases in 2004 to 207 in 2007. Drug cases account for 20% of the cases handled by Eurojust between 2004 and 2008.

The Member States that have reported the largest number of drug trafficking cases to Eurojust are Italy (81 cases), France (72) and the Netherlands (71), while the Member States with the smallest numbers are Malta (1 case), Cyprus (1), Ireland (2) and Slovakia (2).

The Member States in receipt of most applications to take action are the Netherlands (264 applications), Spain (243) and Italy (171), while the Member States in receipt of the fewest applications are Malta (3 applications), Cyprus (8), Slovakia (9), and Latvia (9).

Overall, the statistics point to the prominent role of the Netherlands, Italy, France and Germany, either as applicant countries or countries of enforcement. Sweden and Portugal notified a relatively large number of drug trafficking cases (64 and 57, respectively), while

[24] These documents are included in the working paper.

Spain and the United Kingdom received many applications from other countries (243 and 102 times, respectively). The Member States least involved, whether as applicant countries or countries of enforcement, are Malta, Cyprus, Latvia and Slovakia.

Finally, it is interesting to note that of 151 drug trafficking cases associated with one or more other crimes, 65 involved participation in a criminal organisation.

This information shows that there has been a clear increase in judicial cooperation on drug trafficking between Member States through Eurojust since 2004. However, it is at this stage impossible to distinguish how the Framework Decision has affected such cooperation, or to measure its impact. This question was the focus of the questionnaire to the EJN.

3.2. Input of the European Judicial Network

The contact points of the EJN in ten Member States (CZ, DE, FI, FR, HU, IE, LV, LU, PL, PT) replied to the Commission's questionnaire.

The general impression given by their data is that although specialists are familiar with the Framework Decision, they regard its importance as minor, because it has not resulted in many changes to national legislation. The question of the Framework Decision's effect on cooperation remains open, because the Framework Decision does not concern judicial cooperation directly, and because no Member State seems to have a centralised system enabling it to measure trends in judicial cooperation in drug trafficking cases. The replies often point to a degree of uncertainty amongst specialists, for example in Finland, France and Portugal.

In Finland, for example, the contact point considers that the changes that have taken place since the adoption of the Framework Decision are only minor and that they have had no impact on judicial cooperation, but also says that it is impossible to draw any objective conclusions, given the short perspective and the lack of a monitoring system that would allow any such impact to be measured.

In France, the contact point also mentions the absence of a system providing the central administration with an accurate overview of all requests for assistance concerning narcotics. The French courts are finding an overall improvement in the quality of implementation of their requests for assistance in narcotics trafficking cases, but the quality remains very variable depending on the country involved. The intervention of liaison magistrates or Eurojust representatives often permits complex coordinated action to be taken. The contact point concludes, however, that it is difficult to determine whether these improvements are the result of Member States' transposition of the Framework Decision, and that general improvements in cooperation over the past five years seem to be a result of the emergence of a "European judicial culture" amongst magistrates rather than of the transposition of the Decision.

In Portugal, according to the contact point, the Framework Decision is known but little used, since national legislation was already along the same lines. No particular changes have been noted with respect to judicial cooperation, and greater use of already existing rules in the new cooperation instruments is recommended.

4. CONCLUSION

Implementation of the Framework Decision has not been completely satisfactory. While the majority of Member States already had a number of the provisions in place, a number have also demonstrated – often in sketchy answers – that they have not always amended their existing legislation where the Framework Decision required it. Six Member States provided no information whatsoever. There has thus been little progress in the alignment of national measures in the fight against drug trafficking. The weak impact of the Framework Decision is confirmed by the EJN's input. It is difficult to establish a link between the Framework Decision and the progress in judicial cooperation described by Eurojust. The Commission consequently invites those Member States which have submitted no information, or incomplete information, to comply with their obligations under Article 9 of the Framework Decision and furnish the Commission and the General Secretariat of the Council with all their implementing provisions very rapidly.

COMMISSION REGULATION (EC) No 297/2009

of 8 April 2009

amending Regulation (EC) No 1277/2005 laying down implementing rules for Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and for Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors [1], and in particular Article 11(1) and the third subparagraph of Article 12(1) thereof,

Whereas:

(1) Commission Regulation (EC) No 1277/2005 [2] determines third countries of destination requiring specific monitoring measures upon export of drug precursors from the Community. Annex IV to that Regulation lists for each of the scheduled substances of categories 2 and 3 of the Annex to Regulation (EC) No 111/2005, the countries for which a pre-export notification is required. The lists involve third countries which have requested to receive pre-export notifications in accordance with Article 12(10) of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances of 1988.

(2) Romania is listed in Annex IV to Regulation (EC) No 1277/2005. Since Romania has become a Member State, it is necessary to remove it from the lists.

(3) Annex IV to Regulation (EC) No 1277/2005 does not list all third countries which have requested to receive pre-export notifications since the entry into force of Regulation (EC) No 1277/2005. Since 2005, Canada, Maldives, Oman and the Republic of Korea have made such requests and should therefore be added.

(4) Regulation (EC) No 1277/2005 should therefore be amended accordingly.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 30(1) of Regulation (EC) No 111/2005,

HAS ADOPTED THIS REGULATION:

Article 1

Annex IV to Regulation (EC) No 1277/2005 is replaced by the text set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 April 2009.

For the Commission
László KOVÁCS
Member of the Commission

[1] OJ L 22, 26.1.2005, p. 1.
[2] OJ L 202, 3.8.2005, p. 7.

ANNEX

'ANNEX IV

1. List of countries referred to in Article 20 for which a pre-export notification is required for exports of scheduled substances of category 2 of the Annex to Regulation (EC) No 111/2005

Substance	Destination	
Acetic anhydride **Potassium permanganate**	Any third country	
Anthranilic acid	Antigua and Barbuda Benin Bolivia Brazil Canada Cayman Islands Chile Colombia Costa Rica Dominican Republic Ecuador Ethiopia Haiti India Indonesia Jordan Kazakhstan Lebanon Madagascar	Malaysia Maldives Mexico Nigeria Oman Paraguay Peru Philippines Republic of Moldova Russian Federation Saudi Arabia South Africa Tajikistan Turkey United Arab Emirates United Republic of Tanzania Venezuela
Phenylacetic acid **Piperidine**	Antigua and Barbuda Benin Bolivia Brazil Canada Cayman Islands Chile Colombia Costa Rica Dominican Republic Ecuador Ethiopia Haiti India Indonesia Jordan Kazakhstan Lebanon Madagascar	Malaysia Maldives Mexico Nigeria Oman Paraguay Peru Philippines Republic of Moldova Russian Federation Saudi Arabia Tajikistan Turkey United Arab Emirates United Republic of Tanzania United States of America Venezuela

2. List of countries referred to in Articles 20 and 22 for which a pre-export notification and an export authorisation is required for exports of scheduled substances of category 3 of the Annex to Regulation (EC) No 111/2005

Substance	Destination	
Methylethyl ketone (MEK) (1)	Antigua and Barbuda	Lebanon
Toluene (1)	Argentina	Madagascar
Acetone (1)	Benin	Malaysia
Ethyl ether (1)	Bolivia	Maldives
	Brazil	Mexico
	Canada	Nigeria
	Cayman Islands	Oman
	Chile	Pakistan
	Colombia	Paraguay
	Costa Rica	Peru
	Dominican Republic	Philippines
	Ecuador	Republic of Moldova
	Egypt	Republic of Korea
	El Salvador	Russian Federation
	Ethiopia	Saudi Arabia
	Guatemala	Tajikistan
	Haiti	Turkey
	Honduras	United Arab Emirates
	India	United Republic of Tanzania
	Jordan	Uruguay
	Kazakhstan	Venezuela
Hydrochloric acid	Bolivia	Peru
Sulphuric acid	Chile	Turkey
	Colombia	Venezuela
	Ecuador	

(1) This includes the salts of these substances whenever the existence of such salts is possible.'

COMMISSION REGULATION (EU) No 225/2011

of 7 March 2011

amending Commission Regulation (EC) No 1277/2005 laying down implementing rules for Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and for Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors [1], and in particular Article 11(1) and the third subparagraph of Article 12(1) thereof,

Whereas:

(1) Commission Regulation (EC) No 1277/2005 [2] determines whether specific monitoring measures upon export of drug precursors from the European Union are required. Annex IV to that Regulation lists for each of the scheduled substances of categories 2 and 3 of the Annex to Regulation (EC) No 111/2005, the countries for which a pre-export notification is required. The lists involve third countries which have requested to receive pre-export notifications in accordance with Article 12(10) of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances of 1988.

(2) The United Nations Commission on Narcotic Drugs has, at its second meeting, on 8 March 2010, decided to include phenylacetic acid in Table I of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances of 1988. Article 12(10) of that Convention sets out that each Party from whose territory a substance in Table I is to be exported shall ensure that, prior to such export, information on the export consignment is supplied by its competent authorities to the competent authorities of the importing country.

(3) Following the decision to include phenylacetic acid in Table I of the United Nations Convention, it is necessary to amend Annex IV to Regulation (EC) No 1277/2005 to ensure that pre-export notifications are sent for all exports of phenylacetic acid from the European Union.

(4) Annex IV to Regulation (EC) No 1277/2005 does not list all third countries which have requested to receive pre-export notifications for certain scheduled substances of categories 2 and 3 since the entry into force of Commission Regulation (EC) No 297/2009 [3]. Afghanistan, Australia and Ghana have made such requests and should therefore be added.

(5) Regulation (EC) No 1277/2005 should be amended accordingly.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 30(1) of Regulation (EC) No 111/2005,

HAS ADOPTED THIS REGULATION:

Article 1

Annex IV to Regulation (EC) No 1277/2005 is replaced by the text set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 March 2011.

For the Commission
The President
José Manuel BARROSO

[1] OJ L 22, 26.1.2005, p. 1.
[2] OJ L 202, 3.8.2005, p. 7.
[3] OJ L 95, 9.4.2009, p. 13.

ANNEX

'ANNEX IV

1. List of countries referred to in Article 20 for which a pre-export notification is required for exports of scheduled substances of category 2 of the Annex to Regulation (EC) No 111/2005

Substance	Destination	
Acetic anhydride **Potassium permanganate** **Phenylacetic acid**	Any third country	
Anthranilic acid	Afghanistan Australia Antigua and Barbuda Benin Bolivia Brazil Canada Cayman Islands Chile Colombia Costa Rica Dominican Republic Ecuador Ethiopia Ghana Haiti India Indonesia Jordan Kazakhstan Lebanon Madagascar	Malaysia Maldives Mexico Nigeria Oman Paraguay Peru Philippines Republic of Moldova Russian Federation Saudi Arabia South Africa Tajikistan Turkey United Arab Emirates United Republic of Tanzania Venezuela
Piperidine	Afghanistan Australia Antigua and Barbuda Benin Bolivia Brazil Canada Cayman Islands Chile Colombia Costa Rica Dominican Republic Ecuador Ethiopia Ghana Haiti India Indonesia Jordan Kazakhstan Lebanon Madagascar	Malaysia Maldives Mexico Nigeria Oman Paraguay Peru Philippines Republic of Moldova Russian Federation Saudi Arabia Tajikistan Turkey United Arab Emirates United Republic of Tanzania United States of America Venezuela

2. List of countries referred to in Articles 20 and 22 for which a pre-export notification and an export authorisation is required for exports of scheduled substances of category 3 of the Annex to Regulation (EC) No 111/2005

Substance	Destination	
Methylethyl ketone (MEK) (1) **Toluene** (1) **Acetone** (1) **Ethyl ether** (1)	Afghanistan Australia Antigua and Barbuda Argentina Benin Bolivia Brazil Canada Cayman Islands Chile Colombia Costa Rica Dominican Republic Ecuador Egypt El Salvador Ethiopia Ghana Guatemala Haiti Honduras India Jordan Kazakhstan	Lebanon Madagascar Malaysia Maldives Mexico Nigeria Oman Pakistan Paraguay Peru Philippines Republic of Moldova Republic of Korea Russian Federation Saudia Arabia Tajikistan Turkey United Arab Emirates United Republic of Tanzania Uruguay Venezuela
Hydrochloric acid **Sulphuric acid**	Bolivia Chile Colombia Ecuador	Peru Turkey Venezuela

(1) This includes the salts of these substances whenever the existence of such salts is possible.'

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 111/2005

of 22 December 2004

laying down rules for the monitoring of trade between the Community and third countries in drug precursors

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in Vienna on 19 December 1988, hereinafter referred to as the 'United Nations Convention', is part of the worldwide effort to combat illegal drugs. Within its sphere of competence, the Community participated in the negotiation and concluded the Convention on behalf of the Community by means of Council Decision 90/611/EEC [1].

(2) Article 12 of the United Nations Convention concerns trade in substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances. As provisions on trade in drug precursors affect Community rules in customs matters, it is appropriate to lay down Community rules on trade between the Community and third countries.

(3) Article 12 of the United Nations Convention requires a system to monitor international trade in drug precursors, taking account of the fact that, in principle, trade in these substances is lawful. Consequently, measures have been taken to strike an appropriate balance between the desire to exploit all possible means to prevent drug precursors reaching illicit drug manufacturers and the commercial needs of the chemical industry and other operators.

(4) To implement the requirements of Article 12 of the United Nations Convention and, taking account of the report of the Chemical Action Task Force created by the Houston Economic Summit (G-7) on 10 July 1990, Council Regulation (EEC) No 3677/90 of 13 December 1990 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances [2], established a system for reporting suspicious transactions. This system, which is based on close cooperation with operators, is reinforced through measures such as documentation and labelling, licensing and registration of operators as well as procedures and requirements governing exports.

(5) Following the European Union Action Plan on Drugs 2000 to 2004, endorsed by the European Council at Feira in June 2000, the Commission organised an assessment of the Community control system of trade in drug precursors to draw conclusions from the implementation of Community legislation in this field.

(6) According to that assessment and in order to improve the control mechanisms aiming at preventing diversion of drug precursors, it is necessary to extend monitoring requirements with regard to operators based within the Community facilitating trade between third countries, to introduce a Community approach with regard to procedures for granting licences and to strengthen monitoring requirements governing suspensive customs procedures.

(7) Procedures and requirements for exports should be further intensified to target and concentrate controls on the most sensitive drug precursors, whilst reducing excessive administrative burden through simplified procedures for exports of high volume substances. While the effectiveness and practicability of pre-export notifications is fully recognised, a strategy should be developed striving to exploit the system to the fullest extent possible.

(8) In order to address the heightened concern about the production of amphetamine-type stimulants, import control mechanisms for the main synthetic drug precursors should be further strengthened through common procedures and requirements allowing individual consignment-based controls to be carried out.

[1] OJ L 326, 24.11.1990, p. 56.

[2] OJ L 357, 20.12.1990, p. 1. Regulation as last amended by Commission Regulation (EC) No 1232/2002 (OJ L 180, 10.7.2002, p. 5).

(9) So as to allow operators to fulfil these requirements, provisions governing external trade in drug precursors should, to the extent possible, be aligned with the provisions governing intra-Community trade in drug precursors wholly obtained or produced, or released for free circulation, in the Community.

(10) Taking account of the requirements of the internal market, and in the interests of this Regulation's effectiveness, uniform application of the provisions should be ensured through adoption of comparable and converging means of action by Member States.

(11) Mutual assistance between the Member States and between the Member States and the Commission should be reinforced, in particular by recourse to Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [1].

(12) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of preventing the diversion of drug precursors for the illicit manufacture of narcotic drugs or psychotropic substances to lay down rules for the thorough monitoring of trade between the Community and third countries of these substances. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty.

(13) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [2].

(14) Regulation (EEC) No 3677/90 should therefore be repealed.

(15) This Regulation respects the fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS REGULATION:

[1] OJ L 82, 22.3.1997, p. 1. Regulation as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).
[2] OJ L 184, 17.7.1999, p. 23.

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

This Regulation lays down rules for the monitoring of trade between the Community and third countries in certain substances frequently used for the illicit manufacture of narcotic drugs and psychotropic substances (hereinafter referred to as drug precursors) for the purpose of preventing the diversion of such substances. It applies to imports, exports and intermediary activities.

This Regulation shall be without prejudice to special rules in other fields pertaining to trade in goods between the Community and third countries.

Article 2

For the purposes of this Regulation the following definitions shall apply:

(a) 'scheduled substance' means any substance listed in the Annex, including mixtures and natural products containing such substances, but excluding medicinal products as defined by Directive 2001/83/EC of the European Parliament and of the Council [3], pharmaceutical preparations, mixtures, natural products and other preparations containing scheduled substances that are compounded in such a way that such substances cannot be easily used or extracted by readily applicable or economically viable means;

(b) 'non-scheduled substance' means any substance which, although not listed in the Annex, is identified as having been used for the illicit manufacture of narcotic drugs or psychotropic substances;

(c) 'import' means any entry of scheduled substances having the status as non-Community goods into the customs territory of the Community, including temporary storage, the placing in a free zone or free warehouse, the placing under a suspensive procedure and the release for free circulation within the meaning of Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [4];

(d) 'export' means any departure of scheduled substances from the customs territory of the Community, including the departure of scheduled substances that requires a customs declaration and the departure of scheduled substances after their storage in a free zone of control type I or free warehouse within the meaning of Regulation (EEC) No 2913/92;

[3] OJ L 311, 28.11.2001, p. 67. Directive as last amended by Directive 2004/27/EC of the European Parliament and of the Council (OJ L 136, 30.4.2004, p. 34).
[4] OJ L 302, 19.10.1992, p. 1. Regulation as last amended by the 2003 Act of Accession.

(e) 'intermediary activities' means any activity to arrange purchase and sale or supply of scheduled substances carried out by any natural or legal person who aims to obtain agreement between two parties or to do so through acting on behalf of at least one of these parties without taking these substances into its possession or taking control of the carrying out of such transaction; this definition shall also include any activity carried out by any natural or legal person established in the Community involving purchase and sale or supply of scheduled substances without these substances being introduced into the Community customs territory;

(f) 'operator' means any natural or legal person engaged in import, export of scheduled substances or intermediary activities relating thereto, including persons pursuing the activity of making customs declarations for clients on a self-employed basis, either as their principal occupation or as a secondary activity related to another occupation;

(g) 'exporter' means the natural or legal person chiefly responsible for export activities by virtue of the economic and legal relationship to the scheduled substances and to the consignee and, where appropriate, who lodges the customs declaration or on whose behalf the customs declaration is lodged;

(h) 'importer' means the natural or legal person chiefly responsible for the import activities by virtue of the economic and legal relationship to the scheduled substances and to the consignor and who lodges the customs declaration or on whose behalf the customs declaration is lodged;

(i) 'ultimate consignee' means any natural or legal person to which the scheduled substances are delivered; this person may be different from the end-user;

(j) 'committee procedure' means the procedure provided for in Article 30(2);

(k) 'International Narcotics Control Board' means the Board established by the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol.

CHAPTER II

MONITORING OF TRADE

SECTION 1

Documentation and labelling

Article 3

All imports, exports or intermediary activities involving scheduled substances shall be documented by the operators by way of customs and commercial documents, such as summary declarations, customs declarations, invoices, cargo manifests, transport and other shipping documents.

Those documents shall contain the following information:

(a) the name of the scheduled substance as stated in the Annex, or, in the case of a mixture or a natural product, its name and the name of any scheduled substance, as stated in the Annex, contained in the mixture or in the natural product, followed by the term 'DRUG PRECURSORS';

(b) the quantity and weight of the scheduled substance and, in the case of a mixture or a natural product, the quantity, weight, and, if available, the percentage of any scheduled substance contained therein; and

(c) the names and addresses of the exporter, the importer, the ultimate consignee and, where applicable, the person involved in the intermediary activities.

Article 4

The documentation referred to in Article 3 shall be kept by the operators for a period of three years from the end of the calendar year in which the operation took place. The documentation shall be organised in such a way, electronically or in paper form, that it is readily available for inspection by the competent authorities upon request. The documentation may be provided via image medium or other data medium, provided that the data, when made readable, match the documentation in appearance and content, are available at all times, can be made readable without delay and can be analysed by automated means.

Article 5

Operators shall ensure that labels are affixed on any packaging containing scheduled substances indicating their name as stated in the Annex, or, in the case of a mixture or a natural product, its name and the name of any scheduled substance, as stated in the Annex, contained in the mixture or in the natural product. Operators may, in addition, affix their customary labels.

SECTION 2

Licensing and registration of operators

Article 6

1. Operators established in the Community, other than customs agents and transporters when acting solely in that capacity, engaged in import, export or intermediary activities involving scheduled substances listed in Category 1 of the Annex, shall hold a licence. The licence shall be issued by the competent authority of the Member State in which the operator is established.

In considering whether to grant a licence, the competent authority shall take into account the competence and integrity of the applicant.

The committee procedure shall be used to lay down provisions determining cases where a licence is not required, setting out further conditions for the granting of licences and establishing a model for licences. These provisions shall guarantee a systematic and consistent control and monitoring of operators.

2. The licence may be suspended or revoked by the competent authorities whenever the conditions under which the licence was issued are no longer fulfilled or where there are reasonable grounds for suspecting that there is a risk of diversion of scheduled substances.

Article 7

1. Operators established in the Community, other than customs agents and transporters when acting solely in that capacity, engaged in import, export or intermediary activities involving scheduled substances listed in Category 2 of the Annex, or in the export of scheduled substances listed in Category 3 of the Annex, shall register immediately and update as necessary the addresses of the premises at which they conduct those activities. This obligation shall be carried out with the competent authority in the Member State in which the operator is established.

2. The committee procedure shall be used to establish the conditions for exemption from the controls of certain categories of operators and of operators engaged in the export of small quantities of scheduled substances listed in Category 3. These conditions shall ensure that the risk of diversion of scheduled substances is minimised.

Article 8

1. When the scheduled substances are entered into the customs territory of the Community for unloading or transhipment, for temporary storage, for their storage in a free zone of control type I or a free warehouse, or for their placing under the Community external transit procedure, the licit purposes must be demonstrated by the operator, upon request by the competent authorities.

2. The committee procedure shall be used to establish the criteria to determine how the licit purposes of the transaction may be demonstrated, in order to ensure that all movements of scheduled substances within the Community customs territory can be monitored by the competent authorities and the risk of diversion be minimised.

SECTION 3

Provision of information

Article 9

1. Operators established in the Community shall notify the competent authorities immediately of any circumstances, such as unusual orders and transactions involving scheduled substances, which suggest that such substances intended for import, export or intermediary activities might be diverted for the illicit manufacture of narcotic drugs or psychotropic substances.

2. Operators shall provide the competent authorities with information in summary form about their export, import or intermediary activities. The committee procedure shall be used to determine the information that is required by the competent authorities in order to allow them to monitor these activities.

Article 10

1. In order to facilitate cooperation between the competent authorities of the Member States, operators established in the Community and the chemical industry, in particular as regards non-scheduled substances, the Commission shall, in consultation with the Member States, draw up and update guidelines.

2. These guidelines shall provide, in particular:

(a) information on how to identify and notify suspect transactions;

(b) a regularly updated list of non-scheduled substances to enable the industry to monitor on a voluntary basis the trade in such substances.

3. The competent authorities shall ensure that the guidelines are regularly disseminated in accordance with the objectives of these guidelines.

SECTION 4

Pre-export notification

Article 11

1. All exports of scheduled substances listed in Category 1 of the Annex and exports of scheduled substances listed in Categories 2 and 3 of the Annex to certain countries of destination, shall be preceded by a pre-export notification sent from the competent authorities in the Community to the competent authorities of the country of destination, in accordance with Article 12(10) of the United Nations Convention. The committee procedure shall be used to determine the list of the countries of destination in order to minimise the risk of diversion by ensuring systematic and consistent monitoring of exports of scheduled substances to these countries.

The country of destination shall be allowed a period of 15 working days to reply, at the end of which the export operation may be authorised by the competent authorities of the Member State of export, if no advice from the competent authorities of the country of destination is received indicating that this export operation might be intended for the illicit manufacture of narcotic drugs or psychotropic substances.

2. In the case of the scheduled substances to be notified in accordance with paragraph 1, the competent authorities of the Member State concerned shall, prior to the export of such substances, supply the information specified in Article 13(1) to the competent authorities of the country of destination.

The authority supplying such information shall require the authority in the third country receiving the information to keep confidential any trade, business, commercial or professional secret or any trade process referred to therein.

3. Simplified pre-export notification procedures may be applied by the competent authorities where they are satisfied that this will not result in any risk of diversion of scheduled substances. The committee procedure shall be used to determine such procedures and to establish the common criteria to be applied by the competent authorities.

SECTION 5

Export authorisation

Article 12

1. Exports of scheduled substances that require a customs declaration, including exports of scheduled substances leaving the customs territory from the Community following their storage in a free zone of control type I or free warehouse for a period of at least 10 days, shall be subject to an export authorisation.

Where scheduled substances are re-exported within 10 days from the date of their placing into a suspensive procedure or under a free zone of control type II, an export authorisation shall not be required.

However, exports of scheduled substances listed in Category 3 of the Annex shall only be subject to an export authorisation where pre-export notifications are required, or where these substances are exported to certain countries of destination to be determined in accordance with the committee procedure in order to ensure an appropriate level of control.

2. Export authorisations shall be issued by the competent authorities of the Member State where the exporter is established.

Article 13

1. The application for export authorisations referred to in Article 12 shall contain at least the following:

(a) the names and addresses of the exporter, the importer in the third country, any other operator involved in the export operation or shipment, and the ultimate consignee;

(b) the name of the scheduled substance as stated in the Annex or, in the case of a mixture or a natural product, its name and eight-digit CN code and the name of any scheduled substance, as stated in the Annex, contained in the mixture or in the natural product;

(c) the quantity and weight of the scheduled substance and, in the case of a mixture or a natural product, the quantity, weight, and, if available, the percentage of any scheduled substance contained therein;

(d) details of the transport arrangements, such as the expected date of dispatch, method of transport, name of the customs office where the customs declaration is to be made and, where available at this stage, identification of the means of transport, itinerary, expected point of exit from Community customs territory and the point of entry into the importing country;

(e) in the cases referred to in Article 17, a copy of the import authorisation issued by the country of destination; and

(f) the number of the licence or registration referred to in Articles 6 and 7.

2. A decision on the application for an export authorisation shall be taken within a period of 15 working days from the date on which the competent authority considers the file to be complete.

That period shall be extended if, in the cases referred to in Article 17, the competent authorities are obliged to make further enquiries under the second subparagraph of that Article.

Article 14

1. If the details of the itinerary and means of transport are not provided in the application, the export authorisation shall state that the operator must supply those details to the customs office of exit or other competent authorities at the point of exit from the Community customs territory before the physical departure of the consignment. In such cases the export authorisation shall be annotated accordingly at the time of issue.

Where the export authorisation is presented to a customs office in a Member State other than that of the issuing authority, the exporter shall make available any certified translation of parts or all of the information contained on the authorisation, upon request.

2. The export authorisation shall be presented to the customs office when the customs declaration is made, or in the absence of a customs declaration, at the customs office of exit or other competent authorities at the point of exit from the Community customs territory. The authorisation shall accompany the consignment to the third country of destination.

The customs office of exit or other competent authorities at the point of exit from the Community customs territory shall insert the necessary details referred to in Article 13(1)(d) in the authorisation and affix its stamp thereon.

Article 15

Without prejudice to measures adopted in accordance with Article 26(3), the granting of the export authorisation shall be refused if:

(a) details supplied in accordance with Article 13(1) are incomplete;

(b) there are reasonable grounds for suspecting that the details supplied in accordance with Article 13(1) are false or incorrect;

(c) in the cases referred to in Article 17, it is established that the import of the scheduled substances has not been authorised by the competent authorities of the country of destination, or

(d) there are reasonable grounds for suspecting that the substances in question are intended for the illicit manufacture of narcotic drugs or psychotropic substances.

Article 16

The competent authorities may suspend or revoke an export authorisation whenever there are reasonable grounds for suspecting that the substances are intended for the illicit manufacture of narcotic drugs or psychotropic substances.

Article 17

Whenever, under an agreement between the Community and a third country, exports are not to be authorised unless an import authorisation has been issued by the competent authorities of that third country for the substances in question, the Commission shall communicate to the competent authorities of the Member States the name and address of the competent authority of the third country, together with any operational information obtained from it.

The competent authorities in the Member States shall satisfy themselves as to the authenticity of such import authorisation, if necessary by requesting confirmation from the competent authority of the third country.

Article 18

The period of validity of the export authorisation within which the goods must have left the Community Customs territory shall not exceed six months from the date of issue of the export authorisation. Under exceptional circumstances, the period of validity may be extended, upon request.

Article 19

Simplified procedures to grant an export authorisation may be applied by the competent authorities where they are satisfied that this will not result in any risk of diversion of scheduled substances. The committee procedure shall be used to determine such procedures and to establish the common criteria to be applied by the competent authorities.

SECTION 6

Import authorisation

Article 20

Imports of scheduled substances listed in Category 1 of the Annex shall be subject to an import authorisation. An import authorisation may only be granted to an operator established in the Community. The import authorisation shall be issued by the competent authorities of the Member State where the importer is established.

However, where the substances referred to in subparagraph 1 are unloaded or transhipped, under temporary storage, stored in a free zone of control type I or free warehouse, or placed into the Community transit procedure, such import authorisation shall not be required.

Article 21

1. The application for the import authorisations referred to in Article 20 shall contain at least the following:

(a) the names and addresses of the importer, the exporter of the third country, any other operator involved and the ultimate consignee;

(b) the name of the scheduled substance as stated in the Annex or, in the case of a mixture or a natural product, its name and the eight-digit CN code and the name of any scheduled substance, as stated in the Annex, contained in the mixture or in the natural product;

(c) the quantity and weight of the scheduled substance and, in the case of a mixture or a natural product, the quantity, weight, and, if available, the percentage of any scheduled substance contained therein;

(d) if available, details of the transport arrangements, such as methods and means of transport, and date and place of envisaged import activities, and

(e) the number of the licence or registration referred to in Articles 6 and 7.

2. A decision on the application for an import authorisation shall be taken within a period of 15 working days from the date on which the competent authority considers the file to be complete.

Article 22

The import authorisation shall accompany the consignment from the point of entry into the Community customs territory to the premises of the importer or ultimate consignee.

The import authorisation shall be presented to the customs office when the scheduled substances are declared for a customs procedure.

Where the import authorisation is presented to a customs office in a Member State other than that of the issuing authority, the importer shall make available any certified translation of parts or all information contained on the authorisation, upon request.

Article 23

Without prejudice to measures adopted in accordance with Article 26(3), the granting of the import authorisation shall be refused if:

(a) details supplied in accordance with Article 21(1) are incomplete;

(b) there are reasonable grounds for suspecting that the details supplied in accordance with Article 21(1) in the application are false or incorrect, or

(c) there are reasonable grounds for suspecting that the scheduled substances are intended for the illicit manufacture of narcotic drugs or psychotropic substances.

Article 24

The competent authorities may suspend or revoke the import authorisation whenever there are reasonable grounds for suspecting that the substances are intended for the illicit manufacture of narcotic drugs or psychotropic substances.

Article 25

The period of validity of the import authorisation within which the scheduled substances must have been entered into the customs territory of the Community shall not exceed six months from the date of issue of the import authorisation. Under exceptional circumstances, the period of validity may be extended, upon request.

CHAPTER III

POWERS OF COMPETENT AUTHORITIES

Article 26

1. Without prejudice to the provisions of Articles 11 to 25 and of paragraphs 2 and 3 of this Article, the competent authorities of each Member State shall prohibit the introduction of scheduled substances into the Community customs territory or their departure from it, if there are reasonable grounds for suspecting that the substances are intended for the illicit manufacture of narcotic drugs or psychotropic substances.

2. The competent authorities shall detain or suspend release of the scheduled substances for the time necessary to verify the identification of the scheduled substances or compliance with the rules of this Regulation.

3. Each Member State shall adopt the measures necessary to enable the competent authorities, in particular:

(a) to obtain information on any orders for or operations involving scheduled substances;

(b) to enter operators' business premises in order to obtain evidence of irregularities;

(c) to establish that a diversion or attempted diversion of scheduled substances has taken place.

4. For the purpose of preventing specific risks of diversion in free zones as well as in other sensitive areas such as customs warehouses, Member States shall ensure that effective controls are applied to operations carried out in these areas at every stage of these operations, and that the controls are no less stringent than those applied in the other parts of the customs territory.

5. The competent authorities may require the operators to pay a fee for the issuing of licences, registrations and authorisations. Such fees shall be levied in a non-discriminatory way and shall not exceed the approximate cost of processing the application.

CHAPTER IV

ADMINISTRATIVE COOPERATION

Article 27

For the purposes of applying this Regulation and without prejudice to Article 30, the provisions of Regulation (EC) No 515/97 shall apply *mutatis mutandis*. Each Member State shall communicate to the other Member States and to the Commission the name of the competent authorities appointed to act as correspondents in accordance with Article 2(2) of that Regulation.

CHAPTER V

IMPLEMENTING MEASURES AND AMENDMENTS

Article 28

In addition to the implementing measures referred to in this Regulation, the Committee shall lay down, where necessary, detailed rules to ensure the effective monitoring of trade between the Community and third countries in drug precursors for the purpose of preventing the diversion of such substances, in particular with regard to the design and use of export and import authorisation forms.

Article 29

The committee procedure shall be used to adapt the Annex to this Regulation, to take account of any amendments to the Annex to the United Nations Convention.

Article 30

1. The Commission shall be assisted by the Drug Precursors Committee (hereinafter referred to as the Committee).

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

CHAPTER VI

FINAL PROVISIONS

Article 31

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 32

The competent authorities in each Member State shall, at least once each year, communicate to the Commission all relevant information on the implementation of the monitoring measures laid down in this Regulation, and on scheduled substances used for the illicit manufacture of narcotic drugs or psychotropic substances and methods of diversion and illicit manufacture, and their licit trade, uses and needs.

On the basis of that information, the Commission shall, in consultation with the Member States, evaluate the effectiveness of this Regulation and, in accordance with Article 12 (12) of the United Nations Convention, draw up an annual report to be submitted to the International Narcotics Control Board.

The Commission shall report to the Council on the functioning of this Regulation by the end of August 2008.

Article 33

The Commission is hereby authorised to adopt a position, on behalf of the Community, in favour of amendments to tables I and II of the Annex to the United Nations Convention which conform to the Annex to this Regulation.

Article 34

Regulation (EEC) No 3677/90 is repealed with effect from 18 August 2005.

References to the repealed Regulation shall be construed as references to this Regulation.

Article 35

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 18 August 2005. However, Articles 6(1), 7(2), 8(2), 9(2), 11(1) and (3), 12(1), 19, 28 and 30 shall apply as from the day of entry into force of this Regulation in order to permit the adoption of the measures provided for in those Articles. Such measures shall enter into force at the earliest on 18 August 2005.

This Regulation shall be binding in its entirety and directly applicable in all Member States

Done at Brussels, 22 December 2004.

For the Council
The President
C. VEERMAN

ANNEX

Scheduled substances Category 1

Substance	CN designation (if different)	CN Code (1)	CAS No (2)
1-Phenyl-2-propanone	Phenylacetone	2914 31 00	103-79-7
N-acetylanthranilic acid	2-Acetamidobenzoic acid	2924 23 00	89-52-1
Isosafrol (cis + trans)		2932 91 00	120-58-1
3,4-Methylenedioxyphenylpropan-2-one	1-(1,3-Benzodioxol-5-yl)propan-2-one	2932 92 00	4676-39-5
Piperonal		2932 93 00	120-57-0
Safrole		2932 94 00	94-59-7
Ephedrine		2939 41 00	299-42-3
Pseudoephedrine		2939 42 00	90-82-4
Norephedrine		ex 2939 49 00	14838-15-4
Ergometrine		2939 61 00	60-79-7
Ergotamine		2939 62 00	113-15-5
Lysergic acid		2939 63 00	82-58-6
The stereoisomeric forms of the substances listed in this Category not being cathine (3), whenever the existence of such forms is possible.			
The salts of the substances listed in this Category whenever the existence of such salts is possible and not being the salts of cathine.			

(1) OJ L 290, 28.10.2002, p. 1.
(2) The CAS No is the 'Chemical abstracts service registry number', which is a unique numeric identifier specific to each substance and its structure. The CAS No is specific to each isomer and to each salt of each isomer. It must be understood that the CAS Nos for the salts of the substances listed above will be different from those given.
(3) Also named (+)-norpseudoephedrine, CN code 2939 43 00, CAS No 492-39-7.

Category 2

Substance	CN designation (if different)	CN Code (1)	CAS No (2)
Acetic anhydride		2915 24 00	108-24-7
Phenylacetic acid		2916 34 00	103-82-2
Anthranilic acid		2922 43 00	118-92-3
Piperidine		2933 32 00	110-89-4
Potassium permanganate		2841 61 00	7722-64-7
The salts of the substances listed in this Category whenever the existence of such salts is possible.			

(1) OJ L 290, 28.10.2002, p. 1.
(2) The CAS No is the 'Chemical abstracts service registry number', which is a unique numeric identifier specific to each substance and its structure. The CAS No is specific to each isomer and to each salt of each isomer. It must be understood that the CAS Nos for the salts of the substances listed above will be different from those given.

Category 3

Substance	CN designation (if different)	CN Code [1]	CAS No [2]
Hydrochloric acid	Hydrogen chloride	2806 10 00	7647-01-0
Sulphuric acid		2807 00 10	7664-93-9
Toluene		2902 30 00	108-88-3
Ethyl ether	Diethyl ether	2909 11 00	60-29-7
Acetone		2914 11 00	67-64-1
Methylethylketone	Butanone	2914 12 00	78-93-3

The salts of the substances listed in this Category whenever the existence of such salts is possible and not being the salts of hydrochloric acid and sulphuric acid.

[1] OJ L 290, 28.10.2002, p. 1.
[2] The CAS No is the 'Chemical abstracts service registry number', which is a unique numeric identifier specific to each substance and its structure. The CAS No is specific to each isomer and to each salt of each isomer. It must be understood that the CAS Nos for the salts of the substances listed above will be different from those given.

I

(Acts whose publication is obligatory)

REGULATION (EC) No 273/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 February 2004 on drug precursors

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 19 December 1988, hereinafter referred to as the 'United Nations Convention', was concluded by the Community by Council Decision 90/611/EEC [4].

(2) The requirements of Article 12 of the United Nations Convention in respect of trade in drug precursors (i.e. substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances) have been implemented, as far as trade between the Community and third countries is concerned, by Council Regulation (EEC) No 3677/90 of 13 December 1990 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances [5].

(3) Article 12 of the United Nations Convention envisages adoption of appropriate measures to monitor the manufacture and distribution of precursors. This requires the adoption of measures relating to the trade in precursors among Member States. Such measures were introduced by Council Directive 92/109/EEC of 14 December 1992 on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances [6]. To better ensure that harmonised rules are applied at the same time in all Member States, a regulation is considered to be more adequate than the current Directive.

(4) In the context of the enlargement of the European Union, it is important to replace Directive 92/109/EEC by a regulation, as each modification of that Directive and its Annexes would trigger national implementation measures in 25 Member States.

(5) By decisions taken at its 35th session in 1992, the United Nations Commission on Narcotic Drugs included additional substances in the tables of the Annex to the United Nations Convention. Corresponding provisions should be laid down in this Regulation in order to detect possible cases of illicit diversion of drug precursors in the Community and to ensure that common monitoring rules are applied in the Community market.

(6) The provisions of Article 12 of the United Nations Convention are based on a system of monitoring trade in the substances in question. Most trade in these substances is entirely lawful. The documentation of consignments and labelling of these substances should be sufficiently explicit. It is furthermore important, whilst providing competent authorities with the necessary means of action, to develop, within the spirit of the United Nations Convention, mechanisms based on close cooperation with the operators concerned and on the development of intelligence gathering.

(7) The measures applicable to sassafras oil are currently interpreted in different ways in the Community, since in some Member States it is regarded as a mixture containing Safrole and is therefore controlled, while other Member States regard it as a natural product not subject to controls. Inserting a reference to natural products in the definition of 'scheduled substances' will resolve this discrepancy and therefore allow controls to be applied to sassafras oil; only natural products from which scheduled substances can be extracted easily should be covered by the definition.

[1] OJ C 20 E, 28.1.2003, p. 160.
[2] OJ C 95, 23.4.2003, p. 6.
[3] Opinion of the European Parliament of 11 March 2003 (not yet published in the Official Journal), Council common position of 29 September 2003 (OJ C 277 E, 18.11.2003, p. 31) and position of the European Parliament of 16 December 2003 (not yet published in the Official Journal).
[4] OJ L 326, 24.11.1990, p. 56.
[5] OJ L 357, 20.12.1990, p. 1. Regulation as last amended by Commission Regulation (EC) No 1232/2002 (OJ L 180, 10.7.2002, p. 5).
[6] OJ L 370 19.12.1992, p. 76. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

(8) Substances commonly used in the illicit manufacture of narcotic drugs or psychotropic substances should be listed in an Annex.

(9) It should be ensured that the manufacture or use of certain scheduled substances listed in Annex I is subject to possession of a licence. In addition, the supply of such substances should be permitted only where the persons to whom they are to be supplied are holders of a licence and have signed a customer declaration. The detailed rules concerning the customer declaration should be laid down in Annex III.

(10) Measures should be adopted to encourage operators to notify the competent authorities of suspect transactions involving scheduled substances listed in Annex I.

(11) Measures should be adopted in order to guarantee better control of intra-Community trade in scheduled substances listed in Annex I.

(12) All transactions leading to the placing on the market of scheduled substances of categories 1 and 2 of Annex I should be properly documented. Operators should notify the competent authorities of any suspect transactions involving the substances listed in Annex I. However, exemptions should apply to transactions involving substances of category 2 of Annex I where the quantities involved do not exceed those indicated in Annex II.

(13) A significant number of other substances, many of them traded legally in large quantities, have been identified as precursors to the illicit manufacture of synthetic drugs and psychotropic substances. To subject these substances to the same strict controls as those listed in Annex I would present an unnecessary obstacle to trade involving licences to operate and documentation of transactions. Therefore, a more flexible mechanism at Community level should be established whereby the competent authorities in the Member States are notified of such transactions.

(14) The introduction of a cooperation procedure is provided for in the European Union action plan against drugs approved by the European Council of Santa Maria da Feira on 19 and 20 June 2000. In order to support cooperation between the competent authorities of the Member States and the chemicals industry, in particular with regard to substances which, although not referred to in this Regulation, might be used in the illicit manufacture of synthetic drugs and psychotropic substances, guidelines should be drawn up aimed at helping the chemical industry.

(15) It is appropriate to make provision for the Member States to lay down rules on penalties applicable for infringement of the provisions of this Regulation. Given that the trade in drug precursors may lead to the illicit manufacture of synthetic drugs and psychotropic substances, Member States should be free to choose the most dissuasive penalties available under their national legislation.

(16) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1].

(17) Since the objectives of this Regulation, namely the harmonised monitoring of the trade in drug precursors and the avoidance of its diversion to the illicit manufacture of synthetic drugs and psychotropic substances, cannot be sufficiently achieved by the Member States and can therefore, by reason of the international and changeable nature of such trade, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(18) Council Directive 92/109/EEC, Commission Directives 93/46/EEC [2], 2001/8/EC [3] and 2003/101/EC [4] and Commission Regulations (EC) No 1485/96 [5] and (EC) No 1533/2000 [6] should be repealed,

[1] OJ L 184, 17.7.1999, p. 23.

[2] Commission Directive 93/46/EEC of 22 June 1993 replacing and modifying the Annexes to Council Directive 92/109/EEC on the manufacture and placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances (OJ L 159, 1.7.1993, p. 134).

[3] Commission Directive 2001/8/EC of 8 February 2001 replacing Annex I to Council Directive 92/109/EEC on the manufacture and placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances (OJ L 39, 9.2.2001, p. 31).

[4] Commission Directive 2003/101/EC of 3 November 2003 amending Council Directive 92/109/EEC on the manufacture and placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances (OJ L 286, 4.11.2003, p. 14).

[5] Commission Regulation (EC) No 1485/96 of 26 July 1996 laying down detailed rules for the application of Council Directive 92/109/EEC, as regards customer declarations of specific use relating to certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances (OJ L 188, 27.7.1996, p. 28). Regulation as amended by Regulation (EC) No 1533/2000 (OJ L 175, 14.7.2000, p. 75).

[6] Commission Regulation (EC) No 1533/2000 of 13 July 2000 amending Regulation (EC) No 1485/96 laying down detailed rules for the application of Council Directive 92/109/EEC, as regards customer declarations of specific use relating to certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances.

HAVE ADOPTED THIS REGULATION:

Article 1

Scope and objectives

This Regulation establishes harmonised measures for the intra-Community control and monitoring of certain substances frequently used for the illicit manufacture of narcotic drugs or psychotropic substances with a view to preventing the diversion of such substances.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

(a) 'scheduled substance' means any substance listed in Annex I, including mixtures and natural products containing such substances. This excludes medicinal products as defined by Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use [1], pharmaceutical preparations, mixtures, natural products and other preparations containing scheduled substances that are compounded in such a way that they cannot be easily used or extracted by readily applicable or economically viable means;

(b) 'non-scheduled substance' means any substance which, although not listed in Annex I, is identified as having been used for the illicit manufacture of narcotic drugs or psychotropic substances;

(c) 'placing on the market' means any supply, whether in return for payment or free of charge, of scheduled substances in the Community; or the storage, manufacture, production, processing, trade, distribution or brokering of these substances for the purpose of supply in the Community;

(d) 'operator' means any natural or legal person engaged in the placing on the market of scheduled substances;

(e) 'International Narcotics Control Board' means the Board established by the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol;

(f) 'special licence' means a licence that is granted to a particular type of operator;

(g) 'special registration' means a registration that is made for a particular type of operator.

Article 3

Requirements for the placing on the market of scheduled substances

1. Operators wishing to place on the market scheduled substances of categories 1 and 2 of Annex I shall be required to appoint an officer responsible for the trade in scheduled substances, to notify the competent authorities of the name and contact details of that officer and to notify them immediately of any subsequent modification of this information. The officer shall ensure that the trade in scheduled substances conducted by the operator takes place in compliance with this Regulation. The officer shall be empowered to represent the operator and to take the decisions necessary for performing the tasks specified above.

2. Operators shall be required to obtain a licence from the competent authorities before they may possess or place on the market scheduled substances of category 1 of Annex I. Special licences may be granted by the competent authorities to pharmacies, dispensaries of veterinary medicine, certain types of public authorities or armed forces. Such special licences shall only be valid for the use of precursors within the scope of the official duties of the operators concerned.

3. Any operator holding a licence referred to in paragraph 2 shall supply scheduled substances of category 1 of Annex I only to natural or legal persons who hold such a licence and have signed a customer declaration as provided for in Article 4(1).

4. When considering whether to grant a licence, the competent authorities shall take into account in particular the competence and integrity of the applicant. The licence is to be refused if there are reasonable grounds for doubting the suitability and reliability of the applicant or of the officer responsible for the trade in scheduled substances. The licence may be suspended or revoked by the competent authorities whenever there are reasonable grounds for believing that the holder is no longer a fit and proper person to hold a licence, or that the conditions under which the licence was granted are no longer fulfilled.

5. Without prejudice to Article 14, the competent authorities may either limit the validity of the licence to a period not exceeding three years or may oblige the operators to demonstrate at intervals not exceeding three years that the conditions under which the licence was granted are still fulfilled. The licence shall mention the operation or operations for which it is valid, as well as the substances concerned. Special licences within the meaning of paragraph 2 shall be granted in principle for an unlimited duration but may be suspended or revoked by the competent authorities under the conditions of paragraph 4, third sentence.

6. Without prejudice to Article 6, operators engaged in the placing on the market of scheduled substances of category 2 of Annex I shall be required to register and update with the competent authorities without delay the addresses of the premises at which they manufacture or from which they trade in these substances, before placing them on the market. Pharmacies, dispensaries of veterinary medicine, certain types of public authorities or the armed forces may be made subject to a special registration. Such registrations shall be considered valid only for the use of precursors within the scope of the official duties of the operators concerned.

[1] OJ L 311, 28.11.2001, p. 67. Directive as last amended by Commission Directive 2003/63/EC (OJ L 159, 27.6.2003, p. 46).

7. The competent authorities may require operators to pay a fee for the application for a licence or a registration. Such fees shall be levied in a non-discriminatory way and shall not exceed the cost of processing the application.

Article 4

Customer declaration

1. Without prejudice to Articles 6 and 14, any operator established within the Community who supplies a customer with a scheduled substance of categories 1 or 2 of Annex I shall obtain a declaration from the customer which shows the specific use or uses of the scheduled substances. A separate declaration shall be required for each scheduled substance. This declaration shall conform to the model set out in point 1 of Annex III. In the case of legal persons, the declaration shall be made on headed notepaper.

2. As an alternative to the above declaration for an individual transaction, an operator who regularly supplies a customer with a scheduled substance of category 2 of Annex I may accept a single declaration in respect of a number of transactions involving this scheduled substance over a period not exceeding one year, provided that the operator is satisfied that the following criteria have been met:

(a) the customer has been supplied by the operator with the substance on at least three occasions in the preceding 12 months;

(b) the operator has no reason to suppose that the substance will be used for illicit purposes;

(c) the quantities ordered are consistent with the usual consumption for that customer.

This declaration shall conform to the model set out in point 2 of Annex III. In the case of legal persons, the declaration shall be made on headed notepaper.

3. An operator supplying scheduled substances of category 1 of Annex I shall stamp and date a copy of the declaration, certifying it to be a true copy of the original. Such copy must always accompany category 1 substances being moved within the Community and must be presented on request to the authorities responsible for checking vehicle contents during transport operations.

Article 5

Documentation

1. Without prejudice to Article 6, operators shall ensure that all transactions leading to the placing on the market of scheduled substances of categories 1 and 2 of Annex I are properly documented in accordance with paragraphs 2 to 5 below. This obligation shall not apply to those operators who hold special licences or are subject to special registration pursuant to Article 3(2) and (6) respectively.

2. Commercial documents such as invoices, cargo manifests, administrative documents, transport and other shipping documents shall contain sufficient information to identify positively:

(a) the name of the scheduled substance as given in categories 1 and 2 of Annex I;

(b) the quantity and weight of the scheduled substance and, where a mixture or natural product is concerned, the quantity and weight, if available, of the mixture or natural product as well as the quantity and weight, or the percentage by weight, of any substance or substances of categories 1 and 2 of Annex I which are contained in the mixture;

(c) the name and address of the supplier, distributor, consignee, and, if possible, of other operators directly involved in the transaction, as referred to in Article 2(c) and (d).

3. The documentation must also contain a customer declaration as referred to in Article 4.

4. Operators shall keep such detailed records of their activities as are required to comply with their obligations under paragraph 1.

5. The documentation and records referred to in paragraphs 1 to 4 shall be kept for at least three years from the end of the calendar year in which the transaction referred to in paragraph 1 took place, and must be readily available for inspection by the competent authorities upon request.

6. The documentation may also be kept in the form of reproductions on an image medium or other data media. It must be ensured that the data stored:

(a) match the documentation in appearance and content when made readable, and

(b) are readily available at all times, can be made readable without delay and can be analysed by automated means for the duration of the period specified in paragraph 5.

Article 6

Exemptions

The obligations according to Articles 3, 4 and 5 shall not apply to transactions involving scheduled substances of category 2 of Annex I where the quantities involved do not exceed those indicated in Annex II over a period of one year.

Article 7

Labelling

Operators shall ensure that labels are affixed to scheduled substances of categories 1 and 2 of Annex I before they are supplied. The labels must show the names of the substances as given in Annex I. Operators may in addition affix their customary labels.

Article 8

Notification of the competent authorities

1. Operators shall notify the competent authorities immediately of any circumstances, such as unusual orders or transactions involving scheduled substances to be placed on the market, which suggest that such substances might be diverted for the illicit manufacture of narcotic drugs or psychotropic substances.

2. Operators shall provide the competent authorities in summary form with such information about their transactions involving scheduled substances as is specified in implementing measures adopted pursuant to Article 14.

Article 9

Guidelines

1. In order to facilitate cooperation between the competent authorities, the operators, and the chemical industry, in particular as regards non-scheduled substances, the Commission shall, in accordance with the procedure referred to in Article 15(2), draw up and update guidelines to assist the chemical industry.

2. The guidelines shall provide in particular:

(a) information on how to recognise and notify suspect transactions;

(b) a regularly updated list of non-scheduled substances to enable the industry to monitor on a voluntary basis the trade in such substances;

(c) other information which may be deemed useful.

3. The competent authorities shall ensure that the guidelines and the list of non-scheduled substances are regularly disseminated in a manner deemed appropriate by the competent authorities in accordance with the objectives of the guidelines.

Article 10

Powers and obligations of competent authorities

1. In order to ensure the correct application of Articles 3 to 8, each Member State shall adopt the measures necessary to enable its competent authorities to perform their control and monitoring duties, and in particular:

(a) to obtain information on any orders for scheduled substances or operations involving scheduled substances;

(b) to enter operators' business premises in order to obtain evidence of irregularities;

(c) where necessary, to detain consignments that fail to comply with this Regulation.

2. The competent authorities shall respect confidential business information.

Article 11

Cooperation between the Member States and the Commission

1. Each Member State shall designate the competent authority or authorities responsible for ensuring the application of this Regulation and shall inform the Commission thereof.

2. For the purposes of applying this Regulation and without prejudice to Article 15, the provisions of Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters ([1]), and in particular those on confidentiality, shall apply *mutatis mutandis*. The competent authority or authorities designated under paragraph 1 of this Article shall act as competent authorities within the meaning of Article 2(2) of Regulation (EC) No 515/97.

Article 12

Penalties

The Member State shall lay down the rules on penalties applicable for infringement of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 13

Communications from Member States

1. To permit any necessary adjustments to the arrangements for monitoring trade in scheduled substances and non-scheduled substances, the competent authorities in each Member State shall each year communicate to the Commission all information on the implementation of the monitoring measures laid down in this Regulation, in particular as regards substances frequently used for the illicit manufacture of narcotic drugs or psychotropic substances and methods of diversion and illicit manufacture.

2. A summary of the communications made pursuant to paragraph 1 shall be submitted by the Commission to the International Narcotics Control Board in accordance with Article 12(12) of the United Nations Convention and in consultation with the Member States.

Article 14

Implementation

Where necessary, the following measures for the implementation of this Regulation shall be adopted in accordance with the procedure referred to in Article 15(2):

(a) determination of the requirements and conditions for the granting of the licence as provided for in Article 3 and the details pertaining to the licence;

(b) determination, whenever necessary, of the conditions which shall apply to the documentation and labelling of mixtures and preparations containing substances listed in Annex I, as provided for in Articles 5 to 7;

([1]) OJ L 82, 22.3.1997, p. 1. Regulation as amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

(c) any amendments to Annex I made necessary by amendments to the tables in the Annex to the United Nations Convention;

(d) amendments to the thresholds set in Annex II;

(e) determination of the requirements and conditions for customer declarations referred to in Article 4, as well as the detailed rules concerning their use. This shall include rules on how to provide customer declarations in electronic form, where appropriate;

(f) other measures needed for the efficient implementation of this Regulation.

Article 15

Committee

1. The Commission shall be assisted by the committee set up by Article 10 of Regulation (EEC) No 3677/90.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its Rules of Procedure.

Article 16

Information about measures adopted by Member States

Each Member State shall inform the Commission of the measures it adopts pursuant to this Regulation, and in particular of the measures adopted pursuant to Articles 10 and 12. They shall also notify any subsequent amendments thereof.

The Commission shall communicate this information to the other Member States. It shall evaluate the implementation of the Regulation three years after its entry into force.

Article 17

Repeals

1. Council Directive 92/109/EEC, Commission Directives 93/46/EEC, 2001/8/EC and 2003/101/EC and Commission Regulations (EC) No 1485/96 and (EC) No 1533/2000 are hereby repealed.

2. References to the repealed directives or regulations shall be construed as being made to this Regulation.

3. The validity of any register established, any licences granted and any customer declarations issued under the repealed directives or regulations shall not be affected.

Article 18

Entry into force

This Regulation shall enter into force on 18 August 2005, except for Articles 9, 14 and 15, which shall enter into force on the day of publication of this Regulation in the *Official Journal of the European Union*, in order to permit the adoption of the measures provided for in those Articles. Such measures shall enter into force at the earliest on 18 August 2005.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 11 February 2004.

For the European Parliament
The President
P. COX

For the Council
The President
M. McDOWELL

ANNEX I

Scheduled substances within the meaning of Article 2(a)

CATEGORY 1

Substance	CN designation (if different)	CN code (1)	CAS No (2)
1-phenyl-2-propanone	Phenylacetone	2914 31 00	103-79-7
N-acetylanthranilic acid	2-acetamidobenzoic acid	2924 23 00	89-52-1
Isosafrol (cis + trans)		2932 91 00	120-58-1
3,4-methylenedioxyphenyl-propan-2-one	1-(1,3-Benzodioxol-5-yl)propan-2-one	2932 92 00	4676-39-5
Piperonal		2932 93 00	120-57-0
Safrole		2932 94 00	94-59-7
Ephedrine		2939 41 00	299-42-3
Pseudoephedrine		2939 42 00	90-82-4
Norephedrine		ex 2939 49 00	14838-15-4
Ergometrine		2939 61 00	60-79-7
Ergotamine		2939 62 00	113-15-5
Lysergic acid		2939 63 00	82-58-6

The stereoisomeric forms of the substances listed in this category not being cathine (3), whenever the existence of such forms is possible.

The salts of the substances listed in this category, whenever the existence of such salts is possible and not being the salts of cathine.

(1) OJ L 290, 28.10.2002, p. 1.
(2) The CAS No is the 'chemical abstracts service registry number', which is a unique numeric identifier specific to each substance and its structure. The CAS No is specific to each isomer and to each salt of each isomer. It must be understood that the CAS Nos for the salts of the substances listed above will be different to those given.
(3) Also named (+)-norpseudoephedrine, CN code 2939 43 00, CAS No 492-39-7.

CATEGORY 2

Substance	CN designation (if different)	CN code (1)	CAS No (2)
Acetic anhydride		2915 24 00	108-24-7
Phenylacetic acid		2916 34 00	103-82-2
Anthranilic acid		2922 43 00	118-92-3
Piperidine		2933 32 00	110-89-4
Potassium permanganate		2841 61 00	7722-64-7

The salts of the substances listed in this category, whenever the existence of such salts is possible.

(1) OJ L 290, 28.10.2002, p. 1.
(2) The CAS No is the 'chemical abstracts service registry number', which is a unique numeric identifier specific to each substance and its structure. The CAS No is specific to each isomer and to each salt of each isomer. It must be understood that the CAS Nos for the salts of the substances listed above will be different to those given.

CATEGORY 3

Substance	CN designation (if different)	CN code (1)	CAS No (2)
Hydrochloric acid	Hydrogen chloride	2806 10 00	7647-01-0
Sulphuric acid		2807 00 10	7664-93-9
Toluene		2902 30 00	108-88-3
Ethyl ether	Diethyl ether	2909 11 00	60-29-7
Acetone		2914 11 00	67-64-1
Methylethylketone	Butanone	2914 12 00	78-93-3

The salts of the substances listed in this category, whenever the existence of such salts is possible and not being the salts of hydrochloric acid and sulphuric acid.

(1) OJ L 290, 28.10.2002, p. 1.
(2) The CAS No is the 'chemical abstracts service registry number', which is a unique numeric identifier specific to each substance and its structure. The CAS No is specific to each isomer and to each salt of each isomer. It must be understood that the CAS Nos for the salts of the substances listed above will be different to those given.

ANNEX II

Substance	Threshold
Acetic anhydride	100 l
Potassium permanganate	100 kg
Anthranilic acid and its salts	1 kg
Phenylacetic acid and its salts	1 kg
Piperidine and its salts	0,5 kg

ANNEX III

1. **Model declaration relating to individual transactions (category 1 or 2)**

CUSTOMER DECLARATION OF SPECIFIC USE(S) OF THE SCHEDULED CATEGORY 1 OR 2 SUBSTANCE
(individual transactions)

I/We,

Name: .....

Address: .....

.....

Reference number of authorisation/licence/registration: .....
(delete as appropriate)

issued on..... by .....
(name and address of the authority)

.....

and without time limit/valid until .....
(delete as appropriate)

have ordered from

Name: .....

Address: .....

.....

the following substance

Description: .....

.....

Combined nomenclature (CN) code: ..... Quantity: .....

The substance will be used solely for .....

.....

I/We hereby certify that the substance referred to above will not be re-sold or otherwise supplied to any other customer unless the latter furnishes a declaration of use in accordance with this model or, for category 2 substances, a declaration relating to multiple transactions.

Signature . ..... Name: .....
(in block capitals)

Position: ..... Date: .....

2. **Model declaration relating to multiple transactions (category 2)**

CUSTOMER DECLARATION OF SPECIFIC USE(S) OF THE SCHEDULED CATEGORY 2 SUBSTANCE
(multiple transactions)

I/We,

Name: .....

Address: .....

.....

Registration reference number: .....

issued on..... by .....
(name and address of the authority)

.....

and without time limit/valid until .....
(delete as appropriate)

intend to order from

Name: .....

Address: .....

.....

the following substance

Description: .....

.....

Combined nomenclature (CN) code: ..... Quantity: .....

The substance will be used solely for.....

.....

and represents a quantity that is normally considered sufficient for ..... months
(up to a maximum of 12 months)

I/We hereby certify that the substance referred to above will not be re-sold or supplied to any other customer unless the latter submits a similar declaration of use or a declaration relating to individual transactions.

Signature: ..... Name: .....
(in block capitals)

Position: ..... Date: .....

EUROPEAN
COMMISSION

Brussels, 17.9.2013
COM(2013) 619 final

2013/0305 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on new psychoactive substances

(Text with EEA relevance)

{SWD(2013) 319 final}
{SWD(2013) 320 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. General context

A growing number of new psychoactive substances, which imitate the effects of substances controlled under the UN Conventions on Drugs and are marketed as legal alternatives to them ('legal highs'), are emerging and spreading fast in the internal market. These substances, which act on the central nervous system, modifying mental functions, also have uses in industry or research - as active substances for medicines, for instance. A rising number of individuals, in particular young people, consume new psychoactive substances, despite the risks that they may pose, which may be comparable to those posed by UN-controlled drugs.

During the past years, one new psychoactive substance was reported every week in the EU, and the rapid pace of notification is expected to continue in the coming years. These substances are sold freely, unless public authorities subject them to various restriction measures, underpinned by administrative or criminal sanctions, because of the risks that they pose when consumed by humans. Such national restriction measures, which may differ depending on the Member State and on the substance, can hamper trade in the internal market and hinder the development of future industrial or commercial uses.

New psychoactive substances are not subjected to control measures under the UN Conventions on Drugs, unlike psychoactive substances such as cocaine or amphetamines, although they could be considered for UN-level control on the basis of a risk assessment conducted by the World Health Organisation at the request of at least one UN Member State.

The Commission Communication "Towards a stronger European response to drugs"[1], adopted in October 2011, identified the spread of new psychoactive substances as one of the most challenging developments in drugs policy requiring a firmer EU response. The Communication set the ground for new EU legislative proposals on new psychoactive substances, building on the Council Decision 2005/387/JHA on the information exchange, risk assessment and control of new psychoactive substances[2]. In December 2011[3], the Council requested the Commission to table a legislative proposal revising Council Decision 2005/387/JHA. A legislative proposal on new psychoactive substances is foreseen in the Commission's 2013 Work Programme[4].

This proposal for a Regulation aims at improving the functioning of the internal market regarding licit uses of new psychoactive substances, by reducing obstacles to trade, preventing the emergence of such obstacles and increasing legal certainty for economic operators, while reducing the availability of substances that pose risks through swifter, more effective and more proportionate EU action. It is accompanied by a proposal for a Directive amending Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of

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1 COM(2011) 689 final.
2 OJ L 127, 10.5.2005, p.32.
3 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/126879.pdf
4 COM(2012) 629 final.

illicit drug trafficking[5]. This aims at expanding the scope of application of the Framework Decision to cover the most harmful new psychoactive substances, which pose severe risks. This means that substances that pose severe health, social and safety risks and are, therefore, submitted to permanent market restriction under this proposed Regulation, are also covered, through the proposed amended Framework Decision, by the criminal law provisions applying to controlled drugs.

The case for swifter, more effective and more proportionate action on new psychoactive substances at EU level is compelling, considering the rapid changes in this market, which put national authorities under pressure to act. During the past years, Member States have notified an increasing number of new psychoactive substances to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). Between 1997 and 2012 they reported around 290 substances. The number of notified substances tripled between 2009 and 2012 (from 24 to 73). Around 80% of these substances were reported by more than one Member State. The number of substances that can emerge may run into the thousands because many variations of existing or new, still unexploited substances, can be manufactured at relatively low cost. The issue has been further highlighted in the 2012[6] and 2013[7] EMCDDA annual reports, as well as in the EMCCDA-Europol "EU drug markets report: a strategic analysis"[8], published in January 2013.

Consumption of new psychoactive substances appears to be increasing in Europe and use is predominant among young people. According to the 2011 Eurobarometer "Youth attitudes on drugs", 5% of young people in the EU have used such substances at least once in their life, with a peak of 16% in Ireland, and close to 10% in Poland, Latvia and the UK. According to the results of snapshot surveys conducted by the EMCDDA, the number of online shops selling new psychoactive substances increased four-fold between 2010 and 2012, to 690.

The consumption of new psychoactive substances can cause harms to individuals' health and safety, resulting in deaths, injury or disease, and can pose risks to and burdens on society, as it may lead to violent behaviour and crime. These risks are amplified by the fact that many such substances are sold to consumers without appropriate labelling and instructions of use. In some cases they are sold on the black market alongside, or instead of, controlled drugs.

The rapid emergence and spread of these substances, and the potential risks that they pose, have led national authorities to subject them to various restriction measures. Hundreds such substances or mixtures of substances have been subjected to different restriction measures in the Member States in the past years. Such national measures disrupt trade in licit uses of these substances. Around a fifth of the substances notified by the Member States have other uses (but information on such uses is not collected systematically across the EU).

National restriction measures, which can vary depending on the Member State and on the substance, lead to obstacles to trade in licit uses, fragmentation, an uneven level playing field and legal uncertainties for economic operators, and make it difficult for companies to operate across the internal market. They make research more cumbersome, hampering the

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5 OJ L 335, 11.11.2004, p. 8.

6 EMCDDA, *2012 Annual report on the state of the drugs problem in Europe*; available at: http://www.emcdda.europa.eu/publications/annual-report/2012

7 EMCDDA, *European Drug Report 2013*; available at: http://www.emcdda.europa.eu/edr2013.

8 Available at: http://www.emcdda.europa.eu/publications/joint-publications/drug-markets

development of new uses for these substances. They have a chain-reaction impact on operators in different markets, because such substances are used in the production of other substances or mixtures, which in turn are used for manufacturing various goods. As the market for new psychoactive substances is likely to grow, so will these obstacles to licit trade.

In order to facilitate the functioning of the internal market while protecting consumers from harmful new psychoactive substances, EU-level action shall ensure the free movement of new psychoactive substances for commercial and industrial use, and for scientific research and development, and provide for a graduated set of restriction measures for substances posing risks, proportionate to their level of risk.

This proposal, therefore, sets up a robust system for exchanging rapidly information on new psychoactive substances emerging on the market, including on their commercial and industrial uses, for assessing the risks of substances that cause EU-wide concern and for withdrawing from the market those substances that pose risks.

The substances suspected to pose immediate public health risk will be withdrawn from the consumer market temporarily, pending their risk assessment. Once the risk assessment is completed, measures will be taken proportionate to the risks of substances. While no restrictions will be introduced at the EU level on substances posing low health, social and safety risks, substances posing moderate risks will be subjected to consumer market restriction, which means that they cannot be sold to consumers (except for uses specifically authorised, for instance by medicines legislation) but their trade is allowed for commercial and industrial purposes as well as for scientific research and development.

New psychoactive substances posing severe risks will be subjected to permanent market restriction, covering both the consumer and commercial markets, and their use will only be possible for specifically authorised industrial and commercial purposes, as well as for scientific research and development. In addition, as explained above, these substances will be subjected to EU criminal law provisions under the accompanying proposal for a Directive amending the Framework Decision on illicit drug trafficking.

In relation to new psychoactive substances on which the EU has not acted, Member States may introduce national technical regulations, in full compliance with the EU provisions preventing the emergence of unjustified barriers to trade[9].

1.2. Legal context

Soon after a borderless internal market was created, and following the emergence and rapid spread of synthetic drugs, such as amphetamines and ecstasy, it became clear that the effectiveness of national actions is limited and that EU action was necessary to contain the spread of harmful substances. The EU Joint Action 97/396/JHA concerning the information exchange, risk assessment and the control of new synthetic drugs[10] was adopted in 1997 to address this problem.

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[9] Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society Services, OJ L 204, 21.7.1998, p. 37.

[10] OJ L 167, 25.6.1997, p.1.

Council Decision 2005/387/JHA, which repealed Joint Action 97/396/JHA, established an EU-wide system for tackling new psychoactive substances (synthetic and natural) that raise concern at EU level. It lays down rules on the exchange of information on these substances between Member States, coordinated by the EMCDDA and Europol, on the assessment of their risks and the submission to control and criminal penalties across the EU of those substances that pose risks.

The Commission's assessment report[11] of July 2011, concluded that, while Council Decision 2005/387/JHA is a useful instrument, it is inadequate, considering the scale and complexity of the problem, and it, therefore, requires revision. This is because it involves a lengthy process, it is reactive and it lacks options to the submission to control and criminal penalties.

This Regulation replaces Council Decision 2005/387/JHA.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT

2.1. Consultations with interested parties

Broad stakeholder and expert consultations together with a web-based public consultation and an external study have informed the preparatory work for this proposal. The Commission involved all Member States in the assessment of the functioning of Council Decision 2005/387/JHA, through written consultation. In the context of the external study, the Commission collected and examined the views of a host of national authorities (responsible for drug legislation, justice and health ministries, health institutes and law enforcement agencies) and of EU agencies involved in the implementation of Council Decision 2005/387/JHA. It also collected and examined the views of international organisations (including the World Health Organisation), civil society organisations, economic operators in various markets, research institutes and academic experts.

The survey conducted among Member States in the context of the assessment report showed that a large number of Member States view the lack of alternatives to control and criminal penalties in the current instrument as inadequate and suggest that a wider range of options should be considered, backed by administrative law. Moreover, all Member States agreed that swifter action is necessary to address new psychoactive substances (including temporary measures) and that the current decision-making process is too slow.

During the two experts' meetings organised by the Commission on 15 December 2011 and 1 March 2012, academic experts and practitioners stressed that the Council Decision and product safety legislation are inadequate to tackle the large number of new psychoactive substances emerging on the market, whose effects and risks are mostly unknown. They pointed out that new legislation on new psychoactive substances should be calibrated to the different levels of risks posed by these substances. Certain participants expressed concern that too rigorous policy responses (such as blanket restrictions on entire groups of substances or a wide recourse to criminal penalties) could have adverse effects. Such adverse effects include a displacement of substances from the licit to the illicit market, a replacement of the substances

[11] COM(2011) 430 final and SEC(2011) 912 final.

withdrawn from the market with other substances, possibly even more harmful, and rendering such substances inaccessible for research.

Surveys and interviews were conducted with economic operators which manufacture such substances for various industrial uses, and with their trade associations, as well as with those who produce or distribute new psychoactive substances for recreational use. Recreational users of new psychoactive substances were also interviewed.

The views of young people (15-24 years' old) were collected through the 2011 Eurobarometer "Youth attitudes on drugs". Almost half of respondents (47%) thought that only those substances which are proved to pose risks to health should be restricted, while 34% held that all substances which imitate the effects of controlled drugs should be restricted.

The Commission run a public consultation on drugs policy from 28 October 2011 to 3 February 2012. It included a question on regulatory measures that the EU should develop to contain the spread of new psychoactive substances. Among the 134 replies, most stressed the need for more rapid action on new psychoactive substances and warned against imposing criminal sanctions indiscriminately. The European Economic and Social Committee has urged[12] the Commission to explore options that avoid making the personal use of such substances a criminal offence.

2.2. Impact Assessment

The Commission conducted an impact assessment of policy alternatives, taking into account the consultation of interested parties and the results of external studies. The impact assessment concluded that the following solution would be preferred:

– a more graduated and better targeted set of restriction measures on new psychoactive substances, which should not hinder the industrial use of substances.

– restriction measures should be introduced earlier and substances suspected to pose immediate public health risks should be subjected to temporary restrictions.

– restriction measures should be proportionate to a better determined level of risk of substances, with substances posing moderate risks subjected to restrictions on the consumer market (covered by administrative law), while substances posing severe risks should be subjected to a wider market restriction, as well as being covered by criminal law.

– restriction measures should be introduced through a quicker procedure.

The impact assessment concluded that the most effective way to keep harmful new psychoactive substances out of the market is to apply the EU provisions on illicit drug trafficking to new psychoactive substances that pose severe risks. Applying the same criminal law provisions to controlled drugs and to equally harmful new psychoactive substances, posing severe risks, will help deter trafficking in such substances and the involvement of criminal groups, while streamlining and clarifying the EU legal framework on drugs.

[12] OJ C 229, 31.7.2012, p. 85.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. The legal base

The proposal aims at ensuring that trade in new psychoactive substances having industrial and commercial uses is not hindered and that the functioning of this market is improved, while the health and safety of individuals are protected from harmful substances, which cause concern at the EU level.

The proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), which empowers the European Parliament and the Council to adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in the Member States which have as their object the establishment and functioning of the internal market. Article 114(3) TFEU requires the Commission to ensure a high level of health, safety and consumer protection in its proposals envisaged in paragraph 1 of Article 114 TFEU. This proposal falls within the scope of action to improve the functioning of the internal market for the following reasons:

– it addresses obstacles to trade in new psychoactive substances having dual uses, while enabling the adoption of measures to restrict the availability to consumers of substances posing risks.

– it addresses the lack of legal certainty for economic operators by harmonising the response given to substances causing concern across the EU.

– it connects the market for industrial uses of new psychoactive substances to the wider internal market.

3.2. Subsidiarity, proportionality and the respect for fundamental rights

There is a clear need for EU action on new psychoactive substances. This is because Member States alone cannot reduce the problems caused by the spread in the internal market of harmful new psychoactive substances and by the proliferation of divergent national responses. Uncoordinated national action in this area can produce adverse knock-on effects, for instance hindrance to the operation of the internal market as far as licit trade in these substances is concerned or displacement of harmful substances from one Member State to another.

Consequently, EU-level action is necessary to ensure that potentially harmful new psychoactive substances, which cause EU-wide concern, can be identified, assessed and, if they pose risks, withdrawn from the market rapidly in all Member States.

The proposal is relevant for the following rights and principles enshrined in the EU Charter of Fundamental Rights: the right to health care (notably to a high level of human health protection, Article 35) and to consumer protection (Article 38), the respect of the freedom to conduct a business (Article 16), the right to property (Article 17), the right to an effective remedy and to a fair trial (Article 47), the presumption of innocence and right to defence (Article 48). These rights and freedoms can be subject to limitations, but only under the limits and requirements set by Article 52(1) of the EU Charter.

The proposal is proportionate and does not go beyond what is necessary to achieve the objectives because it only addresses new psychoactive substances that are a concern at the EU

level and because it sets out a calibrated, graduated approach, under which measures are proportionate to the actual risks of substances.

Explicit safeguards laid down in the instrument itself guarantee that any person whose rights are affected by the implementation of any administrative measures or sanctions pursuant to the Regulation shall have the right to an effective remedy before a tribunal.

3.3. Choice of instrument

In order to establish uniform rules, ensure clarity of concepts and procedures, and provide legal certainty for market operators, while ensuring that restriction measures are directly applicable in all Member States, a Regulation is the appropriate instrument.

3.4 Specific provisions

Article 1: Subject matter and scope – this provision sets out the purpose and scope of the proposal, and in particular that it establishes rules for restrictions to the free movement of new psychoactive substances in the internal market.

Article 2: Definitions – this provision sets out definitions which apply throughout the instrument.

Article 3: Free movement – this provision lays down the principle of free movement of new psychoactive substances for industrial and commercial uses, and for research and development.

Article 4: Prevention of barriers to free movement – this provision clarifies under what conditions Member States may introduce restrictions on new psychoactive substances.

Article 5: Information exchange – this provision establishes the respective roles of Member States, the EMCDDA and Europol in the process of exchange of information on new psychoactive substances.

Article 6: Joint report – this provision lays down the contents and the procedures for the drawing up and the transmission by the EMCDDA and Europol of a joint report on a new psychoactive substance. The Commission, the European Medicines Agency, the European Chemicals Agency and the European Food Safety Authority are associated to the collection of information for a joint report.

Article 7: Risk assessment procedure and report – this provision empowers the Commission to request the EMCDDA to assess the risks of a new psychoactive substance on which a joint report was drawn up. It lays down the procedures for the risk assessment, which is to be conducted by the Scientific Committee of the EMCDDA, and for the drawing up and the transmission of a risk assessment report.

Article 8: Exclusion from risk assessment – this provision details such circumstances in which no risk assessment is to be conducted on a new psychoactive substance.

Article 9: Immediate risks to public health and temporary consumer market restriction – this provision lays down the criteria on the basis of which the Commission determines whether a new psychoactive substance poses immediate risks to public health, and empowers the

Commission to prohibit, temporarily, the making available of this substance on the consumer market, if it poses such immediate risks to public health.

Article 10: Determination of the level of health, social and safety risks following the risk assessment – this provision lays down the criteria on the basis of which the Commission determines the level of health, social and safety risks posed by a new psychoactive substance.

Article 11: Low risks – this provision sets out that the Commission shall introduce no restriction measures on new psychoactive substances posing low health, social and safety risks and provides a definition of low risks.

Article 12: Moderate risks and permanent consumer market restriction – this provision empowers the Commission to prohibit the making available on the consumer market of new psychoactive substances which pose moderate health, social and safety risks, and provides a definition of moderate risks.

Article 13: Severe risks and permanent market restriction – this provision empowers the Commission to prohibit the production, manufacture, making available on the market, transport, importation or exportation of new psychoactive substances which pose severe health, social and safety risks, and provides a definition of severe risks.

Article 14: Authorised uses – this provision sets out the exceptions to the market restrictions introduced under the Regulation.

Article 15: Monitoring – this provision lays down monitoring obligations with regard to substances on which a joint report has been drawn up.

Article 16: Re-examination of the level of risks – this provision sets out the procedure for re-examining the level of risks posed by a new psychoactive substance in the light of new information and evidence on the substance.

Article 17: Sanctions – this provision establishes the obligation for the Member States to lay down the rules on administrative sanctions applicable to infringements to market restriction, and to ensure that they are effective, proportionate and dissuasive.

Article 18: Remedy – this provision sets out the right to an effective judicial remedy enshrined in Article 47 of the Charter of Fundamental Rights.

Articles 19: Committee – this provision lays down the standard rules for the exercise of implementing powers in line with Article 291 TFEU.

Article 20: Research and analysis – this provision describes the ways in which the EU shall support the development, sharing and dissemination of information and knowledge on new psychoactive substances, to support the rapid exchange of information on and risk assessment of new psychoactive substances.

Article 21: Reporting – this provision requests the EMCDDA and Europol to report annually on the implementation of certain aspects of the Regulation.

Article 22: Evaluation – this provision sets out an obligation for the Commission to regularly assess the implementation, application and effectiveness of this Regulation and to report to the European Parliament and Council.

Article 23: Replacement of Decision 2005/387/JHA – this provision sets out that this Regulation replaces Council Decision 2005/387/JHA.

Article 24: Entry into force – this establishes when the Regulation shall enter into force.

4. BUDGETARY IMPLICATION

The proposal has no direct impact on the EU budget and does not create new tasks for the EMCDDA, Europol, the European Medicines Agencies, the European Chemicals Agency (ECHA) and the European Food Safety Authority (EFSA). For the purpose of this Regulation, the ECHA and the EFSA are only required to share the information at their disposal, on a limited number of substances, and are not requested to produce new information.

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on new psychoactive substances

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[13],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) New psychoactive substances, which may have numerous commercial and industrial uses, as well as scientific uses, can pose health, social and safety risks when consumed by humans.

(2) During the past years, Member States have notified an increasing number of new psychoactive substances via the mechanism for rapid exchange of information which was established by Joint Action 97/396/JHA of 16 June 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the information exchange, risk assessment and the control of new synthetic drugs[14] and was further strengthened by the Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances[15]. A large majority of these new psychoactive substances were reported by more than one Member State. Many such new psychoactive substances were sold to consumers without appropriate labelling and instructions of use.

(3) Member States' competent public authorities introduce various restriction measures on these new psychoactive substances to address the risks that they pose or may pose

13 OJ C […], […], p. […].
14 OJ L 167, 25.6.1997, p. 1.
15 OJ L 127, 20.5.2005, p. 32.

when consumed. As new psychoactive substances are often used in the production of various goods or of other substances which are used for manufacturing goods, such as medicines, industrial solvents, cleaning agents, goods in the hi-tech industry, restricting their access for this use can have an important impact on economic operators, potentially disrupting their business activities in the internal market.

(4) The increasing number of new psychoactive substances available in the internal market, their growing diversity, the speed with which they emerge on the market, the different risks that they may pose when consumed by humans and the growing number of individuals who consume them, challenge the capacity of public authorities to provide effective responses to protect public health and safety without hampering the functioning of the internal market.

(5) Restriction measures vary significantly in different Member States, meaning that economic operators that use them in the production of various goods must comply, in the case of the same new psychoactive substance, with different requirements, such as pre-export notification, export authorisation, or import and export licences. Consequently, the differences between the Member States' laws, regulations and administrative provisions on new psychoactive substances hinder the functioning of the internal market, by causing obstacles to trade, market fragmentation, lack of legal clarity and of an even level playing field for economic operators, making it difficult for companies to operate across the internal market.

(6) Restriction measures not only cause barriers to trade in the case of new psychoactive substances that already have commercial, industrial or scientific uses, but can also impede the development of such uses, and are likely to cause obstacles to trade for economic operators that seek to develop such uses, by making access to those new psychoactive substances more difficult.

(7) The disparities between the various restriction measures applied to new psychoactive substances can also lead to displacement of harmful new psychoactive substances between the Member States, hampering efforts to restrict their availability to consumers and undermining consumer protection across the Union.

(8) Such disparities are expected to increase as Member States continue to pursue divergent approaches to addressing new psychoactive substances. Therefore, the obstacles to trade and market fragmentation, and the lack of legal clarity and of a level playing field are expected to increase, further hindering the functioning of the internal market.

(9) Those distortions to the functioning of the internal market should be eliminated and, to that end, the rules relating to new psychoactive substances that are of concern at Union level should be approximated, while, at the same time, ensuring a high level of health, safety and consumer protection.

(10) New psychoactive substances and mixtures should be able to move freely in the Union when intended for commercial and industrial use, as well as for scientific research and development. This Regulation should establish rules for introducing restrictions to this free movement.

(11) New psychoactive substances that pose health, social and safety risks across the Union should be addressed at the Union level. Action on new psychoactive substances under

this Regulation should contribute to a high level of protection of human health and safety, as enshrined in the Charter of Fundamental Rights of the European Union.

(12) This Regulation should not apply to drug precursors because the diversion of those chemical substances for the purpose of manufacturing narcotic drugs or psychotropic substances is addressed under Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors[16] and Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors[17].

(13) Any Union action on new psychoactive substances should be based on scientific evidence and subject to a specific procedure. Based on the information notified by Member States, a report should be drawn up on new psychoactive substances that give rise to concerns across the Union. The report should indicate whether it is necessary to carry out a risk assessment. Following the risk assessment, the Commission should determine whether the new psychoactive substances should be subjected to any restriction measures. In case of immediate public health concerns, the Commission should subject them to temporary consumer market restriction before the conclusion of the risk assessment. In case new information emerges on a new psychoactive substance, the Commission should re-assess the level of risks that it poses. Reports on new psychoactive substances should be made publicly available.

(14) No risk assessment should be conducted under this Regulation on a new psychoactive substance if it is subject to an assessment under international law, or if it is an active substance in a medicinal product or in a veterinary medicinal product.

(15) Where the new psychoactive substance on which a report is drawn up is an active substance in a medicinal product or in a veterinary medicinal product, the Commission should assess with the European Medicines Agency the need for further action.

(16) The measures taken on new psychoactive substances at Union level should be proportionate to the health, social and safety risks that they pose.

(17) Certain new psychoactive substances pose immediate public health risks, requiring urgent action. Therefore, their availability to consumers should be restricted for a limited time, pending their risk assessment.

(18) No restriction measures should be introduced at Union level on new psychoactive substances which pose low health, social and safety risks.

(19) Those new psychoactive substances which pose moderate health, social and safety risks should not be made available to consumers.

(20) Those new psychoactive substances which pose severe health, social and safety risks should not be made available on the market.

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16 OJ L 47, 18.2.2004, p. 1.
17 OJ L 22, 26.1.2005, p. 1.

(21) This Regulation should provide for exceptions in order to ensure the protection of human and animal health, to facilitate scientific research and development, and to allow the use of new psychoactive substances in industry, provided that they cannot be abused or recovered.

(22) In order to ensure the efficient implementation of this Regulation, the Member States should lay down rules on the sanctions applicable to infringements of restriction measures. Those sanctions should be effective, proportionate and dissuasive.

(23) The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) established by Regulation 1920/2006/EC of the European Parliament and of the Council of 12 December 2006[18] should have a central role in the exchange of information on new psychoactive substances and in the assessment of the health, social and safety risks that they pose.

(24) The mechanism for rapid exchange of information on new psychoactive substances has proved to be a useful channel for sharing information on new psychoactive substances, on new trends in the use of controlled psychoactive substances and on related public health warnings. That mechanism should be further strengthened to enable a more effective response to the rapid emergence and spread of new psychoactive substances across the Union.

(25) Information from Member States is crucial for the effective functioning of the procedures leading to decision on market restriction of new psychoactive substances. Therefore, Member States should collect, on a regular basis, data on the use of new psychoactive substances, related health, safety and social problems and policy responses, in accordance with the EMCDDA framework for data collection for the key epidemiological indicators and other relevant data. They should share this data.

(26) A lack of capacity to identify and anticipate the emergence and spread of new psychoactive substances and a lack of evidence about their health, social and safety risks hamper the provision of an effective response. Therefore, support should be provided, including at Union level, to facilitate cooperation between the EMCDDA, research institutes and forensic laboratories with relevant expertise, in order to increase the capacity to assess and address effectively new psychoactive substances.

(27) The procedures for information exchange, risk assessment and adoption of temporary and permanent restriction measures on new psychoactive substances established by this Regulation should enable swift action. Market restriction measures should be adopted without undue delay, not later than eight weeks from receipt of the joint report or risk assessment report.

(28) As long as the Union has not adopted measures to subject a new psychoactive substance to market restriction under this Regulation, Member States may adopt technical regulations on that new psychoactive substance in compliance with the provisions of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of

[18] OJ L 376, 27.12.2006, p. 1.

technical standards and regulations and of rules on Information Society Services[19]. In order to preserve the unity of the Union's internal market and to prevent the emergence of unjustified barriers to trade, Member States should immediately communicate to the Commission any draft technical regulation on new psychoactive substances, in accordance with the procedure established by Directive 98/34/EC.

(29) Prevention, treatment and harm reduction measures are important for addressing the growing use of new psychoactive substances and their potential risks. The internet, which is one of the important distribution channels through which new psychoactive substances are sold, should be used for disseminating information on the health, social and safety risks that they pose.

(30) Medicinal products and veterinary medicinal products are addressed under Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products[20], Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use[21] and Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency[22]. Their abuse or misuse should, therefore, not be covered by this Regulation.

(31) In order to ensure uniform conditions for the implementation of temporary and permanent market restrictions, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers[23].

(32) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to a rapid increase in the number of reported fatalities in several Member States associated with the consumption of the new psychoactive substance concerned, imperative grounds of urgency so require.

(33) In the application of this Regulation, the Commission should consult Member States' experts, relevant Union agencies, civil society and economic operators.

(34) Since the objectives of the proposed action cannot be sufficiently achieved by the Member States, and can therefore, by reason of the effects of the envisaged action, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

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19 OJ L 204, 21.7.1998. p. 37.
20 OJ L 311, 28.11.2001, p. 67.
21 OJ L 311, 28.11.2001, p. 1.
22 OJ L 136, 30.4.2004, p. 1.
23 OJ L 55, 28.02.2011, p.13.

(35) In order to establish uniform rules and ensure clarity of concepts and procedures, as well as to provide legal certainty for economic operators, it is appropriate to adopt this act in the form of a Regulation.

(36) This Regulation respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, including the freedom to conduct a business, the right to property and the right to an effective remedy,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER - SCOPE - DEFINITIONS

Article 1

Subject matter and scope

1. This Regulation establishes rules for restrictions to the free movement of new psychoactive substances in the internal market. For that purpose it sets up a mechanism for information exchange on, risk assessment and submission to market restriction measures of new psychoactive substances at Union level.

2. This Regulation shall not apply to scheduled substances as defined in Regulation (EC) No 273/2004 and Regulation (EC) No 111/2005.

Article 2

Definitions

For the purpose of this Regulation, the following definitions apply:

(a) 'new psychoactive substance' means a natural or synthetic substance that, when consumed by a human, has the capacity to produce central nervous system stimulation or depression, resulting in hallucinations, alterations in motor function, thinking, behaviour, perception, awareness or mood, which is intended for human consumption or is likely to be consumed by humans even if not intended for them with the purpose of inducing one or more of the effects mentioned above, which is neither controlled under the 1961 United Nations Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, nor the 1971 United Nations Convention on Psychotropic Substances; it excludes alcohol, caffeine and tobacco, as well as tobacco products within the meaning of Council Directive 2001/37/EC of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products [24];

[24] OJ L 194, 18.7.2001, p. 26.

(b) ‘mixture’ means a mixture or solution containing one or more new psychoactive substances;

(c) ‘medicinal product’ means a product as defined in point 2 of Article 1 of Directive 2001/83/EC;

(d) ‘veterinary medicinal product’ means a product as defined in point 2 of Article 1 of Directive 2001/82/EC;

(e) ‘marketing authorisation’ means an authorisation to place a medicinal product or a veterinary medicinal product on the market, in accordance with Directive 2001/83/EC, Directive 2001/82/EC or Regulation (EC) No 726/2004;

(f) ‘making available on the market’ means any supply of a new psychoactive substance for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;

(g) ‘consumer’ means any natural person who is acting for purposes which are outside his/her trade, business or profession;

(h) ‘commercial and industrial use’ means any manufacture, processing, formulation, storage, mixing, production and sale to natural and legal persons other than consumers;

(i) ‘scientific research and development’ means any scientific experimentation, analysis or research carried out under strictly controlled conditions, in accordance with Regulation (EC) No 1907/2006;

(j) ‘United Nations system’ means the World Health Organisation, the Commission on Narcotic Drugs and the Economic and Social Committee acting in accordance with their respective responsibilities as described in Article 3 of the 1961 United Nations Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, or in Article 2 of the 1971 United Nations Convention on Psychotropic Substances.

CHAPTER II

FREE MOVEMENT

Article 3

Free movement

New psychoactive substances and mixtures shall move freely in the Union for commercial and industrial use, as well as for scientific research and development purposes.

Article 4

Prevention of barriers to free movement

Insofar as the Union has not adopted measures to subject a new psychoactive substance to market restriction under this Regulation, Member States may adopt technical regulations on such new psychoactive substance in accordance with Directive 98/34/EC.

Member States shall immediately communicate to the Commission any such draft technical regulation on new psychoactive substances, in accordance with Directive 98/34/EC.

CHAPTER III

EXCHANGE AND COLLECTION OF INFORMATION

Article 5

Information exchange

National Focal Points within the European Information Network on Drugs and Drug Addiction ("Reitox") and Europol National Units shall provide to the EMCDDA and Europol the available information on the consumption, possible risks, manufacture, extraction, importation, trade, distribution, trafficking, commercial and scientific use of substances that appear to be new psychoactive substances or mixtures.

The EMCDDA and Europol shall communicate that information immediately to Reitox and the Europol National Units.

Article 6

Joint report

1. Where the EMCDDA and Europol, or the Commission, consider that the information shared on a new psychoactive substance notified by several Member States gives rise to concerns across the Union because of the health, social and safety risks that the new psychoactive substance may pose, the EMCDDA and Europol shall draw up a joint report on the new psychoactive substance.

2. The joint report shall contain the following information:

   (a) the nature of the risks that the new psychoactive substance poses when consumed by humans and the scale of the risk to public health, as referred to in Article 9(1);

   (b) the chemical and physical identity of the new psychoactive substance, the methods and, if known, the chemical precursors used for its manufacture or extraction, and other new psychoactive substances with a similar chemical structure that have emerged;

(c) the commercial and industrial use of the new psychoactive substance, as well as its use for scientific research and development purposes;

(d) the human and veterinary medical use of the new psychoactive substance, including as an active substance in a medicinal product or veterinary medicinal product;

(e) the involvement of criminal groups in the manufacture, distribution or trade in the new psychoactive substance, and any use of the new psychoactive substance in the manufacture of narcotic drugs or psychotropic substances;

(f) whether the new psychoactive substance is currently under assessment, or has been under assessment, by the United Nations system;

(g) whether the new psychoactive substance is subject to any restriction measures in the Member States;

(h) any existing prevention and treatment measure in place to address the consequences of the use of the new psychoactive substance.

3. The EMCDDA and Europol shall request the National Focal Points and the Europol National Units to provide additional information on the new psychoactive substance. They shall provide that information within four weeks from receipt of the request.

4. The EMCDDA and Europol shall request the European Medicines Agency to provide information on whether, in the Union or in any Member State, the new psychoactive substance is:

(a) an active substance in a medicinal product or a veterinary medicinal product that has obtained a marketing authorisation;

(b) an active substance in a medicinal product or a veterinary medicinal product that is the subject of an application for a marketing authorisation;

(c) an active substance in a medicinal product or a veterinary medicinal product that has obtained a marketing authorisation, but the marketing authorisation has been suspended by the competent authority;

(d) an active substance in an unauthorised medicinal product in accordance with Article 5 of Directive 2001/83/EC or in a veterinary medicinal product prepared extemporaneously by a person authorised to do so under national legislation in accordance with Article 10(c) of Directive 2001/82/EC.

Member States shall provide the European Medicines Agency with the above information, if so requested by it.

The European Medicines Agency shall provide the information at its disposal within four weeks from receipt of the request from the EMCDDA.

5. The EMCDDA shall request the European Chemicals Agency and the European Food Safety Authority to provide the information and data at their disposal on the new psychoactive substance. The EMCDDA shall respect the conditions on use of

the information, which are communicated to the EMCDDA by the European Chemicals Agency and the European Food Safety Authority, including conditions on information and data security and protection of confidential business information.

The European Chemicals Agency and the European Food Safety Authority shall provide the information and data at their disposal within four weeks from receipt of the request.

6. The EMCDDA and Europol shall submit the joint report to the Commission within eight weeks from the request for additional information referred to in paragraph 3.

When the EMCDDA and Europol collect information on mixtures or on several new psychoactive substances with similar chemical structure, they shall submit individual joint reports to the Commission within ten weeks from the request for additional information referred to in paragraph 3.

CHAPTER IV

RISK ASSESSMENT

Article 7

Risk assessment procedure and report

1. Within four weeks from the receipt of the joint report referred to in Article 6, the Commission may request the EMCDDA to assess the potential risks posed by the new psychoactive substance and to draw up a risk assessment report. The risk assessment shall be conducted by the Scientific Committee of the EMCDDA.

2. The risk assessment report shall include an analysis of the criteria and of the information referred to in Article 10(2) to enable the Commission to determine the level of health, social and safety risks that the new psychoactive substance poses.

3. The Scientific Committee of the EMCDDA shall assess the risks during a special meeting. The Committee may be extended by not more than five experts, representing the scientific fields relevant for ensuring a balanced assessment of the risks of the new psychoactive substance. The Director of the EMCDDA shall designate them from a list of experts. The Management Board of the EMCDDA shall approve the list of experts every three years. The Commission, the EMCDDA, Europol and the European Medicines Agency shall each have the right to nominate two observers.

4. The Scientific Committee of the EMCDDA shall carry out the risk assessment on the basis of information on the risks of the substance and on its uses, including commercial and industrial uses, provided by the Member States, the Commission, the EMCDDA, Europol, the European Medicines Agency, the European Chemicals Agency, the European Food Safety Authority and on the basis of any other relevant scientific evidence. It shall take into consideration all opinions held by its members.

The EMCDDA shall support the risk assessment and shall identify information needs, including targeted studies or tests.

5. The EMCDDA shall submit the risk assessment report to the Commission within twelve weeks from the date when it received the request from the Commission.

6. Upon request of the EMCDDA, the Commission may extend the period to complete the risk assessment by no more than twelve weeks to allow for additional research and data collection to take place. The EMCDDA shall submit such a request to the Commission within six weeks from the launch of the risk assessment. If within two weeks of such request being made the Commission has not objected to such request, the risk assessment shall be so extended.

Article 8

Exclusion from risk assessment

1. No risk assessment shall be carried out where the new psychoactive substance is at an advanced stage of assessment within the United Nations system, namely once the World Health Organisation expert committee on drug dependence has published its critical review together with a written recommendation, except where there is significant information that is new or of particular relevance for the Union and that has not been taken into account by the United Nations system.

2. No risk assessment shall be carried out where the new psychoactive substance has been assessed within the United Nations system, but it has been decided not to schedule it under the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, or the 1971 Convention on Psychotropic Substances, except where there is significant information that is new or of particular relevance for the Union.

3. No risk assessment shall be carried out where the new psychoactive substance is:

   (a) an active substance in a medicinal product or a veterinary medicinal product that has obtained a marketing authorisation;

   (b) an active substance in a medicinal product or a veterinary medicinal product that is the subject of an application for a marketing authorisation;

   (c) an active substance in a medicinal product or a veterinary medicinal product that has obtained a marketing authorisation, but the marketing authorisation has been suspended by the competent authority.

CHAPTER V

MARKET RESTRICTIONS

Article 9

Immediate risks to public health and temporary consumer market restriction

1. Where it requests a risk assessment of a new psychoactive substance pursuant to Article 7(1), the Commission shall, by means of a Decision, prohibit the making available on the market to consumers of the new psychoactive substance if, based on existing information, it poses immediate risks to public health, evidenced by:

   (a) reported fatalities and severe health consequences associated with the consumption of the new psychoactive substance in several Member States, related to the serious acute toxicity of the new psychoactive substance;

   (b) the prevalence and patterns of use of the new psychoactive substance in the general population and in specific groups, in particular frequency, quantities and modality of use, its availability to consumers and the potential for diffusion, which indicate that the scale of the risk is considerable.

2. The Commission shall adopt the Decision referred to in paragraph 1 by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).

   On duly justified imperative grounds of urgency relating to a rapid increase in the number of reported fatalities in several Member States associated with the consumption of the new psychoactive substance concerned, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure laid down in Article 19(3).

3. The market restriction contained in the Decision referred to in paragraph 1 shall not exceed a period of twelve months.

Article 10

Determination of the level of health, social and safety risks following the risk assessment

1. The Commission shall determine the level of the health, social and safety risks posed by the new psychoactive substance on which a risk assessment report was drafted. It shall do so on the basis of all available evidence, in particular the risk assessment report.

2. The Commission shall take the following criteria into account when determining the level of risk of a new psychoactive substance:

   (a) the harm to health caused by the consumption of the new psychoactive substance associated with its acute and chronic toxicity, abuse liability and

dependence-producing potential, in particular injury, disease, and physical and mental impairment;

(b) the social harm caused to individuals and to society, in particular its impact on social functioning, public order and criminal activities, organised crime activity associated with the new psychoactive substance, illicit profits generated by the production, trade and distribution of the new psychoactive substance, and associated economic costs of the social harm;

(c) the risks to safety, in particular the spread of diseases, including transmission of blood borne viruses, the consequences of physical and mental impairment on the ability to drive, the impact of the manufacture, transport and disposal of the new psychoactive substance and associated waste materials on the environment.

The Commission shall also take into account the prevalence and patterns of use of the new psychoactive substance in the general population and in specific groups, its availability to consumers, its potential for diffusion, the number of Member States where it poses health, social and safety risks, the extent of its commercial and industrial use, and its use for scientific research and development purposes.

Article 11

Low risks

The Commission shall not adopt restriction measures on a new psychoactive substance if, based on existing evidence, it poses, overall, low health, social and safety risks, in particular:

(a) the harm to health caused by the consumption of the new psychoactive substance associated with its acute and chronic toxicity, abuse liability and dependence-producing potential, is limited, as it provokes minor injury and disease, and minor physical or mental impairment;

(b) the social harm caused to individuals and to society is limited, in particular regarding its impact on social functioning and public order, criminal activities associated with the new psychoactive substance is low, illicit profits generated by the production, trade and distribution of the new psychoactive substance and associated economic costs are non-existent or negligible;

(c) the risks to safety are limited, in particular low risk of spread of diseases, including transmission of blood borne viruses, non-existent or low consequences of physical and mental impairment on the ability to drive, and the impact of the manufacture, transport and disposal of the new psychoactive substance and associated waste materials on the environment is low.

Article 12

Moderate risks and permanent consumer market restriction

1. The Commission shall, by means of a Decision, without undue delay, prohibit the making available on the market to consumers of the new psychoactive substance if,

based on existing evidence, it poses, overall, moderate health, social and safety risks, in particular:

(a) the harm to health caused by the consumption of the new psychoactive substance associated with its acute and chronic toxicity, abuse liability and dependence-producing potential, is moderate, as it generally provokes non-lethal injury and disease, and moderate physical or mental impairment;

(b) the social harm caused to individuals and to society is moderate, in particular regarding its impact on social functioning and public order, producing public nuisance; criminal activities and organised crime activity associated with the substance are sporadic, illicit profits and economic costs are moderate;

(c) the risks to safety are moderate, in particular sporadic spread of diseases, including transmission of blood borne viruses, moderate consequences of physical and mental impairment on the ability to drive, and the manufacture, transport and disposal of the new psychoactive substance and associated waste materials results in environmental nuisance.

2. The Commission shall adopt the Decision referred to in paragraph 1 by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).

Article 13

Severe risks and permanent market restriction

1. The Commission shall, by means of a Decision, without undue delay, prohibit the production, manufacture, making available on the market including importation to the Union, transport, and exportation from the Union of the new psychoactive substance if, based on existing evidence, it poses, overall, severe health, social and safety risks, in particular:

(a) the harm to health caused by the consumption of the new psychoactive substance associated with its acute and chronic toxicity, abuse liability and dependence-producing potential, is life threatening, as it generally provokes death or lethal injury, severe disease, and severe physical or mental impairment;

(b) the social harm caused to individuals and to society is severe, in particular regarding its impact on social functioning and public order, resulting in public order disruption, violent and anti-social behaviour causing damage to the user, to others and to property; criminal activities and organised crime activity associated with the new psychoactive substance are systematic, illicit profits, and economic costs are high;

(c) the risks to safety are severe, in particular significant spread of diseases, including transmission of blood borne viruses, severe consequences of physical and mental impairment on the ability to drive, and the manufacture, transport and disposal of the new psychoactive substance and associated waste materials result in environmental harm.

2. The Commission shall adopt the Decision referred to in paragraph 1 by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).

Article 14

Authorised uses

1. The Decisions referred to in Article 9(1) and Article 12(1) shall not impede the free movement in the Union and the making available on the market to consumers of new psychoactive substances that are active substances in medicinal products or veterinary medicinal products that have obtained a marketing authorisation.

2. The Decisions referred to in Article 13(1) shall not impede the free movement in the Union and the production, manufacture, making available on the market including importation to the Union, transport, and exportation from the Union of new psychoactive substances:

   (a) for scientific research and development purposes;

   (b) for uses authorised under Union legislation;

   (c) that are active substances in medicinal products or veterinary medicinal products that have obtained a marketing authorisation;

   (d) for use in the manufacture of substances and products provided that the new psychoactive substances are transformed in such a condition that they cannot be abused or recovered.

3. The Decisions referred to in Article 13(1) may set requirements and conditions for the production, manufacture, making available on the market including importation to the Union, transport, and exportation from the Union of new psychoactive substances posing severe health, social and safety risks for the uses listed in paragraph 2.

CHAPTER VI

MONITORING AND RE-EXAMINATION

Article 15

Monitoring

The EMCDDA and Europol, with the support of Reitox, shall monitor all new psychoactive substances on which a joint report has been drawn up.

Article 16

Re-examination of level of risks

Where new information and evidence is available on the risks posed by a new psychoactive substance the health, social and safety risks of which have already been determined in accordance with Article 10, the Commission shall request the EMCDDA to update the risk assessment report drafted on the new psychoactive substance and shall re-examine the level of risks that the new psychoactive substance poses.

CHAPTER VII

SANCTIONS AND REMEDY

Article 17

Sanctions

Member States shall lay down the rules on sanctions applicable to infringements of the Decisions referred to in Article 9(1), Article 12(1) and Article 13(1) and shall take all necessary measures to ensure that they are implemented. The sanctions provided for shall be effective, proportionate and dissuasive. Member States shall notify those rules on sanctions and any subsequent amendment affecting those provisions to the Commission without delay.

Article 18

Remedy

Any person whose rights are affected by the implementation of a sanction taken by a Member State in accordance with Article 17 shall have the right to an effective remedy before a tribunal in that Member State.

CHAPTER VIII

PROCEDURES

Article 19

Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

CHAPTER IX

FINAL PROVISIONS

Article 20

Research and analysis

The Commission and the Member States shall support the development, sharing and dissemination of information and knowledge on new psychoactive substances. They shall do so by facilitating cooperation between the EMCDDA, other Union agencies, and scientific and research centres.

Article 21

Reporting

The EMCDDA and Europol shall report annually on the implementation of this Regulation.

Article 22

Evaluation

By [*five years after the entry into force of this Regulation*] at the latest and every five years thereafter, the Commission shall assess the implementation, application and effectiveness of this Regulation and publish a report.

Article 23

Replacement of Decision 2005/387/JHA

Decision 2005/387/JHA is hereby repealed and replaced, without prejudice to the obligations of the Member States relating to the time limit for transposition of that Decision into national law. References to Decision 2005/387/JHA shall be construed as reference to this Regulation.

Article 24

Entry into force

This Regulation shall enter into force on the [*twentieth*] day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Regulation of the European Parliament and of the Council on new psychoactive substances

1.2. Policy area(s) concerned in the ABM/ABB structure[25]

Title 33: Justice

1.3. Nature of the proposal/initiative

☒ The proposal/initiative relates to **a new action**

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action**[26]

☐ The proposal/initiative relates to **the extension of an existing action**

☐ The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objective(s)

1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

Building a safe and secure Europe: to improve the capacity to detect, assess and respond rapidly and effectively to the emergence of new psychoactive substances

1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

Specific objective No:
Prevent and reduce drug use, drug dependence and drug-related harm
ABM/ABB activity(ies) concerned

25 ABM: activity-based management – ABB: activity-based budgeting.

26 As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

1.4.3. Expected result(s) and impact

To reduce the availability in the EU internal market of new psychoactive substances that pose health, social and safety risks, and to prevent the emergence of obstacles to legitimate trade and increase legal certainty for economic operators.

1.4.4. Indicators of results and impact

- Number of new psychoactive substances notified, of Member States that notified it.
- Known commercial and industrial uses of new psychoactive substances.
- Characteristics and availability (including on the internet) of the substances.
- Number of joint reports and risk assessments conducted.
- Number and type of restriction measures on new psychoactive substances at the EU and national level.
- Number of health alerts issued on new psychoactive substances and follow-up given by responsible authorities.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term

- To reduce obstacles to legitimate trade in new psychoactive substances and prevent the emergence of such obstacles.
- To protect the health and safety of consumers from the risks posed by harmful new psychoactive substances.
- To address substances that pose health, social and safety risks, and that raise immediate public health concerns.
- To improve the capacity to rapidly identify and assess new psychoactive substances, and to address them depending on their risks.
- To facilitate legitimate trade in such substances within the internal market.
- To improve consistency between national responses to harmful new psychoactive substances which raise cross-border concerns and to reduce the risk of their displacement between the Member States.

1.5.2. Added value of EU involvement

EU action on new psychoactive substances would boost the exchange of information among the Member States, with the clear added value of alerting Member States to potentially harmful substances that have emerged in other Member States, to help them anticipate a potential public health threat. The assessment of risks of substances at the EU level has the added value of pooling scientific resources and analytical

capacities from across the EU, to provide the best evidence available on a substance and help develop effective responses to it. EU-level decisions on restricting the availability of harmful substances would increase legal certainty and reduce obstacles for economic operators in the market for legitimate uses, while improving consumer protection across the EU.

1.5.3. Lessons learned from similar experiences in the past

The 2011 Commission's assessment report[27] on the implementing of the current Council Decision 2005/387/JHA on the information exchange, risk-assessment and control of new psychoactive substances, based on an extensive consultation of Member State stakeholders, concluded that the Council Decision is a useful instrument for tackling new substances at the EU level, but that it has several major shortcomings, including:

(1) It is slow and reactive, and it is therefore not able to address effectively the increase in the number of new psychoactive substances.

(2) Insufficient evidence is available to take appropriate and sustainable decisions under this instrument.

(3) It lacks options for restriction measures.

1.5.4. Compatibility and possible synergy with other appropriate instruments

Action in the field of new psychoactive substances is in compliance with the existing rules on the functioning of the internal market, as well as with EU strategic policy documents, including the EU Drugs Strategy 2013-2020, the Stockholm Programme and the Commission Communication "Towards a stronger European response to drugs". EU action in the field of new psychoactive substances is also fully consistent with action at the United Nations' level.

1.6. Duration and financial impact

☐ Proposal/initiative of **limited duration**

– ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY

☒ Proposal/initiative of **unlimited duration**

– Implementation with a start-up period from YYYY to YYYY,

– followed by full-scale operation.

[27] COM(2011) 430 final and SEC(2011) 912.

1.7. Management mode(s) planned[28]

From the 2014 budget

☒ **Direct management** by the Commission

– ☒ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies;

☐ **Shared management** with the Member States

☐ **Indirect management** by delegating implementation tasks to:

– ☐ third countries or the bodies they have designated;

– ☐ international organisations and their agencies (to be specified);

– ☐the EIB and the European Investment Fund;

– ☐ bodies referred to in Articles 208 and 209 of the Financial Regulation;

– ☐ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;

– ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– *If more than one management mode is indicated, please provide details in the "Comments" section.*

Comments:

The only minor costs expected for the EU budget relate to the evaluation of the legislative instrument and meetings of the committee of Member States.

[28] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

The Commission will evaluate the implementation, functioning, effectiveness, efficiency, utility and added value of the future mechanism on new psychoactive substances every five years, publish the results and propose amendments, if necessary.

2.2. Management and control system

2.2.1. Risk(s) identified

None identified.

2.2.2. Information concerning the internal control system set up

Standard Commission control/infringement procedures concerning the application of the future Regulation and Directive.

2.2.3. Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error

Not relevant as no specific risk identified.

2.3. Measures to prevent fraud and irregularities

In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 apply.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [...]Heading……..…….]	Diff./non-diff. (29)	from EFTA countries[30]	from candidate countries[31]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
3	[33 03 03]	Diff.	NO	NO	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [...]Heading……..…….]	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[...][XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

29 Diff. = Differentiated appropriations / Non-Diff. = Non-differentiated appropriations.
30 EFTA: European Free Trade Association.
31 Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	[Heading 3: Security and Citizenship]

DG JUST			Year **2014**	Year **2015**	Year **2016**	Year **2017**	Year **2018**	Year **2019**	Yean **2020**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
• Operational appropriations													
33 03 03	Commitments	(1)						0,150					**0,150**
	Payments	(2)						0,150					**0,150**
Number of budget line	Commitments	(1a)											
	Payments	(2a)											
Appropriations of an administrative nature financed from the envelope of specific programmes[32]													
Number of budget line		(3)											
TOTAL appropriations for DG JUST	Commitments	=1+1a +3						0,150					**0,150**
	Payments	=2+2a +3						0,150					**0,150**

[32] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)						0,150					**0,150**
	Payments	(5)						0,150					**0,150**
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)											
TOTAL appropriations for HEADING 3 of the multiannual financial framework	Commitments	=4+ 6						0,150					**0,150**
	Payments	=5+ 6						0,150					**0,150**

If more than one heading is affected by the proposal / initiative: N/A

• TOTAL operational appropriations	Commitments	(4)									
	Payments	(5)									
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)									
TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)	Commitments	=4+ 6									
	Payments	=5+ 6									

Heading of multiannual financial framework	**5**	"Administrative expenditure"

EUR million (to three decimal places)

		Year **2014**	Year **2015**	Year **2016**	Year **2017**	Year **2018**	Year **2019**	Year **2020**	**TOTAL**
DG JUST									
• Human resources		0,013	0,013	0,013	0,013	0,013	0,065	0,013	**0,143**
• Other administrative expenditure		0,025	0,025	0,025	0,025	0,025	0,025	0,025	**0,175**
TOTAL DG JUST	Appropriations								
TOTAL appropriations for HEADING 5 of the multiannual financial framework	Total commitments = Total payments	0,038	0,038	0,038	0,038	0,038	0,09	0,038	**0,318**

EUR million (to three decimal places)

		Year **2014**	Year **2015**	Year **2016**	Year **2017**	Year **2018**	Year **2019**	Year **2020**	**TOTAL**
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	0,038	0,038	0,038	0,038	0,038	0,240	0,038	**0,468**
	Payments	0,038	0,038	0,038	0,038	0,038	0,240	0,038	**0,468**

3.2.2. Estimated impact on operational appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

– ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs			Year **2014**		Year **2015**		Year **2016**		Year **2017**		Year **2018**		Year **2019**		Year **2020**		**TOTAL**	
	OUTPUTS																	
⇩	Type[33]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No total	Total cost
SPECIFIC OBJECTIVE No 1 Prevent and reduce drug use, drug dependence and drug-related harm																		
- Output	Evaluation	0,158											1	0,150			1	0,150
- Output																		
- Output																		
Subtotal for specific objective No 1													1	0,150			1	0,150
SPECIFIC OBJECTIVE NO 2 ...																		
- Output																		
Subtotal for specific objective No 2																		

[33] Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

TOTAL COST											1	0,150			1	0,150

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

– ☐ The proposal/initiative does not require the use of appropriations of an administrative nature

– ☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year **2014**	Year **2015**	Year **2016**	Year **2017**	Year **2018**	Year **2019**	Year **2020**	**TOTAL**
HEADING 5 of the multiannual financial framework								
Human resources	0,013	0,013	0,013	0,013	0,013	0,065	0,013	**0,143**
Other administrative expenditure	0,025	0,025	0,025	0,025	0,025	0,025	0,025	**0,175**
Subtotal HEADING 5 of the multiannual financial framework	0,038	0,038	0,038	0,038	0,038	0,090	0,038	**0,318**
Outside HEADING 5[34] of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 5 of the multiannual financial framework								
TOTAL	0,038	0,038	0,038	0,038	0,038	0,090	0,038	**0,318**

The human resources appropriations required will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

[34] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

3.2.3.2. Estimated requirements of human resources

– ☐ The proposal/initiative does not require the use of human resources.

– ☒ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

	Year **2014**	Year **2015**	Year **2016**	Year **2017**	Year **2018**	Year **2019**	Year **2020**	**TOTAL**
• Establishment plan posts (officials and temporary staff)								
33 01 01 01 (Headquarters and Commission's Representation Offices)	0,1	0,1	0,1	0,1	0,1	0,5	0,1	1,1
XX 01 01 02 (Delegations)								
XX 01 05 01 (Indirect research)								
10 01 05 01 (Direct research)								
• External staff (in Full Time Equivalent unit: FTE)[35]								
XX 01 02 01 (CA, SNE, INT from the "global envelope")								
XX 01 02 02 (CA, LA, SNE, INT and JED in the delegations)								
XX 01 04 yy[36] - at Headquarters								
XX 01 04 yy[36] - Delegations								
XX 01 05 02 (CA, SNE, INT - Indirect research)								
10 01 05 02 (CA, INT, SNE - Direct research)								
Other budget lines (specify)								
TOTAL	**0,1**	**0,1**	**0,1**	**0,1**	**0,1**	**0,5**	**0,1**	**1,1**

33 is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Preparation of one committee meeting of Member States per year. Coordination of an external study for the evaluation of the instrument every five years.
External staff	

35 CA= Contract Staff; LA = Local Staff; SNE= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations).

36 Sub-ceiling for external staff covered by operational appropriations (former "BA" lines).

3.2.4. Compatibility with the current multiannual financial framework

– ☒ Proposal/initiative is compatible with the current multiannual financial framework.

– ☐ Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

– ☐ Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework[37].

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. Third-party contributions

– The proposal/initiative does not provide for co-financing by third parties.

– The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations cofinanced								

[37] See points 19 and 24 of the Interinstitutional Agreement (for the period 2007-2013).

3.3. Estimated impact on revenue

– ☒ Proposal/initiative has no financial impact on revenue.

– ☐ Proposal/initiative has the following financial impact:

- ☐ on own resources

- ☐ on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[38]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

[38] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.

EUROPEAN
COMMISSION

Brussels, 17.9.2013
COM(2013) 618 final

2013/0304 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, as regards the definition of drug

{SWD(2013) 319 final}
{SWD(2013) 320 final}

EN

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. General context

Illicit drug trafficking and drug abuse are major threats to the health and safety of individuals and to societies in the EU. They affect the social and economic fabric and undermine the quality of life of individuals, as well as the security of the Member States. Although consumption of substances controlled under the UN Conventions on drugs[1], such as cocaine, ecstasy or cannabis ('controlled drugs'), seems to have stabilised in recent years[2], albeit at high levels, a major challenge is to address new substances that emerge on the market at a rapid speed.

New psychoactive substances, which imitate the effects of controlled drugs and are often marketed as legal alternatives to them because they are not subjected to similar control measures, and which have numerous uses in the industry, are increasingly available in the Union. Between 1997 and 2012, Member States reported around 290 substances, with more than one new substance notified every week in 2012. The number of reported substances tripled between 2009 and 2012 (from 24 to 73).

A growing number of individuals, in particular young people, consume new psychoactive substances. However, these substances can cause harms to individuals' health and safety, and can put burdens on society, just like controlled drugs do. The risks that new psychoactive substances can pose have prompted national authorities to submit them to various restriction measures. However, such national restriction measures have limited effectiveness, since these substances can be moved freely in the internal market - around 80% of the substances notified were detected in more than one Member State.

The Commission Communication "Towards a stronger European response to drugs"[3], adopted in October 2011, identified new psychoactive substances as one of the problems requiring a firm response at the EU level.

Council Decision 2005/387/JHA of 10 May 2005[4] provides a mechanism for addressing the risks posed by new psychoactive substances, which can lead to the submission of substances to control measures and criminal penalties across the Union. To address more sustainably the frequent emergence of new psychoactive substances and their rapid spread across the Union, the Commission proposed stronger rules, under [*Regulation (EU) No …/… on new psychoactive substances]*.

To effectively reduce the availability of harmful new psychoactive substances, which pose severe health, social and safety risks to individuals and society, and to deter trafficking in these substances as well as the involvement of criminal organisations in their production or distribution, along with controlled drugs, it is necessary to cover new psychoactive substances by criminal law provisions.

Council Framework Decision 2004/757/JHA of 25 October 2004[5] provides a common approach to the fight against illicit drug trafficking. It sets out minimum common rules on the

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1 The 1961 United Nations Single Convention on Narcotic Drugs (as amended by the 1972 Protocol) and the 1971 United Nations Convention on Psychotropic Substances.

2 European Monitoring Centre for Drugs and Drug Addiction, The state of the drugs problem in Europe, Annual Report 2012. http://www.emcdda.europa.eu/publications/annual-report/2012

3 COM(2011) 689 final.

4 OJ L 127, 20.5.2005, p. 32.

5 OJ L 335, 11.11.2004, p. 8.

definition of drug trafficking offences and sanctions to avoid that problems arise in cooperation between the judicial authorities and law enforcement agencies of Member States, owing to the fact that the offence or offences in question are not punishable under the laws of both the requesting and the requested State. However, while these provisions apply to substances covered by the UN Conventions and to synthetic drugs submitted to control under Joint Action 97/396/JHA of 16 June 1997[6], they do not apply to new psychoactive substances.

In order to streamline and clarify the legal framework applicable to drugs, the most harmful new psychoactive substances should be covered by the same criminal law provisions as substances controlled under the UN Conventions.

It is, therefore, necessary to extend the scope of application of Framework Decision 2004/757/JHA to new psychoactive substances subjected to control measures under Council Decision 2005/387/JHA as well as to those substances subjected to permanent market restriction measures under *[Regulation (EU) No …/… on new psychoactive substances]*.

A legislative proposal on illicit drug trafficking was foreseen in the Commission's 2012 Work Programme.

1.2. Grounds for and objectives of the proposal

This proposal amends Framework Decision 2004/757/JHA to include new psychoactive substances posing severe risks within its scope of application.

This proposal accompanies the proposal for a *[Regulation (EU) No …/… on new psychoactive substances]*. The two proposals are linked, so that new psychoactive substances that pose severe health, social and safety risks and are therefore submitted to permanent market restriction under that Regulation are also subjected to the criminal law provisions on illicit drug trafficking set by the Framework Decision 2004/757/JHA.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT

2.1. Stakeholders' consultation

Broad stakeholder and expert consultations and a web-based public consultation have informed the preparatory work for this proposal.

The Commission consulted all Member States in the assessment of the functioning of Framework Decision 2004/757/JHA and Council Decision 2005/387/JHA. Moreover, in the context of external studies on illicit drug trafficking and new psychoactive substances, the Commission collected and examined the views of a broad range of stakeholders, practitioners and experts, including EU agencies involved in the implementation of these instruments.

The Commission also organised two experts' meeting on illicit drug trafficking, on 10 November 2011 and 29 February 2012, and two experts' meetings on new psychoactive substances, on 15 December 2011 and 1 March 2012. During these meetings, academic experts and practitioners stressed the importance of criminal law provisions in helping clamp down and deter illicit drug trafficking, and tackling the spread of harmful new psychoactive substances. At the same time, they pointed out that legislation on new psychoactive substances should be proportionate and calibrated to the different levels of risks that they pose.

A survey was conducted among young people (15-24 years' old) in 2011, through the Eurobarometer "Youth attitudes on drugs". Almost half of respondents (47%) thought that

[6] OJ L 167, 25.6.1997, p. 1.

only those substances which are proved to pose risks to health should be restricted, while 34% held that all substances which imitate the effects of controlled drugs should be restricted.

2.2. Impact assessment

The Commission assessed the impacts of this proposal for an amendment to Framework Decision 2004/757/JHA in an impact assessment on new psychoactive substances. The analysis concluded that, as under the Council Decision 2005/387/JHA, harmful new psychoactive substances (those posing severe health, social and safety risks) should be subjected to criminal law provisions. It further concluded that they should, therefore, be subjected to the criminal law provisions on illicit drug trafficking. This represented part of the preferred policy option, which foresees a graduated set of restriction measures that are proportionate to the level of risks posed by new psychoactive substances, and which do not cause obstacles to legitimate trade in the internal market.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. The legal base

This proposal is based on Article 83(1) TFEU, which empowers the European Parliament and the Council to establish minimum rules concerning the definition of offences and sanctions in the area of illicit drug trafficking, by means of a Directive adopted in accordance with the ordinary legislative procedure.

3.2. Subsidiarity, proportionality and respect of fundamental rights

The EU is better placed than the Member States to take action to restrict the availability in the internal market of harmful new psychoactive substances for consumers, while simultaneously ensuring that legitimate trade is not impeded.

This is because individually Member States cannot address effectively and sustainably the rapid emergence and spread of these substances. Uncoordinated national action and the proliferation of diverse national regimes on new psychoactive substances can produce knock-on effects on other Member States (displacement of harmful substances) and can pose problems in cooperation between national judicial authorities and law enforcement agencies.

The proposal is proportionate and does not go beyond what is necessary to achieve the objectives because it only addresses through criminal law those new psychoactive substances that are a serious concern at the EU level.

This proposal indirectly impacts on certain fundamental rights and principles enshrined in the EU Charter of Fundamental Rights, because it expands the scope of application of the Framework Decision 2004/757/JHA, whose provisions impact on the following fundamental rights and principles: the right to liberty and security (Article 6), the right to property (Article 17), the right to an effective remedy and to a fair trial (Article 47), the presumption of innocence and right to defence (Article 48), and the principle of legality and proportionality of criminal offences and penalties (Article 49). These rights and freedoms can be subject to limitations, but only under the limits and requirements set by Article 52(1) of the EU Charter.

3.3. Choice of instrument

In accordance with Article 83(1) TFEU, a Directive is the appropriate instrument to ensure minimum harmonisation at the EU level in the area of illicit drug trafficking, while leaving flexibility to Member States when implementing the principles, rules and their exemptions at national level.

3.4. Explanatory documents accompanying notification of transposition measures

Member States are requested to communicate to the Commission the national measures adopted to comply with this Directive.

Member States are not requested to submit to the Commission explanatory documents (including correlation tables) accompanying the notification of national measures adopted for transposing the provisions of this Directive. This is not necessary because of the reduced scope of the proposed amendment. The submission of additional explanatory documents would add an unjustified administrative burden on Member States' competent authorities.

3.5. Main provisions

Article 1 – this provision lays down the amendments to the Framework Decision 2004/757/JHA, in relation to the definition of the term "drug", to the provision for covering by criminal law new psychoactive substances posing severe health, social and safety risks, and to the assessment of the implementation and impacts of the Framework Decision by the Commission.

Article 2 – this provision lays down the deadline for the transposition of the provisions of the Directive in national legislation.

Articles 3 and 4 – these provisions relate to the entry into force and addressees of the Directive.

4. BUDGETARY IMPLICATION

The proposal has no implications for the Union budget.

2013/0304 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, as regards the definition of drug

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking[7] provides a common approach to the fight against illicit drug trafficking, which poses a threat to the health, safety and quality of life of citizens of the Union, and to the legal economy, stability and security of the Member States. It sets out minimum common rules on the definition of drug trafficking offences and sanctions, to avoid that problems may arise in cooperation between the judicial authorities and law enforcement agencies of Member States, owing to the fact that the offence or offences in question are not punishable under the laws of both the requesting and the requested State.

(2) Framework Decision 2004/757/JHA applies to the substances covered by the 1961 United Nations Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and the 1971 United Nations Convention on Psychotropic Substances ('UN Conventions'), as well as to the synthetic drugs subjected to control across the Union pursuant to Joint Action 97/396/JHA of 16 June 1997 concerning the information exchange, risk assessment and the control of new synthetic drugs[8], which pose public health risks comparable to those posed by the substances scheduled under the UN Conventions.

(3) Framework Decision 2004/757/JHA should also apply to the substances subjected to control measures and criminal penalties pursuant to Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk assessment and control of new psychoactive substances[9], which pose public health risks comparable to those posed by the substances scheduled under the UN Conventions.

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7 OJ L 335, 11.11.2004, p. 8.
8 OJ L 167, 25.06.1997, p. 1.
9 OJ L 127, 10.05.2005, p. 32.

(4) New psychoactive substances, which imitate the effects of substances scheduled under the UN Conventions, are emerging frequently and are spreading fast in the Union. Certain new psychoactive substances pose severe health, social and safety risks, as ascertained by *[Regulation (EU) No …/… on new psychoactive substances]*. Under that Regulation, measures may be taken to prohibit the production, manufacture, making available on the market including importation to the Union, transport, and exportation from the Union of new psychoactive substances posing severe health, social and safety risks. To effectively reduce the availability of new psychoactive substances that pose severe risks to individuals and society, and to deter trafficking in those substances across the Union, as well as the involvement of criminal organisations, permanent market restriction measures adopted under that Regulation should be underpinned by criminal law provisions.

(5) The new psychoactive substances subjected to permanent market restriction pursuant to *[Regulation (EU) No …/… on new psychoactive substances]* should, therefore, be covered by the Union criminal law provisions on illicit drug trafficking. This would also help streamline and clarify the Union legal framework, as the same criminal law provisions would apply to substances covered by the UN Conventions and to the most harmful new psychoactive substances. The definition of 'drug' in the Framework Decision 2004/757/JHA should, therefore, be amended.

(6) In order to swiftly address the emergence and spread of harmful new psychoactive substances in the Union, Member States should apply the provisions of the Framework Decision 2004/757/JHA to new psychoactive substances posing severe health, social and safety risks within twelve months from their submission to permanent market restriction under *[Regulation (EU) No …/… on new psychoactive substances]*.

(7) Since the objective of this Directive, namely to extend the application of the Union criminal law provisions that apply to illicit drug trafficking to new psychoactive substances posing severe health, social and safety risks, cannot be sufficiently achieved by the Member States acting alone, and can therefore be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve its objective.

(8) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, and notably the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence, the right not to be tried or punished twice in criminal proceedings for the same criminal offence and the principles of legality and proportionality of criminal offences.

(9) [In accordance with Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive.]

AND/OR

(10) [In accordance with Articles 1 and 2 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the Treaty on the Functioning of

the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by or subject to its application.]

(11) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is therefore not bound by or subject to its application.

(12) Framework Decision 2004/757/JHA should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Framework Decision 2004/757/JHA is amended as follows:

(1) In Article 1, point 1 is replaced by the following:

"'drug' means:

(a) any of the substances covered by the 1961 United Nations Single Convention on Narcotic Drugs (as amended by the 1972 Protocol) and the 1971 United Nations Convention on Psychotropic Substances;

(b) any of the substances listed in the Annex;

(c) any new psychoactive substance posing severe health, social and safety risks, subjected to permanent market restriction on the basis of *[Article 13(1) of Regulation (EU) No …/… on new psychoactive substances]*;"

(2) In Article 9, the following paragraphs 3 and 4 are added:

"3. In respect of new psychoactive substances subjected to permanent market restriction on the basis of [*Article 13(1) of Regulation (EU) No …/… on new psychoactive substances*], Member States shall bring into force the laws, regulations and administrative provisions necessary to apply the provisions of this Framework Decision to these new psychoactive substances within twelve months after entry into force of the permanent market restriction. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Framework Decision or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

4. By [*5 years after entry into force of this Directive and every 5 years thereafter*], the Commission shall assess the extent to which the Member States have taken the necessary measures to comply with this Framework Decision and publish a report."

(3) An Annex, as set out in the Annex to this Directive, is added.

Article 2

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*twelve months after entry into force*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 3

Entry into force

This Directive shall enter into force on [*the same day as entry into force of Regulation (EU) No …/… on new psychoactive substances*].

Article 4

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX

List of substances referred to in point (1)(b) of Article 1

(a) P-Methylthioamphetamine or 4-Methylthioamphetamine, as referred to in Council Decision 1999/615/JHA of 13 September 1999 defining 4-MTA as a new synthetic drug which is to be made subject to control measures and criminal penalties[10].

(b) Paramethoxymethylamphetamine or N-methyl-1-(4-methoxyphenyl)-2-aminopropane, as referred to in Council Decision 2002/188/JHA of 28 February 2002 concerning control measures and criminal sanctions in respect of the new synthetic drug PMMA[11].

(c) 2,5-dimethoxy-4-iodophenethylamine, 2,5-dimethoxy-4-ethylthiophenethylamine, 2,5-dimethoxy-4-(n)-propylthiophenethylamine and 2,4,5-trimethoxyamphetamine, as referred to in Council Decision 2003/847/JHA of 27 November 2003 concerning control measures and criminal sanctions in respect of the new synthetic drugs 2C-I, 2C-T-2, 2C-T-7 and TMA-2[12].

(d) 1-benzylpiperazine or 1-benzyl-1,4-diazacyclohexane or N-benzylpiperazine or benzylpiperazine as referred to in Council Decision 2008/206/JHA of 3 March 2008 on defining 1-benzylpiperazine (BZP) as a new psychoactive substance which is to be made subject to control measures and criminal provisions[13].

(e) 4-methylmethcathinone, as referred to in Council Decision 2010/759/EU of 2 December 2010 on submitting 4-methylmethcathinone (mephedrone) to control measures[14].

(f) 4-methylamphetamine, as referred to in Council Decision 2013/129/EU of 7 March 2013 on subjecting 4-methylamphetamine to control measures[15].

(g) 5-(2-aminopropyl)indole, as referred to in [*Council Decision 2013/…/JHA of … on subjecting 5-(2-aminopropyl) indole to control measures*[16]].

10 OJ L 244, 16.09.1999, p.1.
11 OJ L 063, 06.03.2002, p. 14.
12 OJ L 321, 6.12.2003, p. 64.
13 OJ L 63, 7.03.2008, p. 45.
14 OJ L 322, 8.12.2010, p. 44.
15 OJ L 72, 15.03.2013, p. 11.
16 OJ L […], […], p. […].

(Acts adopted under Title VI of the Treaty on European Union)

COUNCIL DECISION 2005/387/JHA

of 10 May 2005

on the information exchange, risk-assessment and control of new psychoactive substances

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 29, 31(1)(e) and 34 (2)(c) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Whereas:

(1) The particular dangers inherent in the development of psychoactive substances require rapid action by the Member States.

(2) When new psychoactive substances are not brought within the scope of criminal law in all Member States, problems may arise in cooperation between the judicial authorities and law enforcement agencies of Member States owing to the fact that the offence or offences in question are not punishable under the laws of both the requesting and the requested State.

(3) The European Union Action Plan on Drugs 2000-2004 provided for the Commission to organise an appropriate assessment of the Joint Action of 16 June 1997 concerning the information exchange, risk assessment and the control of new synthetic drugs [2] (herineafter 'the Joint Action') taking into account the external evaluation commissioned by the European Monitoring Centre on Drugs and Drug Addiction (hereinafter 'the EMCDDA') of the early warning system. The assessment showed that the Joint Action had fulfilled its expectations. Nevertheless, the outcome of the assessment made it clear that the Joint Action was in need of reinforcement and reorientation. In particular, its main objective, the clarity of its procedures and definitions, the transparency of its operation, and the relevance of its scope had to be redefined. The Communication from the Commission to the European Parliament and the Council on the mid-term evaluation of the EU Action Plan on Drugs (2000-2004) indicated that changes to the legislation would be introduced in order to enhance action against synthetic drugs. The mechanism as established by the Joint Action should therefore be adapted.

(4) New psychoactive substances can be harmful to health.

(5) The new psychoactive substances covered by this Decision may include medicinal products as defined in Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community Code relating to veterinary medicinal products [3] and in Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community Code relating to medicinal products for human use [4].

(6) The information exchange under the early warning system, established under the Joint Action, has proved to be a valuable asset to the Member States.

(7) Nothing in this Decision should prevent Member States from exchanging information, within the European Information Network on Drugs and Drug Addiction (hereinafter 'the Reitox network'), on emerging trends in new uses of existing psychoactive substances which may pose a potential risk to public health, as well as information on possible public health related measures, in accordance with the mandate and procedures of the EMCDDA.

(8) No deterioration of either human or veterinary health care as a result of this Decision will be permitted. Substances of established and acknowledged medical value are therefore excluded from control measures based on this Decision. Suitable regulatory and public health related measures should be taken for substances of established and acknowledged medical value that are being misused.

[1] Opinion delivered on 13 January 2004 (not yet published in the Official Journal).

[2] OJ L 167, 25.6.1997, p. 1.

[3] OJ L 311, 28.11.2001, p. 1. Directive as last amended by Directive 2004/28/EC (OJ L 136, 30.4.2004, p. 58).

[4] OJ L 311, 28.11.2001, p. 67. Directive as last amended by Directive 2004/27/EC (OJ L 136, 30.4.2004, p. 34).

(9) In addition to what is provided for under the pharmacovigilance systems as defined in Directive 2001/82/EC and in Directive 2001/83/EC, the exchange of information on abused or misused psychoactive substances needs to be reinforced and appropriate cooperation with the European Medicines Agency (hereinafter 'EMEA') ensured. The United Nations Commission on Narcotic Drugs (hereinafter 'CND') Resolution 46/7 'Measures to promote the exchange of information on new patterns of drug use and on psychoactive substances consumed', provides a useful framework for action by the Member States.

(10) The introduction of deadlines into every phase of the procedure established by this Decision should guarantee that the instrument can react swiftly and enhances its ability to provide a quick-response mechanism.

(11) The Scientific Committee of the EMCDDA has a central role in the assessment of the risks associated with a new psychoactive substance, it will for the purpose of this Decision be extended to include experts from the Commission, Europol and the EMEA, and experts from scientific fields not represented, or not sufficiently represented, in the Scientific Committee of the EMCDDA.

(12) The extended Scientific Committee that assesses the risks associated with new psychoactive substances should remain a concise technical body of experts, capable of assessing effectively all risks associated with a new psychoactive substance. Therefore the extended Scientific Committee should be kept to a manageable size.

(13) Since the objectives of the proposed action, namely to bring about an exchange of information, a risk-assessment by a scientific committee and an EU-level procedure for bringing notified substances under control, cannot be sufficiently achieved by the Member States and can therefore, by reason of the effects of the envisaged action, be better achieved at European Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Decision does not go what is beyond what is necessary in order to achieve those objectives

(14) In conformity with Article 34(2)(c) of the Treaty, measures based upon this Decision can be taken by qualified majority as these measures are necessary to implement this Decision.

(15) This Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty and reflected in the Charter of Fundamental Rights of the European Union,

HAS DECIDED AS FOLLOWS:

Article 1

Subject matter

This Decision establishes a mechanism for a rapid exchange of information on new psychoactive substances. It takes note of information on suspected adverse reactions to be reported under the pharmacovigilance system as established by Title IX of Directive 2001/83/EC.

This Decision also provides for an assessment of the risks associated with these new psychoactive substances in order to permit the measures applicable in the Member States for control of narcotic and psychotropic substances to be applied also to new psychoactive substances.

Article 2

Scope

This Decision applies to substances not currently listed in any of the schedules to:

(a) the 1961 United Nations Single Convention on Narcotic Drugs, that may pose a comparable threat to public health as the substances listed in Schedule I or II or IV thereof, and

(b) the 1971 United Nations Convention on Psychotropic Substances, that may pose a comparable threat to public health as the substances listed in Schedule I or II or III or IV thereof.

This Decision relates to end-products, as distinct from precursors in respect of which Council Regulation (EEC) No 3677/90 of 13 December 1990 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances [1], and Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors [2] provide for a Community regime.

Article 3

Definitions

For the purpose of this Decision the following definitions shall apply:

(a) 'new psychoactive substance' means a new narcotic drug or a new psychotropic drug in pure form or in a preparation;

[1] OJ L 357, 20.12.1990, p. 1. Regulation as last amended by Commission Regulation (EC) No 1232/2002 (OJ L 180, 10.7.2002, p. 5).
[2] OJ L 47, 18.2.2004, p. 1.

(b) 'new narcotic drug' means a substance in pure form or in a preparation, that has not been scheduled under the 1961 United Nations Single Convention on Narcotic Drugs, and that may pose a threat to public health comparable to the substances listed in Schedule I, II or IV;

(c) 'new psychotropic drug' means a substance in pure form or in a preparation that has not been scheduled under the 1971 United Nations Convention on Psychotropic Substances, and that may pose a threat to public health comparable to the substances listed in Schedule I, II, III or IV;

(d) 'marketing authorisation' means a permission to place a medicinal product on the market, granted by the competent authority of a Member State, as required by Title III of Directive 2001/83/EC (in the case of medicinal products for human use) or Title III of Directive 2001/82/EC (in the case of veterinary medicinal products) or a marketing authorisation granted by the European Commission under Article 3 of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency ([1]);

(e) 'United Nations system' means the World Health Organisation (WHO), the Commission on Narcotic Drugs (CND) and/or the Economic and Social Committee acting in accordance with their respective responsibilities as described in Article 3 of the 1961 United Nations Single Convention on Narcotic Drugs or in Article 2 of the 1971 United Nations Convention on Psychotropic Substances;

(f) 'preparation' means a mixture containing a new psychoactive substance;

(g) 'Reporting Form' means a structured form for notification of a new psychoactive substance and/or of a preparation containing a new psychoactive substance agreed between the EMCDDA/Europol and their respective networks in the Member States' Reitox and the Europol National Units.

Article 4

Exchange of information

1. Each Member State shall ensure that its Europol National Unit and its representative in the Reitox network provide information on the manufacture, traffic and use, including supplementary information on possible medical use, of new psychoactive substances and of preparations containing new psychoactive substances, to Europol and the EMCDDA, taking into account the respective mandates of these two bodies.

([1]) OJ L 136, 30.4.2004, p. 1.

Europol and the EMCDDA shall collect the information received from Member States through a Reporting Form and communicate this information immediately to each other and to the Europol National Units and the representatives of the Reitox network of the Member States, the Commission, and to the EMEA.

2. Should Europol and the EMCDDA consider that the information provided by a Member State on a new psychoactive substance does not merit the communication of information as described in paragraph 1, they shall inform the notifying Member State immediately thereof. Europol and the EMCDDA shall justify their decision to the Council within six weeks.

Article 5

Joint Report

1. Where Europol and the EMCDDA, or the Council, acting by a majority of its members, consider that the information provided by the Member State on a new psychoactive substance merits the collection of further information, this information shall be collated and presented by Europol and the EMCDDA in the form of a Joint Report (hereinafter the 'Joint Report'). The Joint Report shall be submitted to the Council, the EMEA and the Commission.

2. The Joint Report shall contain:

(a) a chemical and physical description, including the name under which the new psychoactive substance is known, including, if available, the scientific name (International Non-proprietary Name);

(b) information on the frequency, circumstances and/or quantities in which a new psychoactive substance is encountered, and information on the means and methods of manufacture of the new psychoactive substance;

(c) information on the involvement of organised crime in the manufacture or trafficking of the new psychoactive substance;

(d) a first indication of the risks associated with the new psychoactive substance, including the health and social risks, and the characteristics of users;

(e) information on whether or not the new substance is currently under assessment, or has been under assessment, by the UN system;

(f) the date of notification on the Reporting Form of the new psychoactive substance to the EMCDDA or to Europol;

(g) information on whether or not the new psychoactive substance is already subject to control measures at national level in a Member State;

(h) as far as possible, information will be made available on:

(i) the chemical precursors that are known to have been used for the manufacture of the substance,

(ii) the mode and scope of the established or expected use of the new substance,

(iii) any other use of the new psychoactive substance and the extent of such use, the risks associated with this use of the new psychoactive substance, including the health and social risks.

3. The EMEA shall submit to Europol and the EMCDDA the following information on whether in the European Union or in any Member State:

(a) the new psychoactive substance has obtained a marketing authorisation;

(b) the new psychoactive substance is the subject of an application for a marketing authorisation;

(c) a marketing authorisation that had been granted in respect of the new psychoactive substance has been suspended.

Where this information relates to marketing authorisations granted by Member States, these Member States shall provide the EMEA with this information if so requested by it.

4. Member States shall provide the details referred to under paragraph 2 within six weeks from the date of notification on the Reporting Form as set out in Article 4(1).

5. The Joint Report shall be submitted no more than four weeks after the date of receipt of the information from Member States and the EMEA. The Report shall be submitted by Europol or the EMCDDA, as appropriate, in accordance with Article 5(1) and (2).

Article 6

Risk assessment

1. The Council, taking into account the advice of Europol and the EMCDDA, and acting by a majority of its members, may request that the risks, including the health and social risks, caused by the use of, the manufacture of, and traffic in, a new psychoactive substance, the involvement of organised crime and possible consequences of control measures, be assessed in accordance with the procedure set out in paragraphs 2 to 4, provided that at least a quarter of its members or the Commission have informed the Council in writing that they are in favour of such an assessment. The Member States or the Commission shall inform the Council thereof as soon as possible, but in any case within four weeks of receipt of the Joint Report. The General Secretariat of the Council shall notify this information to the EMCDDA without delay.

2. In order to carry out the assessment, the EMCDDA shall convene a special meeting under the auspices of its Scientific Committee. In addition, for the purpose of this meeting the Scientific Committee may be extended by a further five experts at most, to be designated by the Director of the EMCDDA, acting on the advice of the Chairperson of the Scientific Committee, chosen from a panel of experts proposed by Member States and approved every three years by the Management Board of the EMCDDA. Such experts will be from scientific fields that are not represented, or not sufficiently represented, in the Scientific Committee, but whose contribution is necessary for the balanced and adequate assessment of the possible risks, including health and social risks. Furthermore, the Commission, Europol and the EMEA shall each be invited to send a maximum of two experts.

3. The risk assessment shall be carried out on the basis of information to be provided to the scientific Committee by the Member States, the EMCDDA, Europol, the EMEA, taking into account all factors which, according to the 1961 United Nations Single Convention on Narcotic Drugs or the 1971 United Nations Convention on Psychotropic Substances, would warrant the placing of a substance under international control.

4. On completion of the risk assessment, a report (hereinafter the 'Risk Assessment Report') shall be drawn up by the Scientific Committee. The Risk Assessment Report shall consist of an analysis of the scientific and law enforcement information available, and shall reflect all opinions held by the members of the Committee. The Risk Assessment Report shall be submitted to the Commission and Council by the chairperson of the Committee, on its behalf, within a period of twelve weeks from the date of the notification by the General Secretariat of the Council to the EMCDDA referred to in paragraph 1.

The Risk Assessment Report shall include:

(a) the physical and chemical description of the new psychoactive substance and its mechanisms of action, including its medical value;

(b) the health risks associated with the new psychoactive substance;

(c) the social risks associated with the new psychoactive substance;

(d) information on the level of involvement of organised crime and information on seizures and/or detections by the authorities, and the manufacture of the new psychoactive substance;

(e) information on any assessment of the new psychoactive substance in the United Nations system;

(f) where appropriate, a description of the control measures that are applicable to the new psychoactive substance in the Member States;

(g) options for control and the possible consequences of the control measures, and

(h) the chemical precursors that are used for the manufacture of the substance.

Article 7

Circumstances where no risk assessment is carried out

1. No risk assessment shall be carried out in the absence of a Europol/EMCDDA Joint Report. Nor shall a risk assessment be carried out where the new psychoactive substance concerned is at an advanced stage of assessment within the United Nations system, namely once the WHO expert committee on drug dependence has published its critical review together with a written recommendation, except where there is significant new information that is relevant in the framework of this Decision.

2. Where the new psychoactive substance has been assessed within the United Nations system, but it has been decided not to schedule the new psychoactive substance under the 1961 Single Convention on Narcotic Drugs or the 1971 Convention on Psychotropic Substances, a risk assessment shall be carried out only if there is significant new information that is relevant in the framework of this Decision.

3. No risk assessment shall be carried out on a new psychoactive substance if:

(a) the new psychoactive substance is used to manufacture a medicinal product which has been granted a marketing authorisation; or,

(b) the new psychoactive substance is used to manufacture a medicinal product for which an application has been made for a marketing authorisation or,

(c) the new psychoactive substance is used to manufacture a medicinal product for which a marketing authorisation has been suspended by a competent authority.

Where the new psychoactive substance falls into one of the categories listed under the first subparagraph, the Commission, on the basis of data collected by EMCDDA and Europol, shall assess with the EMEA the need for further action, in close cooperation with the EMCDDA and in accordance with the mandate and procedures of the EMEA.

The Commission shall report to the Council on the outcome.

Article 8

Procedure for bringing specific new psychoactive substances under control

1. Within six weeks from the date on which it received the Risk Assessment Report, the Commission shall present to the Council an initiative to have the new psychoactive substance subjected to control measures. If the Commission deems it is not necessary to present an initiative on submitting the new psychoactive substance to control measures, within six weeks from the date on which it received the Risk Assessment Report, the Commission shall present a report to the Council explaining its views.

2. Should the Commission deem it not necessary to present an initiative on submitting the new psychoactive substance to control measures, such an initiative may be presented to the Council by one or more Member States, preferably not later than six weeks from the date on which the Commission presented its report to the Council.

3. The Council shall decide, by qualified majority and acting on an initiative presented pursuant to paragraph 1 or 2, on the basis of Article 34(2) (c) of the Treaty, whether to submit the new psychoactive substance to control measures.

Article 9

Control measures taken by Member States

1. If the Council decides to submit a new psychoactive substance to control measures, Member States shall endeavour to take, as soon as possible, but no later than one year from the date of that decision, the necessary measures in accordance with their national law to submit:

(a) the new psychotropic drug to control measures and criminal penalties as provided under their legislation by virtue of their obligations under the 1971 United Nations Convention on Psychotropic Substances;

(b) the new narcotic drug to control measures and criminal penalties as provided under their legislation by virtue of their obligations under the 1961 United Nations Single Convention on Narcotic Drugs.

2. Member States shall report the measures taken to both the Council and the Commission as soon as possible after the relevant decision has been taken. Thereafter this information shall be communicated to the EMCDDA, Europol, the EMEA, and the European Parliament.

3. Nothing in this Decision shall prevent a Member State from maintaining or introducing on its territory any national control measure it deems appropriate once a new psychoactive substance has been identified by a Member State.

Article 10

Annual report

The EMCDDA and Europol shall report annually to the European Parliament, the Council and the Commission on the implementation of this Decision. The report will take into account all aspects required for an assessment of the efficacy and achievements of the system created by this Decision. The Report shall, in particular, include experience relating to coordination between the system set out in this Decision and the pharmacovigilance system.

Article 11

Pharmacovigilance system

Member States and the EMEA shall ensure an appropriate exchange of information between the mechanism set up by means of this Decision and the pharmacovigilance systems as defined and established under Title VII of Directive 2001/82/EC and Title IX of Directive 2001/83/EC.

Article 12

Repeal

The Joint Action on New Synthetic Drugs of 16 June 1997 is hereby repealed. Decisions taken by the Council based on Article 5 of that Joint Action shall continue to be legally valid.

Article 13

Publication and taking effect

This Decision shall take effect on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 10 May 2005.

For the Council
The President
J. KRECKÉ

EUROPEAN COMMISSION

Brussels, 24.1.2013
C(2013) 98 final

Lord Boswell
Chairman of the European Union
Select Committee
House of Lords
Palace of Westminster
UK-LONDON SW1A 0PW

Dear Lord Boswell,

The European Commission would like to thank the House of Lords for its Opinion on the evaluation of the EU Drugs Strategy 2005-2012, and apologizes for the delay in replying. Your Opinion includes an extensive assessment of the implementation of the Drugs Strategy over the past eight years, and provides food for thought for the development of the next EU Drugs Strategy, post 2013.

The Commission would like to make the following observations regarding the House of Lords' Opinion:

The EU Drugs Strategy 2005-2012

The Commission shares the view of the House of Lords concerning the value of the EU Drugs Strategy 2005-2012. The final report of the evaluation of the EU Drugs Strategy, financed by the European Commission and carried out by an external contractor (RAND Europe), which has recently been published[1], shows that the Strategy has clear added value for cooperation in the drugs policy field at EU level. The evaluation report shows that the strategy provides political guidance for Member States' drugs policies and has helped achieve convergence between national policies. Although direct impacts of the Strategy are difficult to identify due to the complexity of the implementation mechanisms and the necessity to translate its objectives into national responses, the available evidence suggests that the Strategy has had some success in aligning policies in the field of drug demand reduction, notably on harm reduction, that it is perceived by third countries and by international organizations as a 'model of good practice' and that it has helped achieve important gains in the field of information, research and evaluation of drugs policies.

New psychoactive substances

The Commission is planning to present new legislation on new psychoactive substances in 2013. As indicated in the Commission Communication 'Towards a stronger EU response to drugs'[2], the new legislation would seek to enhance the monitoring and risk assessment of

[1] The final evaluation report is added in the annex to this response

[2] COM(2011) 689/2

substances, to provide more sustainable responses to the emergence of these substances, including through alternative control options, and to enable a swifter response to the spread of substances, including, possibly, through temporary bans on substances that pose immediate risks. The Commission will explore, inter alia, ways to address groups of substances, notwithstanding the need to determine scientifically the harmfulness to health of each individual substance, through an evidence-based approach. The analogue approach to new psychoactive substances, as proposed by the House of Lords, poses legal issues in certain EU Member States and may have undesirable effects, among others regarding legal certainty for EU citizens and legitimate economic activities involving these substances.

Harm reduction

Over the past 15 years, the Commission has promoted and supported a wide range of initiatives, projects and proposals in the field of drug-demand reduction. The evaluation of the EU Drugs Strategy shows that some progress has been made, but that drug demand reduction measures based on the best available evidence do not seem to be applied commonly across the board in all Member States and by all services within Member States. As indicated in its Communication, the Commission intends to present a proposal on EU minimum quality standards in the field of drug demand reduction, to promote evidence-based prevention, treatment and harm reduction services in the Member States.

Drug trafficking

The effect of displacement of drug trafficking, referred to in your Opinion, can, in the Commission's view, only be effectively tackled by improving cooperation and coordination at EU level, as envisaged by the EU Drug Strategy and its implementing Action Plans, and by making full use of all other EU instruments in the field of drug demand and drug supply reduction.

Countering drug trafficking is an important element of a number of the Commission's initiatives aiming at combatting organised crime, including the new Europol legal basis, the Communication on the Exchange of Information Model and actions on border control through the implementation of the Internal Security Strategy. The involvement of transnational networks and the existence of transnational routes in drug-trafficking require a coordinated approach. The Commission promotes this under the aegis of COSI, where 4 of the 8 priorities retained for the policy cycle 2011-2013 concern drugs trafficking.

Under the future Multiannual Financial Framework 2014-2020, the Commission has proposed funding programmes, presently under negotiation by the co-legislators, which aim to provide comprehensive funding for all aspects of drug policies, including drug trafficking. The Justice Programme and the Internal Security Fund would ensure that funding is available for projects related to drug-trafficking, while the Justice programme would also fund all horizontal drug policies issues. In particular it should be noted that the Internal Security Fund, would, for the first time, allow the financing of activities against drug trafficking in third countries key to the internal security of EU Member States.

The European Monitoring Centre for Drugs and Drugs Addition (EMCDDA)

Both the Opinion of the House of Lords and the external evaluation of the EU Drugs Strategy 2005-2012 have found that the investments made in data collection, monitoring, information

and evaluation in the field of drugs have paid off. The work of the EMCDDA and that of the network of Reitox National Focal Points on drugs has provided the EU with high quality data on the drugs situation. A report on the external evaluation of the EMCDDA, covering the period 2006-2012, will be published soon.

The Commission takes note of the request of the EU Committee to maintain the budget of the EMCDDA in the next few years at adequate levels. The Commission has concerns about the impact of the various budget cuts in the Member States on the funding of the Reitox National Focal Points on drugs. It is essential that Member States continue to fund the provision of timely, adequate and reliable data from national authorities to the EMCDDA.

Statistics and threat assessment

Regarding data in the field of drug supply, the Commission has been the driving force behind the development and improvement of supply side data in the field of drugs, which is necessary for a better understanding of the drugs problem and of the drugs markets. Building on the technical expertise developed at the EMCDDA, the Commission, with the support of EMCDDA and Europol, will present key indicators for the monitoring of drugs markets, drug-related crime and drug supply reduction. These should help improve the effectiveness of responses in the area of drug supply, by enhancing analysis of the different trends and interactions between markets, crimes and the effectiveness of law enforcement responses. The Commission set out its strategy for the development of key indicators on drug markets, drug-related crime and drug supply reduction in a Commission Staff Working Document[3] from October 2010. Furthermore, at the beginning of 2013, a targeted drug report encompassing available information on all illicit drug markets, including a comprehensive overview of the criminal chain, including market analysis and future trends, will be published. It will also contribute to the EU policy cycle for organised and serious international crime.

Research

Under the current EU Drug Action Plan, the Commission has developed various activities to support research in the field of drugs. At the Commission's suggestion, the Horizontal Drugs Group organises an annual debate on priorities for drug-related research. In 2011, funding has been made available for a five-year, 10 million Euro research project on addiction, which covers all aspects of drug addiction. Cooperation on drugs research between Member States will receive a boost with the setting up of a European Research Area Network on illicit drugs (ERA NET), which is expected to start its activities in 2013. On the basis of an EU-financed 23 million Euro research project on driving under influence of drugs, alcohol and medicines, which has been finalised in September 2011, the Commission is exploring possible actions at EU level to address drugged driving, with the aim of increasing road safety. Finally, the Commission has financed and continues to fund various research projects that further examine the functioning of the EU drugs market, the (un)intended impact of drug policies on safety and security as well as projects in the field of drug-demand reduction.

Institutional questions

As in Member States, drugs policy coordination can be organised in different ways. While in certain Member States (for instance in the UK), it is placed within the Interior Ministry, in

[3] Commission Staff Working Document on improving the collection of data on drug markets, drug-related crime and drug supply reduction measures in the European Union, SEC(2010) 1216 final, , 8.10.2010

others (including Germany, the Netherlands and Denmark), it is situated in the Health Ministry. On the other hand, in Spain, France and the Czech Republic, among others, drugs policy coordination is situated within an inter-ministerial coordination body where the various disciplines come together.

Several Commission Directorates General are involved in the elaboration and implementation of the Commission's drugs policy, in order to cover all its aspects. As the Commission is a collegial body, they work closely together, each within their relevant mandate and field of expertise. The Directorate General for Justice is responsible for the overall coordination of drugs policy within the Commission and for ensuring, by working closely with other Directorates General, an integrated and balanced approach to drugs policy, addressing both drug demand and drug supply.

The Commission hopes that these clarifications address the issues raised in the Opinion of the House of Lords and looks forward to continuing our dialogue in the future.

Yours faithfully,

Maroš Šefčovič
Vice-President

European Monitoring Centre
for Drugs and Drug Addiction

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EMCDDA PAPERS

Regional drug strategies across the world

A comparative analysis of intergovernmental policies and approaches

Abstract: This paper offers a comparison of the drug strategies and plans adopted over the last five years by six intergovernmental organisations engaging 148 countries in four continents. It informs decision-makers, professionals and researchers working in the area of international drug policy about the way in which countries of the same region have decided to strategically approach drug-related security, social and health problems. Drug strategies and plans offer interesting insights both when analysed individually and when compared across regions. This paper describes the way in which drug strategies are structured and addresses their priorities and objectives. It looks at the main approaches to demand and supply reduction and analyses the manner in which these interventions are referred from region to region. The content analysis reveals interesting similarities but also important differences. When seen in the light of the current international drugs policy debate, regional drug strategies may provide an important contribution for assessing the drug problem at international level.

Keywords drug strategies
discourse analysis
international drug policy
multilevel governance

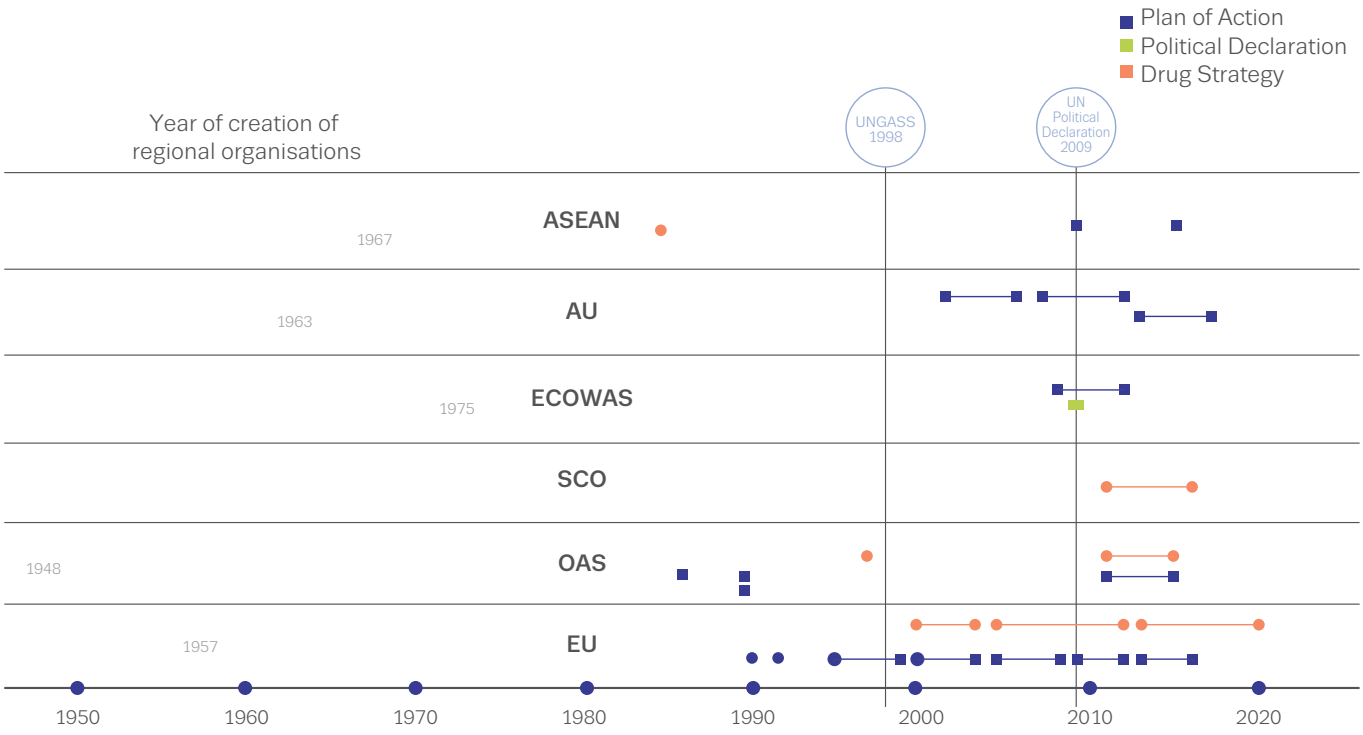
Recommended citation: European Monitoring Centre for Drugs and Drug Addiction (2014), *Regional strategies across the world: a comparative analysis of intergovernmental policies and approaches*, EMCDDA Papers, Publications Office of the European Union, Luxembourg.

Introduction to the paper

International drug control has been consolidated over the last 50 years with the adoption, by United Nations (UN) member states, of three UN drug conventions ([1]) and two political declarations and their corresponding plans of action ([2]). In particular, the two plans of action, endorsed in 1998 and 2009, marked a change towards a more systematic and structured drug policy approach and called on UN member states to adopt comprehensive and balanced national drug strategies and establish regional mechanisms.

Although neither the political declarations nor the action plans explicitly require the creation of regional drug strategies, they may have provided the impetus for neighbouring countries to agree on a common regional approach. Indeed, the decade between 1998 and 2009 witnessed the appearance of intergovernmental (regional) drug plans and strategies involving a number of African and Asian countries, and the renewal of action plans and strategies in the Americas and Europe (Figure 1).

FIGURE 1
Timeline of regional drug strategies and action plans



([1]) The United Nations Single Convention on Narcotic Drugs 1961; the 1971 United Nations Convention on Psychotropic Substances; and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

([2]) General Assembly Twentieth Special Session, Political Declaration and Plan of Action, UNGASS 1998; and High-level segment Commission on Narcotic Drugs, Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem, Vienna, 2009.

This paper offers a brief comparison of the drug strategies and plans adopted in the last five years by six regional intergovernmental organisations (hereafter regional drug strategies) ([3]), covering 148 countries in four continents (Table 1).

TABLE 1

Current regional drug strategies and plans in regional organisations

Region	Organisation	Current number of Member States	Title(s) of the document(s)
Africa	African Union (AU)	54	AU plan of action on drug control 2013–17
	Economic Community of West African States (ECOWAS)	15	Political declaration on the prevention of drug abuse, illicit drug trafficking and organised crime in West Africa (Abuja Declaration, 2008)
			Regional action plan to address the growing problem of illicit drug trafficking, organised crime and drug abuse 2008–11 ([1])
America	Organization of American States (OAS)	35	Hemispheric drug strategy 2011–15
			Plan of action 2011–15
Asia	Association of Southeast Asian Nations (ASEAN)	10	ASEAN work plan on combating illicit drug production, trafficking and use 2009–15
	Shanghai Cooperation Organisation (SCO)	6	Counter narcotic strategy of the Shanghai Cooperation Organisation Member States 2011–16
Europe	European Union (EU)	28	EU drugs strategy 2013–20
			EU action plan on drugs 2013–16

([1]) Extended for two years by the ECOWAS heads of States and Governments in 2012.

These strategies offer interesting insights both when analysed individually and when compared across regions. This paper describes the way in which drug strategies are structured and addresses their priorities and objectives. It looks at the main approaches to demand and supply reduction and analyses the way in which, for instance, prevention and treatment are targeted and whether harm reduction interventions are mentioned to the same extent across regions. It also looks at the way in which drug control measures are identified and discusses if and how the geographical and social context might have influenced the choice of actions. In this paper, the ground for comparison is given by the existence of an official document in the field of drugs, such as a political declaration, a strategy and/or a plan of action, that has been adopted at minister or head of state level and which envisages a time frame for achievements. It does not analyse other relevant regional initiatives in the field of drugs, such as cooperation projects involving many regional and international actors. This paper does not review bilateral agreements in the field of drugs, which are common in all the regions and countries considered, nor does it explore other strategic documents, such as regional security or health plans, which, although they may include a drugs component, are not drugs specific.

The main aim of this work is to inform decision-makers, professionals and researchers working in the area of international drug policy about the way in which countries of the same region have decided to strategically approach drug-related security, social and health problems. It can ultimately serve to juxtapose a variety of policy options designed to face similar challenges and can enrich current drug policy debate.

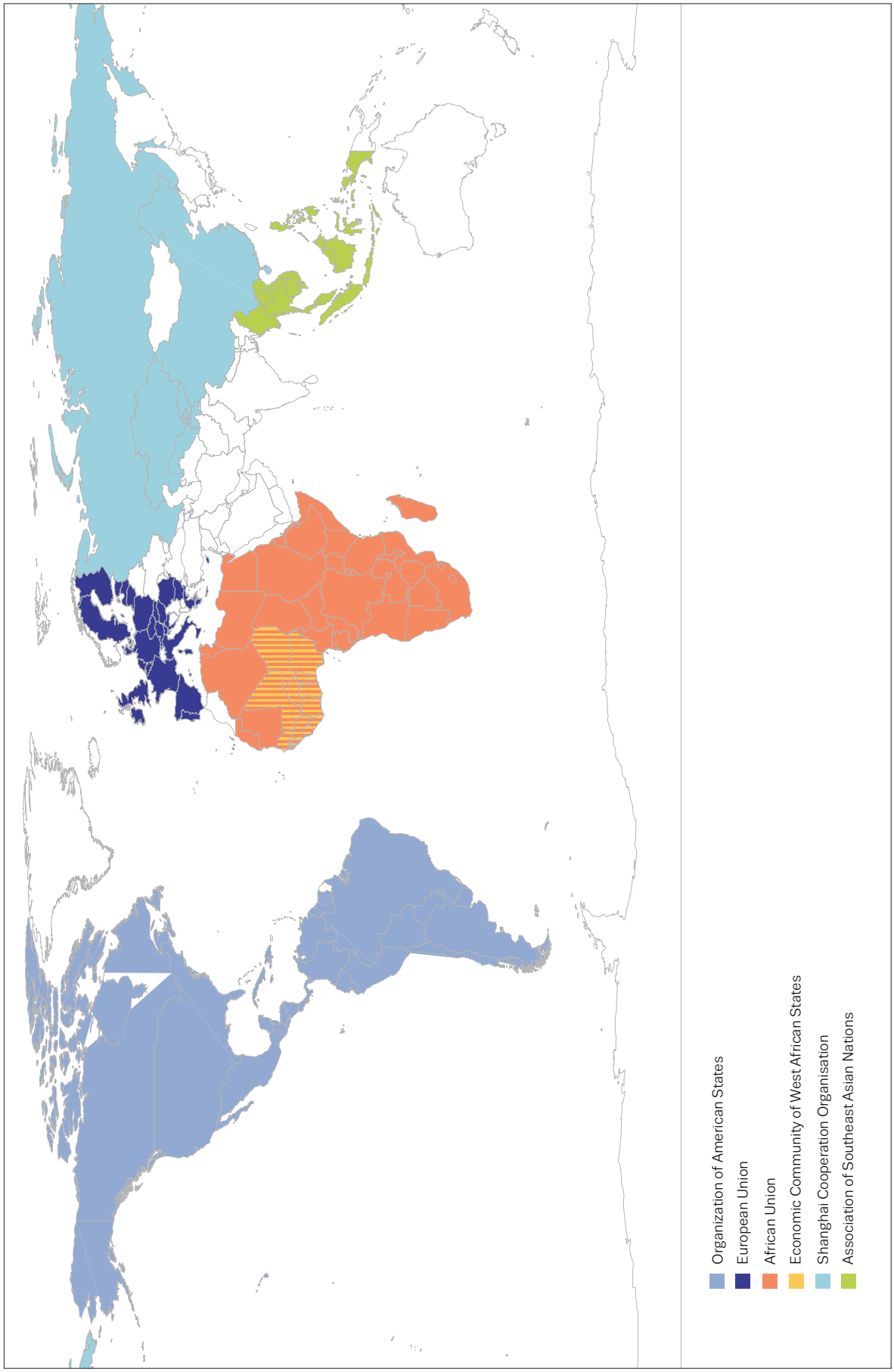
The paper is divided into two parts: Part I is a comparative analysis, which highlights the differences and similarities between the structure and the content of selected documents; and Part II profiles each intergovernmental organisation, describing briefly its institutional structure, strategy and action plan and the regional coordination mechanism.

Regional drug strategies — between high-level policy commitments and actions on the ground

Regional drug strategies and plans of action establish visions, set far-reaching objectives and describe future actions. The policy approaches and concrete objectives outlined in these documents are varied, and an analysis of them reveals not only how regions position themselves in many aspects of the drugs policy agenda but also where the regions stand in relation to each other. It is not the aim of this paper to compare interventions on the ground. Rather, as these political, strategic documents express the official will of a group of countries to tackle the security and social problems caused by the drugs phenomenon, the paper will focus on the high-level commitments, priorities and proposed actions that, whether or not they are feasible, realistic or effective, are intended to influence current drug policy at world level.

([3]) By convention, in this paper, the term 'regional drug strategies' refers to strategies on drugs and drugs action plans unless stated otherwise.

FIGURE 2
Geographical coverage of regional drug strategies



Part I
Comparative analysis

This part describes the main features, objectives and approaches presented in the drugs strategies and plans adopted by the six intergovernmental (regional) organisations.

It looks at the *structure* of the documents and their principles, pillars, objectives and targets. It highlights important elements of drug policy such as evaluation, monitoring, quality of interventions and best practice and analyses the way in which they are addressed in the texts.

It also looks at the *content* of the strategies, comparing objectives in the areas of supply reduction and drug control, and discusses if and how the geographical and social context influences the choice of actions. It addresses the area of demand reduction, comparing the variety of approaches to prevention, treatment and harm reduction. It looks at the issue of prisons and alternatives to punishment, and at the role of civil society in supporting drug policy design and implementation. Finally, it addresses the area of international cooperation as presented in the strategies.

Regional drug policies are shaped by, and to some extent reflect, the differing drug situations and historical, social and political situation. The strategies and plans analysed in this paper reflect and are influenced by this sociogeographical variety.

Strategies and action plans

There is no agreed definition of the elements that should make up a drugs strategy or action plan. However, according to a study by the EMCDDA in 2002, a drugs strategy should describe the set of instruments or mechanisms aimed at directing drug policy principles towards objectives. The aim of a drug action plan, in contrast, is to implement and deliver the principles of the strategy, detailing objectives, targets, resources and responsibilities and laying out a time frame for achieving objectives and meeting targets ([1]).

([1]) EMCDDA/European Commission, 2002. Strategies and coordination in the field of drugs in the European Union, www.emcdda.europa.eu. See under Topics (A–Z) > Policy and law > National strategies > Coordination in the field of drugs.

Part Ia — The structure of drugs strategies and action plans

The nine documents analysed in this paper (Table 1, p. 3) are of different types: three are described as drugs strategies, five as action plans and one as a political declaration.

The three drugs strategies (EU, OAS and SCO) and the political declaration of ECOWAS have a relatively similar structure: a preamble stating the main principles and goals is followed by an outline of the key priority areas. The five action plans (EU, ECOWAS, OAS, ASEAN, AU), designed to be more specific, identify more concrete objectives and actions. Some of them also present, in table format, specific elements such as timetables, indicators or responsible actors.

Although, as is to be expected, the structure of the documents is not uniform, they all follow the same approach: identification of main policy goals and descriptions of the objectives and actions needed to achieve them.

The EU, OAS and ECOWAS publish two documents: a timed strategy (or policy) document to identify the policy objectives and an action plan that breaks down objectives into actions and targets. The OAS and EU even distinguish two different policy processes: first, the adoption of a strategy and, six months later (in case of the EU), its action plan. Both the AU and ASEAN directly adopted plans of action, where policy objectives and concrete actions are presented together. The AU plan even includes an implementation matrix that singles out outcomes and outputs, performance indicators, means of verifications and risks.

Main principles and objectives in drug strategies

Principles as the basis of drug strategies

The *general principles* stated in the introduction of the drug strategies and plans are the foundation of the regional policies, describing the areas where objectives and actions are based and where much attention is focused. A call for respect for *human rights* in the implementation of drug policy is prominent in the EU, OAS and AU strategies. The EU's drug

strategy explicitly mentions the European Charter of Fundamental Rights while that of the OAS refers to the Universal Declaration of Human Rights. The strategies and plans of the ECOWAS, ASEAN and SCO place particular emphasis on individuals' right to safety and security and the threat to this attributable to drug use and trafficking.

Another important principle explicitly mentioned in most of the documents is *common and shared responsibility* for drug policy. Reaffirmed and consecrated by the United Nations General Assembly Special Session (UNGASS) in 1998, the principle aims to reconcile the dualism that for many decades has placed producing and consuming countries in conflict. This principle, defined by the International Narcotics Control Board (INCB) in 2012 as a cooperative partnership based on a *common understanding of a shared problem and a coordinated action towards a common goal*, is strong in the OAS strategy, and is mentioned in both the African documents (AU and ECOWAS) and in the EU strategy, which bases its external relations in the field of drugs on this principle. The ASEAN strategy envisages that member countries will adopt collective and shared responsibility for realisation of the vision of a drug-free region ([4]). The OAS strategy emphasises the individual responsibility of each country, highlighting the principles of *integrity*, *national sovereignty* and *non-intervention in the internal affairs of states*.

The need to *reduce poverty* and *foster development* is central to both African strategies, along with crime prevention and drug control. The ECOWAS sees the promotion of economic and social development as a parallel measure to combating drug trafficking and related crime while the AU's drugs plan makes express reference to the Millennium Development Goals ([5]). Both view crime as a barrier to the region's social and economic development.

The key principle that underlies both the Asian strategies is that peace, security and stability in the region will be achieved only by more effective use of law enforcement against the trafficking and production of drugs. The SCO's strategy reveals the organisation's firm belief that drug trafficking and related crime undermines security in the region.

Principles of drug strategies

- Respect for human rights
- Common and shared responsibility
- Integrity, national sovereignty and non-intervention in the internal affairs of states
- Reduce poverty and foster development
- Effective law enforcement

([4]) ASEAN Ministerial Meeting on drugs Matters, 1–4 September 2013.

([5]) The Millennium Development Goals (MDGs) are eight international development goals that all United Nations member states have agreed to achieve by the year 2015. The goals are: eradicating extreme poverty and hunger; achieving universal primary education; promoting gender equality and empowering women; reducing child mortality rates; improving maternal health; combating HIV/AIDS, malaria, and other diseases; ensuring environmental sustainability; and developing a global partnership for development.

Main objectives

A reduction in the drugs phenomenon is the objective of all strategies and plans analysed. There are, however, slight differences in the way this objective is presented and pursued, revealed by nuances in the language used in the different documents.

For instance, according to its strategy document, the EU intends to contribute to a *measurable reduction of both demand and supply of drugs*. Moreover, it adds, for the first time, another aim: a reduction in the social and health risks and harms caused by drugs. The EU aims, by 2020, to have contributed to an overall impact on key aspects of the EU drugs situation. The Hemispheric strategy and plan of the OAS is in many ways similar to the EU strategy, in that it envisages that signatory countries will adopt a comprehensive, balanced and multidisciplinary approach to the drugs phenomenon. The main goal of the AU plan is improvement in the health, security and socioeconomic well-being of African people, while the ECOWAS focuses on reinforcement of the region's capacity to fight drug trafficking, drug abuse and crime.

The two Asian plans specify as their main objective a substantial reduction in the drugs phenomenon in the ASEAN and SCO regions. In 1998, ASEAN set a goal of establishing a drug-free region by 2015. In 2007, this goal was redefined as a 'significant reduction in production, abuse and trafficking of illicit drugs'. The SCO has a similar aim, namely a 'drastic reduction' in the drugs phenomenon by 2017.

Pillars of drug strategies

Drug strategies and action plans are usually divided into a few main areas or so-called pillars. Some, such as *supply reduction* and *demand reduction*, are found in almost all action plans although *supply reduction* is slightly more common, being presented as main pillar or a key area — together with *crime prevention* and *control measures* — in 10 cases whereas *demand reduction* is a key area in eight.

Other areas that are particularly emphasised in some plans include *capacity building*, which is identified as a key area in the African strategies and in the OAS documents; *international cooperation*, which has its own chapter in the EU, SCO and OAS plans; and *monitoring, research and evaluation*, which is a specific pillar of the African and European plans. *Coordination* is a key area or pillar only of the EU action plan.

TABLE 3
Pillars and key areas in drug plans

	Number of pillars or key policy areas	Supply reduction, crime prevention, control measures, money laundering	Demand reduction, prevention, treatment, rehabilitation, reintegration HIV/AIDS prevention	International cooperation	Enhancing monitoring (research and evaluation)	Capacity building; political leadership; institutional strengthening	Coordination
OAS Plan of Action 2011–15	5	✓✓ (1)	✓	✓		✓	
ECOWAS action plan 2008–11 (2)	5	✓✓ (1)	✓		✓	✓	
AU plan of action on drug control 2013–18	4	✓	✓		✓	✓	
ASEAN work plan on combating illicit drug production trafficking and use 2009–15	3	✓✓ (1)	✓				
SCO counter narcotic strategy 2011–16	4	✓	✓✓ (2)	✓			
EU drugs action plan 2013–16	5	✓	✓	✓	✓		✓

(1) The document distinguishes two distinct pillars or includes separate chapters that focus on the same category: 'supply reduction, crime prevention and/or drug control'.
(2) The document distinguishes two distinct pillars or includes separate chapters that focus on the same category: 'prevention and treatment'.

The areas chosen as the main pillars, whether *demand, coordination* or *capacity building*, are those that each region considers particularly important. However, the fact that a specific subject does not feature as a key area or main pillar does not necessarily mean that that topic will receive no attention. For instance, the OAS does not describe *research* and *monitoring* as a specific pillar but this area is addressed throughout the action plan (Table 3).

Monitoring, implementation and evaluation

Drugs monitoring

All the analysed drugs strategies and plans recognise the importance of generating reliable information as a basis for decision-making. The newer strategies generally aim to create systems and processes that will help to better understand *all aspects* of the drugs phenomenon and to measure and evaluate the impact of policy interventions.

The EU was the first intergovernmental organisation to identify this need, in its first action plan, in 1990. This led to the creation of a European network of reliable and scientifically driven monitoring centres headed by an EU agency, the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) (6). Since then, each EU strategy or plan has included a chapter on monitoring. This development has progressed from the establishment of a regional monitoring centre (action plan 1990) to the need to better understand all aspects of the drugs phenomenon and the impact of responses to it (drug strategy 2013–20).

Although it was the first, Europe is not the only region to have this objective. The African strategies also recognise the need for monitoring systems. A key priority of the new drugs plan of the AU is to strengthen the capacity to establish monitoring systems able to collect data, analyse trends and link them to evidence-based responses and effective policies. National and regional observatories have already been established in South Africa, Kenya and Senegal. The ECOWAS plan also acknowledges that reliable data to assess the phenomenon are lacking and envisages that USD 1.5 million will be needed to strengthen reliable data collection and monitoring. This implicitly seems to respond to the concerns of the INCB (2012), which has described the lack of capacity for the collection and analysis of drug-related data in Africa as a serious challenge.

Setting of national and regional observatories is also a priority in the Americas. In the OAS, the drug monitoring role is performed by the Inter-American Observatory on Drugs (OID), the statistical, information and scientific research body of the Inter-American Drug Abuse Control Commission (CICAD). The OAS's strategy invites member states to establish or strengthen national observatories on drugs, develop national information systems and foster scientific research.

(6) CELAC (1990) European Plan to Combat Drugs.

The ASEAN plan addresses the issue of annual surveys of opium and cannabis cultivation and production, and also aims to establish baseline statistical data in member countries so that progress towards achieving the goals set out in the action plan goal can be measured.

Implementation and evaluation

The OAS strategy stands out in its promotion of evaluation and assessment in all areas of drugs. The document suggests integrating the scientific community into the design, implementation and evaluation of policies, and invites member countries to promote periodic and independent evaluations in the areas of demand and supply reduction, linking the results of evaluation to the allocation of resources.

The EU strategy has a similar vision, devoting an entire chapter to *information, research, monitoring* and *evaluation*. The strategy promotes evaluation of policies and interventions in the areas of demand and supply reduction and proposes that it is good practice that should be exported in international relations.

All the plans and strategies analysed address the need to assess progress in implementation, identifying a variety of mechanisms for doing so, including regular progress reviews (annual or biennial), high-level conferences, mid-term evaluations and final evaluations. However, the level of detail varies. Some plans identify actors, expected results and performance indicators and call for an overall evaluation of progress while others are less specific about the actors, schedule of implementation and assessment of expected outcomes.

The majority of strategies envisage that progress in implementing plans will be assessed by means of annual or biennial reports. In the OAS, CICAD is in charge of monitoring the implementation of the plan via the Multilateral Evaluation Mechanism (MEM), created in 1998 to evaluate drugs control policies and the countries' progress. It will review the assessment of the plan in 2016. In addition, the ECOWAS Commission Operation Plan calls upon its Mechanism and Evaluation Mechanism (MEM) to provide guidance for implementation of actions, and will review its plan annually. In Africa, biennial reports on the status of the implementation of the AU Plan are submitted to the AU conference of ministers. The Counter narcotic strategy of the SCO refers to an implementation mechanism by which countries of the region will review the results of the strategy at the meetings of the competent bodies and annually at the meeting of the senior officials of the SCO. As for the ASEAN, ASOD ([7]) is charged with gathering baseline data and producing annual reviews, a mid-term review in 2012 and a final assessment in 2015. The EU is the only region that anticipates an external evaluation of its strategy at the end of its term in 2020, in addition to biennial progress reviews carried out by the European Commission.

OAS mandate to assess drug policies in the Americas

At the Sixth Summit of the Americas in Colombia (2012), the heads of state and governments entrusted the OAS with the task of preparing a study on the drug problem in the Americas. This study consisted of a comprehensive analysis of policies applied in the Americas, highlighting the strengths, weaknesses and challenges in the implementation of those policies. The findings of the study served as the basis of an analytical report and a scenarios analysis examining new approaches for the OAS leaders to find a better way to address the drugs phenomenon. The analytical report and the four scenarios — Together, Pathways, Resilience and Disruption — of what could happen in the future and the results that could be expected in each scenario were released at the Seventh Summit in Antigua Guatemala in June 2013 ([8]).

Quality, evidence base and best practice in drug strategies

Although the emphasis varies, most of the documents identify *quality, best practice* and *standards* as the main criteria and *keywords* linked to the concept of effectiveness in drug-related interventions. In addition, in several strategies *scientific evidence* is presented as the guiding principle on which — increasingly — drug policy decisions should be based.

This approach is exemplified by the EU drugs strategy, which is based on an *evidence-based* approach to the drugs phenomenon, and by the strategies and plans of the AU and of the OAS. The AU plan, in particular, recognises the need to implement evidence-based responses to address the health and social impact of drug use while the OAS strategy and plan call for the production of evidence in the drugs field and its wide implementation throughout the hemisphere. The ECOWAS strategy mentions *evidence-based* as the principle on which strategic papers must be developed to inform the heads of state and governments of the magnitude of the drug problem and the threat it presents to the security and development of the region.

([7]) ASEAN Senior Officials on Drug Matters (ASOD).

([8]) www.cicad.oas.org

Best practice is another key term that crops up regularly in drugs policy documents. Originally reserved for the demand reduction area, it is now increasingly common for the concept of best practice to be applied in the field of supply reduction, as shown by some of the strategies analysed. The OAS strategy, for example, applies the concept to the areas of *institutional capacity*, *demand reduction* and *supply reduction* and *control measures*, declaring that it is essential to increase the availability and improve the analysis of data to aid policy decisions in the area of supply reduction. Similarly, the EU strategy calls for best practice to be developed and implemented in the areas of demand, supply and in its relations with third countries. In particular, the strategy calls on the EU to work towards more effective policies in supply reduction, through policy evaluation, better understanding of the drug markets and increased effectiveness of law enforcement responses. The AU plan invites Member States to develop and adopt codes of conduct for judges and prosecutors and develop basic minimum standards for effective community policing, police service delivery and cross-border cooperation, according to international standards and norms. The ASEAN drugs action plan promotes the sharing of experiences and the lessons learned across the countries of the region, in particular in the area of alternative development, to share best practice in reducing cultivation of illicit crops. One of the five key areas identified in the ECOWAS plan is the need to obtain reliable data to assess the magnitude of the drug trafficking and abuse problems through the sharing of best practice.

Are drug policies becoming more empirical?

A comparison of previous and recently updated drug strategies (EU, OAS, AU) shows a trend towards the development of an 'empirical' approach to drug policy. It seems that the revision of a strategy provides the opportunity to establish new or more scientific arguments. This evolution is nowhere more evident than in the EU drug strategies and plans, which date back to 1990. It is no accident that the last EU strategy — the ninth strategic policy document adopted by the EU — calls for a balanced, integrated but above all evidence-based approach. The EU is the only intergovernmental organisation to make the concept of 'evidence base' a cornerstone of its regional policy on drugs. This overall trend, is however, equally visible in the new OAS and AU plans. Both, recently updated, show important 'empirical' innovations compared with previous versions. In all three cases — EU, OAS and AU — it can be argued that the role of scientifically driven institutions and of civil society has been a key factor driving an increasingly knowledge-based and scientific approach to the field of drugs.

Thus, it is clear that the expansion of best practice, standards and quality into the area of drug supply is a new, widely shared trend.

The need to establish *science-driven quality standards* to maximise effective interventions is also recognised in many documents. The EU looks at the adoption of *quality standards* in the areas of *prevention, treatment, risk* and *harm reduction* and *rehabilitation*. The AU aims to develop and implement minimum quality standards for drug use *prevention* and *treatment* and the OAS strategy invites its members to make sure that services for drug-dependent persons are evidence based and follow internationally accepted quality standards.

Civil society

The need for the support of non-governmental organisations (NGOs) and civil society in the development and implementation of drug policies and programmes is identified in all strategies analysed.

The ASEAN plan attributes great importance to civil society organisations, calling on them to contribute to the implementation of the regional plan through civic awareness initiatives, research-based communication campaigns, health and social services, and prevention and education programmes, including in the workplace.

The OAS strategy also attributes to civil society a key role in the development and implementation of drug policies and programmes. Two areas are particularly emphasised: supply reduction, with civil society being invited to complement programmes with crime prevention initiatives; and alternative development, the assisting in the design and implementation of supply reduction projects. The demand reduction section of the OAS strategy also mentions engaging NGOs to contribute to the formulation of drug policy. The SCO strategy envisages that civil society will be used to promote prevention messages, the AU calls on its member states to develop partnerships with civil society and the ECOWAS plan calls on civil society to contribute to data collection and monitor trends, monitor and report corruption, and raise awareness on the dangers of drug trafficking and drug abuse.

A similar approach is envisaged in the EU strategy, which gives wide support to the participation of civil society in drugs policy, calling on the Civil Society Forum ([9]) and civil society organisations to provide a number of activities: providing information on the implementation of the drugs action plan, assisting in the development and implementation of drug

([9]) The Civil Society Forum (CSF) serves as a platform for the informal exchange of views and information between the European Commission and civil society organisations. In 2013, 40 organisations joined the organisation for a two-year period and the first plenary meeting took place on 24–25 June 2013.

policies and holding a dialogue with the EU member states twice a year.

Part Ib — Content of regional drug strategies

Supply reduction

Main aims in reducing the supply of drugs

All analysed documents have similar objectives in the area of supply reduction, such as *strengthening law enforcement*, *increasing intelligence, exchange* and *improving border controls*. The regions take a largely uniform approach, with law enforcement measures and methods to tackle drug trafficking and drug-related crime being generally very similar across continents. However, a small, but interesting, difference is noticeable in attitudes towards the final aim in the area of supply reduction, revealed by the terms used and the establishment of clear deadlines.

The ASEAN plan confirms its goal of achieving a drug-free region by 2015, a target set by the ASEAN foreign ministers in 2000 and reaffirmed ever since. Experts in the region agreed the definition of 'drug free': *an insignificant quantity of illicit crops will remain* and manufacturing and trafficking of drugs will be *an insignificant phenomenon*. Similarly, a drug-free status is the main aim of the SCO's plan, which calls for a *drastic reduction* in the scale of illicit trafficking of narcotics and precursors by 2017.

Both plans are aimed at implementing, albeit with a tighter deadline, the 2009 UN political declaration and plan of action, which establish 2019 as a target date for states to *eliminate* or *reduce significantly* and *measurably* the illicit cultivation, production and trafficking of — and demand for — illicit drugs.

The other regional strategies and plans analysed in this paper are not so precise in setting a date for achievement of their expressed objectives and targets, and describe their goal as a *reduction* in the phenomenon. For instance, the stated objective in the supply reduction chapter of the EU drugs strategy 2013–20 is to contribute to a *measurable reduction* in the availability of illicit drugs by using an intelligence-led approach to identify the criminal organisations causing the most harm or posing the most serious threat and make them a priority target. Although no target date for achievement is expressed, 2020 should be considered the end point when progress will be evaluated.

The OAS takes a similar stance, the first objective of its action plan being to improve comprehensive and balanced measures aimed at *reducing* the supply of drugs, through the use of intelligence based on the findings of monitoring and evaluation. An intelligence-led approach also forms the backbone of drug supply measures in the EU, while the AU plan stresses the need to more effectively increase coordination, collaboration and capacity-building towards more efficient law enforcement and harmonised actions to address drug trafficking and related organised crime. Increasing regional cooperation against drug trafficking is also one of the main objectives of the ECOWAS plan, which stresses the need to attract political attention and devote more resources to this growing phenomenon. Both African plans envisage the harmonisation of legislation in the area of drug trafficking.

Geopolitics in the variety of subjects covered

Perhaps more than in any other policy area considered in the analysed documents, the drug supply reduction measures envisaged reflect the geopolitical situation in the region and the different features of the specific drug markets.

This is probably why the strategy of the SCO, which includes Russia and China among its members, is the only one to mention Afghanistan and, indeed, dedicates an entire chapter to the threat from this country. Of the other strategies or plans, only that of the EU identifies Afghanistan as a country with which cooperation should be enhanced. Another subject prominent in some, but not all, strategies is prevention of arms proliferation. Stopping the diversion of firearms, ammunition, explosives and other related materials is an issue in the OAS strategy and a concern in the African plans. Corruption (drug related) is comprehensively addressed in both African strategies and is touched upon in the OAS and the SCO action plans, with a reference to the international instruments against corruption. There is no mention of corruption in the EU strategy.

Conceptually linked to corruption, but receiving attention in all strategies is drug-related *money laundering*. The ECOWAS action plan places a strong emphasis on reinforcing structures to detect and combat money laundering with special *financial intelligence units in charge of* collection, analysis and dissemination of information concerning potential money laundering including the financing of terrorism. ECOWAS also calls on the judiciary system to designate specialised courts and/or judges to handle money laundering and economic crimes. The ASEAN plan proposes the implementation of legislative and enforcement measures, such as asset forfeiture and anti-money laundering initiatives, as the first step in dismantling criminal organisations involved in trafficking of illicit drugs. The SCO envisages more active

cooperation with the Financial Action Task Force (FATF), the Eurasian Group and other specialised organisations to combat money laundering and financing of terrorism.

Another broad subject treated similarly across regions is the *proceeds of crime*. The ECOWAS, AU and OAS strategies envisage national and regional collaboration or even the creation of mechanisms (AU and OAS) to exchange information and detect, retrieve and confiscate drug-related laundered funds and assets. The AU plan goes as far as proposing to change existing laws if necessary. Tackling the proceeds of crime is also addressed in the EU action plan. Judicial cooperation is to be strengthened, to target the confiscation of the proceeds of crime and money laundering.

Another key element in supply reduction activities present in almost all strategies is the diversion of precursors. The ASEAN plan calls for renewed efforts against precursors and for the development of partnerships with the chemical and pharmaceutical industries. The EU and OAS strategies also prioritise the problem of precursors diversion, planning and/or reinforcing community mechanisms for diversion control.

The subject of pharmaceuticals is also increasingly present in the supply reduction chapters of strategies, in particular the role of internet and online pharmacies. The most comprehensive approach to the abuse and diversion of pharmaceuticals is found in the OAS strategy. However, this phenomenon is also addressed in the EU action plan, which aims to tackle the use of certain pharmacologically active substances ([10]) as cutting agents for illicit drugs. The ASEAN drugs plan mentions the widespread use and impact of cybertechnology on trafficking in narcotic drugs and psychotropic substances, including the issue of online pharmacies.

Measurability and effectiveness in supply reduction

Another notable trend in recent strategies and plans is an increased emphasis on gaining a better understanding of the nature of the drug markets and measuring the effectiveness of supply reduction interventions. The need for drug supply data to better understand the dynamics of the illegal drugs market and thus better tackle organised crime is recognised. This perhaps reflects a general trend in law enforcement policies, with data increasingly being considered a useful tool for both operational purposes and strategic decision-making. The need for increased effectiveness, in terms of a greater reduction in the illicit supply of drugs, or in some case eliminating supply altogether, is expressed in all documents. It is generally thought that this will be achieved by increasing cooperation between national law enforcement agencies, together with better law enforcement training and capacity-building in general.

The OAS and ECOWAS action plans, for example, aim to use currently available information to develop policies in the field of drug supply, while the AU, EU and the OAS action plans aim to improve the collection of data and strengthen the evidence base underpinning supply reduction policies. Measuring the effectiveness of supply reduction interventions is a clear aim of the EU strategy and OAS plan. The EU aims to develop a set of key indicators in the field of drug supply within the EMCDDA, while the OAS plans to implement a hemispheric information system in the area of drug supply within CICAD.

The drugs plans of the two African organisations include a strong reminder of the need for political mobilisation against drug trafficking, corruption, terrorism and in favour of strengthening the structures aimed at tackling drug-related crime (training, equipment and capacity-building). The ASEAN strategy is defined by an emphasis on a drastic reduction in the scale of the drugs problem while the SCO focuses on the threat from Afghanistan. The call for a balanced approach to supply reduction is particularly strong in the OAS and EU strategies, but can also be seen in other documents (ASEAN, AU), which envisage increased sustainability of local populations and the environment as a cornerstone of anti-drugs measures.

Alternative development

Alternative development is addressed in all strategies, with a strong focus on providing alternative livelihoods, championing farmers' rights, reducing poverty and increasing food security. The EU promotes financial and technical support for alternative development programmes that are realistic with respect to rural development and which respect human rights and food security. The OAS links alternative development with the promotion of social inclusion and poverty reduction programmes, calling for collaboration in this area of civil society. The issue of poverty and food insecurity in relation to cultivation of illicit crops is also addressed in the ASEAN strategy. In Africa, the ECOWAS political declaration recognises the need to provide cannabis farmers with legitimate, profitable and sustainable livelihoods. The AU drugs action plan, while tackling drug supply, aims to integrate drug control into poverty reduction strategies to develop political, social and economic integration of those people, often vulnerable and marginalised, who are involved in illicit cultivation of drugs.

In general, the supply reduction chapters of regional drugs strategies are notable for their attention to social aspects, human rights and the potential unintended and undesirable consequences of supply reduction interventions, in particular

([10]) As defined in Directive 2011/62/EU.

negative effects on human rights, livelihoods and the environment. Against this background the OAS plan invites countries to consider integral, sustainable, alternative development and to reduce the supply of drugs, while expressly warning against the possible negative impact of these measures on the environment. Similarly, the new EU strategy acknowledges, for the first time in EU drugs policy documents, that the implementation of drug policy has the potential for unintended negative consequences.

Demand reduction

Drug demand reduction is covered in all documents. There are important differences across regions, but three main approaches to demand reduction can be discerned:

- linked to social development, poverty reduction and health intervention in marginalised groups (AU and ECOWAS);
- included in a security and drug control approach (SCO and ASEAN); or
- integrated in a comprehensive, balanced approach (EU and OAS).

This classification, however, is not completely clear-cut. Some, more general, elements of all three approaches can be found — with different emphasis — in all strategies.

The approach to demand reduction taken by the two African organisations (AU and ECOWAS) is to improve capacity-building in healthcare. Particular attention is given to marginalised groups, prisoners, human trafficking, including of street children and child soldiers, and to HIV/AIDS prevention and care. Demand reduction receives some attention in both the SCO strategy and the ASEAN plan, but plays a minor role compared with supply reduction and drug control. Nonetheless, the ASEAN plan focuses on a significant and sustainable reduction in drug use, envisaging intensification of awareness campaigns, aimed, in particular, at high-risk groups, and facilitating access to a range of treatment modalities. The SCO strategy focuses on the promotion of healthy lifestyle and looks at enhancing methods of treating drug addicts. The EU and OAS strategies take a broad-brush approach to demand reduction, utilising a range of components: prevention (increasingly targeted at reducing risks and at selected groups), treatment (towards rehabilitation including measures to reduce risks and harms or adverse consequences) and rehabilitation (linked to social reintegration and recovery).

Definition of drug demand reduction

European Union drugs strategy 2012–20

Drug demand reduction consists of a range of equally important and mutually reinforcing measures, including prevention (environmental, universal, selective and indicated), early detection and intervention, risk and harm reduction, treatment, rehabilitation, social reintegration and recovery.

Organization of American States, Hemispheric drug strategy 2011–15

Demand reduction policies should include as essential elements universal, selective and indicated prevention, early intervention, treatment, rehabilitation and related recovery support services, with the goal of promoting the health and social well-being of individuals, families and communities, and reducing the adverse consequences of drug abuse.

Across all regions analysed, demand reduction activities fall into two main traditional areas of intervention: drug use prevention (to discourage or delay the use of drugs) and the treatment of addiction (to treat addiction and ensure rehabilitation and reintegration of drug users). Reducing the negative consequences of drug use is also addressed in some, but not all, documents.

Prevention

Preventing the use of drugs appears to be the cornerstone of all drug demand reduction interventions, although there are differences in the way in which prevention is viewed. Some documents focus on identifying at-risk groups and evidence-based approaches while others rely on the belief that information alone can be effective in inducing behavioural changes. Some documents include both concepts.

According to the EU strategy and plan, for example, prevention is best achieved by system tailoring the delivery of prevention strategies according to the target group, prioritising some at-risk groups and risk factors and introducing the concept of quality standards. Along the same lines, the OAS promotes the implementation of measurable and evidence-based programmes, targeted at specific populations, and invites member states to disseminate information on the risks of drugs using mass media and the internet.

The SCO's strategy is to use education and information campaigns, delivered by the mass media or during leisure activities, to prevent the use of drugs, especially by young people. Anti-drugs education should be included in extracurricular activities for young people. The ASEAN plan envisages that prevention interventions, including those

aimed at reducing spread of HIV/AIDS, should involve experts, media and civil society and should be targeted at high-risk groups.

The AU's approach is interesting because it links drug use prevention (and treatment) to several qualitative concepts: comprehensive, accessible, evidence-informed, ethical and human rights based. It envisages setting minimum quality standards in the area of prevention throughout the continent.

Treatment

All drug strategies see treatment of drug use and addiction as a pillar of their demand reduction policies. Almost all strategies refer to a comprehensive range of treatment interventions, and increasingly they petition for high quality, standards and evidence.

The overall goals of drug treatment are very similar in the Americas and in Asia: recovery from addiction and the full reintegration into society of drug addicts. These are not dissimilar to the goals enunciated in the new EU strategy, which are described as recovery from drug use problems and dependency. The overall goal of the EU is to enhance the effectiveness of treatment by improving accessibility, availability and quality, putting the specific needs of drug users at the centre. Objective 6 under demand reduction of the OAS strategy has the same goal.

The ASEAN plan also focuses on a range of treatment modalities for different categories of drug users, with a view to scaling up coverage and accessibility. Similar attention to quality and to individual needs is expressed in the AU text, especially regarding the prevention and treatment of HIV/AIDS. The ECOWAS plan envisages the creation of a network of treatment centres to implement best practice in treatment, including preventing HIV infection in vulnerable groups. Medical and rehabilitation measures are envisaged in the SCO's strategy, which focuses on training for narcology specialists and research to enhance treatment methods.

Quality, evidence and measurability of results are central to the treatment approach envisaged in the demand reduction chapter of the OAS strategy. Probably one of the most crucial elements is the recognition that drug dependency is a chronic relapsing disease and, thus, it should be considered a public health issue. According to the OAS strategy, access to, and implementation of, treatment should be implemented through quality standards. The AU and the EU strategies envisage the development of quality standards in the treatment of problem drug use.

Risk and harm reduction

Reducing the risk of drug-related harm at both the individual and the society levels could be regarded as an implicit aim of all drug strategies. The 2009 UN political declaration establishes 2019 as a target date for states to reduce significantly and measurably drug-related health and social risks.

The term 'harm reduction', however, still generates some political controversy, and this is reflected in the way different strategies refer to this issue. In the EU, the term *harm reduction* was first included in the demand reduction chapter of the 2005–12 drugs strategy. In the new strategy (2013-20), the issue is formulated as follows: 'the *EU aims at reducing demand and supply of drugs as well as the health and social risks and harms caused by drugs*'. From this wording,

Is information the keyword of prevention?

Commonly the concept of prevention is associated with the provision of information about the risks deriving from the use of drugs. The underlying idea is that people use information to make decisions about their behaviour. Nevertheless, the relation between information and making decisions about health-related behaviour is not straightforward, especially among young people. Many factors mediate the relation between information and behaviour. This could be one of the reasons why media campaigns aimed at preventing drug use do not always have the expected effects, and in some cases have clearly unwanted effects (Ferri et al., 2013). Research on prevention indicates that multifaceted approaches, including interactivity, and addressing social influence factors and building life skills, provide better results than those based only on the provision of information (EMCDDA, 2008). The need to improve the quality of prevention interventions along with the imperative of avoiding counterproductive effects led several international organisations to publish minimum quality standards. Among them are those produced by the UNODC (2013) and by the EMCDDA (2011). These organisations address different targets (the former, middle- and low-income countries; the latter, first and European countries) but in both cases standards are based on collaboration and use evidence-based methodology. The evidence-based approach takes account of the fact that new studies can necessitate modification of recommendations at any time, and for this reason the prevention strategy and other political documents need to remain flexible enough to accommodate latest findings.

especially the use of the term 'as well as', it is clear that *risk and harm reduction* is an overarching aim of the strategy as a component of the European demand reduction approach.

The OAS strategy refers to the concept using the expression 'reduction of the adverse consequences of drug abuse' and includes it as one of the goals of its drug demand reduction chapter. In the remaining regions, harm reduction is not mentioned.

Prisons and alternatives

Prison is increasingly viewed in strategic documents as a key setting for the provision of health-related drug policy measures. The AU action plan calls for evidence-based interventions to be delivered in prisons and invites Member States to reduce overcrowding and improve prison conditions. The plan recognises that inadequate prison conditions may be conducive to drug use and the spread of HIV infection. The OAS plan proposes the adoption of drug treatment services in prison in accordance with scientific protocol and quality standards. However, it offers some leeway to those countries where such a policy would conflict with national laws, by using the expression 'as far as possible'. In the EU, emphasis is put on equality of services available outside prison and after release from prison. Member States are asked to increase the availability and coverage of drug demand reduction measures in prison settings. There is a reminder of the right to healthcare and human dignity enshrined in the European Convention on Human Rights and the EU Charter of Fundamental Rights. The ECOWAS drug plan invites countries to provide access to treatment for drug-dependent persons, including those in prison, but there is no mention of prison policies in the drugs strategy or plan of ASEAN or the SCO where measures are enacted at national level only.

It is increasingly common for strategic documents to consider alternatives to punishment or incarceration. Both the OAS and the AU promote alternatives to criminal prosecution or imprisonment such as treatment, rehabilitation, social reintegration and recovery of drug offenders and young offenders and, in Africa, of street children and child soldiers. The EU 2013–16 action plan raises the bar even further by calling on Member States to implement alternatives to coercive sanctions.

International cooperation

Most of the objectives and actions in the area of international cooperation mentioned in the OAS, SCO and AU strategies and plans concentrate on internal drug policy within the region. Actions and objectives aim to promote and increase coordination and cooperation among the members of the regional organisation that 'hosts' the drug strategy or plan. In these cases, the drug strategy functions as an internal (regional) integration mechanism in drug policy. This is noticeable, for example, in the emphasis given in the OAS strategy to the need to strengthen joint or coordinated operations, taking into account the individual needs of each state, ratifying or adhering to international drugs treaties and harmonising national laws in the area of judicial cooperation and mutual legal assistance. Similarly, the SCO and the AU, aim to promote cooperation between source, transit and destination countries for drugs in their regions.

In contrast, the EU strategy, uniquely among the documents, deals with the issue of cooperation among member states in a specific chapter on *coordination*. Thus, the *international cooperation* chapter constitutes the *external* dimension of the EU drugs policy. The EU strategy also aims to increase collaboration with EU candidate countries and other neighbouring countries and to reinforce policy dialogues with partners such as the USA, Russia, Afghanistan, Pakistan, Central Asian Republic, China, Latin America and the Caribbean and Africa. At an international level, the EU aims to speak with a united voice to promote its approach to drugs and expand its political influence in the international arena through a balanced, human rights, health-oriented approach to the phenomenon.

Other regional initiatives

Although it is not the role of this paper to look at regional initiatives other than drugs strategies and plans, it is important to mention the role played by the United Nations Office for Drugs and Crime (UNODC) in promoting worldwide a more strategic approach to drugs. The UNODC acts as catalyst for a number of programmes and plans involving multiple regions of the world. The EU has assumed a similar role in relation to candidate countries to the EU and neighbouring states.

Strategies and action plans endorsed by international organisations

- Sub-regional action plan on drug control between UNODC and Cambodia, China, Lao, Myanmar, Thailand and Vietnam 2011–13
- UNODC regional programme for West Africa 2010–14.
- UNODC regional programme on drug control, crime prevention and criminal justice reform in the Arab States 2011–15
- Comprehensive action plan on drugs between the European Union, Latin America and the Caribbean, 1999
- Action plan on drugs between the EU and the Western Balkan countries 2009–13, integrating the 2013 political declaration
- Action plan on drugs between the EU and Central Asian states 2014–20
- Strategy on substance abuse and public health, Pan American Health Organization, World Health Organization, 2010
- Plan of action on psychoactive substance use and public health, Pan American Health Organization, World Health Organization, 2011

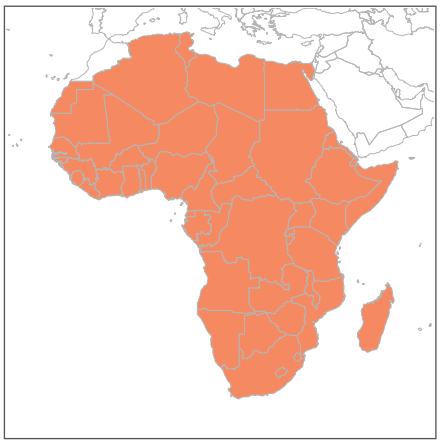
Other regional initiatives exist and are worth mentioning because they contribute to bringing together the policies of countries belonging to the same regions. These include the Colombo plan, the Arab Interior Minister Council, the League of Arab States and, in particular, at European level, the Pompidou Group of the Council of Europe.

The Pompidou Group is an intergovernmental organisation formed in 1971 to contribute to the development of multidisciplinary, innovative, effective and evidence-based drug policies in its Member States. The Pompidou Group is made up of 36 Member States, but its technical cooperation also involves other European states which are not members of the Pompidou Group, such as Albania, Ukraine and states from the Mediterranean Basin such as Algeria, Tunisia and Lebanon.

Part II
Regional strategies

The regional profiles address synthetically the organisational structure, the drug strategy/plan and the drug coordination arrangements of the six intergovernmental organisations considered in this paper.

African Union



The African Union (AU) was established in 2000, on the basis of the dissolved Organisation of African Unity. Its main vision is an integrated, prosperous and peaceful Africa. The AU is headed by the Assembly of heads of state and government. The Executive Council, composed of ministers or authorities designated by Member States, takes decisions on policies in areas of common interest. The Commission is the Secretariat of the Union entrusted with executive functions. The Parliament exercises advisory and consultative powers.

Continent	Africa
Intergovernmental organisation	African Union (AU)
Member States (current)	Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Democratic Republic of Congo, Ivory Coast, Djibouti, Egypt, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Equatorial Guinea, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sahrawi Arab Democratic Republic, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe
Drug strategies/plans	Plan of action on control of illicit drug trafficking and abuse in Africa (2002–06)
	Revised AU plan of action on drug control and crime prevention (2007–12)
	AU plan of action on drug control (2013–17)

The new AU plan of action on drug control (2013–17), adopted by the heads of states in January 2013, represents a substantial change to African drug policy. It aims to improve the health, security and socioeconomic well-being of people in Africa by reducing drug use, illicit trafficking and associated crimes. This plan places special emphasis on combating the drugs phenomenon through a systematic approach to drug-related healthcare. It places particular emphasis on the health-related aspect of drug policy by incorporating drug use prevention and drug treatment into public health programmes. Respect for human rights and a distinction between drug use and other forms of more serious crime are another two important characteristics of this approach. According to the plan, the first two years will see the implementation of minimum quality standards for the treatment of drug dependence, a regional assets recovery policy and a strengthening of research, monitoring and evaluation. Overall, it is expected that this plan will contribute to a decrease in illicit trafficking and supply trends and to a wider access to licit drugs for medical use. It calls for drug-related services to be based on the best available evidence and focuses on an increased reporting and evaluation capacity with more robust data collection systems.

The new plan also reinforces regional coordination in the field of drugs. At the top of the institutional framework on drugs is the AU Conference of Ministers of Drug Control. The Ministers meet biennially to review the progress of implementation and recommend appropriate action to the Heads of State Summit.

Economic Community of West African States (ECOWAS)

The Economic Community of West African States (ECOWAS) was established in 1975 with the aim of promoting cooperation and integration with a view to establishing a West African economic union. Since then, social and cultural matters have gradually been added. The institutional framework includes a Council of Ministers entrusted with the legislative power, a Commission (previously Secretariat), which represents the executive power, and the conference of Heads of State and Government as the main policy-making body. The Community Parliament has an advisory role. The ECOWAS includes the Community Court of Justice, which examines member adherence to obligations set forth under ECOWAS law as well as making declarations on the legality of ECOWAS decisions and mandates, and the Bank for Investment and Development (EBID), the financial arm of ECOWAS and responsible for private sector promotion and financing in West Africa.

Continent	Africa
Intergovernmental organisation	Economic Community of West African States (ECOWAS)
Member States (current)	Benin, Burkina Faso, Cap Verde, Ivory Coast, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo
Drugs strategies/plans	Political declaration on the prevention of drug abuse, illicit drug trafficking and organised crime in West Africa (Abuja Declaration, 2008)
	Regional action plan to address the growing problem of illicit drug trafficking, organised crime and drug abuse 2008–11

In 2008, ECOWAS, in collaboration with the UNODC, drafted the Praia plan of action 2008–11 and a political declaration against illicit drug trafficking. The action plan and the declaration were later endorsed by ECOWAS heads of state. The plan was the first of its kind in the region and engages the ECOWAS institutions and member states around five main key policy areas: mobilisation of political leadership; increased law enforcement cooperation; criminal justice; drug use and related health problems; and reliable monitoring systems. For each of the problems identified, the plan selects an objective, the strategy most suited to achieve it, the activities required and the party responsible for execution at national and regional level. In 2013, at the 42nd ordinary session of the authority of Heads of State and Government, it was decided to extend the period of the plan by two years, in order to sustain the fight against drug trafficking and consolidate the financial support base for its effective implementation.

The ECOWAS regional action plan has inspired the development of subregional initiatives, such as The Dakar Initiative, a subregional Ministerial Conference on Drugs held in 2011 in Dakar. This initiative was attended by six subregional countries, namely Guinea-Bissau, Guinea, the Gambia, Mali, Cape Verde and Senegal. It was sponsored by Spain through its interior ministry, UNODC and ECOWAS. The Regional action plan has also given impetus to national, bilateral and subregional initiatives, for example the West African Coast Initiative (WACI), implemented by UNODC, the United Nations Office for West Africa (UNOWA) and Interpol, and the UN Department of Peacekeeping Operations (DPKO) programme in five countries: Ivory Coast, Liberia, Sierra Leone, Guinea Bissau and Guinea.

In the area of coordination, the ECOWAS Commission is the main responsible for overall coordination and monitoring of regional initiatives in the field of drugs. A Commission Operation Plan was adopted in 2009 to follow the implementation of the regional action plan.

In 2013, a new West Africa Commission on Drugs was set by the Kofi Annan foundation. Composed by 12 African personalities, from the worlds of politics, civil society, health, security and the judiciary, the new Commission intends to analyse the problems of drug trafficking and use in order to deliver an authoritative report and comprehensive policy recommendations by the end of 2013. The Commission will follow three basic objectives: mobilising public awareness and political commitment, developing evidence-based policy recommendations and developing local and regional capacities and ownership ([11]).

([11]) West Africa Commission on Drugs (http://www.wacommissionondrugs.org/).

Organization of American States (OAS)

The Organization of American States (OAS) was established in 1948 among the countries of the American continent with the objective of achieving an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity and their independence. Today, the OAS brings together all 35 countries of the Americas and has granted observer status to 67 states, as well as to the EU. The General Assembly is the supreme organ of the OAS and comprises the delegations of all the member states. The Permanent Council deals with matters entrusted to it by the General Assembly as well as the Meeting of Consultation of Ministers of Foreign Affairs; it also monitors the maintenance of friendly relations among the member states and the observance of the standards governing General Secretariat operations.

Continent	America
Intergovernmental organisation	Organization of American States (OAS)
Member states (current)	Antigua and Barbuda, Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba([12]), Dominica (Commonwealth of), Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, The Bahamas (Commonwealth of), Trinidad and Tobago, United States of America, Uruguay, Venezuela (Bolivarian Republic of)
Drugs strategies/plans	Inter-American program of action of Rio de Janeiro against the illicit use and production of narcotic drugs and psychotropic substances and traffic therein, 1986
	Inter-American program of Quito: comprehensive education to prevent drug abuse, 1990
	Declaration and program of action of Ixtapa: guidelines for implementing the program of Rio inter-American program of Quito, 1990
	Anti-drug strategy in the hemisphere, 1997
	Action plan for the implementation of the anti-drug strategy in the hemisphere, 1998
	Hemispheric drug strategy 2011–15
	Plan of action 2011–15

Among the intergovernmental organisations considered in this study, the OAS was the first to adopt a drug strategy — which it called as program of action — in 1986. Subsequently, another two programmes of actions were adopted in 1990 and the Anti-drug strategy in the hemisphere was introduced in 1996. In 2010, the OAS General Assembly approved a new hemispheric drug strategy, updating the 1997 Anti-drug strategy. The new strategy calls for a rebalance towards a comprehensive and health-oriented approach. It aims at helping countries to develop policies focusing not only on supply and control but also on drug dependence, which is defined as a chronic relapsing disease. Presenting the document, the OAS General Secretary underlined that the change of name, from an 'Anti-drug strategy' (1997), to an 'Hemispheric drug strategy' (2010), signifies a change of vision in drug policy in the region as *not being against something but in favour of the well-being of its people* ([13]). The new document covers five fields (key areas): institutional strengthening, demand reduction, supply reduction, control measures and international cooperation. In May 2011, a plan of action (2011–15) was adopted to implement the strategy's objectives.

To strengthen coordination in the field of drugs in the region, the OAS General Assembly established, in 1986, the Inter-American Drug Abuse Control Commission (CICAD), to promote regional coordination and cooperation among OAS Member States; to reduce the production, trafficking and use of illegal drugs; and to address the health, social and criminal consequences of the drug trade. CICAD is responsible for following up on the implementation of this plan while the Executive Secretariat is responsible for executing programmes and actions in support of this strategy as requested by the Commission. The multilateral evaluation mechanism (MEM) ([14]) will be used to monitor, evaluate and

([12]) On June 3, 2009, the Ministers of Foreign Affairs of the Americas adopted resolution AG/RES. 2438 (XXXIX-O/09), that resolves that the 1962 resolution, which excluded the Government of Cuba from its participation in the inter-American system, ceases to have effect in the Organization of American States (OAS). The 2009 resolution states that the participation of the Republic of Cuba in the OAS will be the result of a process of dialogue initiated at the request of the Government of Cuba, and in accordance with the practices, purposes, and principles of the OAS. (www.oas.org)

([13]) New Hemispheric Drug Strategy, at http://www.cicad.oas.org/en/basicdocuments/Hemispheric%20Drug%20Strategy100603.pdf

([14]) The multilateral evaluation mechanism (MEM) was created in 1998 to strengthen mutual confidence, dialogue and hemispheric cooperation in order to deal with the drug problem with greater efficacy. It highlights both results achieved as well as obstacles faced by member countries in tackling the drugs problem.

improve national and hemispheric policies and actions to address the world drug problem. Members are called on to actively participate in this mechanism as part of an ongoing political process. CICAD's mandate includes, but is not limited to, the execution of regional programmes, the promotion of drug related-research, developing and recommending minimum standards and carrying out regular multilateral evaluations. In 2000, CICAD established the Inter-American Observatory on Drugs (OID), which helps countries to improve the collection and analysis of drug-related data, promotes the establishment of national drug observatories and the use of standardised data systems and methodologies, and provides scientific and technical training for, and the exchange of experiences among, professionals working on the drugs problem.

Association of Southeast Asian Nations (ASEAN)

The Association of Southeast Asian Nations (ASEAN) was established in 1967 to maintain and enhance peace in the region by promoting political security and economic and socio-cultural cooperation. ASEAN comprises 10 countries: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. ASEAN also has 10 so-called 'dialogue partners': Australia, Canada, China, the EU, India, Japan, New Zealand, the Republic of Korea, Russia and the USA. The United Nations Development Program (UNDP) also has dialogue status. The ASEAN summit comprises the heads of state and government of the ASEAN member states. The foreign ministers of the ASEAN members meet in the Coordinating Council while the ASEAN Community Councils deal with economic and socio-cultural matters and issues of political security. A Secretary General and a Secretariat ensure the coordination of ASEAN organs and implementation of ASEAN projects and activities.

Continent	Asia
Intergovernmental organisation	Association of Southeast Asian Nations (ASEAN)
Member states (current)	Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam
Year or creation	1967
Drugs strategies/plans	ASEAN regional policy and strategy in the prevention and control of drug abuse and illicit 1984 ASEAN work plan on combating illicit drug production trafficking and use 2009–15

In 2009, an expert group, ASEAN Senior Officials on Drugs Matters (ASOD), adopted the ASEAN work plan on combating illicit drug production trafficking and use 2009–15, which reiterates the commitment, first made in 1998 by ASEAN governments, to achieve a drug-free region by 2020 and sets this as a specific objective. The ASEAN ministers subsequently brought this date forward to 2015 to demonstrate the scale of member states' concerns about the threat posed by drug markets to the security and stability of the region ([15]). The ASEAN plan commits countries of the region to work towards three objectives: a significant and sustainable reduction in illicit crop cultivation; a reduction in the illicit manufacturing and trafficking of drugs; and a reduction in the prevalence of illicit drugs. A final assessment of the plan will be undertaken in 2015. ASOD has five working groups to carry out the recommended action lines prescribed in the ASOD work plan. They are law enforcement, alternative development, research, treatment and rehabilitation and preventative education.

Cooperation in the field of drugs among ASEAN countries dates back to the first ASEAN declaration of principles to combat the abuse of narcotic drugs in 1976. Since then, ASOD has been the main coordination body. ASOD meets annually and is mandated by the plan to review implementation annually and to carry out a mid-term review in 2012 and a final assessment in 2015.

([15]) 2000 Bangkok political declaration in pursuit of a drug-free ASEAN 2015 at http://cil.nus.edu.sg/rp/pdf/2000%20Bangkok%20Political%20Declaration%20in%20Pursuit%20of%20a%20Drug-Free%20ASEAN%202015-pdf.pdf

The Shanghai Cooperation Organisation (SCO)

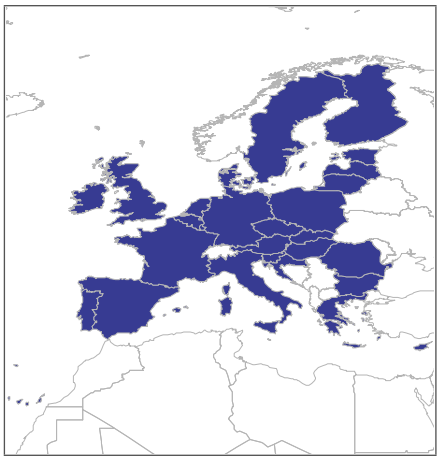
The Shanghai Cooperation Organisation is an intergovernmental security organisation founded in 2001 in Shanghai by China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Uzbekistan. Its structure is based on that of a military organisation, the Shanghai Five, founded in 1996 by the same countries (excluding Uzbekistan). The SCO widens the scope of collaboration among its members, which now covers trade and the economy, culture and education, and security and drugs. Its main goal is to work jointly to maintain and ensure peace, security and stability in the region, moving towards the establishment of a new, democratic, just and rational political and economic international order. Its six full members account for a quarter of the world's population.

Continent	Asia
Intergovernmental organisation	Shanghai Cooperation Organisation (SCO)
Member states (current)	Kazakhstan, China, Kyrgyzstan, Russia, Tajikistan, Uzbekistan
Drugs strategies/plans	Counter narcotic strategy of the Shanghai Cooperation Organisation member states 2011–16

The Counter narcotic strategy of the Shanghai Cooperation Organisation 2011–16 was adopted by the Heads of State Council in June 2011. Its main objective is to *drastically reduce* illicit drug trafficking, precursors and the use of drugs by 2017. The strategy focuses on an increase in efficient law enforcement to counteract the illicit trafficking and production of drugs. The idea of a security belt to address drug trafficking from Afghanistan is key to the strategy. The strategy also addresses the demand reduction aspect of drug control, promoting drug use prevention through mass media campaigns and improvement of medical and rehabilitation care. At the 4th meeting of the heads of counternarcotic agencies of the SCO member states in 2013, the countries approved the Plan of action for 2013–14. The plan aims to implement the programme of measures envisaged to fulfil the Counter narcotic strategy.

The SCO is structured as an intergovernmental network and decisions are taken at annual summits and regular meetings of the heads of government, foreign ministers and other high-level officials of its member states (Bailes et al., 2007, 5, in Hoffman 2011). As far as drug coordination is concerned, the implementation of the plan is reviewed once a year at the meeting of senior officials of competent bodies of the SCO member states. The Heads of State Council (HSC) is the highest decision-making body in the SCO. It meets once every year to take decisions and give instructions on all important issues of SCO activity. There are also regular meetings at the level of speakers of parliament, secretaries of security councils and ministers. The organisation has two permanent bodies — the Secretariat and the Regional Counter-Terrorism Structure.

European Union (EU)



The European Union was established in 1957 as the European Economic Community (EEC). The main purpose at the time was the economic integration among its members. Over the years, the membership of the EU has evolved, as well as its mandate. As an organisation it now spans all policy areas, from development aid to the environment. The change of name from the EEC to the EU in 1993 reflected this evolution. One of the EU's main goals is to promote human rights both internally and around the world. The core values of the EU are human dignity, freedom, democracy, equality, the rule of law and respect for human rights. The EU is composed of three main institutions: the Council of the Ministers, made up of the representatives of Member States and holding the legislative power; the European Commission, an independent organ which holds the executive power and the power of legislative initiative; and the European Parliament, composed of elected members and which holds control and legislative powers with the Council.

Continent	Europe
Intergovernmental organisation	European Union (EU)
Member states	Austria, Belgium, Bulgaria, Cyprus, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom
Year or creation	1957
Drugs strategies/plans	European plan to combat drugs 1990
	European plan to combat drugs 1992
	Action plan to combat drugs 1995–99
	EU drugs strategy 2000–04
	EU action plan on drugs 2000–04
	EU drugs strategy 2005–12
	EU drugs action plan 2005–08
	EU drugs action plan for 2009–12
	EU drugs strategy 2013–20
	EU drugs action plan for 2013–16

The first European plan on drugs dates back to 1990. Since then, several drug strategies and action plans have been endorsed by its Member States, which now number 28. Although these documents do not impose legal obligations on EU Member States, they promote a shared model with defined priorities, objectives, actions and metrics for measuring performance.

A new EU drugs strategy (2013–20), endorsed by the Justice and Home Affairs Council of the EU, constitutes the ninth strategic document on illicit drugs endorsed by EU Member States since 1990. The new strategy sets objectives geared towards the disruption of illicit drug trafficking through intelligence-led law enforcement and a more effective use of the criminal justice system. It also proposes that special attention be paid to communication technologies, which play a significant role in the spread of drugs, particularly new psychoactive substances. For the first time, the 2013–20 strategy incorporates as a policy objective a reduction in the health and social risks and harms caused by drugs, alongside the two traditional drug policy aims of reducing supply and demand. The role of civil society in the drug policy-making process is also enhanced, with explicit support given to the involvement of young people, drug users and clients of drug-related services in policy development. The strategy outlines a model for EU drugs policy that is *integrated*, combining all aspects of drugs activities; *balanced*, concentrating equally on demand and supply reduction measures; and *evidence-based*, drawing on scientific findings. Two consecutive four-year action plans will translate the strategic priorities into specific actions with a timetable, responsible parties, indicators and assessment tools. The first of these action plans, for 2013–16, was adopted on 6 June 2013. It is structured around two policy areas: drug demand reduction and drug supply reduction; and three cross-cutting themes: coordination; international cooperation; and information, research, monitoring and evaluation. The European Commission will assess the implementation of this action plan every two years and will organise a final external evaluation in 2016.

Over the years, the steering of European drug policy has been carried out, within the framework of the EU Council of Ministers, by a group of experts — the Horizontal Drugs Group

— representing the countries, the European institutions and the agencies involved. The monthly meetings have served as a drafting committee, review board and assessment group for EU legislation, policy position and strategies and plans. In addition, since 2005 a biannual meeting of the national drugs coordinators has provided a forum for informal dialogue at a high political level. The European Commission, using its power of initiative, has often steered European drug policy towards the Union's principles and values, with the EMCDDA and other agencies, such as Europol, playing an active role in informing and contributing to the decision-making process with specific data and analyses.

Findings

The analysis of regional drug strategies is interesting because, from an international drug policy perspective, these documents introduce a third political dimension, located between national plans, which aim to address purely national or local issues, and policy declarations at the UN level, which represent a very large consensus, often on a wide scale. This paper, comparing regional approaches, highlights specificities that do not emerge in the UN context and which are too varied to be analysed at national level.

It is too soon to say if and how these regional initiatives will influence drug control internationally, and that, in any case, is not the purpose of this paper, but undoubtedly they represent an interesting policy development within the international drugs policy scene, and well worth a look.

Overall support to international drug control principles

This paper reveals the existence of *official* overall support, in all regions analysed, for the main international foundations of drug policy, in other words the three main UN Conventions and the successive UN political declarations and action plans. The reduction of demand and of supply of drugs are objectives addressed by all drugs strategies and plans. The language in these texts is overall in line with the UN commitment, enshrined by the 1998 UN plan and restated in the political declaration of 2009, of *eliminating* or *significantly reducing* the phenomenon. In some strategies the emphasis is more towards the *elimination* of the phenomenon; in others, the expressed aim is more towards its measurable *reduction*. In both cases, there is coherence between UN guidance and regional strategies.

Regional drugs strategies as part of a wider integration process

Regional action plans and drug strategies did not arise spontaneously from the will of countries of a same region sharing similar social or security problems. Instead they were born of a wider process of integration, often of an economic nature, undertaken by a group of neighbouring countries within the boundaries of an intergovernmental organisation after a wide range of policy reforms in the areas of trade, environment, immigration or culture.

It is not by chance that the first *European action plan on drugs* appeared 30 years after the creation of the EEC, and that the first *Anti-drug strategy* in the OAS was adopted almost 40 years after that organisation's creation. The same can be said for the ECOWAS, the AU, ASEAN and the SCO ([16]). Regional drug policy can therefore be considered as one of those policy areas which are developed at a certain point in the life of an intergovernmental organisation and need to be understood within the level of integration among its members.

Regional strategies as tools for common views on drugs

An interesting feature inherent to the process of drafting a regional drugs strategy or drugs plan is the commitment to a unified regional vision on drugs among countries which often have not only different views but also different legislations and policies.

It seems that the mere act of engaging in the drafting negotiations for a new regional drugs plan or strategy creates the conditions for participating countries to share objectives, agree on definitions and commit to joint activities. Inevitably, this leads to a process of confrontation of beliefs, concepts, effective practice and ideological stance, in which positions, at first divergent, must eventually be combined into common concepts and views.

This developmental process is particularly visible in those strategies and plans that have been regularly renewed. Indeed, the debates and the preparatory work generated around the draft of a new document can create opportunities for new ideas, new trends and new approaches to find their place.

([16]) The European Economic Community changed its name to the European Union in 1993, The African Union was established in 2000 on the basis of the dissolved Organisation of African Unity. The Shanghai Cooperation Organisation was founded in 2001 on the basis of the Shanghai Five, which was founded in 1996.

Regional drug strategies: legally or politically binding?

The issue of the accountability of these documents and the 'obligations' they put on members of a regional organisation is not easy to assess. It is clear that governments that endorse these documents are politically bound to them. However, countries maintain a large degree of national autonomy in the field of drugs. Indeed, legally speaking, these documents are not binding, and the lack of binding power has been at times criticised as providing leeway for countries to agree on something and disregard expectations once a new government with another perspective comes to power. While this possibility cannot be completely avoided, it seems that regional drug strategies and plans — even non-binding ones — do have a value. Over time they may fulfil a normative function and, in the short term, they facilitate policy dialogue and support consensus-building among the members of the inter-governmental organisation and between member states and third countries.

Rebalancing towards a qualitative health-orientated drug policy

The words of the Commissioner for Social Affairs of the AU, presenting the new AU plan of action on drug control, succinctly describes the increased attention to health and social aspects in drug policy: 'While drug control in Africa has tended to focus more attention on supply reduction this Plan proposes to restore the balance and pay greater attention to health and other social consequences of drug use, while not neglecting law enforcement approaches' ([17]).

In addition, in Africa, the fourth plan of the AU (2013–17) focuses on expanding evidence-based services to improve health and social conditions, stressing the need to counter drug trafficking and related challenges in accordance with human rights principles. Other important issues are the increased attention to food security and poverty reduction linked to alternative development, which is infused by social and development issues in the AU strategy. This new health-orientated approach is not exclusive to AU drug policy but is an important feature that cuts across several strategies. The recent drug strategies adopted in the Americas (2011) and in Europe (2013) share this feature, which seems to reflect (at least in part) a steady process that, strategy after strategy, is increasing the role of health and social policies in the field of drugs.

The hemispheric drug strategy of the OAS makes extensive use of demand reduction concepts and promotes measures to reduce the negative consequences of drug use. In particular, the change in the title of the strategy from *Anti-drug strategy* (1997) to the new *Hemispheric drug strategy (2011)* represents, in the words of the OAS General Secretary, a renewed emphasis on the health and social components of the strategy. In the EU, where the principle of a balanced approach has been followed since the first plans in the mid-1990s, the new drugs strategy (2013–20) includes a reduction in drug-related health and social risks and harms among its main policy objectives, related, conceptually, to the main policy objectives of reducing drug demand and supply.

At the same time, this development must not be read as taking attention away from drug control, which remains a priority, and, in fact, control of drugs is increasingly seen as part of a broader security agenda in several regions.

Monitoring and understanding for better decisions

Another relevant trend worth mentioning is the increased attention given to the understanding the drug phenomenon and to the measurability of the responses to tackle it. In almost all strategies analysed, the importance of monitoring systems to collect data, analyse trends and support decision-making towards evidence-based policies is emphasised.

Very prominent are references to quality standards, the need to share best practice and the development of indicators to assess the performance of demand reduction, and increasingly supply reduction, interventions. This approach is key in the EU, where the new strategy promotes a *balanced*, *integrated*, but above all, *evidence-based* approach, but also in the OAS's Hemispheric strategy and in the AU's strategy, which promotes the establishment of national observatories, the adoption of scientific quality standards and the implementation of more evidence-based policies.

Evaluation of strategies and action plans

As far as the assessment of the implementation of these texts is concerned, all propose some sort of assessment mechanism such as annual reports or — in a few cases — mid-term or final evaluations. It is less clear, however, what form these assessments will take. A few documents identify the authorities in charge of assessing progress by means of annual or biennial reports. But the scope and the objective of these assessments are rarely explicitly mentioned, for instance whether the assessment will look at the impact of the action or at its execution. Some documents offer more scope than others for the assessment of their implementation because of the way in which they are drafted. For instance, the AU and EU action plans explicitly envisage the objectives and actions and also performance indicators, dates for achievements and in some cases actors and expected

([17]) Foreword of the AU plan of action on drug control, CAMDC/exp/2(V), submitted for consideration by the 5th session of the Africa Union Conference of Ministers of drug control (CAMDC5).

Some unique specificities

The OAS strategy is the only one to explicitly define and recognise drug dependence as a chronic relapsing disease. The strategy calls on member states to integrate drug treatment into national public health systems. The ASEAN and SCO texts are the only ones to envisage a quantitative target (a drug-free region and a drastic reduction of the phenomenon, respectively) and a date (2015 and 2017, respectively) for the achievement of the main goal of their strategies. The AU plan is the only one that recognises that in the past drug control has tended to focus more on supply reduction and now aims at restoring the balance with demand reduction. The ECOWAS plan is the only one to include an annex giving the estimated budget for each action. The EU is the only region that expressly addresses harm (and risk) reduction as a policy objective and that will entrust an external party to assess the implementation of its eight-year strategy in 2020.

outputs. The ECOWAS and the AU drugs plans include an implementation matrix as an annex.

In general, however, it appears that the evaluation of these plans is left rather vague. For example, a common feature of all the action plans is a failure to identify the resources that will be allocated to their implementation and warning mechanisms if objectives are not achieved. In addition, in most cases the actors and schedule of implementation are not specified and nor is the scope of the expected outcomes.

Concluding remarks

In terms of content, the background to the analysed texts is the same, coherently reflecting the UN conventions, declarations and plans. However, heterogeneity of approach is more apparent in the field of demand reduction than in the area of supply reduction, where the approach is relatively more uniform.

Preventing drug use is the key area shared by all texts, but the measures described to achieve this goal are diverse, ranging from mass media campaigns to interventions tailor-made to address specific risk factors or populations. In the area of treatment, the majority of texts analysed call for evidence-based practice. The goal of drug treatment is always the same, i.e. to treat addiction and promote social reintegration. The recovery from addiction and the full reintegration and resocialisation of drug addicts into society is the objective most often mentioned. Moreover, some strategies focus their attention on improving the effectiveness of treatments through better access to treatment, wider coverage and better quality of services provided. The policy of reducing harm (and risk) caused by drugs is specifically addressed only in the EU strategy. It is referred to in the OAS strategy, albeit with different wording — a reduction of the adverse consequences of drug abuse — and is not mentioned in the other strategies and plans analysed.

Supply reduction approaches adopt a common paradigm of doing 'more and better'. More collaboration among national law enforcement services, more intelligence-led activities and more exchange of data and intelligence are among the measures most often mentioned. The quest for more effectiveness, meaning better results, in reducing, or in some cases eliminating, the illicit supply of drugs is evident across plans and strategies. The intention to monitor law enforcement and supply reduction activities and their results, as mentioned in a few texts, appears to be an interesting innovation.

Finally it can be argued that policy plans and strategies are nothing more than words on paper. It is their implementation into concrete actions on the ground that matters. However, these plans and strategies hold in themselves an important symbolism. They represent the commitment of a group of governments to go in a certain direction in the field of drugs, choosing rhetoric and language, objectives and actions. This paper brings to the attention of professionals and decision-makers the many similarities and the important differences existing among these documents.

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About the EMCDDA

The European Monitoring Centre for Drugs and Drug Addiction is the hub of drug-related information in Europe. Its mission is to provide the European Union and its Member States with 'factual, objective, reliable and comparable information' on drugs and drug addiction and their consequences. Established in 1993, it opened its doors in Lisbon in 1995, and is one of the European Union's decentralised agencies. The Centre offers policymakers the evidence base they need for drawing up drug laws and strategies. It also helps professionals and researchers pinpoint best practice and new areas for analysis.

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EMCDDA, Praça Europa 1, Cais do Sodré, 1249-289 Lisbon, Portugal
Tel. (351) 211 21 02 00 | info@emcdda.europa.eu
emcdda.europa.eu | twitter.com/emcdda | facebook.com/emcdda

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PERSPECTIVES ON DRUGS

The new EU drugs strategy (2013–20)

EU drugs strategies and action plans direct collective action in the field of drugs both within the European Union and at international level. They do not impose legal obligations on EU Member States but promote a shared model with defined priorities, objectives, actions and metrics for measuring performance. Member States, and also some candidate and pre-accession countries, use this framework to develop their own national policy documents, which are increasingly synchronised with the EU strategy. They remain free to emphasise different national priorities within the overall framework of an integrated, balanced and evidence-based approach to the drugs problem.

Full edition of this article with interactive features available online at

emcdda.europa.eu/topics/pods/eu-drugs-strategy-2013-20

Internationally, the EU drug strategies aim to add value to Member States' policies by offering a platform for coordination in relation to international issues and promoting the EU approach to tackling the drugs problem. The strategies also play an important role in the definition of tasks for EU institutions, bodies and agencies, and are taken into consideration by the European Commission when setting funding priorities in the drugs field.

A recent final external evaluation of the EU drug strategy (2005–12) found that it provided a forum for consensus building and decision-making and a platform for information sharing and mutual learning. It also enhanced the 'voice' of the EU in international fora and promoted a culture of harmonised data collection and best practices identification. The review recommended, among others, to further promote the development and use of evidence for drug policy, as there remain instances of insufficient evidence about the effectiveness of specific measures.

A new strategy...

A new EU drugs strategy (2013–20) ([1]) was endorsed by the Justice and Home Affairs Council of the European Union on 7th December 2012. It constitutes the ninth strategic document on illicit drugs endorsed by EU Member States since 1990 and presents their current drug policy position and aspirations, identifying common objectives to reduce drug demand, dependence and supply. Two consecutive four-year action plans will translate the strategic priorities into specific actions with a timetable, responsible parties, indicators and

([1]) http://register.consilium.europa.eu/pdf/en/12/st17/st17547.en12.pdf .

Interactive element: map

Interactive: world regional strategies available on the EMCDDA website: emcdda.europa.eu/topics/pods/eu-drugs-strategy-2013-20

Facts and figures

European Union:

Member States: 27

Population: 503.6 million

Surface: 4 million km^2

EU drugs strategies:

First European plan to combat drugs: 1990

Horizontal working party on drugs: 1997

First EU drugs strategy: 2000

First evaluation of a EU drugs strategy: 2004

First external evaluation of a EU drugs strategy: 2012

assessment tools. These are drafted by corresponding EU Presidencies in 2013 and 2017. The first of these action plans for 2013–16 was adopted under the Irish Presidency of the EU on 6 June 2013. It is structured around two policy areas: drug demand reduction and drug supply reduction; and three cross-cutting themes: coordination; international cooperation; and information, research, monitoring and evaluation. The European Commission will assess the implementation of this action plan every two years and it will undergo a final external evaluation in 2016.

...responding to new challenges in the drugs market

There are a number of significant changes in the EU drugs market which the 2013–20 strategy aims to address. In particular the rapid increase in number of new psychoactive substances becoming available on the drug market as well as diversification in drug trafficking routes and methods of transport are among the challenges that Member States now face. In response, the new strategy sets objectives geared towards the disruption of illicit drug trafficking through intelligence-led law enforcement and a more effective use of the criminal justice system. It also proposes that special attention be paid to communication technologies, which play a significant role in the spread of drugs, particularly new psychoactive substances. It calls for the development of alternatives to traditional law enforcement approaches, which it recognises are increasingly challenged by issues such as the combined use of illicit drugs and alcohol, the misuse of prescription medicines, as well as the so-called 'legal highs' phenomenon.

...addressing health and social issues

For the first time, the 2013–20 strategy incorporates the 'reduction of the health and social risks and harms caused by drugs' as a policy objective, alongside the two traditional drug policy aims of reducing supply and demand. The role of civil society in the drug policy-making process is also enhanced, with explicit support given to the involvement of young people, drug users and clients of drug-related services in policy development. The social reintegration and recovery of all drug users is expected to receive increased attention over the eight-year period as the ultimate goal of drug treatment services. Drug use in prison has also been given increased emphasis, to ensure that the care received by drug users in penal institutions is equivalent to that provided by health services in the community.

... and supporting evidence-based decision making

The new strategy stresses the need for an empirical and evidence-based approach to drugs policy. It expands the main principles on which international drugs policies are based by adding the principle of evidence-based decision-making to the integrated and balanced approach enshrined in the 2009 UN political declaration on drugs ([2]). The strategy outlines a model for EU drugs policy that is: integrated, combining all aspects of drugs activities; balanced, concentrating equally on demand and supply reduction measures; and evidence based, drawing on scientific findings. It aims for an improved understanding of the impact of drug policy measures, the adoption of quality standards and best practice in drug demand reduction alongside the implementation of key

([2]) http://www.unodc.org/unodc/en/frontpage/2009/June/political-declaration_--states-renew-commitment-to-eliminate-drug-abuse.html .

indicators to measure success in the area of drug supply reduction. The strategy provides Member States with a forum for open debate about the effectiveness of demand reduction measures and, increasingly, supply reduction measures, and explicitly supports drug monitoring and collection of data on best practices.

Timeline: other regional drugs strategies

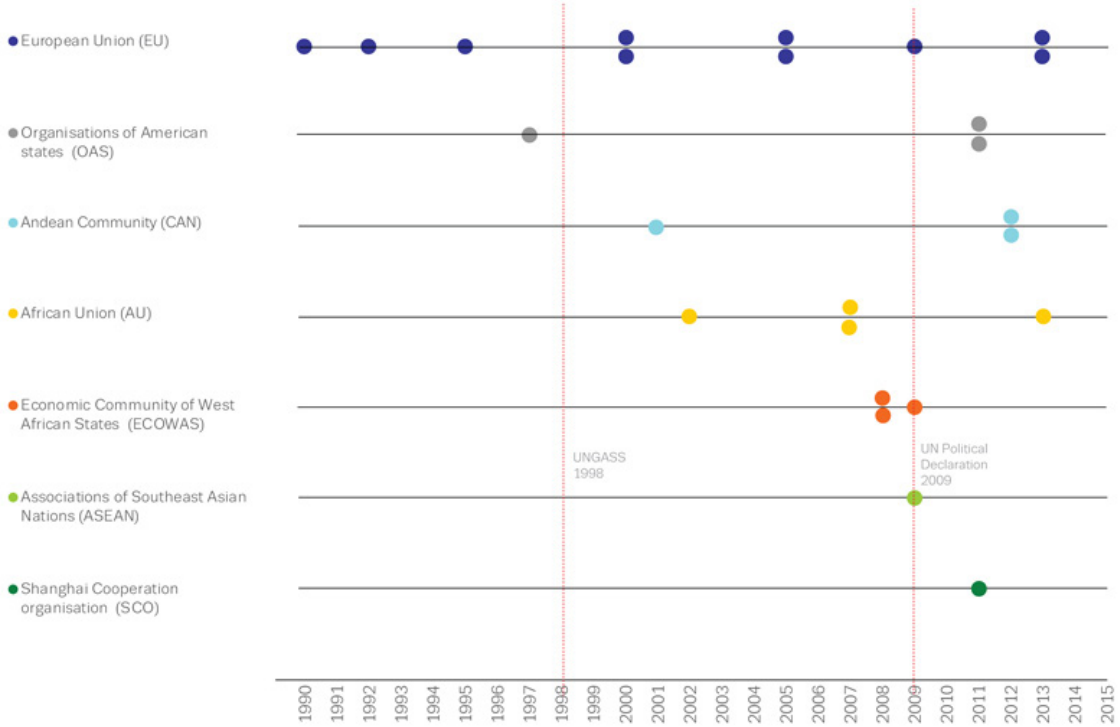
Alongside the European Union, other international organisations have developed regional drug strategies and action plans in recent years. These now cover 147 countries in four continents (see online interactive map).

In the Americas, the Organization of American States (OAS) adopted the Hemispheric Drug Strategy in 2010 and, a year later, a Plan of Action (2011–15) to implement the strategy's objectives. In parallel, the Andean Community adopted its own drug strategy 2012–19 and action plan 2012–16.

In Africa, the African Union (AU) adopted the Plan of Action on drug control (2013–17), while the Economic Community of West African States (ECOWAS) adopted the Regional Action Plan to Address the Growing Problem of Illicit Drug Trafficking, Organised Crime and Drug Abuse 2008–11.

In Asia, the Association of Southeast Asian Nations (ASEAN) adopted the Work Plan on Combating Illicit Drug Production, Trafficking, and Use 2009–15, with the aim of achieving a drug-free region. In addition, the Shanghai Cooperation Organisation (SCO) aims to drastically reduce the scale of trafficking in and consumption of drugs and precursors through the Counternarcotic Strategy of the SCO Member States 2011–16.

The objectives and content of these strategies reflect differences in drug situations and available resources between the regions where they are to be implemented. There is however also a certain degree of similarity in key policy areas and a common use of a comprehensive approach to reduce both drugs supply and demand. The increasing number of regional strategies also reflects a growing understanding that drugs are an issue that cannot be tackled only at the national level and that coordinated regional approaches to common problems can be developed.



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EMCDDA PAPERS

Drug supply reduction and internal security policies in the European Union: an overview

Abstract: The production and trafficking of illicit drugs poses complex and interlinked problems, which have a negative impact on public health and the security and stability of society. In responding to the dynamics of a globalised drug market, the EU and its partners are involved in actions within and outside the EU. Focusing on actions directed at the EU's internal security situation, this paper elaborates who is involved in setting policy, what legal and funding basis for action has been established, and what the main priorities are. In doing so, the paper looks at the EU institutions (the Parliament, the European Council, the Council and the Commission) and agencies predominately involved in the management of drug supply reduction and internal security issues. The paper explores relevant EU treaties and legislations that provide a means to target the supply of illicit drugs, as well as the financial instruments and programmes supporting this action. Additionally, this paper also discusses how these policy areas are addressed in the EU's strategic planning documents. For example, the Stockholm Programme, the EU internal security strategy, the EU policy cycle for organised and serious international crime and the EU drugs strategy 2013–20 and action plan 2013–16.

Keywords drug supply reduction | internal security policies | drug policy | law enforcement | operational cooperation | anti-drug trafficking legislation | organised crime

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Summary

The production and trafficking of illicit drugs poses a set of complex and interlinked problems, which have a negative impact on public health and the security and stability of society. With an illicit drug market worth billions of euros, many of Europe's organised crime groups are involved in this trade. Some drugs are cultivated, produced and trafficked from other regions into Europe (cannabis resin, cocaine, heroin, new psychoactive substances), whereas others are manufactured and distributed within Europe and from there to other areas (amphetamine, ecstasy, herbal cannabis). European industries, logistical supply chains and the financial infrastructure underpinning the legal economy can be penetrated and used by traffickers to produce, transport and profit from illicit drugs. Chemical substances with legitimate industrial applications may be diverted from the licit trade and used to manufacture illicit drugs. Substances that are frequently subject to diversion are called drug precursors. The air, sea, road and rail networks for passengers and freight are exploited to ship drugs, creating border management challenges. The proceeds of crime are laundered through legitimate businesses where they can infiltrate the economy, providing criminals with the financial means to sustain the drug trade and fund other illegal activities. Accordingly, actions aimed at reducing the flow of illicit drugs and curbing the activities of organised crime groups must address developments taking place inside and outside the EU simultaneously.

In responding to the dynamics of a globalised drug market, the EU and its partners are involved in actions at the international, regional, national and local levels. The present paper focuses primarily on actions at the EU level directed at the Union's internal security situation. A wide range of EU-level policy actors participate in the response to drug supply and security challenges. This paper looks at the way aspects of the different agendas and missions of these EU bodies, insofar as they are related to drug supply reduction and internal security issues, work together to implement policy objectives and strategic actions. Across three sections, the paper elaborates who is involved in setting policy, what legal and funding basis for action has been established, and what the main priorities are.

The drug supply reduction and internal security measures discussed in this paper originate in EU-level strategic planning documents. These include the Stockholm Programme, the EU internal security strategy, the EU policy cycle for organised and serious international crime and the EU drugs strategy 2013–20 and action plan 2013–16.

Drug supply reduction can be defined as the set of activities undertaken by the EU and its Member States to restrict the availability of illicit drugs. This encompasses legal measures and operational cooperation in policing and border control aimed at detecting and disrupting the cultivation, production, shipment, distribution and sale of illicit drugs and the profits derived from these activities, both inside and outside the EU.

Internal security issues can be defined as problems that threaten to undermine the EU's stability and the health and safety of its citizens through, among other things, the operation of supply routes for illicit commodities (e.g. drugs) and illicit markets for their sale. The EU internal security strategy defines organised and serious crime and drug trafficking as major threats facing Europe.

The EU system is composed of several institutions. Alongside the Member States, these institutions are tasked with designing and implementing different aspects of the EU's comprehensive drug policies, through the priorities and actions set out in strategic planning documents. This paper looks at the EU institutions predominately involved in the management of drug supply reduction and internal security issues. In doing so, it elaborates the most relevant features of the institutional framework for addressing drug supply reduction and internal security issues, describing the policy actors involved in the policy process from planning to implementation. This includes the role of the European Parliament, the European Council, the Council of the European Union, the European Commission and the various committees and working groups that support their work. The paper also looks at the work of decentralised EU agencies, which undertake specialist roles, frequently of a technical or scientific nature. The work of a number of these agencies contributes to the development and implementation of strategic policy tools, such as drug strategies and action plans of EU drug supply reduction and internal security policies through, for example, the provision of analytic support.

The EU's legislation has been built over many years through the provisions made in different treaties and the instruments that have been adopted to implement them. This system forms the basis for cooperation among Member States and between the EU and the rest of the world. The production and trafficking of illicit drugs are inextricably linked to cross-border organised crime, as the raw materials to manufacture them, the equipment used, the substances themselves and the profits gained move between different legal jurisdictions. Appropriate responses and tools are needed to tackle the security and other challenges that the operation of illicit supply chains present. This paper takes a look at some of the most relevant treaties and legislations that provide a means to target the supply of illicit drugs, as well as the instruments and programmes that support this action.

In responding to the interlinked set of problems posed by the production and trafficking of illicit drugs within and outside the EU, the European Commission operates several funding instruments and programmes in conjunction with their EU and

international partners to support drug supply reduction activities. The paper discusses the four categories into which these financial instruments and programmes fall. These consist of framework programmes (e.g. Security and Safeguarding Liberties), programmes for EU candidate and potential candidate countries (e.g. Instrument for Pre-accession Assistance), geographic or regional programmes (e.g. European Neighbourhood Policy) and specific programmes that complement geographic ones (e.g. Instrument for Stability). Funding for these tools is provided through the EU's overall budget and, in some cases, in cooperation with consortiums of Member States and the EU's international partners.

Given the complex and far-reaching nature of the problems posed by the production and trafficking of illicit drugs, responses to these issues span several areas of policy. The general approach taken by the EU in response to these problems is elaborated in the EU's internal and external security and drug policies. Both of these policy fields have a comprehensive scope, extending beyond drug supply reduction. The EU internal security policy is concerned with terrorism, cybercrime, the activities of organised crime groups, trafficking in human beings and the production and supply of illicit drugs. Structurally, the EU drug strategies have been built around two pillars — demand and supply reduction — and three cross-cutting, or transversal, themes — coordination, international cooperation, and information, research, monitoring and evaluation, an approach now also present in the drugs strategies of most EU Member States. Consequently, EU-level drug supply reduction policy forms part of these two overarching areas, which complement and support each other, where concerns around the illicit drugs trade are increasingly situated within the overall context of internal and external security challenges. It is predominantly these two areas that provide the framework for action against the production and trafficking of drugs, where measures agreed and designed by the Member States and the EU institutions are elaborated, providing the agenda for action undertaken with the legal and funding tools at their disposal. This paper looks at how drug supply reduction arises in both policy areas and sets out the type of actions being taken.

Introduction

The production and trafficking of illicit drugs poses a set of complex and interlinked problems, which have a negative impact on public health and the security and stability of society. With an illicit drug market worth billions of euros, many of Europe's organised crime groups are involved in this trade (Europol, 2013). Some drugs are cultivated, produced and trafficked from other regions into Europe (cannabis resin, cocaine, heroin, new psychoactive substances), whereas others are manufactured and distributed within Europe and from there to other areas (amphetamine, ecstasy, herbal cannabis) (EMCDDA, 2013a; EMCDDA and Europol, 2013). Logistical supply chains and the financial infrastructure underpinning the legal economy can be penetrated and used by criminals to produce, transport and profit from illicit drugs. Chemical substances with legitimate industrial applications may be diverted from the licit trade and used to manufacture illicit drugs. Substances that are frequently diverted in this way are called drug precursors. The air, sea, road and rail networks for passengers and freight are exploited to ship drugs, creating border management challenges. The proceeds of crime are laundered through legitimate businesses, where they can infiltrate the economy, providing criminals with the financial means to sustain the drug trade and fund other illegal activities.

Accordingly, actions aimed at reducing the flow of illicit drugs and curbing the activities of organised crime groups must address developments taking place inside and outside the European Union (EU) simultaneously. This approach reflects the dynamics of a globalised drug market, characterised by multiple shipment methods and routes, along which commodities move, undermining the rule of law, generating public health problems and threatening the stability of states in the process (see the box 'Drug supply reduction and security challenges').

Given the size and global nature of this market, the EU and its partners are involved in a large number of actions at the international, regional, national and local levels. In this report, the focus is primarily on actions at the EU level directed at the Union's internal security situation ([1]) (see the box 'Defining drug supply reduction and internal security'). These measures originate in the Stockholm Programme, the EU internal security strategy, the EU policy cycle for organised and serious international crime and the EU drugs strategy 2013–20 and action plan 2013–16 (Council of the European Union, 2010b, 2012d, 2013e; European Council, 2010a, 2010b).

([1]) Actions addressing the external dimensions of EU drug and security policies and the international partners they are undertaken with are the focus of a companion report scheduled for publication in 2014.

Drug supply reduction and security challenges

In 2013, the EMCDDA and Europol published the 'EU drug markets report — a strategic analysis', providing a comprehensive overview of the production, consumption and trafficking of illicit drugs in Europe. It provided important insights into the operation of the drug market:

- there is an increased level of interaction between the markets for heroin, cocaine, cannabis and synthetic drugs;
- drug trafficking is becoming more diversified, with multiple transit points and complex channels and the increased use of legitimate commercial transport;
- organised crime groups adopt a multi-commodity approach, engaging in a range of illicit activities;
- globalisation plays an important role in the changing nature of the drug market, affecting the flow, availability and demand for drugs;
- the Internet is playing an increased role in facilitating the marketplace for drugs and providing access to knowledge, expertise and logistics;
- the increased demand for drugs in Africa, Asia and Latin America has had impacts on the flow of drugs to and from Europe;
- the EU is a producer of synthetic drugs and cannabis and a source for heroin precursors (acetic anhydride);
- technological advances are changing the production of drugs, resulting in the use of non-controlled chemicals (including pre-precursors) and the manufacture and marketing of new psychoactive substances;
- the significance of heroin is changing; although it remains an important drug, signs of a long-term decline are present;
- consumers of illicit drugs are less discerning in their choice of substance, with users substituting one drug for another or using multiple drugs, particularly in the case of stimulants;
- unregulated new substances (e.g. synthetic cannabinoid receptor agonists, cathinones) and controlled drugs that were not widely used before (e.g. ketamine, methamphetamine) are increasing in importance;
- there is a high demand for cannabis, with a diversity of products, producers and sources, alongside increased domestic production.

Source: EMCDDA and Europol (2013).

Defining drug supply reduction and internal security

A hallmark of the EU is the area of freedom, justice and security that has been created with the removal of internal border controls in the Schengen Area, where citizens can enjoy the benefits of unrestricted freedom of movement between European countries. These same factors have given rise to a set of challenges posed by the illicit drug market and its impact on the security of the EU.

Drug supply reduction can be defined as the set of activities undertaken by the EU and its Member States to restrict the availability of illicit drugs. This encompasses legal measures and operational cooperation in policing and border control aimed at detecting and disrupting the cultivation, production, shipment, distribution and sale of illicit drugs and the profits derived from these activities, both inside and outside the EU. In maintaining an area of freedom, justice and security, characterised by respect for human rights, the rule of law and solidarity, the EU works on two fronts simultaneously: externally, with its immediate neighbours and international partners, and internally, with its own Member States. Internal security issues can be defined as problems that threaten to undermine the EU's stability and the health and safety of its citizens through, among other things, the operation of supply routes for illicit commodities (e.g. drugs) and illicit markets for their sale. The EU internal security strategy defines organised and serious crime and drug trafficking as major threats facing Europe (European Council, 2010a).

The EU institutions and agencies play an important role in contributing to the development and maintenance of a knowledge base for policy-making in the field of drugs. As the means of producing and trafficking drugs evolves to overcome existing enforcement measures, monitoring and intelligence-led operations provide the means for the EU to keep pace with and counter the illicit drug trade. A wide range of EU-level policy actors participate in the response to drug supply and security challenges. This report focuses on the way aspects of the different agendas and missions of these EU bodies, insofar as they are related to drug supply reduction and internal security issues, work together to implement policy objectives and strategic actions.

The present report responds to the emphasis on policy analysis and evaluation in the EU's approach to drug and

security issues generally, and the need for an analysis of supply reduction policies expressed in the EU drugs strategy 2013–20 (priority 22.10, Council of the European Union, 2012d). It also contributes to the development of an overview of the EU policy cycle for organised and serious international crime, requested by the European Commission in its mid-term evaluation of the policy cycle (finding 5b, Council of the European Union, 2013a). In this respect, it situates this specific organised crime policy and the EU's drugs policy within the overarching security policy framework that defines the scope and actions of these implementing and coordination oriented strategic tools. The report provides a clear and comprehensive introduction to EU-level action that will assist those working in the area nationally, provide researchers with orienting information on the mechanisms and direction of activities and the public with an insight into the Union's work in this field.

This report is designed to be accessible for readers, with each section presenting a stand-alone guide to the areas addressed as they relate to drug supply reduction. The different sections of the report elaborate the policy process regarding who is involved in setting policy, what legal and funding basis for action has been established, and what the main priorities are. In this way, the report can be read in its entirety or used as a reference point for each area individually. Specifically, the report is divided into three sections, addressing first the institutional arrangements, then the relevant legislation and funding tools to facilitate action, and finally the policy framework that guides activities. Throughout the document, tables provide quick access to developments and processes, and the EU abbreviations commonly used in this field are explained at the end of the report. A comprehensive set of references is provided, most of which are available online, should readers wish to explore further the areas covered.

Institutional arrangements

The European Union's system consists of several institutions ([2]). Alongside the Member States, these institutions are tasked with designing and implementing different aspects of the EU's comprehensive drug policies through the different priorities and actions set out in strategic planning documents. This section looks at the EU institutions that are predominately involved in the management of drug supply reduction and internal security issues. In doing so, it elaborates the most relevant features of the institutional framework for addressing drug supply reduction and internal security issues, describing the policy actors involved in the policy process from planning to implementation.

European Parliament

The European Parliament's functions include passing laws, in conjunction with the Council of the European Union, through the ordinary legislative procedure (formerly 'co-decision') that applies to many areas of EU law, approving the EU budget and discussing EU policies (European Parliament, 2013b). Drug issues arise in different areas of the Parliament's work when, for example, it considers internal security matters or relations with non-EU countries ('third countries'). Consequently, various parliamentary standing committees are engaged with these policy areas, such as the Foreign Affairs Committee (AFET), the Security and Defence Committee (SEDE), the Civil Liberties, Justice and Home Affairs Committee (LIBE), or its Special Committee on Organised Crime, Corruption and Money Laundering (CRIM) (European Parliament, 2013a). The Standing Committee on Operational Cooperation on Internal Security (COSI), attached to the Council of the European Union, which plays a key role in internal security matters, is required to report to the Parliament and keep it informed about its work (Council of the European Union, 2009b).

European Council

The European Council is tasked with setting the general political directions and priorities of the EU. This body, which meets at least four times a year, has addressed drug supply reduction and organised crime issues in the context of its work on the EU's security situation (European Council, 2013). In 2003, it adopted the (external) European security strategy 'A secure Europe in a better world'. In the Stockholm Programme, in 2010, the European Council called on the Council of the European Union and the European Commission to develop an internal security strategy for the EU, which it

([2]) The European Parliament, the European Council, the Council of the European Union ('the Council'), the European Commission, the Court of Justice of the European Union, the European Central Bank and the European Court of Auditors.

endorsed in March 2010 (European Council, 2003, 2010a, 2010b). In this way, it has played an important role in defining EU security policies along the spectrum of concerns that the Union faces outside and inside its borders.

Council of the European Union

Alongside the European Parliament, the Council of the European Union is one of the main decision-making bodies of the EU. The Council performs a diverse set of functions, including adopting legislation (often in conjunction with the European Parliament), playing a policy coordination role for the Member States, devising the EU Common Foreign and Security Policy (CFSP), signing off on agreements between the EU and third countries, and adopting the EU's annual budget (Council of the European Union, 2013g).

The Council is one of the EU institutions in which drug supply reduction and internal security matters arise most frequently. In common with national administrations, the Council uses a system of working parties to address the array of policy areas with which it must deal. The working parties operate under the different Council configurations and under the Permanent Representatives Committee (Coreper) and its preparatory support bodies (the Mertens and Antici groups). As part of the rotating, bi-annual presidency of the Council, each Member State takes a turn in chairing these working parties. Whereas drug supply reduction and security issues arise in the work of several Council working groups, two are particularly important in this policy area: the Standing Committee on Operational Cooperation on Internal Security (COSI) and the Horizontal Working Party on Drugs (HDG).

Table 1 highlights the working parties, and their associated Council configurations, where drug supply reduction and internal security issues commonly arise. A distinction is made between the general working groups and the top-level committees, Coreper I and II, where the Member States are represented. This reflects the vertical decision-making chain along which information passes, for example, from COSI to the Antici Group and on to Coreper II, before reaching the JHA Council. At all stages, representatives of the Member States drive the process.

Defined in article 240 of the Lisbon Treaty (TEU), the Permanent Representatives Committee (Coreper) is responsible for preparing the work of the Council. All information related to decision-making passes through Coreper, and it functions both as a communication mechanism between Member States and a supervisory structure for the Council's various working groups. Coreper is tasked with reviewing the European Commission's legislative proposals and coming to an agreement prior to passing the relevant dossier up to the Council. Accordingly, Coreper works across the full spectrum of policy concerns, which it addresses by operating in two configurations focused on different areas. Coreper I consists of the Member States' deputy permanent representatives, and their work is supported by the preparatory body the Mertens Group. The Member States' permanent representatives meet in Coreper II, and are assisted by their own support structure, the Antici Group. Justice and Home Affairs (JHA) issues, where drug supply reduction and internal security matters generally feature, arise in the work of Coreper II. The Council's working groups, such as COSI and the HDG, report to Coreper (European Commission, 2012d).

TABLE 1

Council configurations, committees and working groups

Council configurations		
Agriculture and Fisheries (AGRI)	Environment (ENVI)	
Competitiveness (COMPET)	Foreign Affairs (FAC)	
Economic and Financial Affairs (ECOFIN)	General Affairs (GAC)	
Education, youth, culture and sport (EYCS)	Justice and Home Affairs (JHA)	
Employment, Social Policy, Health and Consumer Affairs (EPSCO)	Transport, Telecommunications and Energy (TTE)	
Committees		
Deputy Permanent Representatives Committee (Coreper I) Competencies: AGRI, COMPET, EPSCO, ENVI, EYCS and TTE Preparatory body: Mertens Group	Permanent Representatives Committee (Coreper II) Competencies: ECOFIN, FAC, GAC and JHA Preparatory body: Antici Group	Political and Security Committee (PSC) Competencies: CFSP and CSDP
Working parties		
Standing Committee on Operational Cooperation on Internal Security (COSI)		Related configuration: JHA
Customs Cooperation Working Party (CCWP)		Related configuration: JHA
Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS)		Related configuration: JHA
Horizontal Working Party on Drugs (HDG)		Related configuration: GAC
Working Party on Customs Union (CUG)		Related configuration: COMPET

Established under the Lisbon Treaty (article 71, TFEU) by a Council decision, COSI plays an important role in coordinating the European Union's response to drug supply and internal security issues (Council of the European Union, 2009b). It operates under the JHA configuration of the Council, and is one of only three working parties created by an EU Treaty (Council of the European Union, 2013f), the others being Coreper and the PSC (Political and Security Committee). The need for a standing committee in this area arose from the way the Lisbon Treaty (TFEU) altered the EU's legal framework. The treaty resulted in the so-called 'three pillars' (the European Community, the Common Foreign and Security Policy (CFSP), and police and judicial cooperation in criminal matters) being abolished and replaced by the European Union, endowed with legislative procedures for its competences (European Commission, 2010c).

COSI, which consists of the Member States' representatives, was mandated to facilitate better operational cooperation among the Member States' competent authorities in internal security matters, and to evaluate these activities. It was also tasked with assisting the Council, reporting to the Parliament, but is not involved in carrying out operational activities (the responsibility of Member States) or preparing legislation (Council of the European Union, 2009b). Article 222 of the Lisbon Treaty (TFEU), the 'solidarity clause', requires COSI and the PSC to support the Council in responding to disasters (i.e. terrorist attacks, natural or man-made disasters) within the EU (Council of the European Union, 2009c). In the Stockholm Programme, which addresses the EU's priorities for the area of freedom, justice and security until 2014, responsibility for the implementation of the EU internal security strategy was placed under COSI (Council of the European Union, 2010a). The standing committee plays a leading role in defining, implementing, monitoring and evaluating the EU's activities in the policy cycle for organised and serious international crime (Council of the European Union, 2010b).

With a broader drug policy remit than that of COSI, the HDG operates under the General Affairs configuration of the Council. Reflecting the view that one working party should function as a point to centralise knowledge about the full array of internal and external EU drug policy activities taking place, the HDG's purview encompasses all areas of drug demand reduction and drug supply reduction (Council of the European Union, 1999). Within the Council, it is the main working party through which all drug policy matters are considered, before being passed up to Coreper and on to the JHA Council, where final decision-making takes place. The HDG plays a central role in the development and adoption of the EU drugs strategies and action plans, and is chaired for a period of six months by the Member State that holds the presidency of the Council. During this time, the chair is responsible for driving the work of the HDG forward and ensuring the implementation of the EU drugs strategy and action plan. In this respect, the HDG functions as a mechanism through which all of the Member States can participate in the formulation of the EU drugs strategies and action plans. The working party also plays an important role in the EU's drug policy oriented relations and dialogues with non-EU countries.

Drug supply reduction and security issues can feature in the work of many other Council working groups, but are not their primary concerns. Examples of these include groups with a wider purview of policing, such as the Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS) ('Article 36 Committee') and the Law Enforcement Working Party (LEWP). Similarly, issues dealt with by working groups handling customs matters, such as the movement of passengers and cargo via air and sea routes, can be relevant to drug supply reduction. Among these groups are the Customs Cooperation Working Party (CCWP), the Working Party on Customs Union (CUG), the Working Party on Shipping and the Working Party on Aviation.

European Commission

Within the EU's institutional framework, the European Commission has a wide range of functions. It has the right of initiative to propose new legislation, and is responsible for ensuring that the Member States are correctly implementing the Union's laws. Alongside drafting the EU's annual budget and overseeing how the funds are being used, it is also responsible for undertaking international negotiations on behalf of the EU (European Commission, 2013c). Structurally, the Commission consists of 33 departments referred to as Directorates-General (DGs). Drug supply reduction and security issues arise in different areas of the Commission's work.

The Commission is responsible for managing the EU's internal security policy, the Union's migration and asylum policy, the financing of activities in the home affairs area and the external aspects of this policy field. It manages a set of policies and programmes in the internal security area and is responsible for a number of specialised EU agencies in this field. Its work on internal security covers the fight against organised crime, which encompasses drug supply reduction issues, as well as fostering cooperation among police forces and managing the EU's external borders (European Commission, 2013h).

Among its responsibilities, the Commission is tasked with ensuring that the EU is an area characterised by justice, where the fundamental rights of citizens are respected, people receive equal treatment, their personal data is protected and there is access to support in legal matters throughout the EU. The Commission addresses drug control policy in a broad sense, and covers a range of issues under drug demand reduction and drug supply reduction. These include the monitoring and

evaluation of EU Member States' measures directed at the reduction of drug use and the prevention of drug-related crime and drug trafficking. It proposes measures for the control of new psychoactive substances, based on risk assessment procedures, and ensures the implementation of EU laws designed to prohibit the use of chemicals to produce illicit drugs. In addition, the Commission promotes European cooperation in addressing drug problems, through the provision of financial assistance (European Commission, 2013b).

Licit trade in chemical substances with industrial applications is monitored and controlled by the EU through a set of dedicated pieces of legislation (see the next section). Different aspects of this control framework are managed by the Commission. There are two regulations, one of which relates to the trade between Member States in chemical substances with industrial applications, whereas the other concerns the external trade in these substances between the EU and third countries. These pieces of legislation aim to prevent the diversion of drug precursors from legal trade into the illicit drug manufacturing market.

Issues that may affect the stability of the EU's immediate geographical neighbours and its international partners also have an effect on the Union's internal security as a result of the globalised nature of the illicit drugs trade and the problems it causes. The Commission addresses these matters through a number of its activities. It is tasked with planning development policies, programmes and projects, through which it provides aid in different countries. It has financed two programmes in Central Asia that support the EU's drug policy activities: the Border Management Programme in Central Asia (BOMCA) and the Central Asia Drug Action Programme (CADAP). BOMCA, an important anti-drug trafficking initiative, is aimed at the development and use of modern border management methods in the region, and has been supported between 2003 and 2014 by budgets totalling EUR 33 million. The main aim of CADAP is to promote a balanced approach to drug policy, whereby drug supply reduction and demand reduction elements are given an equal focus and established best practices are adopted. Between 2001 and 2013 the programme's budgets totalled EUR 5 million (European Commission, 2012a).

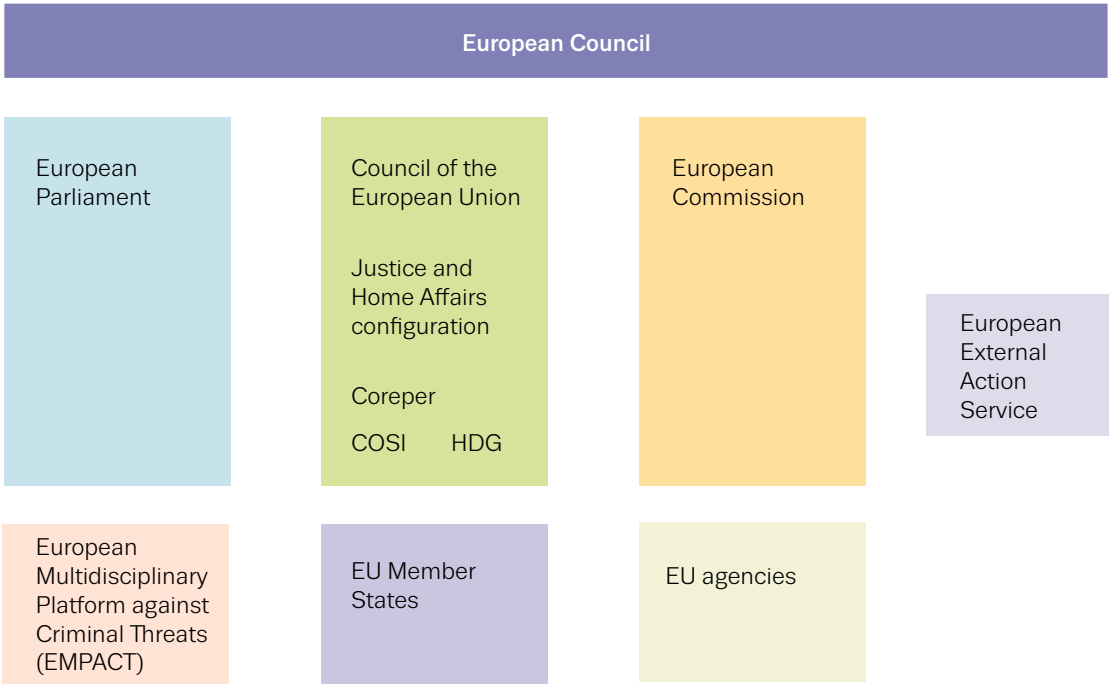
In addressing the EU's capacity to deal with external action, the Lisbon Treaty called for the establishment of the post of High Representative of the Union for Foreign Affairs and Security Policy (TEU article 15) and the European External Action Service (EEAS, TEU article 27) (Council of the European Union, 2012b). The High Representative is in charge of the EEAS and is responsible for, among other things, conducting the EU's CFSP, developing policy proposals and chairing the Foreign Affairs configuration of the Council. Assisting the High Representative, the EEAS is tasked with developing policy proposals and implementing them after approval is received from the Parliament and the Council (European External Action Service, 2013). The EEAS is an EU body. It oversees the EU delegations in more than 130 countries, coordinates the EU's external action, and is the permanent chair of the Council's Political and Security Committee (PSC), which is responsible for the CFSP. The EEAS also carries out the strategic programming for EU external assistance, which is then implemented by EuropeAid.

Given the overlap between external and internal matters on the spectrum of security issues facing the EU, the different EU bodies involved work together to ensure consistency in the approach taken and synergies across activities. The EEAS and the PSC, which work on the (external) European security strategy, regularly meet with COSI in implementing the internal security strategy. In this way, relevant information is passed between those dealing with the internal and external security matters. The EEAS's Intelligence Analysis Centre (EU INTCEN, formerly SITCEN) provides situational analysis on issues relevant to drug supply reduction. An example of such an issue is the challenges faced by police liaison officers in the Sahel and Maghreb as a result of terrorism threats and state destabilisation. The European Commission's Service for Foreign Policy Instruments (FPI) operates under the authority of the High Representative in her capacity as Vice President of the European Commission. It implements the short-term crisis response components of the Instrument for Stability (IfS), through which anti-drug trafficking programmes such as the Cocaine Routes Programme and the Heroin Routes Programme are financed.

Figure 1 shows the different structures in the EU system related to drug supply reduction. This includes EU institutions (the European Council, the Parliament, the Council and the Commission), EU bodies (the EEAS), coordination platforms (EMPACT), the EU Member States and the EU's decentralised agencies.

Different processes are involved at various levels in this system. These include collecting data and turning it into policy-relevant information that can be used as a basis for decision-making, the process of proposing, approving, implementing and monitoring legislation, the coordination of operational actions, and the setting of top-level priorities. Throughout these practices, the representatives of all Member States play a key role.

FIGURE 1
EU structures addressing drug supply reduction issues



Decentralised agencies

Decentralised agencies of the EU undertake specialist roles in key areas, often tasks of a technical or scientific nature. A number of these agencies contribute to the development and delivery of EU drug supply reduction and internal security policies, playing an important role in the work of the EU institutions and various expert working groups. They provide analytical support in the development and implementation of strategic policy tools, such as drug strategies and action plans.

Countering the production and trafficking of illicit drugs requires information on the organised crime groups involved, the scale of the market, the types of substances being manufactured and the routes involved in distributing them. Although work is underway to improve the information on drug production and trafficking, through the construction of supply reduction indicators, there is a lack of data on the illicit markets for drugs. The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) is tasked with providing the EU and its Member States with factual, objective, reliable and comparable information at European level concerning drugs and drug addiction and their consequences (EMCDDA, 2010). As part of this work, it collects data from its Reitox national focal points on a range of drug supply reduction and demand reduction issues. This includes information about drug law offences, drug seizures, drug purity and potency, as well as retail prices for drugs (EMCDDA and Europol, 2013). It also operates the Early warning system (EWS) on new psychoactive substances in conjunction with Europol, the European Police Office, and conducts risk assessments. The Centre participates in the operational action plans that implement the EU policy cycle on organised and serious international crime (hereinafter 'policy cycle'; see the section 'Policy cycle on organised and serious international crime').

Europol is responsible for helping to make the EU a safe society for its citizens, and has a wide range of functions in its mission to assist Member States to respond to serious and organised international crime. In the drugs supply reduction area, Europol provides intelligence information, collects data and runs information systems on the activities of organised crime groups, the substances they manufacture, the locations and equipment they use and their smuggling and transportation methods. It carries out threat assessments in different regions and produces the Serious and Organised Crime Threat Assessment (SOCTA) and the EU Terrorism Situation and Trend Report (TE-SAT), which inform policy-making and planning processes, such as the EU policy cycle. It works closely with the Member States through its Europol national units, and functions as a specialist information hub, supporting policing operations throughout the EU. At Europol, the Operations Department also houses the Europol Criminal Assets Bureau and the Europol Cyber Crime Centre. Europol also provides secretariat services for the Camden Asset Recovery Inter-Agency Network (CARIN). In doing so, it supports the EU internal security strategy's aim to target the proceeds of crime at all stages from seizure to forfeiture (Europol, 2012). It also plays a central role in facilitating action under the EU policy cycle through its specialised information services and the support it provides for the European Multidisciplinary Platform against Criminal Threats (EMPACT), through which coordinated operational actions are implemented (see the section 'Policy cycle on organised and serious international crime').

Effective and integrated border management is a vital part of the response to drug trafficking and the security challenges it poses. The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) plays an important role in this area. Drug supply reduction issues arise in several areas of its work. For example, it carries out joint operations at the EU's external (air, land and sea) borders, provides training and undertakes risk analysis. It works with the EU's international partners, such as the United Nations Office of Drugs and Crime (UNODC) and the Central Asia Border Security Initiative (CABSI).

Cepol, the European Police College, is involved in building police cooperation across the EU. It provides a wide range of training courses relevant to different aspects of supply reduction and internal security activities. In conjunction with Europol, it provides training to national law enforcement officers on the dismantling of clandestine laboratories used to manufacture illicit drugs. Cepol also facilitates the implementation of the EU policy cycle through the provision of specialised training workshops on the development of strategic plans and projects. It works closely with police training colleges in the Member States to deliver different training courses (Cepol, 2013).

Eurojust is the European Union's judicial cooperation unit, and is primarily aimed at developing the coordination of cross-border investigations and prosecutions, as well as creating better cooperation among the Member States' judicial authorities. Among the issues covered in its work are the activities of organised crime groups, such as drug trafficking and money laundering. It provides assistance to Member States when requested to do so and when it is enabled by the presence of a cooperation agreement. Eurojust can request Member States to investigate or prosecute a crime, to work together and to establish a joint investigation team (see the next section). It works closely with the European Judicial Network and Europol, and assists national authorities with the use of mutual legal assistance and the use of mutual recognition legal tools, such as the European arrest warrant, supporting the EU policy cycle in the process. In addition, it works with Member States on the use and coordination of controlled deliveries of illicit drugs (Eurojust, 2013b, 2013c). Eurojust provides statistics on the cases against drug trafficking that it has supported each year in its annual reports (Eurojust, 2013a).

The following section of this report explores EU legislation related to supply reduction issues, and looks at some of the main legal tools used in the fight against the production and trafficking of illicit drugs.

Legislation and financial programmes

The EU's legislation has been built up over many years through the provisions made in different treaties and the instruments that have been adopted to implement them. This system forms the basis for cooperation among Member States and between the EU and the rest of the world. The production and trafficking of illicit drugs are inextricably linked to cross-border organised crime, as the raw materials to manufacture them, the equipment used, the substances themselves and the profits gained move between different legal jurisdictions as they are shipped to drug markets. Appropriate responses and tools are needed to tackle the security and other challenges that the operation of illicit supply chains present. This section of the report looks at some of the most relevant treaties and legislation that provide a means to target the supply of illicit drugs, as well as the instruments and programmes that support this action. The policy priorities that these measures relate to are the subject of the next section.

Legal frameworks for planning and cooperation

The EU's laws take a number of forms, and this subsection sets out some of the main legal instruments related to drug supply reduction and internal security measures. Three institutions play a central role in the development and adoption of EU legislation: the European Parliament, the Council of the European Union and the European Commission. In terms of general process, the Commission makes proposals for new pieces of legislation. These are considered and, if approved, adopted by the European Parliament and the Council of the European Union (the Council). Both of these institutions have the same decision-making power on many issues through the 'ordinary legislative procedure' (formerly 'co-decision'). Alongside making proposals, the Commission is responsible for checking that Member States are correctly applying and implementing EU legislation. EU-level treaties and legislative instruments are developed in line with the principles of subsidiarity and proportionality, which ensure that EU legal measures are necessary and take an appropriate form (see the box 'Subsidiarity and proportionality').

The Lisbon Treaty modified the structure of the EU's institutions, revised the way in which decision-making works, strengthened European democracy, and changed the Union's internal and external policies (European Commission, 2010d). Among the reforms that it ushered in were changes in the operation of the Justice and Home Affairs (JHA) area, which encompasses the EU's response to drug supply and internal security issues. In the past, the EU was based around the so-called three-pillar model, which was: (1) the European Community, (2) the Common Foreign and Security Policy (CFSP) and (3) police and judicial cooperation in criminal matters (where drug supply reduction issues most commonly

Subsidiarity and proportionality

In understanding how the EU exercises its legal powers, articles 5(3) and 5(4) of the Treaty on European Union (TEU) are central, as they set out the principles of subsidiarity and proportionality, respectively (Council of the European Union, 2012b). Together, these two principles ensure that the EU must act only when there is a need for it to do so, and that the action it takes is appropriate. On the one hand, the subsidiarity principle holds that the EU should take action in order to meet its objectives when they can be best accomplished at the EU level, but not when these aims can be achieved through the individual actions of the Member States. On the other hand, the principle of proportionality is concerned with ensuring that the legal tools adopted are of an appropriate type with a suitable level of force. Accordingly, assessments are required to check that there are not other ways of reaching the same objective that are less restrictive. As Borchardt (2010) puts it, 'The main conclusion to be reached in general terms is that framework legislation, minimum standards and mutual recognition of the Member States existing standards should always be preferred to excessively detailed legal provisions'.

arise). This system was burdened by complex processes, as issues in the first pillar were subject to the EU's legislative procedures, whereas matters in the second and third pillars were addressed mostly, but not exclusively, through intergovernmental cooperation. The Lisbon Treaty removed the pillar structure, and introduced three types of competence: (1) exclusive competences (where only the EU can legislate), (2) shared competences (where the EU and the Member States can legislate) and (3) supporting competences (where the EU cannot legislate, but can support Member States' activities) (European Commission, 2010c).

As a result of the Lisbon Treaty, JHA matters are now subject to the same legislative procedures as other areas ('ordinary legislative procedure'), and are not addressed through intergovernmental cooperation, giving the European institutions increased scope for legislative action. This concerns matters at the heart of drug supply reduction and internal security, such as border control, judicial cooperation in criminal matters and police cooperation (European Commission, 2010a). These areas were addressed under Title V of the Lisbon Treaty, which is concerned with the EU's area of freedom, security and justice. For example, in these articles, provision was made for the creation of the Standing Committee on Operational Cooperation on Internal Security (COSI) and updating the scope of Europol and Eurojust's missions. Some of the most relevant articles of the Lisbon Treaty, and the aspects of drug supply reduction and internal security that they related to are presented in Table 2.

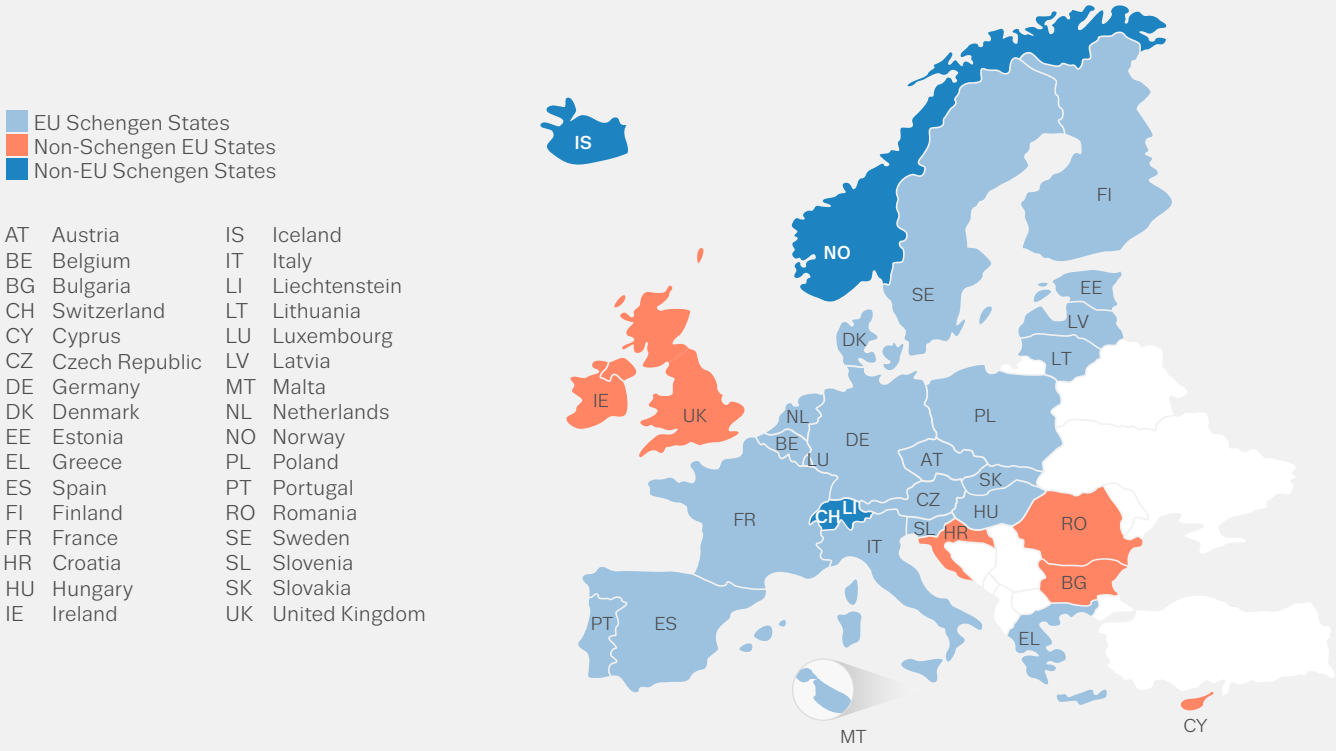
TABLE 2

The Lisbon Treaty and drug supply reduction and internal security

Article	Area covered
15 (TEU)	High Representative of the Union for Foreign Affairs and Security Policy
27 (TEU)	European External Action Service (EEAS)
38 (TEU)	Common Foreign and Security Policy (CFSP)
67 (TFEU)	The EU as an area of freedom, justice and security
68 (TFEU)	Tasks the European Council with defining 'the strategic guidelines for legislative and operational planning within the area of freedom, security and justice'
71 (TFEU)	Standing Committee on Operational Cooperation on Internal Security (COSI)
77 (TFEU)	Border control policy
82 (TFEU)	Judicial cooperation in criminal matters
83 (TFEU)	'Minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension' (including illicit drug trafficking, money laundering and organised crime)
84 (TFEU)	Crime prevention
85 (TFEU)	Eurojust's mission
87 (TFEU)	Police cooperation involving customs and specialised law enforcement services
88 (TFEU)	Europol's mission
89 (TFEU)	Provision for the creation of rules concerning the cross-border operation of Member States' competent policing authorities in other Member States' territories
222 (TFEU)	The 'solidarity clause' against acts of terrorism and COSI's role in this context

NB: TEU, Treaty on European Union; TFEU, Treaty on the Functioning of the European Union; both treaties are amended by the Lisbon Treaty.

FIGURE 2
Schengen Area



NB: Not shown on the map are the island groups of the Azores and Madeira (Portugal) and the Canaries (Spain), all of which are within the Schengen Area.
Source: Redrawn and updated from European Commission (2012e).

Unrestricted freedom of movement is enabled within the EU by the abolition of internal border controls in the Schengen Area (Figure 2). The majority of EU Member States and a small number of non-EU countries are part of the Schengen Area.

The production and trafficking of illicit drugs have been addressed in the development of the Schengen Area. Legally, the area is built upon the Schengen Agreement and Convention and a number of subsequent agreements, such as the Schengen Borders Code. Since 1999, these pieces of legislation have been part of the EU's legal framework as a result of their being added as a protocol ('the Schengen acquis') to the Treaty of Amsterdam, currently protocol 19 of the Lisbon Treaty (TFEU). The Schengen Agreement and Convention reinforced checks at the EU's external borders, set out procedures for issuing standardised visas and created the Schengen Information System. It also strengthened cooperation among police forces at the EU's internal borders, and supported activities aimed at curbing drug trafficking (European Commission, 2009). Drug issues were addressed under Title III: Police and Security, Chapter 6 of the Schengen Agreement in several ways. For example, its articles covered issues such as the sale and import of drugs, external border checks, targeting the proceeds of crime and provision for controlled deliveries of drugs (Council of the European Union, 2000c).

At a level below EU treaties, a set of legislative tools have been adopted, serving a number of purposes. For example, they provide the concrete means through which the Member States can work together to address cross-border criminal activities, such as illicit drug trafficking and production. They also function as the tools that underpin the achievement of the aims and actions in the EU's internal security, drugs and policy cycle strategies. Collectively, these instruments facilitate collaboration and support among the Member States in addressing different aspects of the problems related to illicit drug markets.

The legislation aims at discouraging and disrupting drug smuggling, bringing organised crime groups to justice and depriving them of the proceeds from their activities (Table 3). For example, the trade in drug precursors has been regulated to prevent diversion to illicit drug production. Furthermore, provision has been made for the movement of samples of controlled drugs during investigations (Council of the European Union, 2001, 2005d; European Parliament and the Council of the European Union, 2004). A response to the emergence of new psychoactive substances, involving a three-step process of information exchange, risk assessment and control has been implemented, resulting in EU-wide bans of certain drugs (Council of the European Union, 2005b, 2013c).

TABLE 3
Legislation linked to drug supply reduction

Drug precursors
Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors
Council regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors
Council regulation (EC) No 1277/2005 of 27 July 2005 laying down implementing rules for Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and for Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors
Risk assessment and control of new psychoactive substances
Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances
Council decision of 7 March 2013 on subjecting 4-methylamphetamine to control measures (2013/129/EU) (1)
Forensic analysis and criminal investigation
Council decision of 28 May 2001 on the transmission of samples of controlled substances (2001/419/JHA)
Council recommendation of 30 March 2004 regarding guidelines for taking samples of seized drugs (2004/C 86/04)
Information exchange
Council framework decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union ('the Swedish initiative')
Council decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ('Prüm Decision')
Judicial and police cooperation in criminal matters
Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000/C 197/01)
Council framework decision of 13 June 2002 on joint investigation teams (2002/465/JHA)
Council framework decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)
Council framework decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking
Council framework decision 2008/841/JHA of 24 October 2008 on the fight against organised crime
Council framework decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters
Proceeds of crime
Council Decision of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information
Council framework decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (2001/500/JHA)
Council framework decision 2005/212/JHA of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities and property
Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing
Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between asset recovery offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime

NB: Detailed overviews of EU anti-drug legislation can be accessed at the European Commission website under Home Affairs and Justice.
(1) Similar legislation exists for a number of other substances; see Control measures on the EMCDDA website.

A range of legislation addressing crime in general are also relevant to the fight against drug trafficking. Building cooperation among the Member States' police and customs authorities has been an important goal in successive EU-level treaties. Cooperation, both non-operational and operational, between the competent policing authorities in each Member State is dealt with in article 87 of the Lisbon Treaty (TFEU) (Council of the European Union, 2012b). The timely and efficient exchange of information to support policing lies at the core of cooperation between law enforcement agencies. A number of legal acts have been adopted to facilitate better flows of information between the competent authorities in the Member States. For example, the so-called Swedish Initiative, which replaced related articles in the Convention implementing the Schengen Agreement, ensures that the rules governing the exchange of information between Member States can be no more constraining than national-level standards (Council of the European Union, 2008a; European Commission, 2012g). The Prüm Decision made provision for the automated exchange of information (DNA, fingerprints, vehicle registrations) needed for criminal investigations and the participation of one Member State's law enforcement personnel in joint operations in the territory of another Member State (Council of the European Union, 2006b; European Commission, 2013f).

The processes involved in criminal investigations and judicial proceedings are supported by several legal acts. Legal provisions have been made for the use of controlled deliveries of drugs during investigations, the use of joint investigation teams, European arrest warrants and European evidence warrants, and agreement on the elements that comprise the

criminal act of drug trafficking and its punishment (Council of the European Union, 2000a, 2002a, 2002b, 2004, 2008b). A basis exists from which Member States' authorities can cooperate in targeting the proceeds of crime at all stages of their movement (identification, tracking, freezing, seizing and confiscation) and protect their financial systems (Council of the European Union, 2000b, 2001, 2005c).

As the drugs situation evolves, so too does the EU's response to it. Accordingly, the instruments used to target the illicit drugs industry are revised and updated to take account of new developments and to improve their practical application. The European Commission plays an important role here, as it reports on the implementation and functioning of European legislation and makes proposals for amendments or new pieces of legislation, following an impact assessment. For example, impact assessments have been made as part of considering the need to revise the regulations on drug control (Council of the European Union, 2012a).

Financial programmes and instruments

Responding to the interlinked set of problems posed by the production and trafficking of illicit drugs requires action within and outside the EU, across a range of areas at the same time. Accordingly, several funding instruments and programmes, operated by the European Commission in conjunction with their EU and international partners, support drug supply reduction activities (Table 4). These instruments ([3]) fall into four categories: framework programmes (e.g. Security and Safeguarding Liberties), programmes for EU candidate and potential candidate countries (e.g. Instrument for Pre-accession Assistance), geographic or regional programmes (e.g. European Neighbourhood Policy) and specific programmes that complement geographic ones (e.g. Instrument for Stability). Funding for these tools is provided through the EU's overall budget and, in some cases, in cooperation with consortiums of Member States and the EU's international partners.

TABLE 4

Financial programmes and instruments covering drug supply reduction activities

EU internal action
Framework programme Security and Safeguarding Liberties • Prevention of and Fight against Crime (ISEC)
EU External Borders Fund
EU external action
Instrument for Stability (IfS)
Instrument for Pre-accession Assistance (IPA)
European Neighbourhood Policy (ENP) • European Neighbourhood and Partnership Instrument (ENPI) • TAIEX (Technical Assistance and Information Exchange)
Development and Cooperation Instrument (DCI)

([3]) Action directed outside the EU is discussed in a companion report addressing external security and drug supply reduction, scheduled for publication in 2014.

The 'Internal security strategy for the European Union: towards a European security model', adopted by the European Council in 2010, has set out the main parameters of the policy response to internal security challenges, including drug trafficking and production (European Council, 2010a). Its objectives are translated into action through, among other measures, the framework programme 'Security and Safeguarding Liberties', which fosters cooperation in combating crime. It funds a range of activities and provides financial support to the EU agencies Cepol, the EMCDDA and Europol. The framework programme is supported by two specific programmes of funding, one of which, 'Prevention of and Fight against Crime' (ISEC), is concerned with drug supply reduction issues (European Commission, 2013g).

Established by a Council decision, the ISEC programme is scheduled to run between 2007 and 2013, with an overall budget of EUR 600 million (Council of the European Union, 2007). The programme primarily funds projects through calls for proposals, which result in the awarding of action grants, with allocations totalling EUR 167 million by 2009. The ISEC programme is implemented on the basis of thematic annual work programmes, funding various activities, including training, equipment purchasing and supporting cross-border policing, such as joint investigation teams. These work programmes and the projects they fund support the priorities in EU policies, such as the EU internal security strategy, the policy cycle for organised and serious international crime, and the action plans of the Hague and Stockholm Programmes. For example, funding is grouped around issues underpinning work that will enhance the practical implementation of EU legislation that facilitates police cooperation and information exchange, such as the Prüm Decision and the Swedish Initiative (European Commission, 2011a, 2012b).

The ISEC programme provides financial support to the Maritime Analysis Operations Centre — Narcotics (MAOC-N), which was established in 2007 to counteract drug trafficking from West Africa to Europe by sea and air via the Atlantic Ocean. It is an initiative between seven EU Member States (Ireland, Spain, France, Italy, Netherlands, Portugal, United Kingdom), which signed an inter-governmental treaty. Between 2007 and 2012, MAOC-N, which is located in Lisbon, Portugal, supported operations that seized 70 tonnes of cocaine, with an estimated value of EUR 3 billion, and 50 tonnes of cannabis (MAOC-N, 2013).

The EU actively engages with its immediate geographical neighbours and other regions of the world in undertaking cooperation and development work. These activities are supported by regional and thematic funding tools. Drug issues

generally, and matters linked to supply reduction, fall within the comprehensive scope of the programmes, which are based around regional strategy papers with allocated budgets, implemented through multi-annual strategies. For example, more than EUR 666 million was contributed by the Commission in 2006 to projects targeting drug issues — mainly through alternative development — in third countries such as Afghanistan, where EUR 428 million was spent, and Bolivia, Colombia and Peru to the amount of EUR 154 million (European Commission, 2011b).

The External Borders Fund (EBF) has financed drug supply reduction activities in the context of the external dimension of the EU internal security strategy. This has included the provision of financial support to regional-level surveillance systems that play an important role in the control of the Schengen Area's external borders. For example, the EBF contributed to the Spanish 'Sistema Integrado de Vigilancia Exterior' (SIVE). The SIVE was used to boost maritime interdiction activities on the Strait of Gibraltar and other coastal areas in the southern Mediterranean (European Commission, 2013a).

In line with the Stockholm Programme on the area of freedom, justice and security, the Commission has proposed the creation of an internal security fund (ISF) to support the implementation of the internal security strategy and related activities, including law enforcement cooperation, new large-scale information technology systems and external border management. The ISF will be part of a reordering of funding instruments in the Home Affairs area, reducing the number of financial tools from six to two (European Commission, 2013d). The fund will finance activities that implement the EU policy cycle. As a result of specifications under Title V 'Area of freedom, security and justice' in the Lisbon Treaty (TFEU), the ISF will consist of two separate financial instruments, with activities related to drug supply reduction being supported through the proposed 'instrument for financial support for police cooperation, preventing and combating crime, and crisis management'. When adopted, this instrument will run for the period between 2014 and 2020, and will lead to the repeal of the Council decision on the ISEC programme (Council of the European Union, 2012e).

The Instrument for Stability (IfS) is used to help prevent, ease and address the consequences of both crises and security challenges outside the EU. Its use is coordinated by the EU's High Representative, with the EEAS and the Commission together deciding on what the instrument is directed at, and EuropeAid being responsible for implementation. The Commission draws up annual action plans under the instrument. Drug supply reduction projects are addressed in the context of article 4.1 of the current IfS regulation. It funds drug supply reduction activities through both the 'Cocaine Route Programme' and the 'Heroin Route Programme'. These programmes are frameworks for project-oriented action targeted at regions along known drug trafficking routes, and aim at disrupting the trade and alleviating damage to the regions through which drugs transit (European Commission, 2012f). In this context, the EU has financially contributed to the Airport Communication Project (AIRCOP) and the Seaport Cooperation Programme (SEACOP), designed to interdict drugs at air and sea ports. Both programmes are due to run between 2010 and 2014, with the EU contributing a total of EUR 4.8 million to AIRCOP and EUR 3 million to SEACOP (European Commission, 2011b).

To become Member States of the EU, countries must bring their legislation into line with that of the Union. Candidate and potential candidate countries receive support through the Instrument for Pre-accession Assistance (IPA), which provides assistance for transition and institution building, cross-border cooperation, regional development, human resources and rural development (European Commission, 2012h). The IPA makes provision for drug-related projects and assistance within its funding activities. For example, the EMCDDA works with candidate and potential candidate countries to strengthen national capacity to monitor the drug situation (EMCDDA, 2013b).

Candidate and acceding countries receive assistance through various EU programmes. These include the European Neighbourhood Programme (ENP) and its associated financial tools the European Neighbourhood Policy Instrument (ENPI) and the Technical Advice and Information Exchange (TAIEX) instrument. For example, through TAIEX, support is given to the development of drug policy and its coordination in candidate countries, where workshops designed to facilitate knowledge transfer are held with national and EU experts. This contributes to capacity building in the fight against drugs and crime.

In other regions of the world where the production and trafficking of drugs poses challenges, such as Latin America, the EU provides assistance through its Development Cooperation Instrument (DCI). Funding under this instrument has been invested in the Cooperation Programme between Latin America and the European Union on Drugs Policies (COPOLAD), for example. Running between 2010 and 2014, the programme has a budget of approximately EUR 6.6 million, provided by the EU. It focuses on four main objectives: strengthening the mechanism for drug policy dialogue between the EU and Latin America and the Caribbean, supporting the development of national drug observatories, and enhancing capacity in demand reduction and supply reduction (European Commission, 2012c). EU priorities and actions against the threats posed by the production and trafficking of illicit drugs are guided by strategic planning tools, and the following section looks at these planning instruments in the drugs and security fields.

Policy framework

Given the complex and far-reaching nature of the problems posed by the production and trafficking of illicit drugs, responses to these issues span several areas of policy. The general approach taken by the EU, its Member States and international partners on drug supply reduction issues is elaborated in the EU's internal and external security and drug policies. Both of these policy fields have a comprehensive scope, extending beyond drug supply reduction. The EU internal security policy is concerned with terrorism, cybercrime, the activities of organised crime groups, trafficking in human beings and the production and supply of illicit drugs. Structurally, the EU drug strategies have been built around two pillars — demand reduction and supply reduction — and three cross-cutting, or transversal, themes — coordination, international cooperation, and information, research, monitoring and evaluation, an approach now also evident in most EU Member States' drugs strategies. Consequently, EU-level drug supply reduction policy forms part of these two overarching areas, which complement and support each other, where concerns around the illicit drugs trade are increasingly situated within the overall context of internal and external security challenges. It is predominantly these two areas that provide the framework for action against the production and trafficking of drugs, where measures agreed and designed by the Member States and the EU institutions are elaborated (see the section 'Institutional arrangements'), providing the agenda for action undertaken with the legal and funding tools at their disposal (see the section 'Legislation and financial programmes'). This section of the report looks at how drug supply reduction arises in both policy areas and sets out the type of actions being taken.

EU internal security policy

Within the context of the European Council's meetings, the government leaders of EU Member States agree the overarching political direction that the Union should take in key policy areas. It is here, building on the work of the European Commission and the Council, that the focus of security policy has been endorsed. For example, the spectrum of security challenges facing the EU was set out in 'A secure Europe in a better world', the EU external security strategy, approved by the European Council in 2003. It identified organised crime and drug trafficking as important threats both within and outside the EU, alongside terrorism, the proliferation of weapons of mass destruction, regional conflicts and state failure (European Council, 2003).

The origins of the EU's approach to internal security are closely bound up with the Lisbon Treaty (TFEU) and a set of other developments (Table 5). Title V of the treaty addresses the 'area of freedom, security and justice'. In an overarching way, article 67 seeks to establish the EU as an area where citizens are entitled to freedom of movement, the protection of their fundamental rights and a high level of security through the prevention of and fight against crime. Achieving this vision has been a long-term policy objective, which has developed incrementally through three successive implementing programmes since 1999. These are the Tampere Programme, The Hague Programme and the Stockholm Programme. Given their focus on creating a secure EU society in line with the TFEU, these programmes have addressed issues at the core of internal security matters such as external border control, judicial and police cooperation and the fight against organised crime, including the production and trafficking of drugs (Council of the European Union, 2012b; European Commission, 2013e).

TABLE 5
Timeline of EU internal security developments

1999	The Tampere Programme The Schengen acquis
2003	EU external security strategy
2004	Comprehensive Operational Strategic Planning for the Police (COSPOL) The Hague Programme
2005	Action plan implementing the Hague Programme Council conclusions on intelligence-led policing and the development of the Organised Crime Threat Assessment (OCTA) EU Organised Crime Report
2006	EU Organised Crime Threat Assessment
2008	Report on the implementation of the external security strategy Council framework decision on the fight against organised crime
2009	Council Decision on setting up the Standing Committee on Operational Cooperation on Internal Security
2010	Stockholm Programme Stockholm action plan Internal security strategy Internal security strategy in action Council conclusions on the creation and implementation of an EU policy cycle on organised and serious crime
2011	Council conclusions on setting the EU's priorities for the fight against organised crime between 2011 and 2013 Policy advisory document for the years 2011 to 2013 Amending the COSPOL framework into the European Multidisciplinary Platform against Criminal Threats (EMPACT)
2012	EMPACT terms of reference
2013	EU Serious and Organised Crime Threat Assessment (SOCTA) Council conclusions on setting the EU's priorities for the fight against serious and organised crime between 2014 and 2017 Policy advisory document for the years 2014 to 2017

In the Stockholm Programme (2010–14), the European Council identified drug trafficking as a cross-border organised crime activity that posed a serious challenge to the EU's internal security, and the response that it called for — in line with the Lisbon Treaty (TFEU) — has had a defining impact on the area. For example, it tasked the Council of the European

Union (the Council) and the European Commission with creating an EU internal security strategy grounded in, among other things, cooperation and intelligence-led policing. Within the framework of this overall strategy, it also requested the Council and the Commission to develop a specific strategy to address organised crime (the 'policy cycle', see below), to prioritise the types of crime to be targeted, and to utilise Europol's European and regional Organised Crime Threat Assessments (OCTA) to inform planning. In building mutual support between policy areas, the Council and the Commission were also asked to ensure that the 2013–20 EU drugs strategy supported the internal security strategy and complemented the specific organised crime strategy. In this way, drug supply reduction activities are addressed in both policy areas in an integrated way. The European Council also made the Commission responsible for assessing the feasibility of establishing an Internal Security Fund (ISF) to support the security strategy (Council of the European Union, 2012e; European Council, 2010b).

In 2010, the European Council endorsed the internal security strategy 'Towards a European security model', supporting the development of the EU as an area of freedom, justice and security. It was designed to integrate existing work on internal security and complement the framework provided by the Stockholm Programme in addressing security threats. In responding to, among other things, organised and serious crime, drug trafficking and cross-border crime, it underlined the importance of cooperation between law enforcement, judicial and border control authorities. The strategy also acknowledged the central role of intelligence-led policing and early-warning and risk assessment processes in supporting EU action, particularly the work of COSI (European Council, 2010a).

The main objectives and actions around which existing internal security activities and their development are based have been elaborated by the Commission. In a document on the internal security strategy, the Commission set out five objectives and supporting actions. For example, drug supply reduction issues are covered under the objective of disrupting international crime networks. This is implemented through reviewing legislation on money laundering, supporting use of the European arrest warrant, encouraging more use of joint investigation teams, strengthening anti-corruption measures and the establishment of asset recovery offices by the Member States. Similarly, action against drug trafficking is addressed through the objective of strengthening security through border management. Implementation activities here include the establishment of the European Border Surveillance System (EUROSUR) to enhance the detection and tracking of maritime vessels smuggling drugs. Complementing this, initiatives to strengthen risk analysis and targeting of illicit goods being moved across the EU's external borders will be developed, alongside increasing interagency cooperation at the national level, through common risk analysis and the improvement of border checks (European Commission, 2010b).

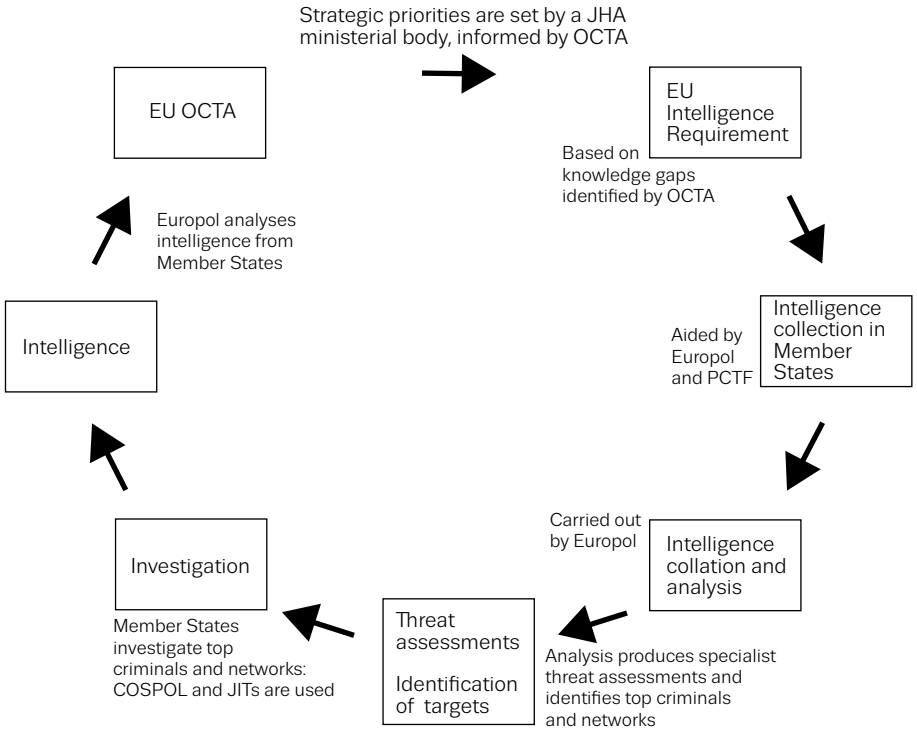
The Commission has set out this agenda, as its role in the decision-making process at the EU level includes proposing legal acts and assessing the impact of existing ones. In this sense, the Commission has proposed new legal acts on a range of issues. These are designed to update existing legislative tools so that EU actions target organised crime more effectively. Among the proposals are a fourth anti-money laundering directive coupled with a fund transfer regulation, a directive on the freezing and confiscation of the proceeds of crime in the EU, and amendments to two existing Council decisions on new psychoactive substances and drug trafficking penalties (European Commission, 2013a).

Policy cycle on organised and serious international crime

Building effective cooperation mechanisms for the EU and its Member States and the development of intelligence-led policing are fundamental components of the EU's approach to tackling organised crime. This has been interlinked with the creation of organised crime threat assessments and the work of Europol. In the Hague Programme (2004–09), Europol was requested to change its intelligence reports from the format of organised crime situation reports to 'threat assessments' of serious crime. The method supporting the assessments involves the Member States providing data in the form of an 'intelligence requirement' through their Europol national units. Once received, the data is combined with Europol's analysis work files to produce the OCTA. The resulting assessment functions as a priority-setting tool for the Council's working groups and coordination platforms (Council of the European Union, 2005a).

Arising from the Council's 2005 conclusions on intelligence-led policing, a European criminal intelligence model (Figure 3) was designed and refined over several years. The model integrated the full cycle of activities behind building operational intelligence on organised crime groups, setting priorities and taking coordinated action. Within this process, the Comprehensive Operational Strategic Planning for the Police (COSPOL) platform was used to implement and support the criminal intelligence model. COSPOL was initiated in 2004 as a platform to facilitate operational cooperation in law enforcement. The platform and the projects it ran were placed under auspices of the European Police Chiefs Task Force (EPCTF) (Council of the European Union, 2005a, 2009a).

FIGURE 3
The European criminal intelligence model



Source: Adapted from Council of the European Union (2009a).

Following on from the COSPOL projects, the Council supported the creation of the Harmony project, in collaboration with the European Commission through its framework programme 'Prevention of and fight against crime'. The Harmony project contributed to the design of the policy cycle adopted by the Council in 2010, which is sometimes referred to as the 'harmony process', as a result of its bringing all the relevant actors and tools together (Council of the European Union, 2010b, 2010d).

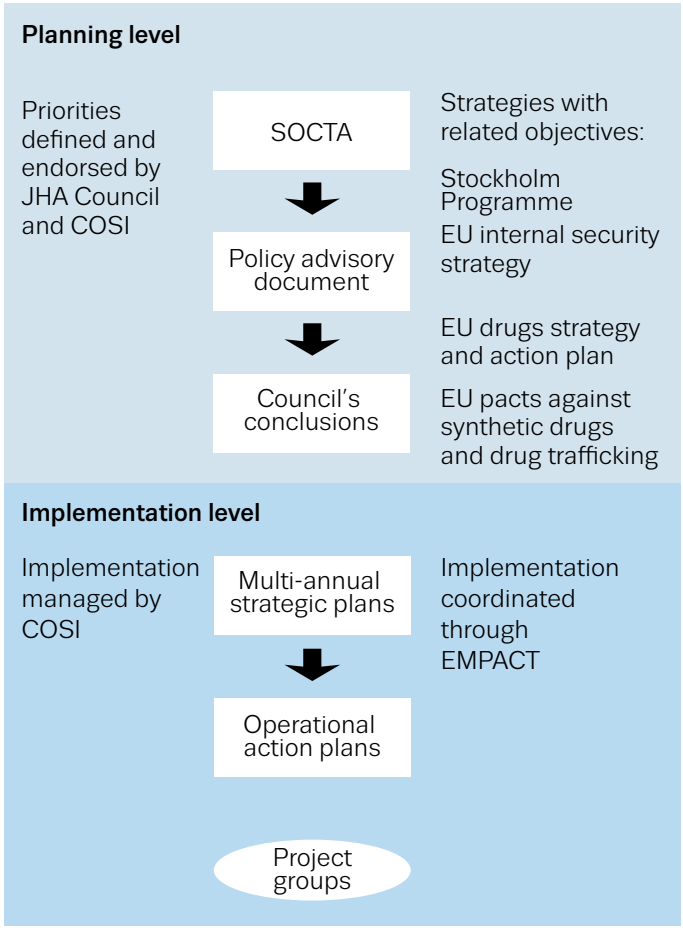
In 2009, the entry into force of the Lisbon Treaty removed the three pillars of the EU and established the European Union, resulting in increased legislative powers in the policy areas that had previously been subject to intergovernmental cooperation (i.e. the second and third pillars) (European Commission, 2010c). Article 71 of the Treaty (TFEU) called for the creation of the Standing Committee on Operational Cooperation on Internal Security (COSI), which was established by a Council decision in 2009. Bringing together the Member States' representatives, COSI is responsible for the facilitation of operational cooperation among competent authorities at the national level for internal security and for the evaluation of activities in this area. Although it is required to support the Council and report to the Parliament, it is not involved in undertaking operational activities, which are the responsibility of Member States, or the preparation of legislation (Council of the European Union, 2009b).

As a result of the Stockholm Programme, COSI was given responsibility for implementing the EU internal security strategy (Council of the European Union, 2010a). Within the context of this work, COSI developed the policy cycle for organised and serious international crime, within which it plays a leading role in defining, implementing, monitoring and evaluating the EU's activities against organised crime (Council of the European Union, 2010b).

Building on the approach defined in the Council's 'Architecture of internal security' and the Harmony project, the Council set out conclusions on the policy cycle in 2010 (Council of the European Union, 2006a, 2010b, 2010d). It elaborated an action plan for both the initial (2011–13) and full (2014–17) phases of the policy cycle and the overarching steps in the process. These are: (1) policy development, (2) priority setting, (3) implementation and monitoring, and (4) evaluation of the current policy cycle and definition of the next one.

The process involves the Presidency of the Council, COSI and the European Commission developing a policy advisory document (PAD) based on the SOCTA. This document is then used by the Council to agree conclusions, drafted by COSI, which define the crime priorities in the policy cycle — it is the Council's responsibility to make political decisions in the Justice and Home Affairs area. Subsequently, multi-annual

FIGURE 4
The policy cycle's components



strategic plans ([4]) are established and implemented through operational action plans, both of which are developed by the Member States, the Commission and the EU agencies under COSI's coordination. Following this, project groups are established to manage each operational action plan (Figure 4) (Council of the European Union, 2010b).

In this way, the policy cycle — like the EU drugs strategy 2013–20's supply reduction measures — contributes to the implementation of the EU internal security strategy's objective to disrupt international crime networks (European Commission, 2013e). This supports the development of the EU's area of freedom, justice and security as set out in the Lisbon Treaty (TFEU) and the Stockholm Programme. Similarly, the strategic goals identified during the initial phase of the policy cycle functioned to implement the 'European pact to combat international drug trafficking — disrupting cocaine and heroin routes' and the 'European pact against synthetic drugs'. These two targeted planning tools reinvigorated and focused the political will to address these supply reduction issues, and their aims fed into the goals of the policy cycle (Council of the European Union, 2010c, 2011c).

A core part of the policy cycle is the mechanism used to implement operational actions. The Council redesigned the COSPOL platform as the European Multidisciplinary Platform against Criminal Threats (EMPACT) in 2011 (see the box on EMPACT). Action 5 of the policy cycle required COSI and the Commission to review the COSPOL terms of reference in order to bring the platform into line with the policy cycle and give it the capacity to implement the operational actions (Council of the European Union, 2011d). To reflect the experience gained in planning the policy cycle and the multidisciplinary nature of the project, the Council renamed the platform as EMPACT (Council of the European Union, 2011a). In developing the tools needed to support the policy cycle, actions 1, 2 and 4 of the action plan focused on the development of Europol's SOCTA. Whereas Europol's 2011 OCTA had been used for priority setting in the initial phase of the policy cycle, the 2013 SOCTA was used to develop the priorities for the full policy cycle, supporting action 26 in the action plan (Council of the European Union, 2010b; Europol, 2011, 2013).

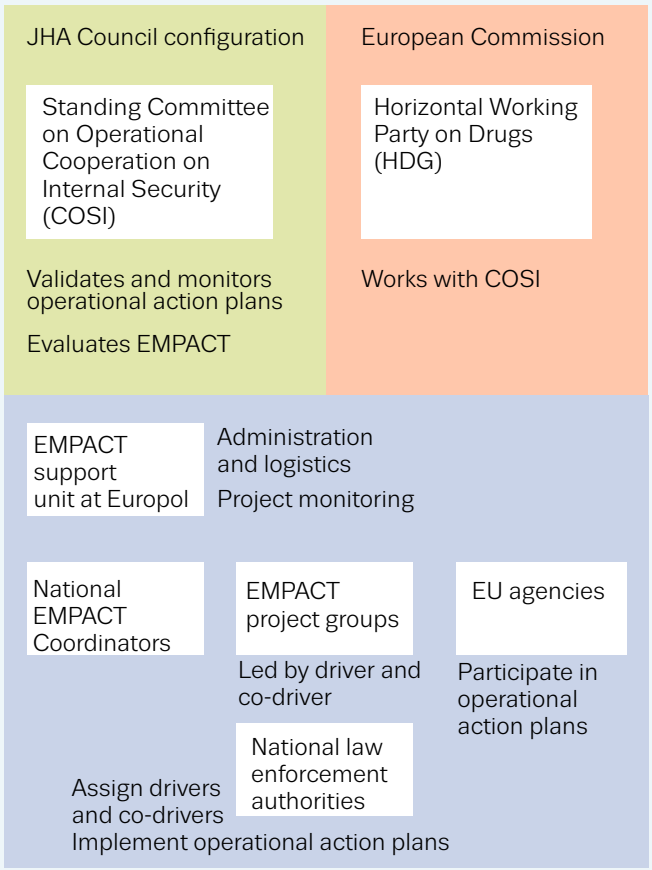
([4]) During the initial phase, strategic goals were adopted, but not referred to as multi-annual strategic plans (Council of the European Union, 2010b).

The European Multidisciplinary Platform against Criminal Threats (EMPACT)

Replacing the COSPOL framework within the European criminal intelligence model (Figure 3), EMPACT functions as the coordination platform for the EU Member States and institutions to implement operational law enforcement actions. It provides a structure to develop and manage actions supporting the policy cycle. Bringing together representatives from the Member States, EU agencies, public and private organisations, and third countries, it is multidisciplinary in nature (see the graphic below, 'EMPACT participants'). It is here that the crime priorities agreed by the Member States' representatives at COSI are implemented by National EMPACT Coordinators (NECs). Holding a senior law enforcement position of a strategic nature, the NECs must have the authority to implement the projects agreed. They must assess the need for and ability of their respective countries to participate in addressing a crime priority, monitor implementation of the action and report to Europol and COSI on it.

Europol plays a central role through its EMPACT support unit, which provides administrative and logistical support to the platform, as well as monitoring the progress of projects. It assigns an official to manage each project. When the operational action plans, validated by COSI, supporting the policy cycle are designed, a lead country and a back-up — known as the driver and co-driver — are assigned to lead the project group implementing the joint actions. Projects — one per crime priority — are generally scheduled to run for 12-month periods. COSI requests Member States to integrate the actions implementing the operational action plans into their national planning and to provide supporting resources. Both the European Commission and the EU agencies make provision for participation in EMPACT projects. COSI is responsible for evaluating EMPACT, and has designed its terms of reference (Council of the European Union, 2012c, 2013a).

EMPACT participants



The policy cycle approach does not involve all Member States participating in all actions. Rather, those most affected by specific criminal threats take part in the operational actions targeting them. Other Member States with proven experience in responding to particular types of crime problems may also be involved in supporting the actions (Council of the European Union, 2013d).

As a feedback-oriented process, the policy cycle is designed to support the adjustment of crime priorities so that they remain up-to-date, build on the lessons learned from the initial policy cycle and take into account other EU-level work addressing the activities being targeted. In this sense, a move from a focus on (geographic) criminal hubs in the OCTA, to one structured around illicit commodities in the SOCTA, based on the simultaneous involvement of organised crime groups in multiple illegal activities, resulted in a revised set of priorities for the full policy cycle (see Table 6). This reflects the fact that some activities are being addressed through other EU mechanisms and processes, but will still be taken into account when designing the specific actions in the operational action plans (Council of the European Union, 2013d). Following action 40 of the policy cycle's action plan, an interim assessment of the full cycle (2014–17) will be prepared in 2015, identifying and recommending modifications to the priorities (Council of the European Union, 2010b).

TABLE 6

Key priorities related to drug supply reduction in the policy cycle

Initial cycle: 2011–13
Weaken the capacity of organised crime groups active or based in West Africa to traffic cocaine and heroin to and within the EU
Mitigate the role of the Western Balkans as a key transit and storage zone for illicit commodities destined for the EU and logistical centre for organised crime groups, including Albanian-speaking organised crime groups
Reduce the production and distribution in the EU of synthetic drugs, including new psychoactive substances
Disrupt the trafficking to the EU, particularly in container form, of illicit commodities, including cocaine, heroin, cannabis, counterfeit goods and cigarettes
Full cycle: 2014–17
Reduce the production of synthetic drugs in the EU and disrupt the organised crime groups involved in synthetic drugs trafficking
Reduce cocaine and heroin trafficking to the EU and disrupt the organised crime groups facilitating the distribution of these drugs in the EU

NB: This table does not list all of the policy cycle's crime priorities
Source: Council of the European Union (2011b, 2013b).

The policy cycle represents the culmination of EU efforts to develop an effective priority-setting and operational cooperation mechanism between the Union and the Member States. It reflects the EU's commitment to the evaluation and modification of policies based on the experiences gained and the upgrading of the supporting infrastructure. In line with action 20 of the policy cycle's action plan, the European Commission evaluated the initial phase of the policy cycle and used the results to support the implementation of the full cycle. The evaluation identified the need to strengthen the engagement of the Member States in the policy cycle and the EMPACT platform, and to define the strategic goals so that they are more conducive to the design of operational EMPACT activities. The Commission underlined the need for flexibility in the process, in order to allow for the termination of actions and projects that are no longer relevant or not being achieved, and the importance of conveying information to Europol. The evaluation also noted the need to simplify the funding process and establish synergies with EU actions in the external security area (Council of the European Union, 2013a).

EU drugs policy

Since 1990, the EU and its Member States have used the format of a strategic (long-term) planning document, increasingly supported by an operational (short-term) planning tool, to express drug policies. Drug supply reduction activities are a central component of this model for expressing drug policy, which provides orientation and coordination for action. Below, EU supply reduction activities are discussed in the context of the EU drugs strategy 2013–20 and its action plan 2013–16.

The EU legal infrastructure is constantly evolving in response to the dynamic and shifting nature of the problems posed by the production and trafficking of drugs. This is visible both at the treaty level in the general JHA area and in the specific legislative tools that enable cross-border policing and judicial action. Similarly, new EU-level drug strategies and action plans are adopted as old ones expire, in order to restate support for the action being taken, as well as to re-orient and update that work. In 2012, the EU adopted its sixth drugs strategy since 1990 (Table 7). As the EU drugs strategies and action plans extend over both long and short periods of time, actions initiated under an earlier strategy or action plan may continue to run under, and give support to, subsequent strategies or action plans.

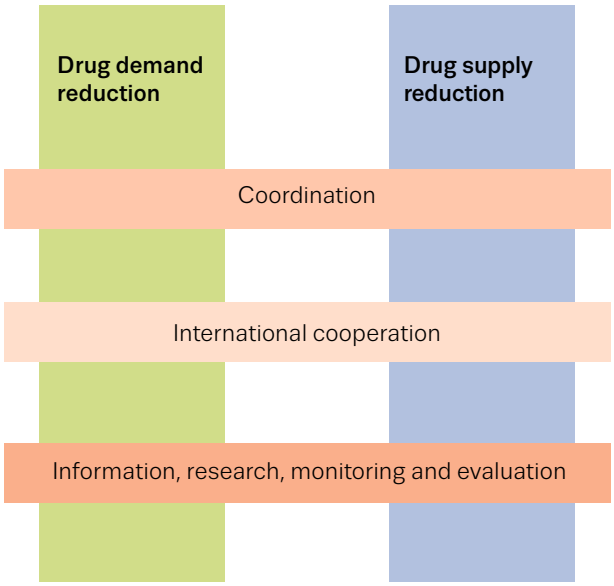
It is in these EU-level drug strategies and action plans that the main principles, objectives, priorities and actions addressing drug issues generally are elaborated. This is done across the two pillars of demand reduction and supply reduction and the three cross-cutting themes of coordination, international cooperation, and information, research, monitoring and evaluation (Figure 5). This conceptual architecture provides a coherent framework for mapping, assessing and structuring activity, and has been increasingly adopted at the national level by EU Member States in their drug policies. The equal focus placed on demand reduction and supply reduction activities, where both elements reinforce each other, is the central principle of the 'balanced approach' to drug policy.

TABLE 7

Timeline of EU drugs strategies

1990	First European action plan to combat drugs
1992	Second European action plan to combat drugs
1995	EU drugs action plan 1995–99
2000	EU drugs strategy 2000–04 EU drugs action plan 2000–04
2005	EU drugs strategy 2005–12 EU drugs action plan 2005–08
2009	EU drugs action plan 2009–12
2012	EU drugs strategy 2013–20
2013	EU drugs action plan 2013–16

FIGURE 5
EU drugs strategies are built on two pillars and three cross-cutting themes



Both strategies and action plans are designed by the Member States under the coordination of the Presidency of the Council and the HDG, and adopted by the Council at the JHA configuration. The framework provided by the EU drugs strategy 2013–20 and its current (2013–16) and subsequent (2017–20) action plans is designed to complement the Member States' national strategies and to support joint actions. The strategy seeks to ensure an effective and efficient use of the resources available to address drug problems. In the area of supply reduction, it has identified several challenges. These include the dynamic nature of illicit drugs markets, changes in trafficking routes, and the role of cross-border organised crime and new technologies in the trafficking of illicit drugs and new psychoactive substances. In addition, the strategy has noted the importance of preventing the diversion of drug precursors and cutting agents from licit industry that can be used to manufacture illicit drugs. In an overarching sense, the strategy responds to these challenges through its objective to disrupt drug markets and limit the availability of illicit drugs (see the box 'Supply reduction in the EU drugs strategy') (Council of the European Union, 2012d).

Supply reduction in the EU drugs strategy

The overarching objective of the EU drugs strategy 2013–20 in the area of supply reduction is a measurable reduction of the availability of illicit drugs, through:

- the disruption of illicit drug trafficking;
- the dismantling of organised crime groups that are involved in drug production and trafficking;
- efficient use of the criminal justice system;
- effective intelligence-led law enforcement and increased intelligence sharing;
- an EU-level emphasis on large-scale, cross-border and organised drug-related crime.

Source: Reproduced from Council of the European Union (2012d).

In meeting this objective, a number of priorities have been set out in the strategy, which are then translated into supporting objectives and specific actions in the EU drugs action plan 2013–16 (Table 8). Here, drug supply reduction and internal security issues are clustered around a number of themes, where actions are undertaken by EU institutions, working groups and agencies in conjunction with the Member States, through cooperation platforms. Utilising and updating the EU's legal tools plays an important role in implementing the action plan. For example, the design and adoption of new legislative measures underpins the achievement of measures against drug trafficking, money laundering (action 17), the availability of new psychoactive substances (action 18), the diversion of drug precursors (action 19) and the use of certain chemicals as cutting agents (action 20). The collection and use of information to support intelligence-led policing forms a central part of the EU response to drug production and trafficking. This includes measures designed to make effective use of law enforcement information to support joint investigation teams, joint customs operations, judicial and law enforcement cross-border cooperation activities and EMPACT projects (action 10). Similarly, providing support to cooperation platforms that facilitate information exchange is aimed at tackling new threats arising from shifts in drug supply routes (action 13), whereas the development of key indicators on drug supply reduction seeks to improve monitoring of the drug markets (action 16) (Council of the European Union, 2013e).

TABLE 8
Distribution of objectives and actions in EU drugs strategy and action plan

	Drug demand reduction	Drug supply reduction	Coordination	International cooperation	Information, research, monitoring and evaluation
EU drugs strategy 2013–20	1 objective 10 priorities	1 objective 11 priorities	1 objective 6 priorities	1 objective 10 priorities	1 objective 10 priorities
EU drugs action plan 2013–16	3 objectives 9 actions	3 objectives 13 actions	3 objectives 8 actions	3 objectives 14 actions	3 objectives 10 actions

Source: Council of the European Union (2012d, 2013e).

Both the policy cycle and the EU drugs strategy contribute to the implementation of the EU internal security strategy (European Commission, 2013a). These strategic tools and their accompanying action plans are designed to complement each other, so that actions being implemented under one strategy are taken account of in the other. This avoids duplication of efforts, provides effective coordination of EU-level policy actors and ensures that all aspects of drug supply reduction are covered through the EU internal security and general drugs strategies. For example, objective 4 of the drugs action plan is aimed at building 'effective law enforcement cooperation and coordination [...] in coherence, as appropriate, with relevant actions determined through the EU policy cycle'. COSI is involved in managing the implementation of five of the 13 actions addressing supply reduction issues in the drugs action plan (Council of the European Union, 2013e). This supports the European Council's request in the Stockholm Programme for the Council and the Commission to develop a drugs strategy that complements and takes into consideration the EU internal security strategy and the policy cycle (European Council, 2010b).

Reflecting this approach in practice, action 11 of the drugs action plan seeks to 'identify and prioritise the most pressing threats associated with drug-related organised crime'. This is implemented through the work of Europol in developing its SOCTA, the creation of a policy advisory document by the Commission and COSI, and the adoption of Council conclusions setting out the crime priorities for the full policy cycle between 2014 and 2017 (Council of the European Union, 2013e). Similarly, the EMPACT platform supports six of the 13 actions addressing supply reduction in the drugs strategy, reflecting the level of synergy between drug supply reduction and internal security tools. This is evident, for example, in responding to developments in communication technologies, particularly the Internet, which facilitate the illicit drugs trade (action 22), where EMPACT is a source of law enforcement information. In this context, it is important to remember that the EU drugs strategy is a comprehensive tool, covering internal and external actions by the Union. Consequently, it takes account of related strategic instruments, such as the policy cycle, in order to meet related objectives, such as identifying the main criminal threats facing the EU.

Conclusions

Recent decades have been marked by shifts in the production and trafficking of illicit drugs. Globalisation, characterised by the increased movement of people and goods across the world, together with the near-universal use of the Internet, has sustained illicit drug markets. New methods of manufacturing drugs are devised to bypass controls on drug precursors by using pre-precursors and unscheduled drug precursors. While laws are being adopted to restrict the sale of new psychoactive substances, molecules are tweaked in illicit laboratories to evade bans. The Internet — an integral means of organising the production, trafficking, distribution and sale of illicit drugs — remains unregulated, while financial systems are manipulated to disguise the proceeds of crime.

The EU and its Member States have reacted to the activities of organised crime groups by taking the threats they pose into account when updating Union legislation. EU treaties provide legal support for a range of counter-measures that are implemented through specific and targeted legal acts designed to facilitate cooperation between the Member States in tackling drug production and trafficking. In attempting to hit this moving target, the use of legal tools is monitored so that appropriate revisions can be made to keep pace with changes in the behaviour of organised crime groups and in the technologies that support their activities.

Through a set of complementary strategic planning tools, the EU targets its work and builds operational cooperation among national authorities and international partners. At all levels of the EU institutions, the Member States and their representatives guide action, deciding the powers needed and the measures to be taken. This reflects the coordinated and shared approach taken by the EU and its Member States in responding to organised crime and drug trafficking.

The establishment of the EU as an area of freedom, justice and security has been one of the Union's defining achievements. However, this development remains subject to challenges posed by the activities of criminals within and outside the EU's external borders. An intelligence-led approach to law enforcement and internal security has been adopted by the EU. It is underpinned by strategic data collection, analysis and information sharing across areas impacted by organised crime. Measures are designed, implemented, evaluated and adapted to keep pace with changes in the supply of illicit drugs. Here, the Member States, EU institutions and agencies work together and use EU and national legal tools to deliver a targeted response to illicit drug markets.

Abbreviations

Abbreviations and terms commonly used in the fields of supply reduction and internal security are provided here. Although including all the relevant abbreviations found in this publication, please note that the list is not comprehensive.

AFET	Foreign Affairs Committee (European Parliament)
AIRCOP	Airport Communication Project
AWF	Analysis work file (Europol)
BOMCA	Border Management Programme in Central Asia
CABSI	Central Asia Border Security Initiative
CADAP	Central Asia Drug Action Programme
CARIN	Camden Asset Recovery Inter-Agency Network
CATS	Coordinating Committee in the area of police and judicial cooperation in criminal matters
CCWP	Customs Cooperation Working Party
Cepol	European Police College
CFSP	Common Foreign and Security Policy
COMPET	Competitiveness (configuration of the Council of the EU)
COPOLAD	Cooperation Programme between Latin American and European Union on Drug Policies
Coreper	Permanent Representatives Committee (at the Council of the EU)
COSI	Standing Committee on Operational Cooperation on Internal Security
COSPOL	Comprehensive Operational Strategic Planning for the Police
CRIM	Special Committee on Organised Crime, Corruption and Money Laundering (European Parliament)
CSDP	Common Security and Defence Policy
CUG	Working Party on Customs Union
DG	Directorate-general (at the Council of the EU, the EU Parliament or the EC)
EAW	European arrest warrant
EBF	External Borders Fund
ECIM	European criminal intelligence model
EEAS	European External Action Service
EEW	European evidence warrant
EILCS	Europol illicit laboratory comparison system
EIXM	European information exchange model
ELOs	Europol liaison officers
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
EMPACT	European Multidisciplinary Platform against Criminal Threats
EMPACT SU	EMPACT support unit
ENU	Europol national units
EPCTF	European Police Chiefs Operational Task Force (also known as 'TFPC')
EU	European Union
EU INTCEN	European Union Intelligence Analysis Centre (formerly SITCEN)
Eurojust	The European Union's judicial cooperation unit
Europol	The European Police Office
EUROSUR	European Border Surveillance System
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
GAC	General Affairs (configuration of the Council of the EU)
HDG	Horizontal Working Party on Drugs
High Representative	High Representative of the Union for Foreign Affairs and Security Policy
IfS	Instrument for Stability
IPA	Instrument for Pre-accession Assistance
ISEC	Prevention of and Fight against Crime
ISF	Internal Security Fund
JCO	Joint customs operations
JHA	Justice and Home Affairs (configuration of the Council of the EU)
JIT	Joint investigation teams
LEWP	Law Enforcement Working Party
LIBE	Civil Liberties, Justice and Home Affairs Committee (European Parliament)
MAOC-N	Maritime Analysis Operation Centre — Narcotics
MASP	Multi-annual strategic action plan
MFF	Multi-annual financial framework
MS	Member States (of the European Union)
NEC	National EMPACT Coordinator
OCTA	Organised Crime Threat Assessment
PAD	Policy advisory document
PR	Presidency of the Council of European Union
PSC	Political and Security Committee
Reitox	Réseau Européen d'Information sur les Drogues et les Toxicomanies (the EMCDDA's network of national focal points)
SEACOP	Seaport Cooperation Programme
SEDE	Security and Defence Committee (European Parliament)
SIVE	Sistema Integrado de Vigilancia Exterior (integrated external vigilance system)
SOCTA	Serious and Organised Crime Threat Assessment
TAIEX	Technical Assistance and Information Exchange
TE-SAT	EU Terrorism Situation and Trend Report
TEU	Treaty on European Union (Lisbon Treaty)
TFEU	Treaty on the Functioning of the European Union (Lisbon Treaty)
UNODC	United Nations Office on Drugs and Crime

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About the EMCDDA

The European Monitoring Centre for Drugs and Drug Addiction is the hub of drug-related information in Europe. Its mission is to provide the European Union and its Member States with 'factual, objective, reliable and comparable information' on drugs and drug addiction and their consequences. Established in 1993, it opened its doors in Lisbon in 1995, and is one of the European Union's decentralised agencies. The Centre offers policymakers the evidence base they need for drawing up drug laws and strategies. It also helps professionals and researchers pinpoint best practice and new areas for analysis.

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EMCDDA, Praça Europa 1, Cais do Sodré, 1249-289 Lisbon, Portugal
Tel. (351) 211 21 02 00 | info@emcdda.europa.eu
emcdda.europa.eu | twitter.com/emcdda | facebook.com/emcdda

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Drug squads: units specialised in drug law enforcement in Europe

Abstract: Drug law enforcement is likely to be the intervention that contributes the most to reducing the supply of drugs in Europe. Important statistical datasets on drug seizures and drug law offences are the result of drug law enforcement activity, yet little is known about how drug law enforcement is organised in Europe. Based on a survey of specialised units, or drug squads, in 26 countries, this report provides for the first time essential facts about drug law enforcement in Europe. Data on the number of staff, institutional affiliations, mandates and functions of the more than 1 000 drug squads operating in Europe and their approximately 17 000 officers are presented and put into perspective, and knowledge gaps are identified. This report thus provides an evidence base against which to monitor future changes, while offering insights that will help in the contextualisation of essential datasets. Thus, it will be of interest to policymakers, but also to the scientific community, the public at large and those working in law enforcement in Europe and beyond.

Keywords illicit drugs | drug supply reduction | key indicator | drug law enforcement | police | customs | drug markets

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Key findings

This report provides the first European overview of units specialising in drug law enforcement, a key intervention in reducing drug supply. As such, it may be viewed as a monitoring baseline against which future changes can be compared.

About 1 100 specialised drug law enforcement units exist in the 26 European countries participating in the project.

At the time of the survey, September 2012, the staff of drug law enforcement units in Europe amounted to about 19 000, 90 % of whom were law enforcement officers (17 000).

Drug law enforcement units represent about 1 %, on average, of all police staff in Europe, though proportions vary from 0.1 % to 3.5 % in the 23 countries providing information.

Political decisions regarding drug law enforcement in Europe are made primarily by the interior ministries (in charge of police and gendarmerie-like forces), which have responsibilities over drug squads in 24 of the 26 of participating countries.

Ministries of justice have direct responsibility over specialised drug squads in seven countries.

Ministries of finance and trade, which are mentioned by 14 countries, also play a significant role, mainly through the involvement of customs services.

However, justice ministries play a central role in the provision of supervision of drug law enforcement. Indeed, drug law enforcement activities in Europe are overwhelmingly supervised by justice system officials, especially prosecutors, while in a handful of countries other authorities carry out this function.

More detailed information is needed on the roles of customs and justice system officials, including prosecutors, in drug law enforcement in Europe.

As in other areas of policing, drug law enforcement is embedded within the overall system of checks and balances characteristic of democratic states ruled by law. However, because it can make use of intrusive techniques (such as wiretaps and undercover measures), drug law enforcement may require closer supervision than other policing activities.

Most specialised drug law enforcement units in Europe are established within the police, specifically the judicial or criminal police, where almost all countries have established drug squads. However, in most countries, drug squads are also established in other police organisations and other law enforcement organisations such as customs and gendarmerie-like forces.

The distribution of drug squads across the different types of law enforcement organisations is one of extreme diversity, with a wide range of different national combinations existing in Europe.

By contrast, two organisational models dominate the European landscape for implementing drug law enforcement: *dedicated* units, which focus exclusively on drugs and exist in 21 countries; and *serious and organised crime-related* units, which are reported in 18 countries. The two types of organisations coexist in 11 countries.

In two-thirds of the participating countries, there are no formally established units where police and customs organisations cooperate on drug issues.

Nearly all participating countries report that drug law enforcement includes an intelligence-gathering function, mostly performed by drug squads, but in some countries also by drug intelligence units. The management of the drug law enforcement intelligence function in Europe should be analysed in connection with the ongoing development of intelligence-led policing at national and European level.

In most countries, drug squads with a comprehensive technical mandate operate alongside units with specific technical mandates. Thus, for instance, in several countries, units mandated to address all types of drug law offences work alongside squads specialised in combating illicit synthetic drug production.

In a majority of countries, most drug squads operate under a local or regional territorial mandate, while a national mandate is assigned to a central drug squad.

In Europe, it appears that the preferred approach is to give a concrete drug law enforcement response at local levels. This implies that, even if the drug phenomenon has a transnational dimension, the perception is that it requires a local response.

Introduction

This report presents the main results of an EMCDDA study carried out in 2012 on drug law enforcement in Europe. Based on the study, it is now possible to provide, for the first time, an overview of the specialised units that work to reduce the supply of drugs in countries across Europe.

These specialised organisations, or drug squads, as they will be referred to in this report, in addition to enforcing drug laws and carrying out measures aimed at reducing drug supply, are the main sources of the information that is used to analyse the European drugs market. Understanding the key datasets produced largely by these units, such as drug seizures and reported drug supply offences, will be contingent on developing a reliable description of Europe's drug squads and how they fit into and operate with the drug law enforcement landscape.

Although statistics resulting from the activities of drug squads are not touched upon in the study reported here, establishing the context within which these organisations operate is a necessary step towards being able to interpret the data they produce on drug supply and the drugs market.

The study had two main objectives. The first was to provide an overview of the numbers, institutional affiliations and mandates of the specialised drug units operating in the EU Member States, Turkey and Norway. This exercise is necessary for the development of a European key indicator on drug supply reduction, since it provides a baseline against which future developments can be measured. In addition, it will provide insights that will help in the contextualisation of essential elements of the key indicators on drug markets and drug-related crime datasets, such as statistics on drug seizures and reported drug law offences. Secondly, as the EMCDDA's first attempt at collecting information about sensitive drug law enforcement organisations, the study is an important learning exercise on how to build trust and establish a partnership with key European law enforcement experts, a precondition for sustainable and methodologically sound monitoring activities in this field. In this sense, the study can be viewed as an investment for the future. The voluntary and often enthusiastic participation of law enforcement organisations from 26 countries in this project is ample evidence that these objectives are relevant to the practical needs of professionals in the field.

It is not really a surprise that the European drug law enforcement landscape emerging from the study is diverse and complex. Indeed, this was hypothesised at the beginning of the study and the questionnaire sent to the national respondents was designed with this diversity in mind. Drug law enforcement, even at national or local level, is a complex activity, the analysis of which must consider a wide range of factors including legal traditions, geographical settings (for instance, in relation to drug producer regions) and the fact that drug law offences are consensual crimes, which means that law enforcement organisations need to work proactively and selectively.

This report is published in the scope of the EMCDDA's mission to provide factual, objective, reliable and comparable data on all aspects of the drug problem and, more specifically, under its mandate to provide an evidence base for policymakers in the area of drug supply and supply reduction. In addition to policymakers, this report may also be of interest to the scientific community, the public at large and law enforcement professionals, without whose enthusiasm, patience and commitment this project would not have been possible.

Institutional and political context

The EMCDDA has been collecting datasets pertaining to the supply side of the drug problem since its inception in 1995. Initially, and for many years, these data were viewed merely as providing context for the epidemiological key indicators covering drug consumption and its consequences. In recent years, however, a combination of initiatives in the drugs and security fields at European level has highlighted the importance of drug supply issues and the need for them to become a distinct area for monitoring. The present report is a direct result of these initiatives.

The recently expired EU Drugs Strategy (2005–12) (Council of the European Union, 2004), and its two action plans, created the initial momentum, as it confirmed that all EU Member States subscribe to the same set of basic principles, namely that there should be a balanced approach to drug policy, whereby equal importance is given to actions aiming to reduce the supply of drugs and those aiming to reduce the demand for drugs. Whereas the evaluation of the Drugs Action Plan 2005–08 (Council of the European Union, 2005a) pointed to 'a persistent lack of reliable data on drug supply', the following Action Plan (2009–12) (Council of the European Union, 2008) asked the European Commission, the EMCDDA and Europol to 'develop key-indicators for the collection of policy-relevant data on drug-related crime, illegal cultivation, drug markets and supply reduction interventions and to develop a strategy to collect them'. In this context, a number of activities were implemented, including two EU conferences on drug supply indicators (in 2010 and 2012) and three expert meetings (all in 2011). This resulted in the definition of three composite key indicators covering drug supply reduction, drug markets and drug-related crime. Each of these proposed indicators is made up of a number of datasets and analytical tools, which will be further defined in consultation with the Member States under the new Drugs Action Plan 2013–16 (Council of the European Union, 2013) within the EU Drugs Strategy 2013–20 (Council

of the European Union, 2012a). Although the study on drug squads in Europe is an important component of the key indicator on supply reduction, it will also make an important contribution to the other two drug supply key indicators (see below).

An equally important impetus resulted from the Treaty of Lisbon, which entered into force in 2009 (Council of the European Union, 2012b). The Lisbon Treaty continued to develop an area of freedom, security and justice in Europe. In view of the different legal systems and traditions of the various EU Member States, the Treaty highlights a need 'for coordination and cooperation between police and judicial authorities and other competent authorities', and consequently the setting up of 'a standing committee [...] within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union' (Art. 67) (Council of the European Union, 2012b). The Standing Committee on Operational Cooperation on Internal Security (COSI) was established by the Council in early 2010, and launched the new EU policy cycle 2012–13 on internal security. A number of drug issues were identified as a threat to the internal security of the European Union and were the subject of several priorities under the policy cycle and related operational action plans ([1]). This is likely to have an impact on both operational and organisational aspects of drug law enforcement in the EU Member States for years to come. The present study, which describes the situation of European drug law enforcement in mid-2012, will provide a useful baseline against which to monitor future developments in this field.

Following on from the Lisbon Treaty, the Stockholm Programme of the European Council (2010), which sets out the European Union's priorities for the area of justice, freedom and security for the period 2010–14, proclaims an 'open and secure Europe serving and protecting citizens' against threats such as 'serious and organised crime' including 'illicit drug trafficking'. In order to achieve this goal, the Programme sets six political priorities and puts forward nine 'tools'. Particular emphasis is put on achieving a 'European dimension' in the training of law enforcement and justice system professionals, while 'mutual trust between authorities and services in the different Member States' is considered as the basis for efficient cooperation. The European overview presented here of specialised law enforcement on drugs will be helpful for training purposes. For instance, the study has provided input for the European Police College (Cepol) training needs. This report will also facilitate the building of trust between the different professionals involved by improving mutual understanding of existing national instruments and organisational arrangements. This is especially useful since the Programme calls for the identification of appropriate responses to security issues at European level. The prime objective of law enforcement cooperation in the European Union is to combat forms of crime that contain a cross-border dimension, which is often the case for drug supply. Finally, the Stockholm Programme invites the EMCDDA together with the European Commission and Europol to evaluate the EU Drugs Strategy for 2005–12 (see above) and this requires the collection of reliable data on drug law enforcement in Europe.

Drug supply reduction and drug law enforcement

Drug supply reduction is a broad, diverse and complex field where law enforcement plays a central role. However, drug law enforcement is a multifaceted activity involving many actors, organisations, methods and practices, and not all drug law enforcement is geared towards reducing drug supply. For instance, arresting drug users is a law enforcement activity but not necessarily a supply reduction activity. There is, therefore, a need to identify those law enforcement activities and institutions that contribute to reducing the supply of drugs in Europe.

It is likely that the bulk of drug law enforcement carried out by generalist policing organisations is focused on drug users, and therefore cannot be counted as drug supply reduction. However, an unknown proportion of this activity may be contributing to drug supply reduction. In contrast, across Europe, units specialising in enforcing the legislation on drugs possibly carry out most drug supply reduction activities. The nature and intensity of the efforts of the units may vary, depending on national legislation and its implementation, as well as on the resources and priorities of the institutions involved. Nevertheless, it may be assumed that a substantial proportion of the effort of these units is spent on disrupting the intermediary and wholesale levels of the drug supply chain, which contributes to reducing the supply of drugs.

For these reasons, a mapping exercise on drug squads is an appropriate first step in exploring the supply reduction landscape in Europe. It is also a prerequisite for the development of the drug supply reduction key indicator.

Drug law enforcement: consensual crime and priority setting

To understand drug law enforcement, it is necessary to consider the two key concepts of consensual crime and priority setting, which between them define the very nature of drug law enforcement. The following paragraphs attempt to explain in some detail how the nature of the crime and the need for setting response priorities combine to make drug law

([1]) The priorities of the policy cycle are informed by Europol's Serious and Organised Crime Threat Assessment (SOCTA) based on data from the EU Member States and EU agencies.

enforcement a specific type of policing activity. Indeed, drug law enforcement, like all law enforcement activities dealing with other types of consensual crime — such as illegal immigration, illegal gambling and illegal prostitution — is characterised by a combination of proactive detection strategies and a structural uncertainty about the true extent of the crime.

For many types of crime, the offences committed mostly come to the attention of law enforcement institutions as a result of reports by the public. The proportion of committed offences that is reported varies between crimes, with, for example, most car thefts being reported whereas only a small proportion of sexual offences are (Feltes, 2009; van Dijk et al., 2006). These types of crimes, however, are often reported by the victim. Offences against drug laws, in contrast, usually take place in secret between consenting individuals — 'consensual crime' — or, in the case of drug consumption, can be regarded as victimless. Such offences will sometimes be discovered by chance (e.g. during a foot patrol) but, for the most part, detection of drug law offences is the result of proactive policing — initiatives undertaken by drug law enforcement institutions. It is inevitable that the police are unaware of a large number of drug law offences that are committed ('chiffre noir' or 'dark figure'), and are by necessity selective in the types of drug offences they target and the drug-related activities that they attempt to stop (EMCDDA, 2009a, 2012).

The selection of the criminal activities that will be targeted is the result of a management process by which objectives are set for drug law enforcement organisations. This is commonly referred to as priority setting, and may be divided into 'strategic' priority setting and 'operational' priority setting, although the distinction may not always be clear.

Strategic priority setting first involves selecting a number of top-level priority targets for law enforcement, for instance drugs or one specific illicit drug. Here, drugs are, so to speak, in competition with other threats, such as terrorism, organised crime and illegal immigration, for selection as an area deserving of more law enforcement attention and resources than others. Secondly, this decision must be translated into organisational terms, i.e. by selecting the organisations in charge of implementing the priority, or by setting up new organisational arrangements (e.g. creating a special police or customs unit or merging existing units). In addition, one or more territorial mandates are ascribed to the designated organisations. The third step is to allocate the resources available to implement the priorities selected. These are not only financial, but also include human resources (a number of police officers or of man hours), logistics (e.g. cars, surveillance technology, drug test kits) and legal resources (which may be ad hoc, to authorise specific activities, or more generic).

Operational priority setting is a translation of strategic decisions into actions performed by the organisations tasked with implementing the priorities, for instance a drug squad. It involves selecting specific targets for investigation, often in cooperation with the prosecutor or similar official, and allocating specific human, financial and logistical resources to perform the investigations (EMCDDA, 2012).

Law enforcement data, such as statistics on drug seizures, are an important tool in priority setting, especially in decisions regarding resource allocation. However, another important input in priority setting is the operational knowledge of drug law enforcement officers, which is based on experience, is implicit and is rarely recorded in databases. This type of knowledge, which may be referred to as 'investigative experience', is an essential component of police work. It plays a key role, especially in operational priority setting, which is usually embedded into the overall strategic priorities but relies on a combination of factors including daily organisational challenges and issues, available information on the crime situation and individual emphasis. The selection of operational priorities will have an important impact on the aggregated data that will eventually be made public, which will also affect the setting of priorities in the future (Stock and Kreuzer, 1998).

This report explores the areas that both frame and result from strategic priority setting for drug law enforcement in Europe, although fully understanding the European drug law enforcement landscape would also require exploring operational priority-setting areas.

Background, objectives and methods

Background and objectives of the study

The study reported here was designed on the basis of an internal EMCDDA report that laid out the conceptual framework for monitoring drug supply issues and drug supply reduction interventions in Europe (EMCDDA, 2009b). That report was intended to map the activities necessary to implement the EU Drugs Action Plan 2009–12, which called upon the EMCDDA and others to establish key indicators in the field of drug supply and drug supply reduction, especially in view of a lack of reliable data on drug supply issues (Council of the European Union, 2008).

The EMCDDA study on drug squads was intended as the first step towards the establishment of a typology that would improve our understanding of drug supply reduction activities, thereby helping to fill the information gap identified by the evaluators.

The typology should describe and help analyse the activities that are implemented to reduce drug supply. Concretely, it should explain *what* activities are implemented, *how*, by *whom* and *where*, and be tested against reality. Because gathering the information and developing a definitive typology of drug supply reduction activities is a huge task that will probably take many years and many resources, it was decided that this initial study — an exercise that had never been done before at the EMCDDA or elsewhere — would focus on the *who* by surveying specialised drug law enforcement units in Europe. In doing so, the study would also explore, to a certain extent, the *where*.

The rationale of its focus on *specialised European drug law enforcement units*, or *drug squads*, is as follows. In the absence of both a universally accepted definition of drug supply reduction and an official list of the organisations that contribute to reduce drug supply, the EMCDDA assumed that law enforcement was a key contributor to reducing the supply of drugs in Europe. However, it was also assumed that not all drug law enforcement activities contributed to drug supply. For instance, arrests for drug use or possession for use, which account for the majority of the drug law offences reported to the EMCDDA every year, reflect law enforcement activity, but probably do not contribute to reducing drug supply. The focus of the study was further narrowed by excluding law enforcement actors that are likely to contribute to supply reduction in Europe. Among these are foreign law enforcement organisations active in the region, such as the US Drug Enforcement Administration, European officers posted abroad (liaison officers), foreign law enforcement organisations fighting drugs in their own countries (e.g. Moroccan or Venezuelan police forces) and European and international law enforcement organisations, for example Europol, Interpol and the World Customs Organization.

A questionnaire was designed to explore five main areas, covering the existence of drug squads, their organisational affiliations, their mandates, both legal and operational, and their staffing levels (see Annex). Two main difficulties were anticipated when designing the questionnaire. The first was how to phrase questions in a way that would be adapted to all national situations so that the survey would capture as much of the diversity of the European drug law enforcement landscape as possible. Secondly, there were worries that certain types of information might be seen as confidential by the respondents, and questions on these topics could have a negative effect on participation in the survey. Because of this consideration, some questions were not asked in the questionnaire. For instance, while a question about staffing levels of drug squads was included in the questionnaire, no budgetary information was requested. These doubts and difficulties were not all solved when the questionnaire was tested with three EU countries.

This serves as a reminder that the questionnaire was not only a tool to gather information, but, as the EMCDDA's first attempt at collecting data from and about sensitive policing institutions, the study was also an important learning exercise on how to build trust and establish a working relationship with a network of crucial national law enforcement partners. The project may therefore be viewed as laying some of the groundwork for the future of monitoring activities in the field of drug supply reduction at the EMCDDA, and one that will also prove useful in the fields of drug markets and drug-related crime.

Methods

The methodology for this study was designed to collect information in a sequential and logical manner. It allowed a broad scope for learning about drug squads from a range of European countries, as well as having a clear focus on how information about the organisational, operational and coordinating structures of drug law enforcement forces could inform the development of drug supply and supply reduction indicators in Europe.

In order to obtain insights into drug squads in Europe, we conducted several data collection processes. These are summarised in Table 1 and described in detail below.

TABLE 1
Summary of data collection processes

Step in data collection and analysis	Description
Development of the survey questionnaire	13 questions in five areas
	Reference to key documents
	Initial version piloted in three EU Member States
E-mail survey	National reference persons for 30 countries identified through the Reitox network of national focal points
	30 national reference persons invited to answer the questionnaire; 26 countries provided information
National reference person interviews	More than 300 informal interviews with national reference persons
Document review	Targeted review of organisational charts and publicly accessible resources
	29 organisational charts from 18 countries provided and examined
Expert meeting	Preliminary project analysis presented and discussed
	19 participants

Two main steps were involved in the development of the questionnaire. First, the key areas of study interest and initial questionnaire items were outlined. The main study areas were based on discussions with the project team members and other relevant individuals representing drug law enforcement and criminal justice expertise. From these discussions, and with reference to the relevant literature, an English-language questionnaire was developed that consisted of 13 questions in five areas.

Secondly, a pilot study was carried out, in which four drug law enforcement organisations (a mix of police and customs) from three different countries (Germany, France and Portugal) participated. A senior drug law enforcement officer from each agency took part in a one-to-one semi-structured interview, which was intended to:

1. determine the comprehensibility of the questions and the accuracy of the interpretation of key terms and definitions used in the survey questions;
2. determine the quality of the data collected with the survey questions — that is, to estimate the validity and reliability of the data;
3. establish the acceptability of the survey questionnaire for use in the collection of national data on drug squads in EU Member States.

All interviews followed a protocol developed by the project team. This initial test led to modifications being made to the terms and definitions used in the survey questionnaire. The final survey included questions on the availability, human resources, institutional affiliation and mandates of specialised drug units in each country (see Annex).

Following the pilot testing of the survey questionnaire, the project team sought to obtain a Europe-wide overview of specialised drugs units through an email survey. As a first step, the heads of the 30 Reitox national focal points were each requested to nominate a national reference person for the project. The necessary qualifications for the position of national reference person included being institutionally suitably placed and being mandated to provide access to national data on behalf of all drug squads in their country. All 30 Reitox national focal points nominated a reference person, who were then formally contacted by the EMCDDA and were provided additional information about the project and its timescale. It was also made clear to the countries that participation in the study was voluntary.

In July 2011, the survey questionnaire was sent by email to the network of national reference persons. Correspondents from 26 of the 30 countries returned completed questionnaires during the following four months. Typically, participating reference persons occupied senior posts at central law enforcement organisations.

The responses to the survey questions form the backbone of the study in that they provided indications of the number of specialised drug units and their place in the general organisation of law enforcement bodies, as well as the legal, strategic and technical mandates of these units and their staffing patterns.

Based on the survey findings, areas were identified where further investigations could produce a more detailed understanding of the organisational aspects of Europe's specialised drug units. To this end, further information was collected using three approaches: interviews with reference persons; document review; and a two-day expert meeting with a number of reference persons.

As a complementary measure to the email survey, the national reference persons were contacted by telephone. An initial follow-up phone call was made to each of the reference persons immediately after the launch of the email survey questionnaire to resolve any practical issues relating to the completion and return of the survey questionnaire as well as to provide clarifications around issues such as confidentiality

and safe storage and handling of data generated through the project.

A further round of interviews was conducted with the 26 responding reference persons between September 2011 and July 2012. These interviews provided background information to the core data sourced through the survey, they informed a number of sections in the report and they helped identify possible areas for exploration.

These interviews were carried out in order to clarify and add to the information obtained in the survey, particularly regarding priority setting for Europe's drug squads and the relations between these bodies and other national agencies in the same country. Also covered in the interviews were the cultural perspectives on the occupation, the organisation and the policing of drugs. The interviews were organised around the principle of conducting a 'grand tour' of the subject matter, whereby national reference persons were guided towards a small number of destinations, but were encouraged to range freely across related issues in their responses to questions (Undheim, 2003).

Beyond exploring key topics and themes, the interviews conducted during the project fostered trust between the EMCDDA and drug law enforcement organisations laying the basis for future work.

Alongside conducting interviews with national reference persons, a document review of available organisational charts of the reported drug squads was carried out, supplemented by a review of a wide range of publicly accessible resources. The organisational charts, typically of a non-confidential nature, were requested ad hoc from each reference person. In total, 29 organisational charts from 18 countries were examined for additional information about the structure and staff composition of the target units.

Furthermore, an expert meeting was held on 19–20 April 2012 in Lisbon, with the participation of members of the network of European drug law enforcement officers and experts from Cepol (European Police College), the EMCDDA, Europol and MAOC-N (Maritime Analysis and Operations Centre — Narcotics). The purpose of the seminar was to explore the study's preliminary findings, and its outcome has informed various sections of the present report. For instance, brief descriptions of specific features of the approach taken to drug law enforcement in various countries, which were presented by national reference persons, are published as text boxes in the present report.

Preliminary results of the study were shared with more than 40 European law enforcement officers at meetings held in the framework of Cepol's Exchange Programme, which took place in Lisbon in July 2012 and April 2013. The possible inclusion in the study results of complementary information gathered at these events was then discussed bilaterally with the national reference persons.

A draft report was prepared in the first half of 2013, and sent to all national reference persons for review and comments. A total of eight countries provided comments, most of which were integrated into the final report.

Key figures and institutional affiliations

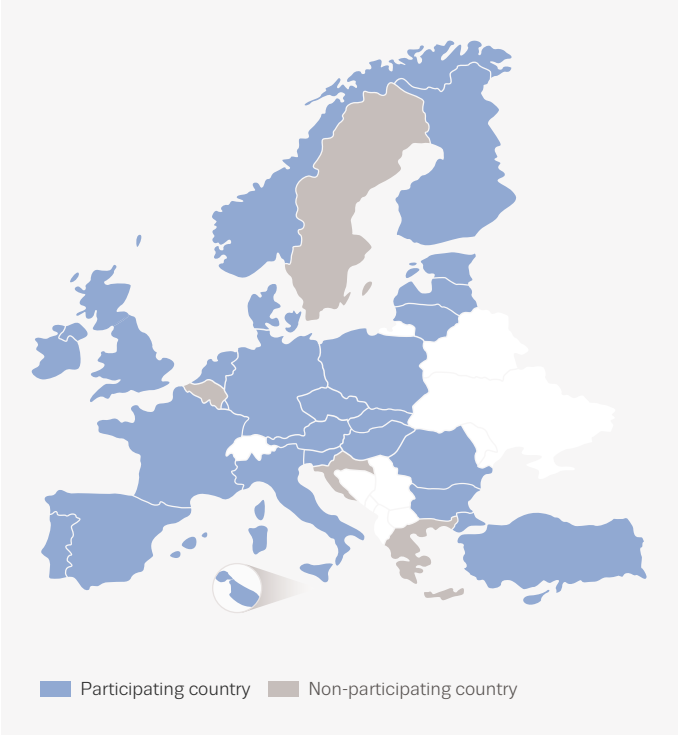
This section presents key figures on the distribution, number and staffing of specialised drug law enforcement units in Europe, and analyses the institutional frameworks within which these units exist and function across Europe. Institutional affiliations of drug squads are described along two dimensions: (i) governmental institutions and (ii) reporting drug law enforcement authorities.

Participating countries

Twenty-six European countries took part in the project by returning a completed questionnaire and providing additional comments and details on their drug law enforcement structures and functions (Figure 1). Non-participating countries either failed to provide data (Greece, Croatia, Sweden) or, in the case of Belgium, provided information that could not be analysed within the framework of this project ([2]).

Of the 26 countries providing information on the number of drug squads that existed in their territory, 17 reported precise figures and the remainder provided estimates. It should be emphasised that the resulting image is a 'snapshot', taken in September 2012, of a situation that is likely to change in the future given the ongoing reorganisation of national police forces in Europe, especially as regards drug law enforcement.

FIGURE 1
Countries participating in the study



Before going on to present the results on the numbers and institutional affiliations of European drug squads, three preliminary remarks should be made. First, in the absence of a generally accepted definition, for the purpose of this project, a specialised drug law enforcement unit, or drug squad, was defined as follows:

'A formally established official, state or governmental, law enforcement agency or sub-division thereof (such as, department, section, unit), the only or main mission of which is to detect and investigate breaches to the drug legislation and to bring the offenders to justice.' ([3])

In addition, the questionnaire specified that these units could have an operational role, be specialised in intelligence or combine the two functions. The jurisdiction of the units could be local, regional, national or 'international'. It also stressed that, although most such drug squads were likely to belong to police or customs services, drug squads potentially existing in other organisations such as intelligence or military organisations (e.g. gendarmerie, Guardia Civil, border guards) should also be counted and reported.

Secondly, the decisions on what units in each country should be counted and reported as drug squads were taken by the national reference persons. For example, Latvia, the Netherlands and Norway initially reported that there were no specifically mandated drug squads in their countries, but that drug law enforcement was implemented by other units (mostly serious and organised crime units). However, after broadening their interpretation framework to include the law enforcement units that work mainly on enforcing drug laws in these countries, the reference persons from the three countries eventually reported information on these units. This more inclusive approach had already been adopted by other countries, such as Bulgaria, Romania and Finland, without previous discussion with the EMCDDA.

Finally, 23 national reference persons provided exact or estimated numbers of drug law enforcement personnel and drug law enforcement officers in their country, based on a broad definition developed by the EMCDDA for the purpose of the study ([4]).

([2]) In May 2013, Belgium reported 41 specialised drug law enforcement units with different territorial mandates. About 500 people worked in these units; almost all were police officers.

([3]) The definition of drug squad was initially drafted by the EMCDDA, reviewed during pilot test interviews with selected national reference persons and eventually included in the survey questionnaire.

([4]) The definition of 'law enforcement officer' was initially drafted by the EMCDDA, reviewed during pilot test interviews with selected national reference persons and eventually included in the survey questionnaire.

Under this definition:

'"Law enforcement officers" are officials who are permitted to arrest individuals, make seizures, conduct investigations and so on.'

The definition was intentionally broad to allow for the expected diversity in the actual attributions and powers granted to law enforcement officers in the 30 European countries invited to take part in the project. Since the majority of the national reference persons were law enforcement officers, it was deemed safe to rely mainly on their understanding of who should be counted among their peers and who should not. In addition, the national reference persons were encouraged to provide their own or other existing estimates in cases where exact numbers were not available.

Number of drug law enforcement units

All 26 participating countries reported the existence of drug squads within their law enforcement structures.

In September 2012, 1 145 drug law enforcement units were reported under the project ([5]). This number includes 15 multi-agency drug law enforcement (MDLE) units ([6]).

The number of drug squads reported by the participating countries ranged from 1 (Denmark, Cyprus, Malta) to 301 (Poland) (Table 2). Clearly, the number of drug squads in a country is not a direct consequence of its size or population. The numbers reported here are likely to reflect differences in a range of factors, including the interpretation of the definition of drug squads and national characteristics in political structure, the criminal justice system, legislation and drug policy.

TABLE 2

Number of drug law enforcement units per country

Country	Drug law enforcement units
Bulgaria	32
Czech Republic	2
Denmark	1
Germany	250
Estonia	6
Ireland	29
Spain	118
France	99
Italy	41
Cyprus	1
Latvia	3
Lithuania	12
Luxembourg	8
Hungary	2
Malta	1
Netherlands	5
Austria	10
Poland	301
Portugal	53
Romania	44
Slovenia	13
Slovakia	2
Finland	26
United Kingdom	54
Turkey	4
Norway	28
Total	**1 145**

([5]) Belgium reported 41 specialised drug law enforcement units, while Hungary and Slovakia each reported disbanding one drug squad in 2013. As a result, the total number of drug squads reported to the project in June 2013 is 1 184.

([6]) Not all the MDLE units reported under the project were considered when counting the total number of drug squads in Europe. Only the 15 'discrete' MDLE units reported were taken into account (a total of 40 MDLE units were identified in Europe; see the subsection 'Multi-agency drug law enforcement units'). An MDLE unit is considered 'discrete' if at least one of its participating agencies is not counted already as a drug squad. So for example, in Germany, only 1 of the 30 reported MDLE units was counted as a discrete unit, since the other 29 units were already counted as police or customs drug squads.

Drug law enforcement personnel in Europe

Information on staffing levels in the national drug squads was provided by 23 of the countries. Based on this information, it can be estimated that, in September 2012, drug squads in Europe had a combined staff of about 19 000 people. The majority of the staff, about 17 200, were law enforcement officers, while the remaining were administrative and technical staff, intelligence analysts or other staff (Table 3).

TABLE 3

Staff assigned to specialised drug law enforcement units in European countries

Country	Officers	All staff
Bulgaria	50	60
Czech Republic	210	236
Germany (1)	2 800	3 000
Estonia	100	100
Ireland	390	416
Spain (1)	3 350	3 900
France (1)	2 600	3 500 (3 000–4 000)
Italy (1)	500 (200–800)	500 (200–800)
Cyprus	179	179
Latvia	67	67
Lithuania (1)	100	100
Luxembourg	40	44
Hungary	80	80
Malta	47	47
Netherlands (1)	175 (150–200)	175 (150–200)
Austria (1)	350	350
Poland (1)	1 150	1 150
Portugal	589	589
Romania (1)	330	330
Slovenia (1)	70	80
Slovakia	85	85
Finland	210	250
Turkey (1)	3 750 (3 500–4 000)	3 750 (3 500–4 000)
Total (1,2)	**17 222**	**18 988**

(1) The reported figure is an estimate.
(2) In the case of an estimated range, the mid-point was taken for calculating the general total.

Although almost 90 % of the reporting countries provided information on drug law enforcement staff numbers, the figures remain tentative owing to gaps in the available information. One of these concerns the United Kingdom, a country with a large population and presumably large numbers of drug law enforcement staff. Were data available for the United Kingdom, they would be expected to raise considerably the estimated number of drug law enforcement staff in Europe. Furthermore, the European total should also be read with the caveat that approximately half of the 23 responding countries provided estimates rather than true counts.

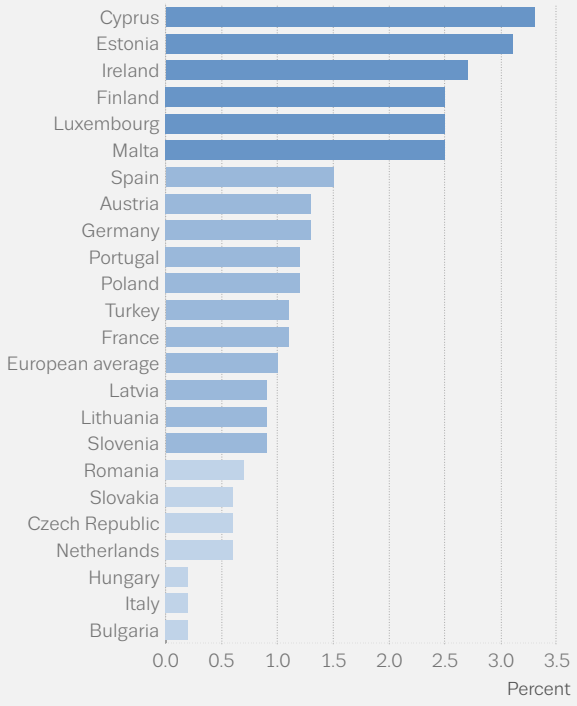
That said, the estimated number of drug squad staff in Europe is a key piece of information elicited by the project. This approximation is the first of its kind and, despite the limitations described above, is important in a number of ways.

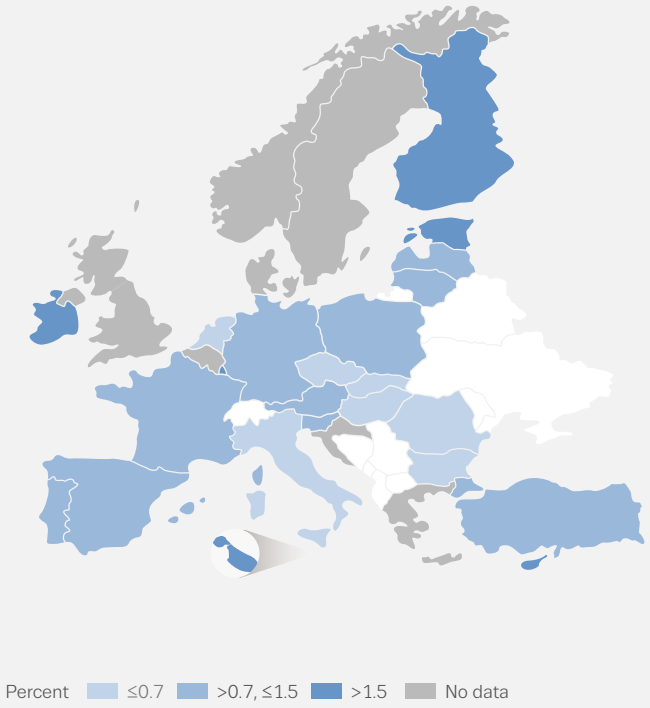
Firstly, when compared with the total number of staff employed in national police forces, it gives an indication of the importance given to specialised drug law enforcement in Europe (7). For the 23 countries for which data are available, drug law enforcement officers represent between 0.2 % (Bulgaria, Italy and Hungary) and 3.3 % (Cyprus) of the total police forces. Overall, a weighted European average shows that about 1 % of all police staff in Europe are drug law enforcement officers (Figure 2). It appears that the police forces with the largest proportions of drug law enforcement officers tend to be found in territorially small or sparsely populated countries.

(7) For the purpose of this calculation, data on the size of police forces are sourced from Eurostat (2013). It should be noted that the Eurostat dataset on the total number of police officers in the 23 countries reporting information is from 2009 (latest data available), while the data on drug law enforcement officers gathered by the EMCDDA are from 2012. However, an exploration of the data collected by Eurostat since 2000 shows that in the period 2000–09 there have not been substantial changes in the total number of police officers in the target countries and in Europe, with the figure remaining around 2 million in the 28 EU Member States, Turkey and Norway. Based on the assumption that no substantial changes to this figure occurred between 2009 and 2012, the latest figures available (2009) were used. In addition, the Eurostat data on the total number of police officers does not include civilian staff, tax police, secret service and other specific departments. Importantly, it also excludes customs services, which in 15 countries have been reported within the number of drug squads, although four countries only provided estimates or exact numbers of customs staff working in specialised drug law enforcement units. As a result, the Eurostat numbers are not immediately comparable to the number of drug law enforcement officers estimated in the project. In addition, two specific cases have to be considered: the Dutch Fiscal Investigation and Information Service (FIOD — 30 staff members), and the Italian Guardia di Finanza staff members working at the DCSA (no data available). These have been reported as drug squads. The total number of staff in these two organisations is presumed to be relatively small and is unlikely to influence the comparison noticeably.

FIGURE 2

Drug law enforcement officers as a proportion of police personnel





Secondly, and more importantly, knowledge of the number of staff assigned to the enforcement of drug laws is needed to improve our understanding of drug supply reduction. As the bulk of drug law enforcement work is performed at the initiative of drug law enforcement institutions, and most drug law offences are detected by these efforts, the number of drug law enforcement staff has a strong influence on the results of drug law enforcement work. These results are often presented in the form of statistics, such as the number of seizures made, the quantities of drugs seized and the number of reported drug law offences, which are routinely used as indicators of the drug market.

Ministerial affiliation

This subsection of the report reviews the governmental authorities responsible for Europe's specialised drug law enforcement units.

One key aspect of the organisation of Europe's specialised drug law enforcement units is their ministerial affiliation — under the responsibility of which ministries they operate. Although it was known from the outset of the project that interior ministries would be key players, the project assumed that a certain degree of diversity would exist. Therefore, it was important to map out which other ministries were involved and to what extent, so that a picture could be constructed of all governmental departments involved and having a stake in drug supply reduction.

Data for this analysis are available from the 26 participating countries. In 12 of these countries, only one ministry is involved in drug law enforcement; in an equal number of countries, two ministries are involved; in the remaining two countries, three ministries are involved.

Where one ministry is involved in drug law enforcement, with the exception of Denmark (Ministry of Justice), this is the Ministry of the Interior, which in some cases (e.g. Cyprus, Malta and Norway) is organisationally aggregated under the name Ministry of the Interior and Justice. In all cases where institutional affiliation to two ministries was noted, this involved the Ministry of Interior in tandem with the Ministry of Finance. In the two other countries, the Netherlands and Portugal, the ministries involved in the supervision of drug law enforcement include the Ministry of Finance, together with the interior and justice ministries, albeit as the Ministry of the Interior and Justice in the Netherlands, where the Ministry of Defence is the third government department (Table 4).

TABLE 4

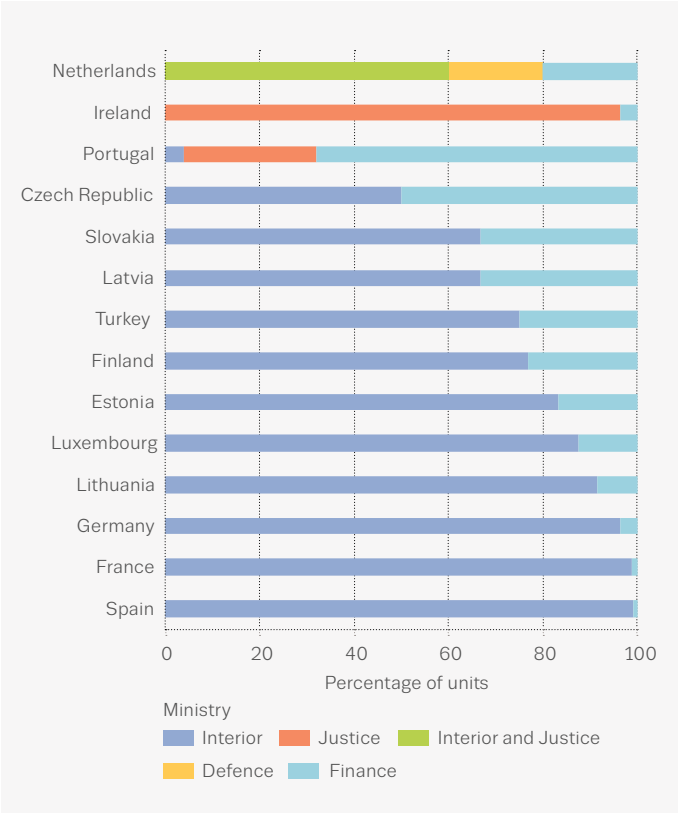
Ministerial affiliation of drug squads in Europe

Country	Interior	Justice	Interior and Justice	Defence	Finance
Bulgaria	X				
Czech Republic	X				X
Denmark		X			
Germany	X				X
Estonia	X				X
Ireland		X			X
Spain	X				X
France	X				X
Italy	X				
Cyprus			X		
Latvia	X				X
Lithuania	X				X
Luxembourg	X				X
Hungary	X				
Malta			X		
Netherlands			X	X	X
Austria	X				
Poland	X				
Portugal	X	X			X
Romania	X				
Slovenia	X				
Slovakia	X				X
Finland	X				X
United Kingdom	X				
Norway			X		
Turkey	X				X

NB: Names of the target ministries may differ across countries in Europe. Nonetheless, guided by the nature of their core work with relevance to drug law enforcement activities, this report uses four collective names for ministries: the Interior, Justice (the Interior and Justice in cases of organisational aggregation), Finance and Defence. In different countries, these ministries are recognised with a range of names listed as follows: Ireland, Justice and Equality; Spain, Economy and Finance; France, Budget, Public Account and State Reform; Cyprus, Justice and Public Order; Malta, Justice and Home Affairs; Netherlands, Justice and Security; Poland, the Interior and Administration; Portugal, Home Affairs — Guarda Nacional Republicana (GNR) and Polícia de Segurança Pública (PSP); Romania, Administration and the Interior; United Kingdom, Home Affairs; Norway, Justice and Police; Turkey, Customs and Trade.

FIGURE 3

Ministerial responsibility of drug squads in countries where drug squads are affiliated with more than one governmental institution



Interior ministries (alone or in tandem with another governmental structure) are by far the government department most commonly involved in drug law enforcement in European countries, reported by almost all (24) of the participating countries. Reported by over half of the responding countries (14), the Ministry of Finance is the second most frequently mentioned governmental body involved in drug law enforcement in Europe, supervising mostly customs services. Justice ministries (alone or alongside another ministry) are responsible for drug squads in seven countries, and the Ministry of Defence is involved in drug law enforcement in one country.

Typically, a drug squad reports to one ministry only, although in some cases it may be subject to a multi-institutional setup involving several ministries. In many of the countries where more than one ministry is involved, the majority of drug squads are under the responsibility of the interior ministry (Figure 3). Although drug squads are linked to finance ministries in all of the countries represented in Figure 3, in most cases they make up a smaller share of the total, especially so in those countries with the largest numbers of drug squads, such as Germany (301), Spain (118) and France (99).

National law enforcement organisations

This subsection deals with the range of national law enforcement organisations within which drug squads are found. These organisations are responsible for implementing the political strategies of ministries, that is to say, translating strategic objectives into concrete organisational arrangements within which operational measures can be implemented. Typically, a drug squad is established within the structure of a single national law enforcement organisation, to which it reports.

From the survey, it appears that drug squads may be set up in four types of law enforcement organisations in European

countries: police forces ([8]), customs and tax services, gendarmerie-like organisations and coast guards.

In each of the 26 reporting countries, enforcement of drug laws is carried out mainly by units located within the police forces. In 16 countries, customs services play a role in drug law enforcement (see the box on customs services). Institutionalised forms of cooperation between police and customs are discussed in a later part of this section under the heading of 'Multi-agency drug law enforcement' (MDLE). Gendarmerie-like institutions are military bodies with powers to enforce national laws, and are found in six countries (France, Spain, Italy, Netherlands, Portugal, Turkey) (see the box on gendarmerie-like organisations). In four countries (Ireland, Spain, Romania, Turkey), coast-guard units are also involved in drug law enforcement (usually alongside police and customs), where they concentrate on countering drug smuggling in coastal areas and territorial waters.

At the European level, therefore, drug law enforcement is mostly carried out by police forces and customs services, with gendarmerie-like organisations a distant third. This reflects the fact that the two principal governmental players in European drug law enforcement are the Ministry of the Interior and the Ministry of Finance.

The role of customs services in European drug law enforcement

The available information shows that customs services are a key player in drug law enforcement in Europe. Although the information on customs services was, overall, less detailed than that for police organisations, key features of customs and their involvement in drug law enforcement are discernible. In Europe, customs services generally appear to operate at the national level (at least in 15 countries), although in two countries they also focus on international cases. Three countries reported that their customs services had a regional or local mandate, or were operating in restricted areas only, such as customs areas.

Much like police forces, customs perform a range of strategic functions including coordination, case management, intelligence and operations. Seven countries reported that customs services perform all of these functions, whereas in others they have a narrower field of operation. Specific drug law enforcement tasks performed by customs services across Europe include countering the production of synthetic drugs and the diversion of precursor chemicals, as well as scrutinising container and passenger traffic at ports and airports.

The role of gendarmerie-like organisations in European drug law enforcement

Gendarmerie-like organisations are militarised police forces with a key role in drug law enforcement in a number of European countries. They are mostly placed under the responsibility of interior ministries. As for customs services, data on these units were relatively limited compared with information on police forces. Nonetheless, the following picture emerged. Gendarmerie-like units appear to take responsibility within a local or district-wide area (in at least three countries), although they can also be found operating at national level (in at least three countries) or targeting specific locations such as harbours and airports (one country) as well as coastal and territorial waters (one country).

At least four of Europe's gendarmerie-like units perform criminal police functions — either general or focused on serious and organised crime. Diversity, however, can be noted, including special interventions aimed at the prevention of drug smuggling (two units in one country) and general policing, including surveillance and patrolling of public drug trafficking or consumption areas (one unit).

The survey showed that the operational layer of police forces may be made up of as many as four distinct branches, and drug squads can be established in any one (or more) of these domains of policing: judicial or criminal police, public security police, border police and general police. In addition, drug squads may exist in customs and gendarmerie-like organisations.

Twenty-five countries report the existence of drug law enforcement units within the judicial or criminal police (Table 5). In five countries, drug squads are established exclusively in the judicial or criminal police; in the remaining 20 countries multi-organisational systems exist involving the judicial or criminal police together with customs (eight countries), general police forces (three countries), gendarmerie and customs (three countries), public security police, gendarmerie and customs (two countries), general police and customs (three countries) and gendarmerie (one country).

Drug squads are established exclusively within the general police forces in one country. To our knowledge, no drug squad units have been set up within border police force structures, although this branch of police forces is active in transnational crime investigation.

([8]) General police, public security police, judicial/criminal police, border police.

TABLE 5

Location of drug squads within domains of police activity, customs and gendarmerie-like organisations

Country	Judicial or criminal police	Public security police	General police	Gendarmerie	Customs
Bulgaria	X				
Czech Republic	X				X
Denmark			X		
Germany	X				X
Estonia	X				X
Ireland	X				X
Spain	X			X	X
France	X	X		X	X
Italy	X			X	
Cyprus	X				
Latvia	X				X
Lithuania	X		X		X
Luxembourg	X		X		X
Hungary	X		X		
Malta	X				
Netherlands	X			X	X
Austria	X				
Poland	X		X		
Portugal	X	X		X	X
Romania	X				X
Slovenia	X		X		
Slovakia	X				X
Finland	X		X		X
United Kingdom	X				X
Norway	X				
Turkey	X			X	X

Organisational status of drug squads

The organisational status of units specialised in enforcing drug laws can be can be differentiated into three categories: dedicated drug squads; serious and organised crime-related drug squads; and law enforcement units with a primary focus on drugs.

Dedicated drug squads focus exclusively on drug trafficking and related crime. This type of drug squad is found in 21 of the 26 reporting countries. The drug squads related to serious and organised crime represent the second most frequently encountered type of specialised drug law enforcement unit in Europe, and are set up in 18 countries. In contrast, law enforcement units with a primary focus on drugs investigate drug-related crime as a primary task, but do not exist exclusively for that purpose. Such units are set up and operate in three countries: Spain and Turkey, with a primary focus on maritime and coastal areas; and Portugal, where they have a strong mandate to fight against street-level drug trafficking.

Netherlands: the programmatic approach of the Central Criminal Investigations Division

Introduced in the mid-2000s, the programmatic approach to law enforcement is specific to the Netherlands. Under the programmatic approach, rather than focusing on the particulars of an individual case, a type of crime is dealt with as a complex phenomenon, where many actors may bear responsibility. In contrast to traditional law enforcement, where the police and prosecution services are the two key parties assumed to have responsibility for countering any type of crime, the programmatic approach uses, in addition to contributions from criminal law enforcement, the input of other parties including government services, such as the tax services or municipal authorities, and businesses.

The programmatic approach is being applied in a growing number of areas. In the field of drug law enforcement, the first area subjected to a programmatic approach was the large-scale cultivation of cannabis — a flourishing business in the Netherlands, partly controlled by organised crime. Today, the approach has been extended to other drug supply activities including the trafficking of heroin and cocaine.

The programmatic approach is intelligence-led. It is based on validated data and information sourced by means of a quadrennial process involving the following steps:

1. An analysis of a particular type of crime addresses questions such as 'What is the scale of this type of crime?', 'What are the enabling and hindering conditions for this type of crime to occur?' and 'Which facilities and players are relevant?'
2. The output from the strategic analysis is used to determine, for each type of crime, strategic choices in terms of when and how best to use available crime-fighting resources.
3. In a next step, a strategic plan is put together collaboratively by the National Public Prosecutor Service and strategic partners such as Customs and Fiscal Intelligence and Investigations Services. The plan defines the parameters for action to all parties concerned with regard to different types of crime.
4. The final step is the translation of the strategic plan into a detailed tactical programme for each type of crime; tactical programmes are annual products, based on concrete targets.

Since January 2013, the Dutch police has been reorganised to combine the previously separate 26 police branches into one national police force, called the National Police of the Netherlands (NPN). The main implication of this reorganisation for the National Crime Squad, newly named Central Criminal Investigations Division, is visible at the level at which the Division officially operates. Historically, it was an exclusive force tackling 'level three' organised crime, but today it is placed on the same level as regional crime units.

The reorganisation of the Dutch police has implications for the programmatic approach too. Although the tactical programmes are currently exclusive to the Central Criminal Investigations Division, it is envisaged that they will become national programmes in the future.

TABLE 6

Types of drug squads existing in 25 countries according to their organisational status

	Type of drug squad		
	Dedicated drug squad	Serious and organised crime-related drug squads	Units with a primary focus on drugs (1)
Bulgaria		X	
Czech Republic	X		
Germany	X	X	
Estonia	X		
Ireland	X		
Spain	X	X	
France	X	X	
Italy	X		
Cyprus	X		
Latvia	X	X	
Lithuania	X	X	
Luxembourg	X	X	
Hungary	X	X	
Malta	X		
Netherlands	X	X	
Austria	X		
Poland	X	X	
Portugal	X	X	X
Romania		X	
Slovenia	X	X	
Slovakia	X	X	
Finland		X	
United Kingdom	X	X	
Turkey	X	X	X
Norway		X	

NB: An X indicates the existence of the type of unit in a country.
(1) Coast-guard and maritime units.

In 10 of the countries providing enough information, only one specific type of drug squad exists. In the remaining 15 countries, multiple types have been established (Table 6).

Multi-agency drug law enforcement units

The drug law enforcement landscape revealed by the results of this study is highly variable. More than 1 000 specialised units operate in Europe, spread across various police and other law enforcement bodies and answering to any of five different ministries. On the one hand, this diversity guarantees that a wide range of law enforcement approaches are implemented, for instance to address the many different settings in which crime is committed such as urban and rural areas, border regions, territorial waters, airports and ships.

On the other hand, with diversity comes the risk of duplication of effort and therefore a need for coordination at the strategic and operational levels. Maintaining synergies at national level between law enforcement organisations with different technical backgrounds and different mandates, and coordinating their actions, is an ongoing challenge for national political and law enforcement decision-makers. Fostering synergies and coordination at European and international level, as required by the Treaty of Lisbon and the Stockholm Programme (Council of the European Union, 2012b; European Council, 2010), is probably an even bigger challenge (9). However, this is an important objective in order to achieve efficient use of resources and adequate flows of information at national, European and international levels.

This issue is often addressed at national level by establishing permanent or temporary multi-agency units, in which different law enforcement organisations (e.g. criminal police and customs) work together. To discover to what extent this approach is applied within the European drug law enforcement landscape, information on formally-established 'multi-agency approaches' was requested in the EMCDDA questionnaire. All 26 responding countries provided information, in some cases very detailed. This allowed the production, for the first time, of a European overview of multi-agency cooperation in drug law enforcement at national level.

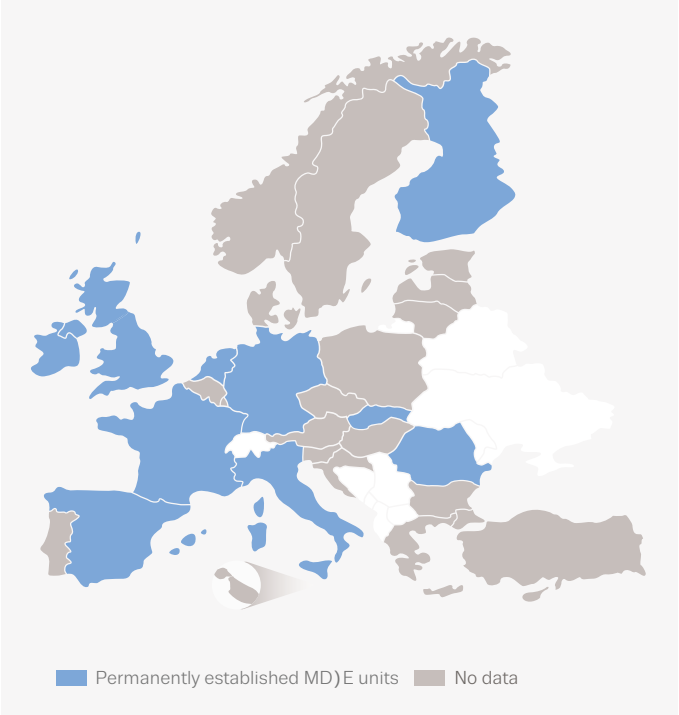
There is no commonly agreed term to refer to this approach but, based on the answers provided by the national reference persons, the term adopted in this report is 'multi-agency drug law enforcement units' (MDLE units).

In Europe, 10 countries report a total of 40 formally established MDLE units (Figure 4), 30 of which are set up in Germany (see the box on MDLE units in Germany). The other nine countries each have one or two MDLE units (Table 7).

(9) To address this issue, and as a compensatory measure for the abolition of internal border controls under the Schengen agreement, a European mechanism was established in 1995 allowing the creation of police and customs cooperation centres (PCCCs). Except in the case of Finland, the MDLE units reported in the context of this study are not PCCCs.

FIGURE 4

Presence of multi-agency drug law enforcement (MDLE) units in European countries



Typical composition of European MDLE units

Across Europe, MDLE structures typically involve the cooperation of police forces and customs. In Germany and Slovakia, MDLE units are based on the cooperation of police forces and customs services only. In contrast, in the United Kingdom and Italy, MDLE units are established and function without customs participation. However, in just under two-thirds of the countries with established MDLE units, multiple agencies work together including gendarmerie-like organisations, security and intelligence services and coast guards (Table 7).

All 10 countries reporting multi-agency drug law enforcement have established at least one central MDLE unit. Eight countries report the existence of a single, centralised unit (Ireland, Spain, France, Italy, Netherlands, Romania, Slovakia and Finland). In the remaining two (Germany, United Kingdom), there is a range of between 1 and 29 decentralised MDLE units alongside the central unit.

TABLE 7

Multi-agency drug law enforcement in Europe: units and participating organisations

Country	Number of units	Multi-agency drug law enforcement unit name	Participating agencies
Germany (1)	29	Gemeinsame Ermittlungsgruppe Rauschgift, GER (Joint customs/police narcotic investigation teams)	Police forces, customs
	1	Gemeinsame Grundstoffüberwachungsstelle, GÜS (Joint customs/police precursor monitoring unit at the Federal Criminal Police Office)	Police forces, customs
United Kingdom	2	Serious and Organised Crime Agency, SOCA	Police forces, customs, security and intelligence services
	2	Middle market drug unit	Police forces
Ireland	1	National interagency drug joint task force	Police forces, customs, coast guards
Spain	1	Centro de Inteligencia Contra el Crimen Organizado, CICO (Coordination and action department in organised crime investigations including drug trafficking)	Police forces, customs, gendarmerie, others
France	1	Office Central pour la Répression du Trafic Illicite des Stupéfiants, OCRTIS (Central office for the suppression of illicit traffic in narcotics)	Police forces, customs, gendarmerie
Italy	1	Direzione Centrale Servizi Antidroga, DCSA (Antidrug Central Directorate)	Police forces, gendarmerie, security and intelligence services, others
Netherlands	1	Centre of expertise for synthetic drugs and precursors (2)	Police forces, customs, others
Romania	1	Service for countering organised criminality in maritime ports (SCCO)	Police forces, customs, security and intelligence services
Slovakia (3)	1	Joint (dual agency) team of police and customs mandated to investigate illicit diversion and usage of precursors	Police forces, customs
Finland	1	National Police and Customs and Border Guard Centre (PCB – Police, Customs and Border Guard)	Police forces, customs

(1) In early 2013, two German MDLE units were merged into one, so that the total number of MDLE units in Germany has decreased to 29.
(2) Since 2013, 'Team drugs and Dutch networks'.
(3) In early 2013, the Slovakian MDLE unit was disbanded as a result of police reorganisation.

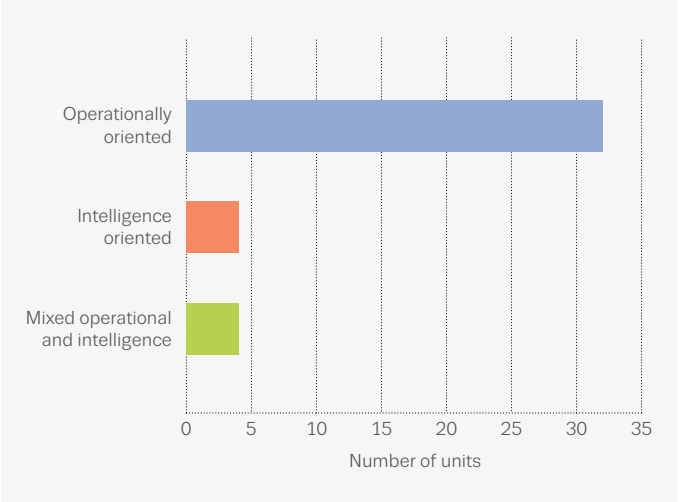
Functions of MDLE units in Europe

MDLE units perform a range of functions based on the mandates of the participating organisations. In practice, the two most important functions are operations and intelligence, although some case management may also be performed. Based on the nature of their prevailing functions, the profiles of MDLE units can be established. As shown in Figure 5, the majority of Europe's MDLE units are predominantly ([10]) operationally oriented, with most of them (29) located in Germany, two in the United Kingdom and one in Ireland. Four established MDLE units have a predominantly intelligence-gathering character (Italy, Romania, Slovakia and Finland). Four MDLE units perform both intelligence and operational strategic functions and their profile is hence best described as a mixed one — Germany (GÜS), Spain, France and the Netherlands have each established one MDLE unit with mixed functions.

Furthermore, with regard to how MDLE units exert an effect on supply reduction, these units fall along a continuum, from having a direct effect through operations and case management (e.g. MDLE units in Germany) to occupying a coordination, information and technical-support function in the drug supply area (e.g. MDLE units in Romania and Finland), with a range intermediary roles, including networking and cooperation with other parties.

FIGURE 5

Profiles of multi-agency drug law enforcement units based on their prevailing functions



Specific roles of MDLE units

A small number of the 40 permanently established MDLE units in Europe are tasked to perform two types of specific roles.

Three MDLE units play a dedicated central coordination role related to drug law offence investigations; these are located in Spain (CICO), France (OCRTIS) and Italy (DCSA). The relatively large numbers of drug law enforcement organisations in these three countries, compared with other countries with established MDLE units, may explain the need for more coordination and therefore the establishment of an MDLE unit with a dedicated central coordination role.

Three countries reported the existence of MDLE units that are exclusively mandated to monitor or investigate cases related to precursor chemicals and/or synthetic drugs production (the precursor monitoring office in Germany, the Centre of expertise in the Netherlands and the diversion of precursors unit in Slovakia). Other specific functions assigned to MDLE units include targeting serious and organised crime (SOCA, United Kingdom) and drug smuggling (Ireland).

Having described the units that populate the European drug law enforcement landscape, the next section will look at the mandates, both territorial and technical, that these bodies operate under and at how they are supervised.

Italy: the mandate of the Antidrug Central Directorate

The Antidrug Central Directorate (Direzione Centrale Servizi Antidroga, DCSA) is one of 17 central directorates and offices falling under the Public Security Department, which is under the authority of the Ministry of the Interior. It is a multi-force body, coordinating the activities of the police forces in the fight against drug trafficking. The DCSA is responsible for developing and maintaining relationships with foreign counterparts (including foreign liaison officers posted to Italy), as well as coordinating with national and international drug prevention bodies. Also included in its mandate are operational research, analysis and training. In drug-producing or transit areas, the DCSA manages a network of drug experts.

([10]) Given the common need to improve both information exchange and tactical cooperation a strict separation between intelligence and operational tasks is often not possible. Nevertheless clear operational predominance was identifiable for almost each MDLE unit.

Germany: the multi-agency drug law enforcement approach

In Germany, the multi-agency drug law enforcement approach is shaped by the federal structure of the state. Responsibility for border security and prevention of cross-border crime coupled lies with the federal authorities, while internal security falls under the remit of the Länder or federal states. This approach is seen in the fight against drug precursor trafficking, in which a central monitoring unit (Gemeinsame Grundstoffüberwachungsstelle, GÜS) (Joint Precursor Monitoring Office) cooperates with operationally oriented multi-drug law enforcement initiatives (Gemeinsame Ermittlungsgruppen Rauschgift, GER) (joint customs/police narcotics investigation teams). The legal basis for this cooperation is shaped by an administrative regulation between the central office of the German customs investigation service and the Ministries of the Interior at federal and state levels.

The Joint Precursor Monitoring Office is located at the Federal Criminal Police Office (BKA) in Wiesbaden. It is, by law, the contact point for operators of the chemical and pharmaceutical industry and their associations (e.g. as recipient of information about suspicious inquiries) as well as the link between the federal medicines agency (Bundesinstitut für Arzneimittel und Medizinprodukte), the competent licensing and administrative control authority, and the investigation and control bodies (police and customs).

The joint customs/police narcotics investigation teams are located at the different State Offices for Criminal Investigations. Currently, there are 29 such interagency units in Germany.

The MDLE approach in Germany was adopted in 1992. In each Land (state), the MDLE unit consists of a customs officer and an officer of either the state central drug crime squad or a regional headquarters drug squad. The customs officer reports to the federal central customs service investigation office.

The technical mandate of MDLE units relates to serious or organised drug crime offences and does not cover minor offences. Furthermore, illicit domestic drug production without an international dimension is not part of the mandate of MDLE units.

The staff of an MDLE unit is composed of an equal number of police and customs officers, although the total number of staff can vary. Each MDLE unit is under joint leadership, with the two chairs having equal power regarding technical issues such as operation, case management and intelligence. Administrative issues are solved by each wing separately. Because of the differences in background and training between the police and customs forces, since the late 1990s a common approach has been adopted whereby leaders of operations receive specific operational training. Another area where differences must be overcome concerns the databases, which, although customs and police each has its own, can be accessed by both forces.

Mandates and supervision

Three aspects of the legal framework that govern the activity of law enforcement units are examined in this section. The first two delineate the areas in which these units can operate: the territorial mandate in a geographical sense and the technical mandate in a task-oriented sense. As with all government agencies in a democratic state, those enforcing the law are subject to supervision by an independent authority. The final subsection looks at how this is carried out in European countries.

Territorial mandates

The term 'territorial mandate', in the context of a drug law enforcement unit, represents the territorial jurisdiction within which the responsibility and operations of a drug squad extend. It may be local, regional, national or international.

Information about the territorial mandates of national specialised drug law enforcement units is key to understanding how drug law enforcement is organised and implemented in Europe. Indeed, drug law enforcement is likely to be performed differently in different locations. Drug law enforcement is an activity that is, by necessity, applied on a specific piece of territory, on its population and on the activities that are carried out there. These three dimensions may contribute to determining what type of drug offences are likely to be committed, or are considered likely, in a particular location. This 'location' may be an entire country, a region, a city, a neighbourhood or a specific area such as a harbour, an airport, a motorway or territorial waters. In addition, the territorial organisation of national drug law enforcement may be a reflection, or a consequence, of how law enforcement in general is territorially organised in a country.

Whatever the case, the territorial mandate must be taken into consideration when attempting to define the 'style' of drug law enforcement performed in a country. This will, among other things, contribute to determining how different or how similar the national drug law enforcement approaches existing in Europe are. Knowledge of the territorial organisation of drug law enforcement can also help in contextualising and understanding existing routine datasets, such as reported drug seizures and drug law offences, which reflect law enforcement activities. Other benefits of gathering data on the territorial mandate include the facilitation of mutual understanding of and cooperation between drug law enforcement organisations across Europe, and the sharing of good practice, where the territorial dimension is very often essential.

Territorial mandates of drug squads are generally defined by legal frameworks. However, flexibility must exist in the implementation of territorial mandates, since operational investigations may lead drug squads to reach beyond the territorial limits formally assigned to them.

Although legal frameworks set the geographical boundaries of a drug squad, they often leave scope to ensure suitable legal cover for all operations, including those for which there is limited regional responsibility. Indeed, since drug trafficking often implies cross-border activities, transnational investigations are frequently required in cases handled by regionally or locally mandated drug squads. Therefore, for practical reasons, local and regional authorities may be granted national or international jurisdiction, on a case-by-case basis (Eurojust, 2012).

This case-by-case approach poses challenges to the exercise of identifying territorial mandates within the current project. Whereas territorial mandates are primarily defined by law, and therefore presented as constant and established features of each drug law enforcement unit, there are also internal regulations that are used to guide decisions on territorial assignment in individual cases and specific circumstances. The interpretation of internal regulations may be equivocal. Nonetheless, a systematic approach was used to elicit relevant information on reference laws and internal regulations from each participating country to enable the identification of territorial mandates.

This study found that European drug squads may be assigned one of the four following territorial mandates: international, national, regional or local.

An international mandate allows a European drug squad to collaborate with a foreign authority in order to advance its investigation of a case, usually by requesting the foreign authority to perform an action on behalf of the requesting unit. It does not confer powers on the unit to operate in or enforce its national laws in a foreign country. With very few exceptions, drug law enforcement, like all other law enforcement activities, remains country-bound, with national institutions working to enforce national laws within their own borders. (This is often described as a major impediment to efficient law enforcement against drug traffickers, who are said to 'know no national borders' while law enforcement officers are bound by them.) In this sense, the term 'international mandate' as it is used here has a slightly different meaning from the other types of territorial mandates described in this report. Indeed, national, regional and local mandates all mean that the organisations that enjoy them can act directly within the territory to which they have been assigned.

In 20 of the reporting countries, at least one drug law enforcement unit exists with a permanent responsibility for international drug trafficking cases. All 26 participating countries report the existence of at least one drug law enforcement unit with a national mandate.

National mandates are put into practice in a variety of ways in Europe. One approach involves the establishment of local field offices (e.g. Czech Republic, Cyprus), whereby field units, specialised, for example, in laboratory investigation, diversion of precursors or money flows, are tasked with operating on a local scale within a national jurisdiction, while reporting to a national central crime office. In Turkey, under the 'split mandate' approach, central units task local police or gendarmerie units with taking responsibility over target localities. Although the Czech Republic, Spain, Cyprus and Turkey officially apply a national centralised approach to drug law enforcement, the above practices suggest an implicit approach that may be regional or local in nature. Similarly, in the United Kingdom, although in principle drug law enforcement is a national responsibility, in practice, regional or district responsibility is assumed by regional or local chief constables, who nonetheless operate within a national mandate in accordance with reference laws.

Finally, in Romania and Turkey, surveillance of[illegible] waters and coastal areas is conducted by drug law enforcement units with a national mandate. In other countries, this type of surveillance is also performed, but not by specialised drug law enforcement units.

In addition to international and national mandates, European countries have a range of drug squads officially mandated to operate within regional or local territorial units. Seventeen countries have assigned regional mandates to at least one drug squad, while drug squads tasked to investigate drug-related cases locally exist in 11 countries.

Our analysis thus reveals that the 26 reporting European countries have assigned two (13 countries), three (four countries) or four (nine countries) territorial mandates to their drug squads.

In nine countries, drug squads may be assigned one or more of the four different territorial mandates, allowing the drug law enforcement units of these countries to intervene in international, national, regional and local cases (Table 8). International cases may also be pursued by drug squads in a further 11 countries, where both international and national mandates are assigned; in three of these countries, regional mandates are also reported. In the remaining six countries, in addition to national mandates assigned to drug squads, five countries report regional mandates, three countries report local mandates, and one country reports both regional and local mandates.

TABLE 8

Territorial mandates assigned to drug law enforcement in Europe

	International	National	Regional	Local
Bulgaria		X	X	
Czech Republic	X	X		
Denmark		X		X
Germany	X	X	X	X
Estonia		X	X	
Ireland		X	X	
Spain	X	X	X	X
France	X	X	X	X
Italy	X	X		
Cyprus	X	X		
Latvia	X	X	X	
Lithuania		X	X	X
Luxembourg		X	X	
Hungary	X	X	X	X
Malta	X	X		
Netherlands	X	X		
Austria	X	X	X	X
Poland	X	X	X	X
Portugal	X	X	X	X
Romania	X	X	X	X
Slovenia	X	X	X	X
Slovakia	X	X		
Finland	X	X	X	
United Kingdom	X	X		
Turkey	X	X		
Norway	X	X	X	

The survey indicates that the territorial organisation of drug law enforcement in Europe is characterised by a dual emphasis on the national and sub-national levels. All 26 countries have established at least one drug squad with a mandate to enforce drug laws across the entire country. At the same time, 18 countries have also established drug squads with regional or local mandate. In addition, although eight countries report that their drug squads have national jurisdiction but are not assigned regional or local mandates (Table 8), five of these appear to maintain a regional presence through the use of field offices, split mandates or seconded officers. Thus, 23 European countries have effectively granted regional or local mandates to their specialised drug law enforcement units, which would indicate that specialised drug law enforcement is, to a large extent, perceived as a local response to local problems.

Portugal: the joint drug law intelligence protocol — composition and mandate

Portugal is one of the countries in Europe with the largest numbers of drug law enforcement authorities and therefore coordination is essential. To facilitate coordination among the different law enforcement organisations and authorities in the country, a joint drug law intelligence protocol was set up in 1995 with a dual purpose regarding drug trafficking: (i) coordination and sharing of information; and (ii) operational coordination and joint action. Under this protocol, which operates under the coordination and strategic direction of the Judicial Police (Polícia Judiciária), regular meetings are held which serve to resolve the conflicts that may arise between the different law enforcement organisations and investigating authorities.

These meetings are held with representatives of the Judicial Police and other relevant agencies, including the National Guard (Guarda Nacional Republicana), Public Security Police Service (Polícia de Segurança Pública), Immigration and Border Authority (Serviço de Estrangeiros e Fronteiras), Tax Authority and Customs (Autoridade Tributária e Aduaneira) and the Maritime Authority (Autoridade Marítima). Quarterly national and regional meetings are held in the following regions: Northern region (Porto), Central region (Coimbra), Lisbon region, Southern region (Faro), Madeira (Funchal) and the Azores (Ponte Delgada).

The existence of a permanent international mandate, as reported by 20 countries, is a reflection of the international and European dimensions of contemporary national drug law enforcement, due for instance to the United Nations conventions on drugs and European treaties and programmes, such as the Prüm Convention (Council of the European Union, 2005b) against cross-border crime and the Stockholm Programme on police cooperation. Agreements between countries for bilateral law enforcement are common. Cooperation with international organisations such as Interpol, Europol and the World Customs Organization is also among the tasks performed by national drug law enforcement organisations. The need to deal with these international obligations is often translated into the establishment of a central unit at national level. These central units, in turn, also often require a national mandate in order to fulfil their country's international obligations. In practice, however, units that are not assigned a formal, permanent international mandate may still be involved in international cooperation on an ad hoc basis.

Technical mandates

The term 'technical mandate' in this report represents the range and scope of activities that drug law enforcement units can carry out with reference to two sets of documents: legal acts, or drug laws (technical jurisdiction); and internal regulations that interpret or complement legal acts.

Technical jurisdictions are, by definition, more general than internal regulations. Although they must be consulted in order to determine the overall legal framework within which drug law enforcement units operate, an examination of the internal regulations reveals how relevant laws are interpreted and applied by law enforcement. Internal regulations may also indicate relevant regional or local and organisational specifics that may influence the application of reference drug laws. Although drug laws are public documents, their informative value about the technical mandate of drug squads remains limited without supplementary information contained in internal regulations, which are, however, generally not available for public consultation. This subsection is informed by both sets of documents, and presents a unique insight into the technical areas of operation as well as the professional orientation of specialised drug law enforcement units across Europe.

Information about the technical mandates of national specialised law enforcement units on drugs is essential to understanding how drug law enforcement is implemented, and to some extent, organised in Europe. Indeed, technical mandates refer to specific drug law enforcement tasks that must be performed based on specific types of knowledge, know-how and experience. The range of tasks to be performed may vary from country to country as a result of historical, geographical or legal factors. For instance, in the years after the fall of the Berlin wall, most of the former Communist countries felt the need to set up drug law enforcement organisations, as drug use emerged as a problem for them. In another illustration, countries where illicit synthetic drug production has been a long-standing issue have felt the need to create a specific mandate to investigate illicit production or to dismantle illicit production facilities. Such a mandate may not exist in other countries. In addition to reflecting some specific features of national drug markets, technical mandates may also reflect drug and security policies as well as political decisions.

For these reasons, the technical mandate must be considered when defining the 'style' of drug law enforcement that is performed in a country. The various technical mandates existing in European countries help determine the differences and similarities between the national drug law enforcement approaches. Additional benefits of gathering information about technical mandates include the fostering of direct communication between investigators in different countries,

facilitating the practical organisation of controlled deliveries or of the use of covert human intelligence sources ([11]). Such mapping of technical mandates may also prove interesting for the sharing of useful experience (good practice).

The organisational affiliation of drug squads within law enforcement structures (e.g. criminal police, border police, organised crime units) or other drug law enforcement authorities (e.g. customs) does not necessarily correspond to particular technical mandates. For instance, serious and organised crime units in the United Kingdom are generally mandated to conduct drug investigations alongside investigations of other types of crime such as murder or fraud. The organisational affiliation of a drug squad is predominantly the result of organisational considerations, whereas its technical mandate derives from law as interpreted by internal regulations. In practice, however, these considerations merge and, to some extent, influence one another.

The allocation of technical mandates represents a formal decision, typically taken by the responsible ministry, based on law enforcement experience and knowledge and consideration for both past and projected future criminal activity in the target geographical area.

The categorisation of the technical areas for drug law enforcement is not standardised and the terminology differs across countries in Europe. Nonetheless, for the purposes of this report the following categories, based on those defined by Kaiser (1997), will be used: type of drug law offence and level in the drug supply chain; type of offender; trafficking modus operandi; type of incriminating good. In each of these areas, a number of technical activities can be located, as outlined in Table 9.

TABLE 9

Areas of drug law enforcement that may be included in technical mandates: some examples

Area of drug law enforcement	Examples
Type of drug law offence and level in the drug supply chain	Production Trafficking Distribution At different levels of the market including import/export, wholesale, intermediary and retail
Type of offender	Individual (e.g. a mule, supporting criminals) Group (e.g. gang crime, organised crime)
Modus operandi	Container smuggling Concealment methods (e.g. body-packing) Trafficking and transportation methods
Type of incriminating good	Illicit psychoactive substances Drug precursors Adulterants Cash Related goods (e.g. weapons, electronic equipment)

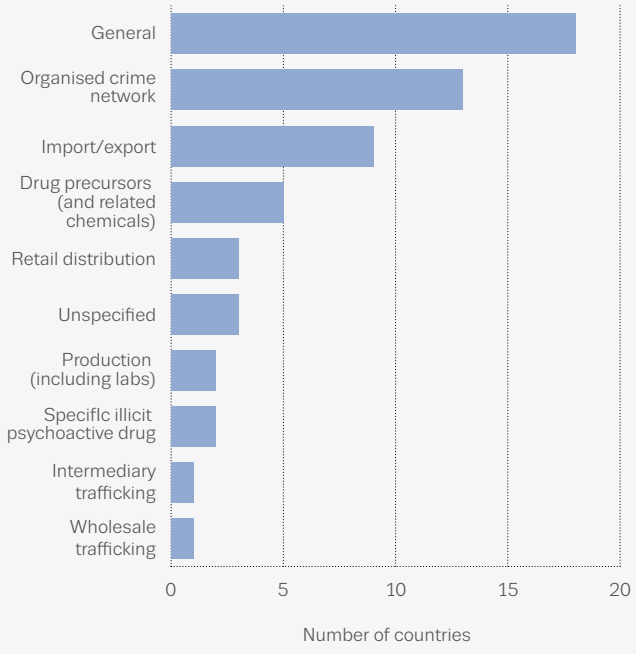
Two-thirds of the countries (18) report a technical mandate that encompasses all possible technical areas; this mandate is comprehensive in that it is not bound by technical limitations. Although the formal technical scope defined by this type of mandate may be wide-ranging, it is likely that it will be mitigated in practice by the priority-setting process, which may require drug squads to concentrate a large proportion of their resources and know-how on specific crimes (e.g. cocaine trafficking).

Thirteen countries have tasked drug squads — notwithstanding organisational affiliation — to investigate organised drug crime networks. Import or export of drugs is the focus of drug law enforcement units in a further nine countries, whereas the remaining identified mandates were reported by a smaller number (one to five) of countries (Figure 6).

Drug law enforcement units have a single technical mandate in 10 countries, of which eight are comprehensive (Table 10). Where data are available (in four out of these eight countries), the number of drug law enforcement units with a single comprehensive mandate ranges from one (Malta) to 12 (Lithuania).

FIGURE 6

Technical mandates of drug squads in European countries



([11]) Covert human intelligence sources include undercover officers, public informants and people who make test purchases (Home Office, 2012).

TABLE 10

Technical mandates assigned to drug law enforcement in Europe

	Bulgaria	Czech Republic	Denmark	Germany	Estonia	Ireland	Spain	France	Italy	Cyprus	Latvia	Lithuania	Luxembourg	Hungary	Malta	Netherlands	Austria	Poland	Portugal	Romania	Slovenia	Slovakia	Finland	United Kingdom	Turkey	Norway
Comprehensive	X		X	X	X	X	X	X	X	X	X	X	X		X		X		X		X		X	X		
Offender type Organised crime network	X	X		X									X			X		X	X	X		X	X	X	X	X
Incriminating good Specific illicit psychoactive drug		X														X										
Drug precursors (and related chemicals)		X		X							X					X			X			X				
Production and trafficking Production (including labs)	X	X														X										
Import/export		X		X		X	X									X			X	X			X		X	
Wholesale trafficking														X												
Intermediary trafficking																		X								
Retail distribution																		X	X		X					
Unspecified	X																			X					X	

In Hungary, the two drug squads have a single mandate focused on wholesale trafficking ([12]), whereas in Norway the existing 28 drug law enforcement units are all mandated to target organised crime networks and activities.

In seven countries, drug law enforcement units fall under two technical mandates, and in six cases one of these is comprehensive. In Ireland and Spain, this mandate is coupled with a mandate on import/export, suggesting differences in mandate based on institutional affiliation. For example, it is likely that units based in customs services (Ministry of Finance) are giving priority to investigating import/export cases. In four other countries, whereas some drug law enforcement units have a comprehensive mandate, others have mandates on organised crime networks (Luxembourg, United Kingdom), on precursors (Latvia) and on retail drug distribution (Slovenia). Slovakia is the only country with two technical mandates (one on organised crime networks and one on precursors) where neither of the mandates is comprehensive.

Four countries (Poland, Romania, Finland and Turkey) report the existence of three technical mandates. In all of these countries, one of the mandates is on organised crime networks, confirming their implementation of drug law enforcement through a *serious and organised crime* approach (see Organisational status of drug squads). In two cases, this is supplemented with a mandate on intermediary trafficking and retail distribution (Poland) and unspecified trafficking and import/export (Romania). In two further cases, the organised crime mandate is coupled with a mandate on import/export and a comprehensive mandate (Finland) or a focus on unspecified trafficking (Turkey).

Czech Republic: performance indicators based on proven quantities of trafficked drugs

Data on amounts of seized drugs and number of arrests are often used to monitor the effectiveness of law enforcement activities against drug-related crime. In the Czech Republic, these indicators are supplemented with data on evidenced amounts of drugs sold by an offender during their criminal activity. These data on proven quantities of trafficked drugs are viewed as an additional objective indicator of effective police work and represent a distinctive feature of the monitoring of drug law enforcement in this country.

In the Czech Republic, drug-related data collection falls under the National Drug Headquarters of the National Police and follows instructions issued by the Police President. A range of district and regional directorates provide data each month. At present, data are collected on the amount of drugs seized during operations, as well as the amount of trafficked drugs confirmed in cooperation with a state prosecutor during criminal proceedings.

([12]) From 2013, the two drug squads merged into one central drug squad with the same technical mandate on wholesale trafficking.

In Bulgaria and Germany, four different mandates are assigned to drug squads, including a comprehensive mandate and a focus on organised crime. In addition, Bulgaria also reports a mandate on drug production and on unspecified trafficking. In Germany, most likely because of the prominent role of customs in drug law enforcement, some drug squads are specifically mandated to address issues related to drug precursors and to import/export of drugs.

Finally, in the Czech Republic, the Netherlands and Portugal, five different technical mandates can be assigned across national drug squads. In all three countries, drug squads are mandated on organised crime networks, drug precursors and import/export, with additional mandates on specific substances and drug production in the Czech Republic and the Netherlands and on comprehensive and retail distribution mandates in Portugal.

Drug law enforcement functions

The day-to-day activities of drug law enforcement units can be grouped into three main functions: intelligence management, operations and case management.

Intelligence management is the process by which relevant information is obtained, processed and made available for drug law enforcement purposes. In some cases, the intelligence function is performed in a dedicated unit. Traditionally, however, intelligence management is part of the daily work of every drug squad and is a precondition for the other two functions to be performed.

The term 'operations' is used in this report to describe overt and covert drug law enforcement activities mainly aimed at reducing drug supply by making arrests, seizing drugs, dismantling illicit drug production sites, deploying officers to disrupt local drug markets and so on.

Case management refers to the provision of evidence for prosecution. Typically, this involves drafting and transmitting a written report to the prosecution service or the court. The report usually brings together all the elements gathered by law enforcement organisations through intelligence management or operations, and which are necessary for the legal prosecution of a case.

By performing these functions, drug law enforcement units fulfil their technical mandates. In practice, drug squads are usually pursuing multiple targets in parallel, and case management, intelligence work and operations can all be starting points for investigations.

France: The National Database of Drugs Targets

In order to optimise the actions of drug services, the French authorities have created a National Database of Drugs Targets (Fichier national des objectifs en matière de stupéfiants, FNOS). The development of this database incorporates improvements to existing law enforcement databases. Launched in the second quarter of 2013, the system will collect data from a number of organisations with responsible for drug law enforcement in France, including the National Police (judicial and public security police), the Gendarmerie Nationale and the customs service. The aim is to allow investigators from a range of administrative backgrounds to register cases within a common system and receive alerts if and when these cases are under investigation by multiple services.

In the FNOS, a case is an individual for whom there is plausible reason to suspect involvement in drug-trafficking offences. Under the supervision of a prosecutor or an examining magistrate, cases can be conducted in the context of a preliminary investigation, in a procedure of 'flagrante delicto', in a letter rogatory or in a customs investigation.

The new tool is expected to improve coordination between the services investigating a target — for example, through the early detection of duplicate activities in the investigations. Also, it is envisaged that the new tool will facilitate a better distribution of means and resources, potentially leading to improved services outcome.

The operation of the database is underpinned by the principles of confidentiality and equality of all partners accessing and working with the database. In addition, there is a common regulation defining the objectives of the database as well as its management and use. Finally, the database has received a favourable opinion from the Commission nationale informatique et liberté (CNIL), the French data protection agency.

Although some drug law enforcement units perform only one of the three main functions, the majority of units perform multiple functions. Usually, those units that are mandated to carry out operations have a parallel mandate to perform case management. On the basis of their functional orientation, European drug squads can be grouped as follows: (1) drug squads dedicated to carrying out operations and conducting case management; (2) drug squads focusing exclusively on intelligence gathering; (3) drug squads mandated to performing a comprehensive set of functions, i.e. case management, operations and intelligence gathering.

Drug law enforcement units that are mandated to carry out all three functions are reported by 21 countries, while units tasked solely with the gathering of intelligence and units with a dual focus on case management and operations are reported by fewer countries (Figure 7).

To put these results into perspective, it should be noted that drug law enforcement activities do not always aim at providing conclusive evidence usable for prosecution purposes (case management). Producing solid information on supply and demand structures (intelligence) is given at least as much attention as tackling and controlling illegal drug markets and, ideally, preventing, reducing and stopping breaches of drug legislation (operations). Not every drug offence or offender discovered by drug law enforcement is necessarily reported to the prosecutor or the justice system. Whether or not a detected offence is reported depends on a number of factors, including what legal principle (discretionary or mandatory) rules the law enforcement agency and the priorities set for the unit (EMCDDA, 2012).

FIGURE 7

Functional orientation of drug law enforcement units in European countries

NB: Some countries report the co-existence of units with different functional orientations.

An exploration of the range of different types of drug law enforcement units, based on their functional orientation, reveals some diversity, and possibly some reporting artefacts. In two-thirds of the countries providing information, only one type of functional orientation is reported. In most (15) of these countries, all drug squads are reported to have a comprehensive orientation, fulfilling the three functions. In the Czech Republic, Slovakia and Turkey, however, despite the data indicating that all drug squads are oriented to case management and operations only, it is likely that intelligence gathering is embedded within the other two functions.

In six countries, two types of functional orientation are reported for drug squads. In four cases, one of these is towards intelligence management, while the other is either a comprehensive orientation (Italy, Netherlands) or towards operations and case management (Bulgaria, Finland). In Ireland and Latvia, drug law enforcement units are oriented towards case management and operations or have a comprehensive orientation.

Finally, Poland and Portugal are the only countries reporting that each of the three functional orientations is held by at least one unit.

In Europe, based on available data, it may be concluded that the majority of countries empower most, and in many cases all, of their drug law enforcement units with a comprehensive set of functions. Thus, most drug squads in Europe perform all three drug law enforcement functions, with little evidence of specialisation at the level of unit (Table 11).

TABLE 11
Number of drug law enforcement units by type of function

	Case management/ operational units	Intelligence-oriented units	Comprehensive units	Total number of units
Bulgaria	31	1		32
Czech Republic	3			3
Denmark			1	1
Germany			250	250
Estonia			6	6
Ireland	1		28	29
Spain			118	118
France			99	99
Italy		1	40	41
Cyprus			1	1
Latvia	1		2	3
Lithuania			12	12
Luxembourg			8	8
Hungary			2	2
Malta			1	1
Netherlands		1	4	5
Austria			10	10
Poland	17	1	283	301
Portugal	10	9	34	53
Romania			44	44
Slovenia			13	13
Slovakia	2			2
Finland (1)	15	4		26
United Kingdom			54	54
Turkey	4			4
Norway			28	28

(1) The information provided for Finland did not make it possible to ascertain the functions that were assigned to seven of the 26 drug squads.

It is important to understand how the three functions are distributed within the European drug law enforcement landscape. Whereas in the past each unit performed all three functions, and many still do, there is an international trend towards the differentiation of law enforcement functions, including drug law enforcement, between different units. This points to an increasing specialisation within drug law enforcement organisations, especially as regards intelligence and operations. Examples of this in practice include the model of intelligence-led policing, which would require a specific professional profile focused exclusively on intelligence and therefore ill-suited to perform the other functions to the same high standards. Similarly, the increased use of technology in drug law enforcement operations, for instance for the surveillance of a suspect's communications, and the development of methodologies and guidelines to perform specific tasks such as using covert human intelligence, and accompanying legal requirements, all push towards the specialisation of the professional profiles of drug law enforcement officers or drug law enforcement units. Finally, the increased use of violence towards law enforcement officers promotes the development of units specialised in the arrest of potentially violent suspects.

All this implies that the field of drug law enforcement functions is more in flux than other domains, for instance the territorial mandate, and therefore particularly suitable for monitoring changes in the drug law enforcement landscape.

Supervising external authority

All policing activities in democratic societies ruled by law are subject to supervision by an external authority independent of national policing organisations, usually located within the justice system. The purpose of such supervision is to balance the fundamental rights of citizens with the needs of the institutions in charge of fighting crime. Such oversight is all the more necessary in the case of drug law enforcement, which, because it is tackling consensual crime, is largely proactive in nature and often involves the use of intrusive means while maintaining low levels of transparency. The justice system is, in the majority of European countries, the external supervising authority of drug law enforcement work, given the need to ensure that national formalities and procedures are respected.

Finland: the supervisory roles of the Parliamentary Ombudsman and of the Chancellor of Justice

Drug law enforcement practice in Finland is unique in that it is subject to the regulation and supervision of the Parliamentary Ombudsman and of the Chancellor of Justice.

The Parliamentary Ombudsman has the key role of exercising oversight to ensure that authorities, officials and others performing tasks of a public nature adhere to the law and perform their duties accordingly. Additionally, the Ombudsman pays special attention to respect for fundamental and human rights. Related to this is the Ombudsman's focused attention on the manner in which the police employ coercive measures affecting telecommunications and their conduct of undercover operations.

The Chancellor of Justice endeavours to ensure that the courts of law, other authorities and other individuals or organisations assigned to perform public tasks comply with the law and fulfil their assigned obligations. The Chancellor of Justice supervises the authorities by handling any written complaints arising from their actions. A complaint may be filed with the Chancellor of Justice if the complainant believes that an authority, civil servant or public official or other person or body assigned to perform public tasks has acted in an unlawful or otherwise wrongful manner or failed to fulfil their responsibilities. The Chancellor of Justice can also open an investigation on an issue on his own initiative, such as matters brought forth in the media.

The Chancellor of Justice is entitled to perform inspections of those authorities, institutions, offices and other units that fall within the scope of his supervisory authority. In practice, the Deputy Chancellor of Justice performs any necessary inspections. Over recent years, about 30 inspections per year have been carried out. The Chancellor of Justice is entitled to request and access any necessary information from authorities and other public bodies for the purpose of ensuring the legality of their actions. The Chancellor of Justice can order the initiation of a police or preliminary investigation for the purposes of clarifying a particular matter.

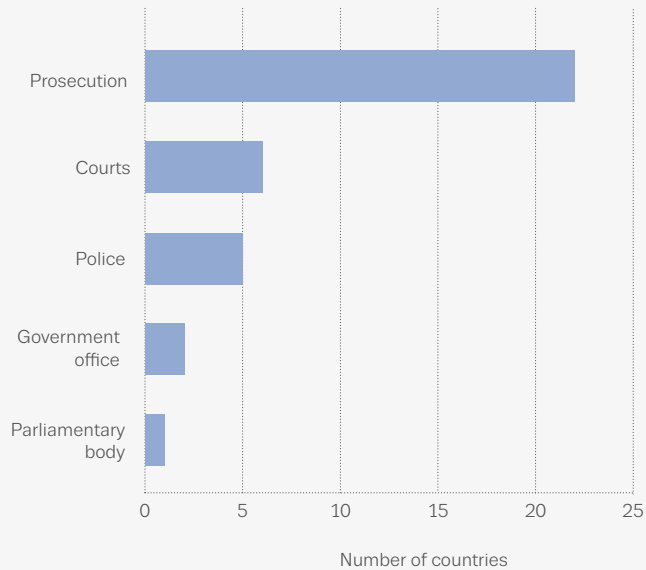
More information can be accessed at: http://www.okv.fi/en/chancellor/duties-and-activities/supervision-authorities/; http://www.oikeusasiamies.fi/Resource.phx/eoa/english/ombudsman/tasks/index.htx

All 26 participating countries provided information on the external authorities supervising drug squads. Based on these data, each country ensures that one or more authorities are supervising, and in some cases authorising, drug law enforcement activity within its territory. In a majority of countries, supervisory authorities are located outside law enforcement, mostly in prosecution structures.

The supervisory function can be assumed by a range of authorities within the justice system (e.g. prosecution, courts), police authorities or other authorities (e.g. government offices, parliamentary bodies). As shown in Figure 8 and Table 12, prosecution structures play a supervisory role in most of the reporting countries (23), while the other institutions are reported by fewer (one to six) countries.

FIGURE 8

Authorities supervising drug squads



NB: Prosecution structures include the following: prosecutor, prosecution service, public prosecutors, district attorneys and special prosecution office against drugs.

TABLE 12

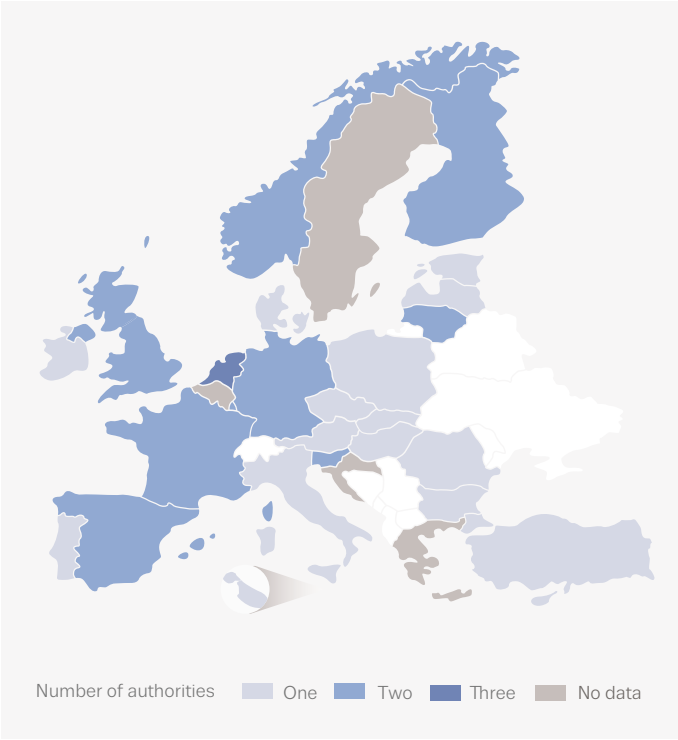
Authorities supervising drug law enforcement in European countries

Country	Authorities
Bulgaria	Prosecution
Czech Republic	Prosecution
Denmark	Prosecution
Germany	Prosecution, courts
Estonia	Prosecution
Ireland	Police authorities
Spain	Courts
France	Prosecution, courts
Italy	Prosecution
Cyprus	Government office
Latvia	Prosecution
Lithuania	Prosecution, courts
Luxembourg	Prosecution, courts
Hungary	Prosecution
Malta	Prosecution
Netherlands	Prosecution, police authorities, government office
Austria	Prosecution
Poland	Prosecution
Portugal	Prosecution
Romania	Prosecution
Slovenia	Prosecution, courts
Slovakia	Prosecution
Finland	Police authorities, parliamentary body
United Kingdom	Prosecution (1), police authorities
Turkey	Prosecution
Norway	Prosecution, police authorities

(1) Scotland only: Crown Office and Procurator Fiscal Service.

FIGURE 9

Number of supervising authorities per country



Two-thirds of the countries (17) report that drug law enforcement units operate under the external stewardship of one authority, while in the remaining countries supervision is shared between two or three authorities (Figure 9).

Of the 16 countries reporting one supervising authority, all but two report that the prosecutor performs this role. The exceptions are Ireland, where the supervising authority is a police authority, and Cyprus, where it is a governmental office (Ministry of Justice and Public Order).

Seven of the other countries report the involvement of a prosecutor in tandem with either a court (Germany, France, Lithuania, Luxembourg, Slovenia) or a police authority (Norway, Scotland in the United Kingdom) (see the box on the Norwegian approach). In Finland, the work of drug units is monitored by police authorities and parliamentary institutions (see the box on the Finnish system).

Only in the Netherlands is the responsibility for the oversight of drug law enforcement split between three authorities: a prosecutor, a police authority and a local or national government office (Ministry of Justice and Safety).

Norway: a two-track system for the supervision of drug law enforcement decisions and the role of the police prosecutor

Most countries in Europe have a clear dividing line between the police authority and the public prosecuting authority. In Norway, uniquely, these two authorities are integrated into a two-track system. The rationale for this arrangement is that it is easier to supervise an investigation where the prosecutor and the investigating officer work in closer geographical proximity.

A police prosecutor works within the prosecuting authority and is subordinate to the Director General of Public Prosecution and the District Attorney's office. The police prosecutor, a lawyer, is typically a member of the police force at management level and outranks most police officers.

The role of the police prosecutor includes performance of duties as head of investigation and prosecutor in court. Police prosecutors have prosecution powers in minor offences. During the course of an investigation, the prosecutor can decide to issue a charge sheet, carry out a search at an address or issue a warrant of arrest, as well as making an application to the court about custody proceedings. As a head of an investigation, the police prosecutor is responsible for the termination or continuation of a prosecution (investigation).

Police lawyers act as prosecutors in most city court criminal proceedings (lower level), and the District Attorney's office acts as prosecutor in cases concerning more serious matters in the higher court of law (higher level). The Director General of Public Prosecution can, on rare occasions concerning matters of principle, act as prosecutor in the Supreme Court.

At the time of writing, the model of police organisation applied in Norway is under debate. Among the stronger arguments raised by opponents is the potential adverse impact exerted by a prominent prosecuting presence on the objectivity of the investigation. In contrast, the main advantage of the two-track system is that it fosters close cooperation between police lawyers and investigating police officers. Whereas lawyers are in a position to identify which circumstances should be examined for the investigation, investigators are best equipped to provide the necessary information through interviews and a range of information channels.

Conclusions

This study reported here set out to provide a comprehensive picture of the organisation and mandate of specialised drug law enforcement in Europe, which had hitherto been lacking. The information presented in this report establishes a key starting point to a better understanding of the diverse and complex reality of drug supply reduction in the region.

At the time of the survey, September 2012, the 26 European countries participating in the project reported a total of about 1 100 drug squads. About 90 % of the estimated total staff (19 000) in the 23 countries providing information were law enforcement officers (17 000). These officers would represent about 1 % on average of all police staff in Europe, though the national proportions vary between 0.1 and 3.5 %. The largest proportions of drug law enforcement officers are found in territorially small or sparsely populated countries.

Although these results are best viewed as estimates, and should be interpreted with caution, they are the first overall figures on drug law enforcement to be produced at European level, and they provide a baseline for future monitoring of drug supply reduction activities in Europe. For monitoring purposes, the number of drug law enforcement officers is likely to be more useful than the number of units, as the interpretation of drug squad may differ between the various national reference persons. Although this may also be true of the number of drug law enforcement officers, this number is less dependent on whether some units are counted as discrete drug squads. Furthermore, the number of drug law enforcement officers has greater potential as an analytical tool, since it can be put into perspective with other numbers, such as the total number of police officers in a country or region, or the size of a population.

Furthermore, if used cautiously, this number could contribute to the interpretation of other numbers routinely reported as indicators of drug-related crime and drug supply, which are the result of drug supply reduction activities: reported drug supply offences and drug seizures.

At national level, political decisions on drug law enforcement are mainly in the hands of interior ministries (in charge of police and gendarmerie-like forces), which have responsibilities over drug squads in 24 of the 26 participating countries. Closely connected to Member States' interior ministries, the Standing Committee on Operational Cooperation on Internal Security (COSI) and Europol are key players for priority setting on drug supply reduction at European level.

Ministries of finance and trade, which are reported by 14 countries, should also play a significant role in this field, mainly through the involvement of customs services. Customs organisations are especially important for issues related to cross-border trafficking and seizures at importation level, but also drug precursors. However, the study produced less information on customs, largely as specific information on customs was reported by fewer countries.

The importance of finance and trade ministries is also a reminder that drug supply reduction is not a matter exclusively for law enforcement organisations, as is often thought to be the case. For instance, drug precursors control is now recognised as a shared responsibility between law enforcement and the chemical industry.

Ministries of justice have direct responsibility over specialised drug law enforcement units in seven countries. Their role in drug law enforcement is much stronger than this number may indicate, since in many countries drug investigations are supervised and/or headed by justice ministry staff, especially prosecutors. In fact, fully understanding drug supply reduction actors and activities in Europe requires mapping out and analysing the contribution made by the justice system alongside law enforcement.

The diversity in the organisation of law enforcement in Europe is reflected in the distribution of drug squads across different sets of law enforcement organisations, depending on the country. Drug squads have been established in the judicial or criminal police of 25 of the 26 responding countries, and in the customs services of 16. However, drug squads are also reported to exist in other types of police forces and gendarmerie-like organisations in a smaller number of countries, resulting in a complex array of national configurations. By contrast, the organisational status of drug squads is somewhat less diverse. Two models dominate the European landscape for carrying out the specialised drug law enforcement function: dedicated units, i.e. units with an exclusive focus on drugs (the archetypal drug squads) exist in 21 countries; while serious and organised crime-related drug squads are reported in 18 countries. These models are not mutually exclusive, as 11 countries report the coexistence of both types of drug squads.

The study has not adequately explored the involvement of customs organisation in European drug law enforcement, for reasons that have already been explained. However, it is clear that future monitoring efforts should seek to learn more about customs services, first, in order to better understand the impact of customs interventions on drug seizures and reported drug law offences statistics, and, secondly, as the role of customs services in European internal security matters is likely to grow in the future.

This is especially the case because customs services are often key players in MDLE units. At the time of the survey, September 2012, 40 such units were established in 10 countries. The majority (30) of these MDLE units were

reported in Germany, where they are made up of police and customs officers. In the rest of the countries but two, the reported MDLE units also bring together police and customs. Formally established units where police and customs organisations, and in some cases additional agencies, cooperate on drug issues do not exist in almost two-thirds of the European countries participating in the study. It would be interesting to better understand how the cooperation between different organisations is implemented in the countries where no MDLE units exist.

In eight countries, drug law enforcement is performed by granting all drug squads a comprehensive technical mandate, which enables them to intervene in all areas of drug law enforcement, while in five countries only a specific technical mandate (e.g. wholesale trafficking) is assigned to the national drug squad. In a majority of European countries, drug law enforcement combines comprehensive and specific technical mandates. This finding of the study raises the question of whether or not the strategic priorities mirrored in the technical mandates assigned to drug squads answer a need to address specific national drug problems.

In the 26 countries participating in the study, a central drug squad is assigned a national territorial mandate. In 20 countries, the nationally mandated drug squad also has a mandate to pursue cross-border investigations. In a majority of countries (18), however, most drug law enforcement units operate under a local or regional territorial mandate. In addition, three of the seven countries that assign solely a national mandate maintain a regional or local presence through a variety of means.

It appears, therefore, that, in Europe, the preferred approach is to give a concrete drug law enforcement response at local levels. This implies that, even if the drug phenomenon has a transnational dimension, the perception is that it requires first and foremost a local response.

Drug law enforcement activities in Europe are overwhelmingly supervised by the justice system, and only in a handful of countries do other authorities carry out the supervising function. In this sense, drug law enforcement is not different from other areas of policing and is embedded within the overall system of checks and balances characteristic of democratic states ruled by law. However, it is particularly important to understand supervision arrangements, since these have a strong influence on the priority-setting process and, therefore, on the activities and results of drug law enforcement organisations. Supervision arrangements are also particularly important here, as drug law enforcement often makes use of intrusive techniques (such as wiretaps and undercover measures), which require closer supervision than other policing activities. Although this study could not cover this area, it should be included in future monitoring efforts.

Drug law enforcement activities fall under three main functions: intelligence gathering, operations and case management. The fact that operations and case management are reported as standard drug squad functions comes as no surprise. However, 24 out of 26 countries providing information to the project reported that drug law enforcement included an intelligence-gathering function, mostly within drug squads and sometimes within independent drug intelligence units. Further monitoring efforts should endeavour to analyse the management of the drug law enforcement intelligence function in Europe in connection with the ongoing development of intelligence-led policing at national and European levels.

This study is the first result of the EMCDDA's efforts at monitoring drug supply reduction in Europe, with the help of national law enforcement partners. It provides an initial overview of important but hitherto unexplored aspects of drug law enforcement, and so may be viewed as a baseline against which future changes can be monitored. However, as is often the case with first-time surveys, the initial set of questions and the answers to them gave rise to new questions and helped identify gaps in our knowledge. In particular, it is now clear that improving our understanding of drug supply reduction in Europe will require more accurate mapping of all the institutions involved, especially customs services. Other important areas on which more information is needed include the financial resources allocated to drug law enforcement and the drug law enforcement operations and techniques used by drug squads.

In taking this forward, it will be necessary to collect data regularly within the framework of the key indicator on drug supply reduction. Indeed, this study is a core element of the European key indicator on drug supply reduction, which is under development at the EMCDDA. It will also help to contextualise and further analyse essential datasets such as drug seizures and reported drug law offences. In this way, this study will also make an important contribution to the development of the other two European key indicators on drug markets and drug-related crime. Improved monitoring of law enforcement strategies and practices will be one of the aims of a European network, to be set up shortly, that will be tasked with reporting qualitative data on drug supply and supply reduction issues. The success of these initiatives in improving our monitoring and understanding of developments in the area of drug supply reduction in Europe will rest on the building of a sound relationship between the EMCDDA and European drug law enforcement professionals. This study has laid some of the groundwork towards that goal.

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  www.guardiacivil.es/es/institucional/estructuraorganizacion/index.html
  www.interpol.int
  www.policia.es
  www.politi.dk

Annex

Questionnaire sent to national reference persons

European Monitoring Centre
for Drugs and Drug Addiction

I. Introduction

First and foremost we gratefully acknowledge your willingness to support this mapping exercise on drug squads in Europe. Answers to the questionnaire should provide an overview of those law enforcement forces which aim to reduce the supply of illicit drugs across Europe, in terms of their organisational, operational and coordinating structures. This should in turn help to deepen the EMCDDA's technical knowledge, which is a precondition to fulfilling our mandate to develop indicators on drug supply and drug supply reduction in Europe.

The questionnaire was pre-tested with four different national law enforcement agencies, namely officials of specialised drug law enforcement units (police and customs) and the results helped us to improve the questionnaire.

The 13 questions address five areas of drug law enforcement in your country:

- The existence of drug squads
- Drug squads in the general organisation of law enforcement
- The legal and technical mandate of drug squads
- The strategic and tactical mandate of drug squads
- The staff of drug squads

Definitions of 'drug squads', 'law enforcement',' technical mandate' and 'enforcement officers' are provided below the respective questions.

Section III of the questionnaire gives you the possibility to make additional comments and recommendations, should you wish to, and to name additional institutions or persons that we may contact for further information on drug squads in your country.

You received this questionnaire via e-mail (pdf-format). Please provide responses to the questions in Section II and III in the available text boxes. There is no limit to the size. In the near future the EMCDDA will give you a phone call to introduce the questionnaire and its contents and discuss the answering procedure. The EMCDDA is happy to provide any help you may require at any stage of the project; do not hesitate to contact the Project Manager, Mr. Rainer Kasecker, by email (Rainer.Kasecker@emcdda.europa.eu) or by phone (tel. +351 211 210 253). The questionnaire should be answered in English and by 15 September 2011 at the latest. Please send back the completed questionnaire via e-mail to the following address:

Rainer.Kasecker@emcdda.europa.eu

II. Questions on drug squads

AREA 1: The existence of drug squads

1. Are there any drug squads in your country?

Definition: In the context of this project, 'drug squad' has been defined as:

'a formally established official, state or governmental law enforcement agency or sub-division thereof (i.e. department, section, unit, etc.), the only or main mission of which is to detect and/or investigate breaches to the drug legislation and to bring the offenders to justice. It may be an intelligence and/or an operational law enforcement unit with local, regional, national or international jurisdiction. Although most such 'drug squads' are likely to belong to Police or Customs organisations, drug squads potentially active in other institutions including for instance intelligence or military institutions (Gendarmerie, Guardia Civil, Border Guard, etc.) should also be taken into account'

Yes ☐ No ☐

If the answer is No, please go to **III. Final Remarks** at the end of this questionnaire.

AREA 2: Drug squads in the general organisation of law enforcement

Definition: 'Law enforcement' includes police, customs, but also any other agency that is enforcing laws (including for example some military organisations such as Gendarmerie, Guardia Civil, etc.).

2. Which ministry or ministries do drug squads in your country report to (in other words, where are they located)?

Please list all ministries concerned and indicate the drug squads that are located within each one.

. . . . . .

. . . . . .

In which agencies are the drug squads located (e.g. Judicial Police Force, Customs Service, etc.)?
Please list all concerned agencies and indicate the drug squads located within each.

. . . . . .
. . . . . .

3. Is there a multi-agency approach (for example, drug squads made up of both police and customs officials)?

Please name the multi-agency organisation(s) and describe briefly the institutional and organisational framework(s) within which they are located.

. . . . . .
. . . . . .

AREA 3: The legal and technical mandates of drug squads

4. What are the technical mandates of the drug squads in your country?

Definition: 'Technical mandate' means: can the unit address all types of drug offences or is it limited to intermediary or wholesale level or focussed on specific operations such as importation, smuggling, dismantling illicit laboratories or cultivation sites?

Please describe briefly the technical mandates of the different drug squads in your country. Should they vary according to the type of drug squad, please specify.

. . . . . .
. . . . . .

Do the drug squads have different territorial responsibilities (local, regional, national, international) and which ones are responsible for international, national, regional and/or local cases?

Please describe briefly the territorial responsibilities of the different drug squads in your country. If they vary according to the type of drug squad, please specify. Wherever possible, provide an estimation of the number (or percentage) of drug squads for each of the territorial responsibilities identified.

. . . . . .
. . . . . .

Who is the external decisional authority supervising the law enforcement efforts made by drug squads?

Please tick an option, or describe briefly, as appropriate. Should the external decisional authority vary according to the type of drug squad, please specify.

Prosecutor ☐

Court ☐

Other (please specify): . . . . . .

Additional comments: . . . . . .

AREA 4: The strategic and tactical mandates of drug squads

5. Are there any drug squads which are pure case management units without operational tasks?

Yes ☐ No ☐

If **Yes,** how many: ...

If you **do not know** the exact number, please skip to **Question 12**.

6. Are there some that are also operationally oriented (for example, making arrests, implementing undercover operations or surveillance operations, etc.)?

Yes ☐ No ☐

If **Yes,** how many: ...

If you **do not know** the exact number, please skip to **Question 12**.

7. Are there any drug squads that are pure law enforcement intelligence units?

Yes ☐ No ☐

If **Yes,** how many: ...

If you **do not know** the exact number, please skip to **Question 12**.

8. Are there drug squads that are a mix of these different law enforcement functions?

Yes ☐ No ☐

If **Yes,** how many: .....

If you **do not know** the exact number, please skip to **Question 12**.

9. If you were not able to provide exact numbers for Questions 8, 9, 10 and 11, could you please try to provide an estimate of the proportion of each type of drug squads (or mixed ones) there are in your country?

Please provide estimates as percentage of total number of drug squads. Feel free to use approximate percentages.

Should they vary according to the type of agency or ministry they are located in, please specify.

Pure case management units:
% of total number of drug squads

Both case management and operationally oriented:
% of total number of drug squads

Pure law enforcement intelligence units:
% of total number of drug squads

Mix of law enforcement functions:
% of total number of drug squads

Other type(s):
% of total number of drug squads

AREA 5: Staffing of drug squads

10. Could you provide us with an idea of the total number of staff working in drug squads (according to the different types of drug squads), and in particular how many within these are law enforcement officers?

Definition: 'law enforcement officers' are officials who are permitted to arrest individuals, make seizures, conduct investigations, and so on.

In the absence of exact numbers, please provide estimates. Whenever possible, provide a breakdown of number of staff/ enforcement officers by type of drug squad.

Total number of staff in drug squads:
.....
.....

Total number of law enforcement officers in drug squads:
.....
.....

III. Final remarks

The questionnaire is now nearly finished. However, we would like to ask you a few additional questions in order to complete the picture.

- Is there any other complementary information you would like to provide on drug squads in general, or in your country?
- Is there any additional comment you wish to make?
- Is the overview you provided us with representative of the situation across your country?
- Is there anyone else in your country with knowledge of drug squads you think we should contact? If so, please provide their full name and title and contact details (e-mail or telephone number).

IV. Sharing answers and analysis

1. Can the results you have provided to this survey be divulged to other respondents?

Sharing answers to the questionnaire between respondents may prove a good option and be a useful source of information and knowledge for all participants. For respondents who wish to share answers, the EMCDDA will set up a secure website (accessible with a password) which will display the answers of the respondents who have agreed to share them. It will be regularly updated.

It is essential that you let us know whether you agree to share your answer with the other respondents (on a secure website):

Yes ☐ No ☐

2. What will the EMCDDA do with the information from the questionnaires?

The EMCDDA aims to collect responses from its network of reporting countries including the 27 Member States of the European Union, Norway, Croatia and Turkey. The information obtained will be the subject of an analysis on specialised drug law enforcement in Europe. Preliminary results will be discussed with a selection of respondents during a technical meeting early 2012 in Lisbon, Portugal. At all stages of the analysis, we may contact you for clarification in relation to the answers you provided. A draft of the analysis will be sent to all respondents for comments during the first half of 2012 in order to allow them to correct potential misunderstandings and complete information where deemed appropriate. The final report on the drug squads project is expected to be ready by the end of 2012.

Thank you very much for your patience and efforts.

TD-AU-13-005-EN-N

Acknowledgements

Project coordination: Rainer Kasecker

Authors: Laurent Laniel, Rainer Kasecker, Teodora Groshkova and Chloé Carpentier

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About the EMCDDA

The European Monitoring Centre for Drugs and Drug Addiction is the hub of drug-related information in Europe. Its mission is to provide the European Union and its Member States with 'factual, objective, reliable and comparable information' on drugs and drug addiction and their consequences. Established in 1993, it opened its doors in Lisbon in 1995, and is one of the European Union's decentralised agencies. The Centre offers policymakers the evidence base they need for drawing up drug laws and strategies. It also helps professionals and researchers pinpoint best practice and new areas for analysis.

Related publications

EMCDDA

- First European conference on drug supply indicators: key conclusions, 2010

EMCDDA and Europol

- EU drug market report: a strategic analysis, 2013
- Amphetamine: a European Union perspective in the global context, 2011
- Cocaine: a European Union perspective in the global context, 2010
- Methamphetamine: a European Union perspective in the global context, 2009

These and all other EMCDDA publications are available from www.emcdda.europa.eu/publications

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EMCDDA, Praça Europa 1, Cais do Sodré, 1249-289 Lisbon, Portugal
Tel. (351) 211 21 02 00 | info@emcdda.europa.eu
emcdda.europa.eu | twitter.com/emcdda | facebook.com/emcdda

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A year in review

Highlights from the EMCDDA's General Report of Activities 2012

Welcome to the second edition of *A year in review*. 2012 was a year of challenges: the agency needed to work harder with limited resources in order to meet increasing information needs, both in Europe and beyond. We took up the challenge and released a broad range of incisive outputs focusing on Europe's constantly evolving drug situation. We also completed several projects which will help improve our analysis and the quality of the data we collect in the years to come.

Wolfgang Götz, Director

The EMCDDA: 2012 figures

41 key publications in a range of languages

Active involvement in 263 events, conferences and technical meetings

73 new psychoactive substances identified and 23 public health alerts issued through the EU early warning system network

Budget: EUR 16.31 million.
By 31 December: 99.74 % of the annual budget had been committed

Introduction

This leaflet provides an overview of the work of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), as presented in our General Report of Activities ([1]), with a spotlight on key topics and events.
A decentralised European agency based in Lisbon, the EMCDDA is the hub of reliable, robust data on the European drugs situation and responses to it. Our annual progress report provides an overview of our achievements over a set period, for those interested in what we do and how we do it. For further information on the agency, please visit our website at: emcdda.europa.eu

([1]) Available at emcdda.europa.eu/publications/general-report-of-activities/2012

Monitoring the drugs situation

One of the EMCDDA's core tasks is to collect, manage and analyse data provided by our focal points in 30 countries (European Union (EU) Member States plus Croatia, Turkey and Norway). The findings gathered through this collective effort — along with expert meetings on epidemiological key indicators where national information is shared — form the basis for the agency's main outputs each year.

On 15 November, we were honoured to welcome Commissioner Malmström to our offices in Lisbon to mark the launch of our *Annual report on the state of the drugs problem in Europe* ([1]) and associated products. Published in 22 languages, the report was complemented by an online Statistical bulletin of over 400 tables and graphs and in-depth reports (Selected issues) on drug-related concerns in relation to pregnancy, childcare and the family, and prisons. Commenting on the report, Commissioner Malmström said:

'This new analysis from the EMCDDA is particularly welcome as it highlights the drug problems we share across the European Union and informs the work we are currently undertaking to strengthen Europe's strategic and operational approach to drug trafficking and use.'

Demand reduction was high on the agenda last year. We produced several thematic publications (e.g. on heroin-assisted treatment and the social reintegration and employment of drug users) and launched new online tools (including harm reduction profiles covering 30 countries) on responses to drug use in Europe. Two monitoring instruments developed in 2012 will lead to better harmonised data on treatment and drug use in prison in the years to come.

Continued on page 2

([1]) Available at: emcdda.europa.eu/publications/annual-report/2012

Continued from page 1

Significant progress was made in developing key indicators on drug supply. The second European conference on the topic, held in Lisbon and co-organised by the European Commission and the EMCDDA with support from Europol, provided experts with a forum to discuss how to better monitor drugs coming into Europe as part of global efforts to control the production, sale and consumption of illicit substances.

We released a landmark review of cannabis production and markets in Europe ([1]), describing in detail the cannabis supply chain from cultivation to consumption, along with an estimate of the size of the EU cannabis market. Moreover, the agency commissioned a demonstration project to explore how wastewater analysis can help estimate population drug consumption in 19 European cities.

Another key activity was the drafting of an innovative joint report with Europol on EU drug markets — prepared at the request of Commissioner Malmström. A 2013 release and the first of its kind, the report focuses on painting a coherent and holistic picture of developments in the EU for stakeholders, including law enforcement, prevention and academic communities. ■

([1]) Available at: emcdda.europa.eu/publications/insights/cannabis-market

Working in partnership

Partnership lies at the heart of our work. The EMCDDA can only react in a timely manner to the rapidly-evolving European drug situation through strong links with key partners. We nurture collaboration with many organisations, including EU institutions and other EU agencies.

2012 was a busy year for inter-agency collaboration. Existing work programmes and agreements with Europol, the European Centre for Disease Prevention and Control (ECDC), and CEPOL (the European Police College) ran their course, and an amended working agreement was signed with the European Medicines Agency (EMA). The EMCDDA started negotiations for a Memorandum of Understanding with Eurojust. We held the first exchange programme for senior law enforcement officers with CEPOL.

Promoting the monitoring model we use with third countries is capital. For example, the agency obtained funding from the IPA (Instrument for Pre-accession Assistance) programme to run a technical assistance project with Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Iceland, Kosovo ([1]), Montenegro and Serbia from 2012–14. This will prepare the countries for collaborating with us in the future. Our Director also signed a Memorandum of Understanding with the authorities of the Republic of Moldova.

Relations with the scientific, research and academic communities were strengthened throughout the year. Initiatives here included the ceremony for our second Scientific paper award, the hosting of the annual meeting of the International Society of Addiction Journal Editors (ISAJE), and the graduation ceremony for the European Masters in Drug and Alcohol Studies (EMDAS).

The EMCDDA and the United States National Institute on Drug Abuse (NIDA) co-organised the second interdisciplinary forum on new and emerging psychoactive substances in Palm Springs. This event brought together over 300 leading US, European and international experts from 72 countries to take stock of the new drugs phenomenon from a global perspective.

Work with the European School Survey Project on Alcohol and Other Drugs (ESPAD) continued, with the EMCDDA publishing the summary of the 2011 ESPAD report in 25 languages ([2]).

Last but not least, we must underline our ongoing cooperation with the Reitox network of national focal points: the agency's main data providers and a vital source of knowledge and expertise on drugs issues at national level. Work flourished in 2012, for example with our first 'Reitox week', gathering representatives from the network's 30 countries, as well as some IPA and European Neighbourhood Policy countries ([3]), in order to foster knowledge and share experience. Representatives of the Reitox network were invited to attend various expert and coordination meetings throughout the year. ■

([1]) This designation is without prejudice to positions on status, and is in line with United Nations Security Council Resolution 1244/99 and the International Court of Justice Opinion on the Kosovo declaration of independence.

([2]) Available at: emcdda.europa.eu/publications/joint-publications/2011-espad

([3]) ENP countries: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Palestine, Syria, Tunisia and Ukraine.

Dr Traute Demirakca and Dr Johanna Gripenberg, two winners of the EMCDDA Scientific paper award, with Scientific Director Paul Griffiths and Director Wolfgang Götz at the award ceremony.

Alerting and anticipating

The EU early warning system (EWS) implemented by the EMCDDA, Europol and partners in the Member States was particularly active in 2012: 73 new substances were identified, nearly 50% more than in 2011. Twenty-three public health alerts were also issued.
To support this work, we organised annual meetings of EWS experts from a broad range of disciplines.

Requests from Member States and institutional partners were handled by the EMCDDA's rapid response team. For example, with sister agency ECDC, we reacted to the outbreaks of newly-detected HIV infections in people who inject drugs in Greece and Romania with a fact-finding mission, expert meetings, reports on the situation in each country and by providing targeted support.

Today's rapidly evolving drug situation in Europe means that identifying and monitoring new trends are central to the work of the agency. In this respect we organised an expert meeting to discuss the abuse of fentanyls (powerful synthetic opioids), followed by the publication of a trendspotter study on the topic ([1]).

([1]) Available at: emcdda.europa.eu/scientific-studies/2012/trendspotters-report

In 2012, the list of substances reported was dominated by 30 synthetic cannabonioids which mimic the effects of cannabis. The product shown is one example. It contains various combinations of synthetic cannabinoids, however these are not declared on the packaging.

Source: Simon D. Brandt, Liverpool John Moores University.

Informing policy

We continued to support drug policy dialogue at EU level by providing expertise to the European Parliament, the Council of the EU and the European Commission, along with policymakers in the Member States. Mr Götz presented our *Annual report on the state of the drugs problem in Europe* to the European Ministers for Justice and the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE committee).

The EMCDDA took part in the implementation of the first EU Policy Cycle for organised and serious international crime launched by the Standing Committee on operational cooperation and internal security (COSI) for 2012–13. The agency contributed to the definition and implementation of several activities under the Operational Action Plan (OAP) on the synthetic drugs priority.

In terms of policy issues linked to new drugs, data-collection exercises were launched with the EWS network on two new psychoactive substances. A Joint Report on 4-methylamphetamine (4-MA), was prepared with Europol. On the basis of this report, the Council of the European Union asked for a formal risk assessment of the substance. Consequently, in March 2013, the decision was taken to submit the drug to control measures throughout Europe. A Joint Report on 5-(2-aminopropyl) indole (5-IT) was also prepared.

The agency produced a trend report for the evaluation of the 2005–12 EU drugs strategy and was a key member of the Steering Committee managing the evaluation process (strategy and action plans).

To support national policymakers, we produced the briefing paper *Drug demand reduction: global evidence for local actions* in 25 languages ([1]).

([1]) Available at: emcdda.europa.eu/publications/drugs-in-focus/best-practice

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Tel. (351) 211 21 02 00

info@emcdda.europa.eu
emcdda.europa.eu
twitter.com/emcdda
facebook.com/emcdda

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Dynamic and diverse communication

A new, integrated communication strategy was prepared in a drive to improve even further the EMCDDA's publications and contact with its key audiences. As the European hub for data on drugs, the agency communicates in a variety of styles and formats, increasingly online and via social media. The strategy was endorsed by the Management Board in July. It sets the overall guidelines and tone for all future communication activities, outlining the core values that underpin our work: relevance, quality, efficiency, transparency and consistency. Evolving to meet the changing needs of our audiences is essential in order to remain relevant and credible.

We released 41 key products and a range of new online tools and web-based resources over the period, and 23 scientific articles were published. Twitter and Facebook grew as dissemination channels. Over 200 visitors came to the agency's headquarters: such visits highlight the EMCDDA's role as the reference point on drugs in Europe.

In order to enhance the communication of results to our target audiences, we organised a summer school on 'Drugs in Europe: supply, demand and public policies', in collaboration with the *Instituto Superior das Ciências do Trabalho e da Empresa–Instituto Universitário de Lisboa* (ISCTE–IUL). The course attracted 32 students from 12 European countries, with a professional or academic interest in the field of drugs. Trainers for the course came from both the EMCDDA and ISCTE–IUL. The success of this first course means we will hold a second session, in July 2013 ([1]).

The media are vital relays for all of our activities. We continued to foster relations with journalists, providing a wealth of media-friendly information. In the course of the year, we produced 13 news releases and 10 fact sheets, and the press office handled some 170 requests from the media. The EMCDDA made 232 Facebook posts/entries and 168 tweets and retweets. ■

([1]) Summer school website: drugsummerschool.cies.iscte-iul.pt/np4/home

Governance and management

The Management Board adopted a new triennial strategy and work programme for 2013–15. This builds on the progress already made in improving our use of resources, as highlighted in the recent external evaluation of the agency, and contains three core commitments for the agency's future work: providing a relevant, timely and responsive analysis of the drug situation, anticipating future issues and problems; delivering efficiency and ensuring maximum value, and; ensuring we communicate and deliver in a customer-oriented manner.

'...the information provided by the EMCDDA has helped with the development of effective policymaking at the EU and Member State levels to combat the drugs problem.'

External evaluation report of the EMCDDA, Centre for Strategy & Evaluation Services, Sevenoaks, UK.
June 2012

Staff award

Our Scientific Director, Paul Griffiths, received the Award for Excellence in International Leadership from NIDA.
This recognises researchers who have made significant contributions to international collaborative research and/or capacity building outside the United States or who have helped improve scientific understanding of drug abuse and addiction.

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The Hague, 7 August 2013

EDOC# 681540

Europol's Contribution to the UNODC high level review of the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem

1. Introduction

The following summary will aim to provide a valuable contribution to the UNODC's high level-report on the *'Implementation by Member States of the Political Declaration and Plan of Action on International Cooperation Towards an Integrated and Balanced Strategy to Counter the World Drug Problem'* by putting forward an accurate representation of Europol's standpoint on the subject matter, and the level of support provided in relation to the issues identified.

As a result of Europol's mandate, remaining a global player countering drug production, drug trafficking and money laundering is amongst the organisation's top priorities. Evidence of this is that almost 25% of all messages exchanged via Europol relate to drugs.

What follows is an overview of Europol's efforts to support international cooperation to counter the world drug problem, not only from a strategic point of view, but from an operational perspective. It provides insight into Europol products and the European Union (EU) Policy cycle for serious organised crime, thus providing a comprehensive summary of Europol's drug-related activities.

Previous cooperation between Europol and the UNODC has been good. An example of this can be seen in the **UNODC Paris Pact Initiative**. We are sure the UNODC is well aware of the extent of said collaboration and therefore further details are not provided in this report.

2. European Drug Situation and EU policies and strategies

Patterns of drug use are constantly changing as new drugs appear contributing to the complexity of the drugs market. Equally, the criminality that the drug market generates can only be understood in the wider context of the activities of organised crime groups (OCGs). There is an increasing interaction and cooperation between OCGs. Poly-drug trafficking is becoming more prevalent whilst the diversification of trafficking routes is on the increase. Through globalisation, the drug market appears increasingly dynamic, innovative and quick to respond to challenges. Beyond Europe and North America, new markets in Africa, Asia and South America present new challenges. The EU is a production and source region for cannabis and synthetic drugs, but also a source for precursors for heroin and other essential chemicals required for drug or precursor production. Although the heroin problem within the EU seems to be declining in the long term, stimulants like cocaine and synthetic drugs are of growing importance. Substitutions are fuelling the market: in particular new psychoactive substances are unregulated, difficult to control, but economically attractive for users and OCGs. The cannabis market has grown in importance and is linked with violence and other criminal activities. This calls for an equally dynamic, innovative and agile response in continuing to tackle the drugs

problem in a comprehensive and balanced way. The drug policy chosen by the EU fully complements the Political Declaration of the UN to counter the world drug problem.

In the framework of the EU Strategy on Drugs and related action plans, the European (external) Security Strategy, the Stockholm (internal security) Programme, the EU Internal Security Strategy and the EU Policy Cycle for organised and serious international crime, the EU has developed a wide range of operational actions on all fronts in the fight against drugs. Europol plays a key role in operational coordination and in providing strategic advice to law enforcement agencies and EU policy-makers.

2.1. EU Drug Strategy 2005-2012

With the adoption of the previous EU Strategy on Drugs (2005-2012) Europol's role was to strengthen law enforcement cooperation and to exchange best practice, knowledge and expertise in this area. Throughout the lifetime of the Strategy, Europol fulfilled a crucial role in coordinating the collection and dissemination of intelligence and in the provision of operational support. The organisation provided exchange networks, analysis and training in drug expertise to law enforcement agencies.

2.2. EU Drug Strategy 2013-2020

The current EU Drugs Strategy (2013-2020) is structured around two policy areas: drug demand reduction and drug supply reduction, and three cross cutting themes, coordination, international cooperation and research / information / evaluation. The strategy will be implemented through two Action Plans, which will provide a list of specific actions with a timetable, responsible parties, indicators and assessment tools. The first of these Action Plans (2013-2016) was adopted recently. It provides for more than 50 actions to comply with the objectives of the EU Strategy. Europol is involved in the policy area of drug supply reduction and has been made a responsible party for 9 of 13 actions. Additionally, Europol has a responsibility for other actions referring to the cross cutting themes of coordination, international cooperation and information/research/monitoring and evaluation. Europol is expected to help to maintain a continued focus on the implementation of the Strategy and the accompanying Action Plans and to contribute to the mid-term assessment of the Strategy by 2016.

The strategy includes approaches in drug supply reduction, addressing new challenges which have been identified in recent years. This is especially so in respect of the dynamics of the drug markets, including the use of new communication technologies as a facilitator for the distribution of illicit drugs and the need to prevent diversion of precursors, pre-precursors and other essential chemicals used in the illicit manufacture of drugs from the legal trade to the illicit market. The objectives are therefore to contribute to a disruption of the drugs market and a measurable reduction of the availability of illicit drugs; to encourage coordination through active discourse and analysis of developments and challenges in the field of illicit drugs at EU and international level; and to further strengthen dialogue and cooperation between EU and non-EU countries, International Organisations and other actors.

A measurable reduction of the availability of illicit drugs should be achieved through the disruption of illicit drug trafficking, the dismantling of OCGs involved in drug trafficking, efficient use of the criminal justice system, effective intelligence-led law enforcement and increased intelligence sharing. At EU level, emphasis will be placed on large-scale, cross-border and organised drug-related crime. All related priorities have links to current operational and strategic activities within Europol, including its core operational projects ('Focal Points'), Europol support to EMPACT as the

operational implementation of the EU policy cycle (see below), support provided to other regional initiatives and activities in the areas of money laundering and asset recovery.

The orientation of the EU Strategies on Drugs (2005-2012 and 2013-2020) were and are closely linked with the UN goals and targets as set out in the Political Declaration and its Action Plan. Therefore, the Europol contribution to the EU Action Plan of the new EU Strategy on Drugs can consequently be seen as a Europol contribution to the UN Plan of Action.

2.3. EU Policy Cycle, EMPACT and Focal Points

The EU Policy Cycle for organised and serious international crime was established in 2010 and is now in its second iteration. The Policy Cycle foresees the agreement of priorities by EU Ministers, based on the recommendations of the new EU Serious and Organised Crime Threat Assessment (SOCTA), and the subsequent implementation of strategic plans to tackle the agreed priorities through the "European Multidisciplinary Platform Against Criminal Threats" (EMPACT).

2.3.1.2012-2013 EMPACT priority areas related to drugs

In 2011, the Council of the EU adopted eight crime priorities, four of which related to illicit drugs. Each priority led to agreement on a series of strategic goals, which were later transferred into Operational Action Plans (OAPs) managed by project groups (EU Member States supported by Europol) serving for the years 2012 and 2013.

1. **EMPACT West Africa** – Weaken the capacity of OCGs active or based in West Africa to traffic cocaine and heroin to and within the EU.
2. **EMPACT Western Balkans –** Mitigate the role of the Western Balkans as a key transit and storage zone for illicit commodities destined for the EU and logistical centre for OCGs, including Albanian-speaking OCGs.
3. **EMPACT Synthetic drugs –** Reduce the proportion and distribution in the EU of synthetic drugs, including new psychoactive substances.
4. **EMPACT Container Smuggling –** Disrupt the trafficking to the EU, particularly in container form, of illicit commodities, including cocaine, heroin, cannabis, counterfeit goods and cigarettes.

The first set of Operational Action Plans (OAPs) have already provided concrete drugs-related action points in 2012 and 2013. Europol had an integral involvement in implementing these actions. This included strategic and operational coordination and coordination of investigations as well as operational support on the spot.

2.3.2.2014-2017 EMPACT priority areas related to drugs

Based on the 2013 SOCTA, EU Member States have defined new priorities for the EU Policy Cycle 2014-2017, two of which specifically related to drug trafficking. Although not formally adopted yet, as shown below, the Multi-Annual Strategic Plans (MASPs) for the new priorities provide concrete strategic objectives. Europol has an important and integral involvement in these strategic objectives, including strategic and operational coordination.

1. **EMPACT priority cocaine/heroin**: Reduce cocaine and heroin trafficking to the EU and disrupt the OCGs facilitating the distribution in the EU.

- Improve the strategic and operational picture of the cocaine and heroin markets, in particular trafficking to and within the EU, including through regular evidence based reviews. Specific attention should be given to OCGs, production methods, trafficking methodologies and traditional and developing modi operandi.
- Increase and improve cooperation and intelligence and information exchange amongst Member States' law enforcement agencies and judicial authorities, EU bodies/agencies and other relevant stakeholders with regard to transnational cases, particularly in support of operational activities.
- Develop and improve the cooperation with Third Countries, including source and transit countries, taking into consideration the continuous diversification of routes and on-going efforts in West-Africa and the Western Balkans, particularly through the enhanced involvement of EU Member States' and agencies' liaison officers and magistrates.
- Target prominent OCGs and high value targets, through coordinated investigation and prosecution, acting as key brokers in the trafficking of heroin, cocaine, precursors and cutting agents through the main entry points and routes to an within the EU.
- Undermine and disrupt the criminal infrastructure by targeting those who are involved in corruption, abuse legitimate business structures and communication technologies, invest in poly-crime activity and engage in money laundering, through coordinated investigations and prosecutions, particularly in support of asset recovery.
- Improve controls using a multi-disciplinary approach at key EU entry points, in particular ports and airports, and to develop specific operations in partnership with law enforcement agencies, port authorities, private security companies and commercial transport organisations, in order to minimize vulnerabilities.
- Raise awareness and build prevention capabilities, notably by sharing best practices amongst all stakeholders with a view to identifying and implementing those measures that deliver the greatest impact in terms of prevention, deterrence, detection, investigation and prosecution.
- Support the rationalisation of existing mechanisms towards the development of a system to coordinate donor activities of the EU, Member States and where possible other relevant stakeholders with a view to optimising operational outcomes.

2. **EMPACT priority synthetic drugs:** Reduce the production of synthetic drugs in the EU and disrupt the OCGs involved in synthetic drugs trafficking.

- Improve the strategic and operational picture on synthetic drugs including through evidence-based indicators by giving specific attention to illicit market trends, trafficking methodology and OCGs modi operandi.
- Further develop intelligence and information gathering using a multi-disciplinary approach and to improve intelligence sharing mainly with a view to initiate investigations and prosecutions by focusing especially on emerging threats and large-scale production of synthetic drugs.
- Reduce the diversion/trafficking of (pre)precursors and other essential chemicals by focusing on controls in particular at the EU entry points, by addressing their diversion within the EU, by targeting and prosecuting the main

OCGs involved, and by tackling in a timely manner emerging threats including through means of legislation.

- Improve law enforcement knowledge on and the response to the supply of NPS including the involvement of OCGs by wider sharing of information through existing channels, in particular the Early Warning System, by tackling in a more effective manner emerging threats including through means of legislation.
- Improve law enforcement and judicial cooperation among EU Member States by conducting joint and parallel investigations and prosecutions particularly on prominent OCGs, HVTs and facilitators.
- Develop law enforcement and judicial cooperation with relevant third countries and partners on threats emerging from the production and trafficking of synthetic drugs.
- Improve cooperation with the private sector including the financial sector, the chemical and pharmaceutical industries, internet service providers and transport/courier/delivery companies, in order to disrupt the chain of synthetic drugs production and trafficking.
- Focus on asset recovery and money laundering activities by triggering financial investigations and prosecutions in parallel with the criminal investigation on synthetic drugs. Such investigations should include the participation of all relevant services including the tax authorities.
- Further develop multi-disciplinary training and awareness activities at national, EU and international level as well as curricula at EU level i.a. on dismantling of clandestine laboratories. Training will also cover judicial authorities.

These strategic priorities will be translated into operational action and with implementation starting 2014. However, to reach its full potential, it needs serious commitment of different competent European Union national authorities and EU agencies to align their work programmes to the priorities.

3. Drug related operational support for supply reduction via Focal Points at Europol

Operational analytical support provided to Member States and operational partners are dealt with in the framework of Europol's Analysis Work Files (AWFs). Within these, "Focal Points" are the operational projects bringing together groups of investigators and analysts from Europol, concerned Member States and Third Parties. Europol current runs Focal Points (FPs) on cannabis, cocaine, heroin and synthetic drugs/precursors (Cannabis, Cola, Heroin and Synergy). However, drug related support may also be provided within other Focal Points such as Outlaw Motorcycle Gangs (Monitor), Ethnic Albanian Organised Crime (Copper), Eastern European Organised Crime (EEOC), Sustrans (Suspicious Transactions – Money laundering related).

With regard to drugs, Europol focuses on supply reduction, particularly on sources, processing, production, routes, regions and involved OCGs. A more systematic use of the EU Member States liaison officers in Third Countries for intelligence exchange is envisaged as well as a use of regional security platforms to counter emerging threats, wherever appropriate and useful. There will be a focus on high value targets and most prominent OCGs. Asset recovery in Member States supported by Europol's Criminal Asset Bureau is a key element to tackle OCGs.

The objectives of the FPs are to gather and exploit available information (within Member states as well as outside), discover links between cases, identify criminal targets & target OCGs. FPs are also involved in initiating, supporting and

coordinating the intelligence aspects of investigations, facilitating and enhancing information exchange, knowledge and experience in the specific subject area including the related precursors and equipment as well as wholesale, trafficking, cultivation/ production, etc.

The customised products provided by the Focal Points, increasingly in support of EMPACT, include:

- Operational analysis;
- Technical and forensic expertise;
- On-the-spot support (mobile office; Universal Forensic Extraction Device (UFED); dismantling of laboratories/cultivation sites including technical and comparison reports on chemicals and equipment seized in illegal synthetic drug production/storage locations and waste dump sites; participation in Joint Investigation teams (JITs) and in Joint Customs and/or Joint Police Operations (JCO, JPO, JCPO);
- Testimony in court;
- Financial support for operational meetings;
- A faster first line of response to contributions (e.g. cross match reporting);
- Technical and forensic support for specific criminal investigations, for example the Europol Illicit Laboratory Comparison System (EILCS), the Europol Synthetic Drug System (ESDS), the Europol Cocaine Logo System (ECLS), the Europol Logo System on Cannabis (ELSC) and concealment methods;
- Technical and forensic analysis of IT;
- Financial intelligence profiles on natural or legal persons;
- Overview of OCG financial activities (money flows, company ownership, assets held);
- Threat notices, intelligence and situation reporting.

4. Drug related strategic products in the period 2009 – 2013

The purpose of providing strategic products related to drugs trafficking and production is to inform policies at national and EU level and to provide a basis for intelligence-led law enforcement. Concrete recommendations are proposed where a potential is seen to improve the EU response to the drug situation.

4.1. General strategic assessments:

- Organised Crime Threat Assessment (OCTA) 2011, including drug related strategic information.
- Serious and Organised Crime Threat Assessment (SOCTA) 2013, including drug related strategic information. The SOCTA is designed to provide a comprehensive overview of the threat of serious and organised crime in the EU. The SOCTA adopts a commodity-oriented approach and as such the crime areas are largely defined by the commodities and services offered by OCGs. The recommended priorities inform decision-making at EU-level, in particular decisions priorities for the EU Policy Cycle.
- EU Drugs Market Report – A Strategic Analysis (EMCDDA-Europol joint publication in January 2012).

4.2. Specific drug-related strategic products:

- New Psychoactive Substances (within the Early Warning System and on annual basis) together with the EMCDDA and in close cooperation with the European Commission in line with the Council Decision of 2005[1]
- Europol Drugs Newsletter Alert on 4-Fluoramphetamine 2009-001
- Europol Drugs Newsletter Alert on BMK Bisulphite adduct 2009-002
- Europol Drugs Newsletter Alert on Safrole 2009-003
- Methamphetamine - A European Union perspective in the global context (EMCDDA – Europol joint publication) 2009
- Report on concealment methods, 2009
- Cocaine conversion laboratories in the European Union, 2009
- Europol Cocaine Logo Catalogues, 2010
- Safrole and Sassafras Oil – An emerging trend in MDMA production, 2010
- Synthetic Drug Equipment Catalogue 2010
- Alert Report SYNALERT on PMK Glycidate 2010-001
- Alert Report SYNALERT on PMA and PMMA 2010-002
- Cocaine - A European Union perspective in the global context 2010 (EMCDDA-Europol joint publication)
- Amphetamine – A European Union perspective in a global context 2011 (EMCDDA – Europol joint publication)
- Alert Report SYNALERT on APAAN 2011-001
- Cocaine trafficking within the banana trade, 2011
- Chemicals involved in the cocaine extraction and conversion process, 2011
- Submersibles – The imminent threat to Europe?, 2011
- Alert Report SYNALERT on 'legal high' product known as "Annihilation" 2012-002
- Cocaine concealed within liquids, 2012
- Cocaine trafficking to Europe by sea, 2012
- Regular contributions to the UNODC Global Smart Reports

[1] EU Council decision 2005/387/JHA

EU DRUG MARKETS REPORT
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Case study 1
Cannabis: changing demand and an increase in domestic production

Europe remains one of the world's largest consumer markets for cannabis resin, the majority of which continues to be sourced from Morocco. Traditionally associated with resin consumption, the western part of the region is now increasingly dominated by herbal cannabis.

An estimated 2 500 tonnes of cannabis are consumed every year in the EU and Norway, corresponding to a retail value of between 18 and 30 billion euros. The largest markets for cannabis resin are Italy, Spain and France, and for cannabis herb, the United Kingdom and Germany.

Indoor cannabis cultivation site.
Photo: Spanish Guardia Civil via Europol.

Cannabis cultivation techniques have advanced and indoor cultivation has spread, reducing the demand for imported products ('import substitution'). Domestic cannabis production is widespread throughout Europe, taking place both indoors and outdoors, and is increasing.

Although there are a number of growers catering for their own needs, the use of large-scale production facilities run by criminal groups is increasing in some countries, while some of them now tend to run multiple small-scale plantations to mitigate risks.

Domestic production of herbal cannabis in Europe is a major challenge for law enforcement. Production is difficult to detect, especially when occurring indoors, and trafficking of the drug, now often intra-regional, is more difficult to interdict than that of imported resin. This is reflected in the estimated interdiction rates at around 30 % for resin and below 10 % for herb in the EU.

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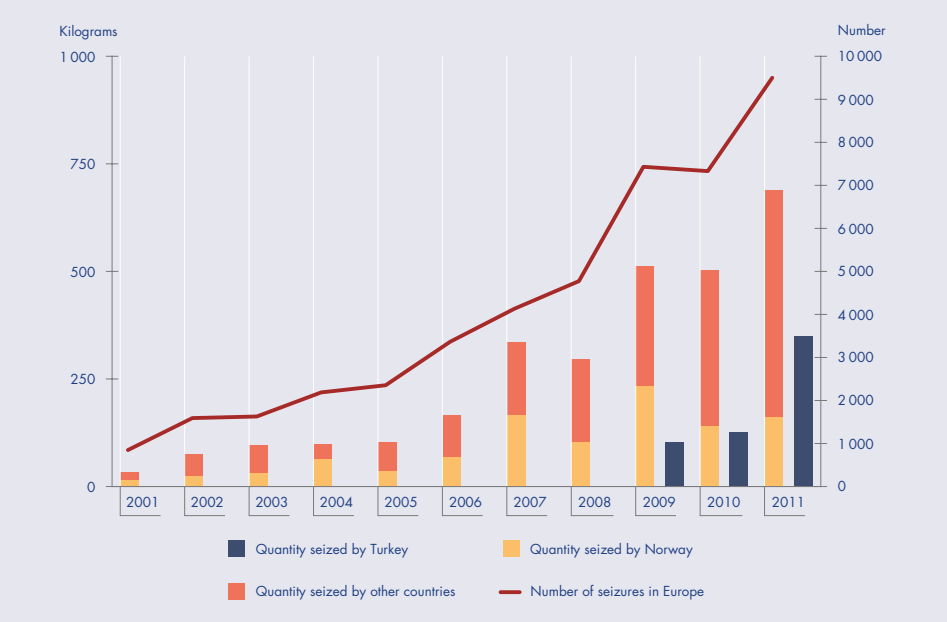
Case study 2
Methamphetamine production and trafficking increasing in Europe

Production and trafficking of methamphetamine is increasing in Europe, and it is spreading outside its traditional consumer markets of the Czech Republic and Slovakia.

Manufacturing of methamphetamine is now occurring or increasing in countries where it was previously absent or low-level, including Austria, Bulgaria, Germany, Hungary, Lithuania, the Netherlands, Poland and the United Kingdom.

Europe is also now used as a transit territory for methamphetamine made in Africa and the Middle East and trafficked by air to East Asia. For instance, Turkey, a country traditionally associated with the heroin trade, is now a significant transit area for methamphetamine exports to Asia.

Seizures of methamphetamine in Europe, 2001–2011



Note: All 26 European countries reporting methamphetamine seizures are included, except the Netherlands and Poland where *Number of seizures* data are not available. The total amounts represent the sum of the quantities of methamphetamine seized under different forms; for calculation purposes, tablets were assumed to weigh 250 mg.
Four countries—Spain, Malta, the United Kingdom and Croatia—do not report methamphetamine seizure data.

Source: EMCDDA/Reitox national focal points, EMCDDA (2012a).

As a result, the quantities of methamphetamine seized in Europe, including Turkey, have increased six-fold since 2006, while the number of seizures was multiplied by three during that period (see graph).

The main new consumer markets for the drug are in Central Europe and Scandinavia. They include Germany, Norway and Sweden, three countries traditionally associated with the use of amphetamine.

Although compared to other world regions, such as Asia and North America, production and use of methamphetamine is limited in Europe, the spread of this drug is worrying and warrants careful monitoring.

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Case study 3
New psychoactive substances: 73 detected in 2012

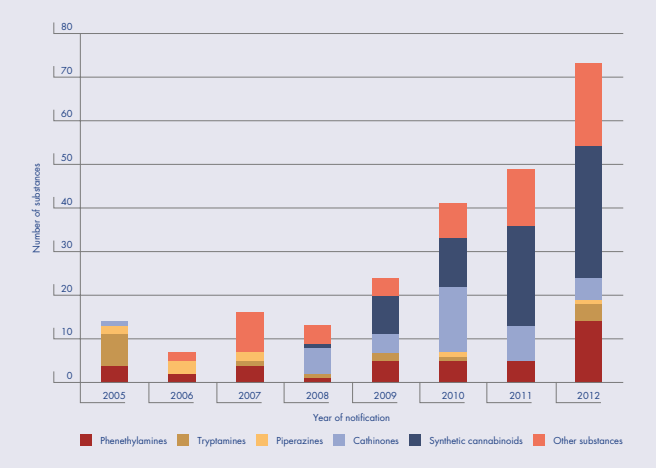
New psychoactive substances are a diverse group of drugs that are not controlled under international law.

They are emerging at an unprecedented rate: 73 substances were notified in 2012, up from 49 in 2011 and 41 in 2010. More than 200 new substances have been notified across the EU since 2005.

Often marketed as 'legal highs', the substances are sourced legally as powders from China and India in bulk quantities. They are then imported into Europe and turned into final products. These in turn are sold on the open market as replacements for controlled drugs using aggressive and sophisticated marketing strategies.

Some new psychoactive substances are sold directly on the illicit market as drugs in their own right or deceptively as MDMA (ecstasy), amphetamine or cocaine.

Number of new psychoactive substances notified to the European Early warning system, 2005–2012



Source: EMCDDA/EWS.

The Internet plays a key role in reshaping the 'new drugs' market: a growing number of Internet shops have been identified by EMCDDA monitoring with almost 700 identified in 2012.

A recent EU survey in young people aged 15–24 found that lifetime use of 'legal highs' in most Member States was 5 % or less, with use in the United Kingdom, Latvia, Poland and Ireland being 8 %, 9 %, 9 % and 16 % respectively.

Tablets resembling 'ecstasy' found to contain 5-(2-aminopropyl) indole (5-IT).
Photo: Hungarian national focal point.

'Annihilation': a so-called 'legal high' that led to hospitalisations in Europe. Analysis of samples found different combinations of synthetic cannabinoids, some of which are controlled drugs in some countries.
Photo: Simon D. Brandt, Liverpool John Moores University.

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Case study 4
Twenty-seven arrested as European police dismantle drug smuggling network

An international drug smuggling network responsible for trafficking large quantities of illegal drugs into and out of Spain has been dismantled. Operation Capea, led by Spain's Guardia Civil in Navarra, was coordinated by Europol and Eurojust, working in cooperation with French and Dutch law-enforcement authorities.

Over a period of years, this organised criminal group from Navarra was the main importer of amphetamine sulphate into Spain. Together with another criminal group based in Valencia, which supplied consignments of cannabis resin shipped in horse transporters, the drugs were concealed in cans and then transported by lorry to The Netherlands. On 30 November 2011, French police intercepted a lorry bound for The Netherlands which contained over half a tonne of cannabis resin. This was to be exchanged for 200 kg of amphetamine and sent back to the criminals in Spain for onward distribution.

Photo: Europol.

The effective law enforcement cooperation demonstrated by this operation resulted in:

- a seizure of 675 kg of cannabis resin by French police.
- Spain's Guardia Civil carrying out 25 house searches and seizing:
    - 4.3 kg of amphetamine plus ketamine, cocaine and other illegal substances
    - an indoor cannabis plantation and more than 100 cannabis plants
    - four firearms
- 27 arrests in Spain in Valencia, Madrid, La Rioja, Zaragoza and Navarra. Those arrested were linked to three international drug trafficking organisations.
- Spanish customs (AEAT) blocking 97 bank accounts and seizing 19 apartments, six companies and eight vehicles as part of a parallel money-laundering investigation.

Supporting the investigation were two Europol specialists who were present in Spain for the action day, deploying the Europol mobile office, as well as assisting with the secure dismantling of outdoor and indoor cannabis plantations. In the initial stages of the investigation, Europol hosted an operational coordination meeting in The Hague, and Europol drugs experts facilitated the exchange and analysis of key criminal intelligence.

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Case study 5
Synthetic drugs network broken up

In early 2012, an international organised crime network, responsible for the large-scale production and trafficking of synthetic drugs, was broken up following an extensive investigation by European law-enforcement authorities. The operation resulted in the arrest of the key members of the criminal network, the discovery of three illegal drug production facilities and the seizure of over 100 kg of amphetamine, significant quantities of drug precursors, ammunition, firearms and explosives.

Photo: Europol.

The investigation began when Swedish authorities identified large quantities of amphetamine being trafficked into Sweden. Cooperation was then launched with Europol and other EU Member States when enquiries confirmed that an international criminal network was involved. Based on intelligence and links identified between different countries, Europol initiated 'Operation Fire', working together with several European law-enforcement agencies. The aim of the operation was to dismantle the organised crime network and stop the large-scale production and trafficking of synthetic drugs within the European Union.

Parallel investigations started in Sweden and Germany, while other countries involved supported the operation and conducted their own enquiries. Europol helped coordinate 'Operation Fire' and foster the exchange of criminal intelligence.

During the operational phase of the investigation, 30 kg of amphetamine were seized in Sweden and three suspects arrested as well as two in Germany and one in the Netherlands. In addition, cooperation with Bulgarian authorities led to the arrest of three members of the organised crime network and the dismantling of three illegal synthetic drug production facilities. The Bulgarian authorities seized approximately 75 litres of amphetamine base (enough to produce around 120 kg of pure amphetamine), 15 kg of amphetamine substance and over 1 400 litres of various chemicals used to produce synthetic drugs. Equipment, including two tableting machines, together with five firearms, 150 rounds of ammunition and 6.4 kg of trinitrotoluene (TNT) was also seized.

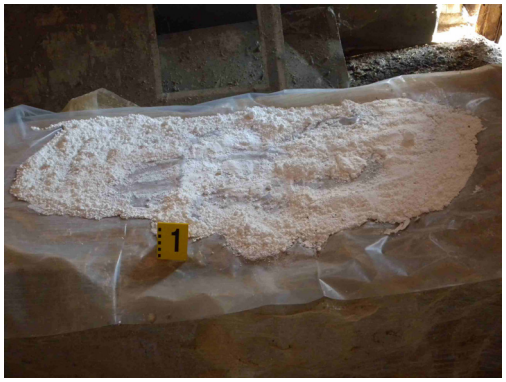

Photo: Europol.

Following the results of this operation, Europol's Director, Rob Wainwright, commented: 'The successful cooperation between Europol and our European law-enforcement partners has delivered a major blow to this dangerous criminal network of drug producers and traffickers, and will bring justice to those concerned. Europol will continue to proactively support such investigations with our intelligence and technical capabilities and we anticipate further results in this area of serious organised crime.'

'Crime knows no borders, and neither should we. This joint operation goes to show just how immensely important it is for national law enforcement and Europol to effectively exchange information about dangerous criminal activities,' said Cecilia Malmström, European Commissioner for Home Affairs.

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Case study 6
6.5 tonnes of heroin precursor seized

As a result of an intensive cooperation between Slovakia, Hungary and several other EU Member States, supported by Europol and Eurojust, 6.5 tonnes of acetic anhydride, a critical heroin precursor, were seized in Hungary on 5 April 2011 by Hungarian Police services.

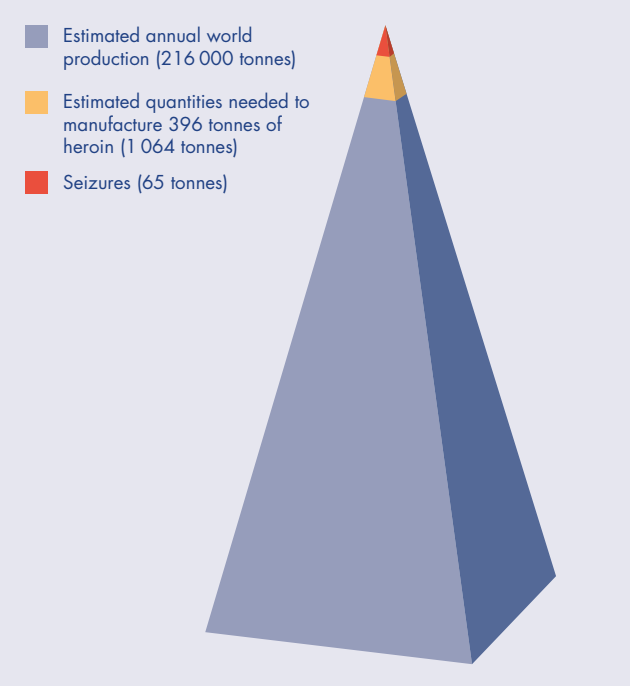
These efforts led to the dismantling of a major organised criminal group network heavily involved in acetic anhydride trafficking. Several house searches were successfully executed in the Czech Republic, Slovakia, Hungary, Slovenia and the main suspects were arrested. The organised crime group concerned was involved in the trafficking of at least of 30 tonnes of the precursor.

The significance of the seizure was recognised in terms of the quantity involved and the amount of heroin that could have been manufactured had the consignment reached the heroin laboratories in Afghanistan, for which it was destined.

Europol supports several such multi-lateral operations and continues to target wider organised crime groups involved in this activity. Through analysis of case data a number of operational links were found and operational meetings were convened by Europol to exchange information in support of investigative teams in the field.

On an international level, the case was regarded as significant, and it was a follow-up from a recent 10-tonne seizure of acetic anhydride in Turkey that originated in the EU. In total, more then 30 tonnes of the precursor were seized by European law-enforcement authorities, supported by a Europol sub-project on heroin precursors.

Acetic anhydride: estimated annual world production, estimated requirements for heroin manufacture and seizures in 2010



Note: Between 1.08 and 4.32 kg of acetic anhydride is required to manufacture 1 kg of heroin (INCB, 2012a). Therefore, in 2010, between 417 and 1 711 tonnes (a mid-range point of 1 064 tonnes) of diverted acetic anhydride would have been needed to manufacture the 396 tonnes of heroin estimated to have been produced worldwide (UNODC, 2011a).
Sources: UNODC (2011a), INCB (2012a).

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Case study 7
International judicial and law-enforcement cooperation leads to trial against major Swedish cocaine smugglers

On 26 March 2012, a highly organised drug trafficking network was brought to trial in Sweden. Eight members of the group faced criminal charges for trafficking multi-tonne shipments of high-quality cocaine from South America to Europe. Another trial on the money laundering activities related to drug trafficking was also held in Spain.

The indictments came as a result of more than three years of joint international effort at both law-enforcement and judicial level in Sweden, Spain and France, with continuous support from Eurojust and Europol. Several other Member States (the Netherlands, Malta, the United Kingdom, Estonia, Cyprus and Germany), as well as several third States (Colombia, USA, Switzerland, Venezuela, Israel and Andorra), also provided valuable assistance.

Photo: Europol.

The investigation started in Sweden in December 2008. The international dimensions of the case soon became clear, and consequently, a Joint Investigation Team (JIT) was established for the purpose of coordinating operational and judicial activity. The JIT legal framework enabled a prompt exchange of information to take place without the need for lengthy rogatory procedures.

A first success for the JIT came with the seizure of 1.4 tonnes of cocaine found on board a 15-metre sailboat bound for Europe. The boat was boarded by French authorities in the Caribbean and was brought to Martinique in June 2010. The only person on board, a 56-year-old Swede, was arrested. The investigations continued, focusing on the main criminal figure and his accomplices, who were still at large. The investigators linked the suspected criminals to a sophisticated network of companies created to facilitate money laundering, money transfers and property acquisitions.

More than 30 people were subsequently arrested throughout the world. Spanish authorities froze several bank accounts as part of the investigations into money laundering and approximately 6 million euros were seized in five different countries, linked to reinvestments in real estate, a discotheque and other legal businesses, luxury vehicles and ships. The network appears to have invested and spent at least 12 million euros between 2007 and 2010.

Europol provided operational analysis and facilitated the identification of key players in the organised crime group in Colombia, USA, France, French West Indies, Spain and Sweden. Additionally, they provided expertise and investigative support to the financial part of the case by facilitating the recovery of the assets obtained by the illicit activities of the organised crime group.

Eurojust facilitated the exchange of information and coordination of investigations. It hosted 13 coordination/JIT meetings to decide where the prosecutions should take place and to solve possible conflicts of jurisdiction and to coordinate the division of tasks among the various jurisdictions involved. Eurojust provided expertise in relation to the maritime interception.

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Case study 8
Mobile production units

The manufacture of synthetic drugs mainly takes place in stationary production units, such as farm houses, factories, apartments or sheds. However, a new trend of using mobile production units has been identified during several recent investigations, with the units being subsequently seized. Latest developments to the trend favour using mobile production units which are transported to a site where manufacture can start almost immediately. This saves considerable time as, in the past, stationary units needed to be built, installed and then rendered operational. Such instances are becoming more common.

Sound insulation, air ventilation and a purification system are present inside this mobile tableting unit.
Photo: Europol.

Seized mobile production units are designed, constructed and used for the:

- manufacture of amphetamine via reductive amination including distillation
- manufacture of MDMA via reductive amination with the use of hydrogen gas and platinum oxide and distillation
- manufacture of (MDMA) tablets with the use of a tableting machine, including mixing, packing and sealing
- manufacture of cannabis in a mobile cannabis nursery.

Mobile MDMA production unit with pressure reaction vessel and distillation (front, left); a mobile tableting unit (back, right).
Photo: Europol.

Trailers and trucks are often used for the construction of mobile production units. In most cases, the units are designed, built and installed in a professional manner with the production equipment, including cables and piping, being fitted to the floor, roof or side walls of the trailer or truck. In some mobile tableting units, sound insulation and air purification with both a ventilation system and absorption system (active carbon filter) are installed.

The introduction of mobile units has led to production at various locations for limited periods of time. The low cost and short time needed to set up a professional production unit are attractive and the use of timing devices means that the producer only needs to be physically present during a limited part of the production process.

In all cases, mobile production units can be up and running in a few hours. Often, all they need in order to function is an electricity and water supply. The use of the aforementioned timing devices in some units means that after starting the process (amphetamine or MDMA production), the producers can leave the unit unattended. The equipment shuts down automatically after a set period of time, which is the time needed to achieve synthesis.

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European Monitoring Centre
for Drugs and Drug Addiction

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In accordance with Article 10 of Council Decision 2005/387/JHA on the information exchange, risk assessment and control of new psychoactive substances

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Cais do Sodré, 1249-289 Lisbon, Portugal
Tel. +351 211210200 • info@emcdda.europa.eu • www.emcdda.europa.eu

Eisenhowerlaan 73, 2517 KK, The Hague, the Netherlands
Tel. +31 703025000; Fax +31 703455896
Publications: www.europol.europa.eu/latest-publications

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Contents

Overview

This report presents the activities implemented by the EMCDDA and Europol in 2012 in support of Council Decision 2005/387/JHA on the information exchange, risk assessment and control of new psychoactive substances (hereinafter referred to as the Council Decision) ([1]).

This year was particularly busy for those involved in detecting, monitoring and responding to new psychoactive substances across the European Union (EU) ([2]). The unprecedented growth in the number, type and availability of new drugs over the past few years has also seen the phenomenon take on global significance. The reasons for the growth in this market include the increasing complexity and volatility of the drugs market set against a backdrop of globalisation and technological advancement. The rapid appearance of non-controlled alternatives to controlled drugs underlines the ability of the market to respond to changes in the legal status of psychoactive substances. In addition, an important development has been the growing interaction between the illicit and 'legal highs' markets, whereby some substances are legally sourced and either sold directly on the illicit market or turned into products and sold as 'legal highs'. It is well established that organised crime is involved in some of these activities and continues to exploit the opportunities presented by the market in new drugs.

New psychoactive substances, particularly the so-called 'legal highs', continued to be a high policy priority in the EU and many Member States. This was evidenced by responses at national level including awareness raising, new legislative measures, and the inclusion of new psychoactive substances in general population surveys. As announced in the communication 'Towards a stronger European response to drugs' ([3]), the European Commission is currently preparing and will propose new EU legislation on new psychoactive substances taking into account the rapid developments in this field and scientific evidence on the risks posed by these substances. The EMCDDA participated in many development activities in 2012 in support of the efforts in this field, the most notable of which are described in the body of this report.

Headline activities in 2012

- 73 new psychoactive substances were officially notified for the first time through the EU Early warning system (EWS) in 2012, up from 49 in 2011, 41 in 2010 and 24 in 2009.
- A Joint report was produced and a risk assessment conducted on 4-methylamphetamine (4-MA) after 21 deaths in total were reported by four Member States. The substance will now be subjected to control measures throughout the EU.
- A Joint report was produced on 5-(2-aminopropyl)indole (5-IT) after 21 deaths were reported by three Member States over a short period of time. The substance will be risk-assessed by the Scientific Committee of the EMCDDA in April 2013.
- 693 Internet shops were identified by the EMCDDA selling 'legal highs' to consumers in the EU in 2012. This compares to 314 shops identified in January 2011 and 170 in January 2010.

As highlighted in the first joint EMCDDA and Europol strategic analysis of the drug market in the EU ([4]), 73 new psychoactive substances were officially notified for the first time in 2012 through the EU Early warning system (EWS), the information exchange mechanism that was set up by the Council Decision. This is the largest number of substances ever reported in a single year, considerably up from the 49 substances reported in 2011, 41 in 2010 and

([1]) Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances, OJ L 127, 20.5.2005, p. 32.
([2]) This report uses the terms 'new psychoactive substances' and 'new drugs' interchangeably.
([3]) European Commission (2011), *Communication from the Commission to the European Parliament and the Council, Towards a stronger European response to drugs*, Brussels, 25.10.11, COM(2011) 689/2.
([4]) EMCDDA and Europol (2013), *EU drug markets report: a strategic analysis*, Publications Office of the European Union, Luxembourg.

24 in 2009. The list of new substances notified in 2012 was dominated by 30 synthetic cannabinoids ([5]) and 19 compounds classed as 'others' which do not conform to the main categories currently used by the EMCDDA. Together, these two groups represented about two-thirds of the total number of substances reported in 2012 (Annex 1 and Annex 2). Overall, the number of substances notified in the last two years accounts for more than half of the total number of substances notified under the terms of the Council Decision since May 2005.

In 2012, the EMCDDA and Europol produced two Joint reports on the new psychoactive substances 4-MA and 5-IT, in accordance with Article 5 of the Council Decision. The findings are summarised in this report.

The Joint report on 4-MA ([6]) led to a formal risk assessment that was conducted in November by the extended Scientific Committee of the EMCDDA. The risk assessment report detailed 21 deaths in four Member States (Belgium, Denmark, Netherlands, and the United Kingdom), where 4-MA was detected in post-mortem samples ([7]). These detections were either alone or in combination with other substances, in particular amphetamine. The report also described how 4-MA could have serious adverse effects, such as hyperthermia, hypertension, anorexia, nausea, headache, insomnia, paranoia and anxiety. Fourteen European countries provided data on seizures of the drug where it had been sold as amphetamine and frequently mixed with it. 4-MA has no established medical value or known legitimate purpose, aside from limited use in scientific research and as an analytical reference standard.

The Joint report on 5-IT ([8]) was produced after the substance was considered by the EMCDDA and Europol to be causing significant concern in several EU Member States. It was first detected in Norway in April 2012, and subsequently by authorities in seven countries. It was associated with 21 deaths in three Member States (Hungary, Sweden, and the United Kingdom). As a result of the report, the Council of the European Union requested that the EMCDDA conduct a formal risk assessment on the substance, which is planned for April 2013.

([5]) A more precise term for these compounds is 'synthetic cannabinoid receptor agonists', however, the term 'synthetic cannabinoids' has been widely accepted and is therefore used throughout the report.

([6]) EMCDDA and Europol (2012), *EMCDDA–Europol joint report on a new psychoactive substance, 4-methylamphetamine*, EMCDDA, Lisbon. Available at: http://www.emcdda.europa.eu/attachements.cfm/att_191982_EN_TDAS12001ENN.PDF

([7]) Council of the European Union (2012), *Risk assessment report on the new psychoactive substance 4-methylamphetamine*, 17275/12 CORDROGUE 98 SAN 320. Available at: http://register.consilium.europa.eu/pdf/en/12/st17/st17275.en12.pdf

([8]) EMCDDA and Europol (2012), *EMCDDA–Europol joint report on a new psychoactive substance, 5-(2-aminopropyl)indole*, EMCDDA, Lisbon. Available at: http://www.emcdda.europa.eu/publications/joint-reports/5-IT

1. Introduction and background

As part of the response to new psychoactive substances within the EU, the Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk assessment and control of new psychoactive substances established a mechanism for the rapid exchange of information on substances that may pose public health and social threats, including the involvement of organised crime (Box 1). This provides a legal basis for EU institutions and Member States to monitor all new narcotic and psychotropic substances that appear on the European drug scene ([9]). Where necessary, the Council Decision also provides for an assessment of the risks associated with these new substances, so that control measures deriving from Member States' obligations to the United Nations international drug control conventions ([10]) can also be applied to new psychoactive substances.

The EMCDDA and Europol, in close collaboration with their respective expert networks, the Reitox national focal points and Europol National Units, are assigned a central role in detecting, notifying and monitoring new psychoactive substances (Article 4 of the Council Decision). Furthermore, where necessary, and in cooperation with the European Medicines Agency (EMA), the two organisations may collect, analyse and present information on a new psychoactive substance in the form of a Joint report (Article 5). The Joint report provides evidence to the Council of the European Union and the European Commission on the need to request a risk assessment on a new psychoactive substance. Such a risk assessment examines the health and social risks posed by: the use of, manufacture of, and, traffic in, a new psychoactive substance; the involvement of organised crime; and, the possible consequences of control measures. In order to conduct the risk assessment, the EMCDDA convenes a special meeting under the auspices of its Scientific Committee, extended with additional experts as necessary (Article 6).

To ensure transparency in the implementation of the Council Decision, Article 10 stipulates that: 'The EMCDDA and Europol shall report annually to the European Parliament, the Council and the Commission on the implementation of this Decision. The report will take into account all aspects required for an assessment of the efficacy and achievements of the system created by this Decision. The report shall, in particular, include experience relating to coordination between the system set out in this Decision and the Pharmacovigilance system'.

In compliance with Article 10, the EMCDDA and Europol herewith present the eighth such Annual Report on the implementation of the Council Decision, covering the period January to December 2012. The report outlines the results of the implementation, describes key issues arising from accumulated experiences, and also serves as a monitoring tool. In order to facilitate the reading of the report, the reader is referred to the full text of the Council Decision (Appendix).

The report is written as a standalone document with annexes kept to a minimum ([11]). Annex 1 provides the list of new psychoactive substances notified in 2012. This includes the systematic chemical name, the reporting country, and date of notification for each substance. Comprehensive information on the new substances described in the report is available from the EMCDDA and Europol. Annex 2 provides a list of those new substances notified in 2012 categorised as 'others'. Annex 3 provides the legal and working definitions used by the EMCDDA to classify and describe new drugs. The reader should note that these definitions were further developed during 2012 to reflect changes in the phenomenon. Finally, Annex 4 provides an overview of the main groups of new psychoactive substances monitored by the EWS and their molecular characteristics.

([9]) See definitions in Annex 3.
([10]) The 1961 United Nations Single Convention on Narcotic Drugs and the 1971 United Nations Convention on Psychotropic Substances.
([11]) Where possible, the report avoids the use of overly technical discussion and language, however, this is occasionally unavoidable given the nature of the phenomenon.

New drugs in Europe at a glance

The EMCDDA and Europol have played a central role in the detection, monitoring and assessment of new drugs in Europe since 1997. During this time, the new drug phenomenon has evolved to become one of the most important contemporary developments in the drugs field, with the past few years seeing unprecedented growth in their number, type and availability.

- The EU Early warning system (EWS) operated by the EMCDDA and Europol currently monitors more than 280 new psychoactive substances.
- 73 new psychoactive substances were officially notified for the first time in the EU through the EWS in 2012, up from 49 in 2011, 41 in 2010 and 24 in 2009.
- Since 1997, 13 substances have been risk-assessed. Of these, eight (4-MTA, PMMA, 2C-I, 2C-T-2, 2-C-T-7, TMA-2, BZP, mephedrone) are now controlled across the EU and one (GHB) is controlled at international level. 4-Methylamphetamine (4-MA) is in the process of being subjected to control measures across the EU.
- The main groups of substances monitored by the EWS are: phenethylamines (with stimulant, entactogenic or hallucinogenic effects, such as PMMA and 2C-I); tryptamines (which have predominantly hallucinogenic effects, such as AMT and 5-MeO-DALT); piperazines (which exhibit predominantly stimulant effects, such as mCPP and BZP); cathinones (such as mephedrone, methylone and MDPV, which exhibit stimulant effects); synthetic cannabinoids (which can have hallucinogenic and depressant effects); and, a broad group of substances that do not strictly belong to any of the previous groups.
- The Internet appears to be playing a growing role in shaping the market in new drugs. 693 Internet shops selling 'legal highs' to EU consumers were identified by EMCDDA monitoring in 2012. This compares to 314 shops identified in January 2011 and 170 in January 2010.
- A 2011 Eurobarometer survey of young people aged 15–24 from across the EU found that while lifetime use of 'legal highs' in most Member States was 5 % or less, use in the United Kingdom, Latvia, Poland and Ireland was 8 %, 9 %, 9 % and 16 % respectively.

Further information on new drugs can be found at: www.emcdda.europa.eu/activities/action-on-new-drugs

2. Implementation arrangements and cooperation with the EU Pharmacovigilance system

2.1. Specific implementation arrangements

2.1.1. Assistance to national early warning systems

The Action on new drugs team within the EMCDDA regularly provides support to the national early warning systems within the national focal points in order to assist them in the identification of new substances. In addition, other requests for assistance related to the new drug phenomenon are regularly received from the Member States, EU agencies and other institutions, individual experts, third countries and the media. In order to ensure an effective and efficient response to this growing number of requests, the EMCDDA has established a rapid response team.

Building on improvements developed over the past few years, 2012 saw the routine exchange of instrumental analytical data such as GC-MS, FT-IR and NMR ([12]) spectra for the 73 new substances that were notified. These data, along with additional analytical data from substances already reported, were also included in the substance profiles on the European Database on New Drugs (EDND). By providing the data in common formats, laboratories are then able to import them directly into their instruments. In this way, laboratories across Europe can ensure that their analytical libraries are up-to-date, thus improving the capacity and speed in which new substances can be detected. This approach is becoming of growing importance to laboratories as the chemistry of new drugs becomes increasingly complex, and more advanced analytical techniques are often needed to elucidate their molecular structure.

While provision of analytical data plays a key role in identifying new drugs, the EMCDDA has also begun to collect national risk assessments on new psychoactive substances on a routine basis, and has made them available on the EDND in order to help inform policy responses in the Member States.

Also in 2012, the EMCDDA published a compendium providing a comprehensive overview of the 30 national early warning systems that participate in the EWS network ([13]). The publication aims to promote best practice and enhance the exchange of experiences from the national level. Furthermore, the document also serves to assist third parties who may be considering implementing an early warning system — a common enquiry to the EMCDDA from countries outside the EWS network. The document is available on the EMCDDA website ([14]).

The EMCDDA is in the process of preparing to provide assistance in the form of training on the EWS in the context of the project for Pre-Accession Assistance (IPA) beneficiaries ([15]) in Prague in April 2013.

2.1.2. Annual meeting of the Reitox EWS network

The 12th Annual meeting of the Reitox Early warning system network was held in Lisbon on 24–25 May 2012. Participants included representatives from the 27 EU Member States, Croatia, Turkey and Norway. The two candidate countries Serbia and the former Yugoslav Republic of Macedonia and the potential candidate countries Albania and Kosovo ([16]) were also represented. Europol was also represented. Invited expert speakers attended from Finland, the United Kingdom and the United States of America. The meeting was split into the following sessions:

([12]) Gas chromatography–mass spectrometry, Fourier transform-infrared spectrometry and nuclear magnetic resonance spectrometry are some of the typical analytical techniques used to identify new psychoactive substances.
([13]) The 27 EU Member States, Croatia, Turkey and Norway.
([14]) EMCDDA (2012), *Early warning system — national profiles*, EMCDDA, Lisbon. Available at: http://www.emcdda.europa.eu/thematic-papers/ews
([15]) Participating countries: Bosnia and Herzegovina, Serbia, Montenegro, the Former Yugoslav Republic of Macedonia, Kosovo (under UNSCR 1244/99), Turkey and Croatia.
([16]) This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

- the implementation of the Council Decision;
- updates from the national EWS correspondents;
- mephedrone, the continuation: promises and pitfalls;
- new approaches for monitoring new drugs and trends in drug use; and,
- controlling new psychoactive substances.

During the sessions, delegates heard about the recent experiences of the Member States and were updated on the developments in the field. Relevant highlights are provided below.

The Belgian national focal point provided an overview of their experience with 4-MA, which was associated with a cluster of deaths that occurred over a short period of time. A formal information request under Article 5.1 of the Council Decision was launched during the meeting in order to provide further information for the Joint report. Details of the Joint report and risk assessment of 4-MA are provided in Sections 3.2.1 and 3.2.2, respectively.

The Hungarian national focal point provided an overview of a two-day workshop on 'Exchange on data collection challenges related to new psychoactive substances use', which took place in Budapest in April 2012. Representatives from 10 Member States and the EMCDDA attended. A summary of the workshop is available on the Hungarian national focal point website ([17]). The national focal point also provided an update on the amendments to Hungarian legislation concerning new psychoactive substances. The amendments introduced a new schedule, which includes a list of named substances and four distinct generic definitions for synthetic cannabinoids, cathinones, tryptamines and phenethylamines.

The EMA provided an update on the cooperation with the EMCDDA, in particular in relation to the EU Pharmacovigilance system.

Experts from the United Kingdom and Finland discussed two novel approaches for monitoring for new psychoactive substances and their metabolites in human waste products. These pioneering methods are being actively supported by the EMCDDA and will be closely monitored and developed in the coming years. More information on this can be found in section 4.3 and on the EMCDDA website ([18]).

A presentation from Cambridge University described how computational methods can be used to predict the potential properties of new substances, including their toxicity and psychoactivity (section 4.4). A guest speaker from the Addiction Research Institute at Austin University, Texas provided an overview of drug trends and use patterns in the United States (US). Of particular note in this presentation was the recent increase in reports of exposure to synthetic cannabinoids and synthetic cathinones to public health agencies.

2.1.3. Structured monitoring of the Internet — online availability of 'legal highs'

Part of the reason for the growth in the availability of new drugs over the past few years is due to the sophisticated ways in which drugs such as the so-called 'legal highs' can now be marketed and distributed. This includes advertising and selling them on an open market, including through online shops and in 'bricks and mortar' head shops. In order to monitor the online market and to get a better understanding of how this affects the availability of new drugs, the EMCDDA has conducted multilingual snapshots since 2006. The snapshots function as a rapid assessment of the market and are undertaken during a limited time window. Information collected in these snapshots can provide insights into the market characteristics, including:

- the number of online shops offering to sell new drugs to consumers in at least one EU Member State and, for these shops:
- the names and prices of the substances and products that are offered for sale;
- the marketing and distribution techniques used;
- the number of businesses in a particular geographical area; and,
- the detection of new drugs that have not yet been identified through chemical analysis of seizures, test purchases or biological samples.

In 2012, a snapshot was conducted in 20 EU languages, as well as Norwegian, Russian and Ukrainian. Along with other key information on this market, the snapshot identified 693 shops selling 'legal high' type products. This compares to 314 shops identified in January 2011 and 170 in January 2010 ([19]). Targeted Internet searches were also conducted

([17]) Hungarian national focal point (2012), *Exchange on data collection challenges related to new psychoactive substances use*, Hungarian national focal point, Budapest. Available at: http://drogfokuszpont.hu/wp-content/uploads/workshop_summary_final.pdf
([18]) http://www.emcdda.europa.eu/wastewater-analysis
([19]) EMCDDA (2011), *Online sales of new psychoactive substances/'legal highs': summary of results from the 2011 multilingual snapshots*, EMCDDA, Lisbon. Available at: http://www.emcdda.europa.eu/publications/scientific-studies/2011/snapshot

in English in support of the EMCDDA–Europol Joint reports on 4-MA and 5-IT.

The methodology used for the snapshot series is currently being revised with support from the ICT unit at the EMCDDA. This work will lead to improvements in the scope, coverage and robustness of the methodology. Overall, these revisions will allow the continual monitoring of both the online market in new drugs and the emerging online market in controlled drugs.

2.1.4. Supporting activities

In support of the Council Decision, the EMCDDA regularly organises and participates in events and activities, often in collaboration with partners. These activities are designed to develop the EWS network and provide support to others working in the field of new drugs. These events and activities provide a platform to improve collaboration among EWS partners and promote areas of best practice where possible. Some of the most significant activities carried out in 2012 are described below.

First international conference on novel psychoactive substances

The 'ever-changing world of psychoactive drugs' was the title and focus of the First international conference on novel psychoactive substances. The conference was a joint initiative of the EU-funded Recreational Drugs European Network (ReDNet) project and the EMCDDA, and was held in Budapest in March 2012.

The aim of the conference was the exchange of scientific knowledge on new psychoactive substances and the forensic, clinical and legal challenges faced by practitioners. The programme was based around four key themes: clinical challenges; novel prevention models for novel compounds; legal challenges; and, substance misuse and lifestyle. International experts, including many partners from the EWS network and members of the EMCDDA Action on new drugs team, delivered over 60 presentations.

Building on this, a second conference will be held in Swansea, United Kingdom in September 2013 and will focus on the latest research on the effects of new drugs in humans.

NIDA–EMCDDA second international forum on new drugs

In June 2012, the United States National Institute on Drug Abuse (NIDA) and the EMCDDA co-organised and co-hosted the Second interdisciplinary forum on new and emerging psychoactive substances in Palm Springs, US. The event gathered over 300 participants from 72 countries. Building on the First international multidisciplinary forum on new drugs that was organised by the EMCDDA in Lisbon in May 2011, the event brought together leading US, European and other international experts to examine the issue from a global perspective. The EMCDDA gave one of the keynote presentations as well as six other presentations during the event.

During the event, updates were provided by the EU, Australia, Japan, the US, as well as the United Nations Office on Drugs and Crime (UNODC). These presentations explored the appearance and use of new drugs, as well as how they are detected, monitored, risk-assessed and controlled. The updates revealed important commonalities between countries in the marketing and use of new drugs as well as the responses to this phenomenon.

Importantly, the challenges posed by new psychoactive substances for prevention and treatment were also addressed at the event. Discussions considered individual substances, as well as the broader new drugs phenomenon, the implications for the treatment of acute toxicity and the prevention of use. Presentations included: insights from hospital emergency departments in the United Kingdom; prevention strategies from Poland; and, medical experts from the US who examined synthetic cannabinoids and piperazines.

Europol–EMCDDA law enforcement expert meeting on new psychoactive substances

In September 2012, an expert meeting on new psychoactive substances was held at the headquarters of Europol in the Hague, co-organised and co-chaired by the EMCDDA and Europol. This meeting was foreseen in the EMPACT (European Multidisciplinary Platform Against Criminal Threats) Operational Action Plan (OAP) for 2012 under the priority to 'reduce the production and distribution in the EU of synthetic drugs including new psychoactive substances'. The aim of the meeting was to raise awareness of new psychoactive substances as well as to improve the response by law enforcement, including the information flow to Europol. Representatives from law enforcement from 26 EU Member States and Norway attended.

Europol and the EMCDDA set the scene by presenting the EWS and an overview of the current situation in Europe. The European Commission presented some of the challenges facing EU legislators in terms of tackling the issue. A representative from the Belgian Federal Police provided an overview of the situation in Belgium. This included case

studies demonstrating the scale of the phenomenon as well as the modus operandi of some of the groups involved in making 'legal high' products.

Europol highlighted the global nature of the challenge faced by law enforcement by providing an overview of a multi-national police operation involving 12 EU Member States, Australia, the US and Eurojust (the EU agency responsible for judicial cooperation), which targeted a Chinese supplier involved in trafficking large quantities of new psychoactive substances.

There was an acknowledgement at the meeting that law enforcement has a particularly challenging task when responding to new psychoactive substances and that considerable effort is required to address this. There was, however, an equally strong message that this is an issue that law enforcement is willing to tackle. An area of concern expressed was the requirement for clear definitions for this area of work, which would enable law enforcement officers across Europe to communicate more effectively. It was also identified that customs authorities have a key role to play and therefore close collaboration by all law enforcement agencies is required.

At the conclusion of the meeting it was proposed that:

- There could be a network of law enforcement correspondents who would provide a point of contact for Europol for matters involving new psychoactive substances. In addition, such a network could meet to discuss the issues of new psychoactive substances, perhaps coinciding with the Reitox EWS annual meeting and thus taking the opportunity to develop and enhance the relationship with the national focal points.
- Law enforcement representatives from the Member States who were unaware of their Reitox national focal point were encouraged to make contact with them.
- Law enforcement representatives from the Member States would make efforts to improve information flow to Europol.
- The EMPACT OAP activities for the forthcoming year would be updated to reflect the proposals above.
- A follow-up meeting involving experts from EU law enforcement agencies will be held in 2013 at the EMCDDA in Lisbon.

2.2. Cooperation with the EMA and the Pharmacovigilance system

The EMA is a key partner in the implementation of the system set up by the Council Decision. The EMCDDA and EMA have established protocols for bilateral exchange of information on the basis of data available through the EWS and the EU Pharmacovigilance system. The existing databases of the two agencies, EudraVigilance at the EMA and the European Database on New Drugs (EDND) at the EMCDDA, are used to enable reliable and rapid exchange of information between the two agencies.

On 7 September 2012 in Lisbon, a revised working arrangement was signed by the Directors of the EMCDDA and EMA. The arrangement enhances cooperation between the two agencies, including the exchange of information on the abuse of medicinal products as part of the Pharmacovigilance system ([20]).

As part of the EWS, the two agencies regularly exchange information on new psychoactive substances, as well as ad hoc reports relating to the misuse of medicinal products in order to complement the Pharmacovigilance system ([21]).

In 2012, formal consultations and exchange of information took place between the EMCDDA and EMA regarding 4-MA (section 3.2.1) and 5-IT (section 3.2.3).

([20]) http://www.emcdda.europa.eu/about/partners/ema
([21]) An example of this in 2012 was the exchange of information from EudraVigilance related to the abuse of zopiclone, a medicinal product authorised in some Member States for the treatment of insomnia.

3. Formal activities

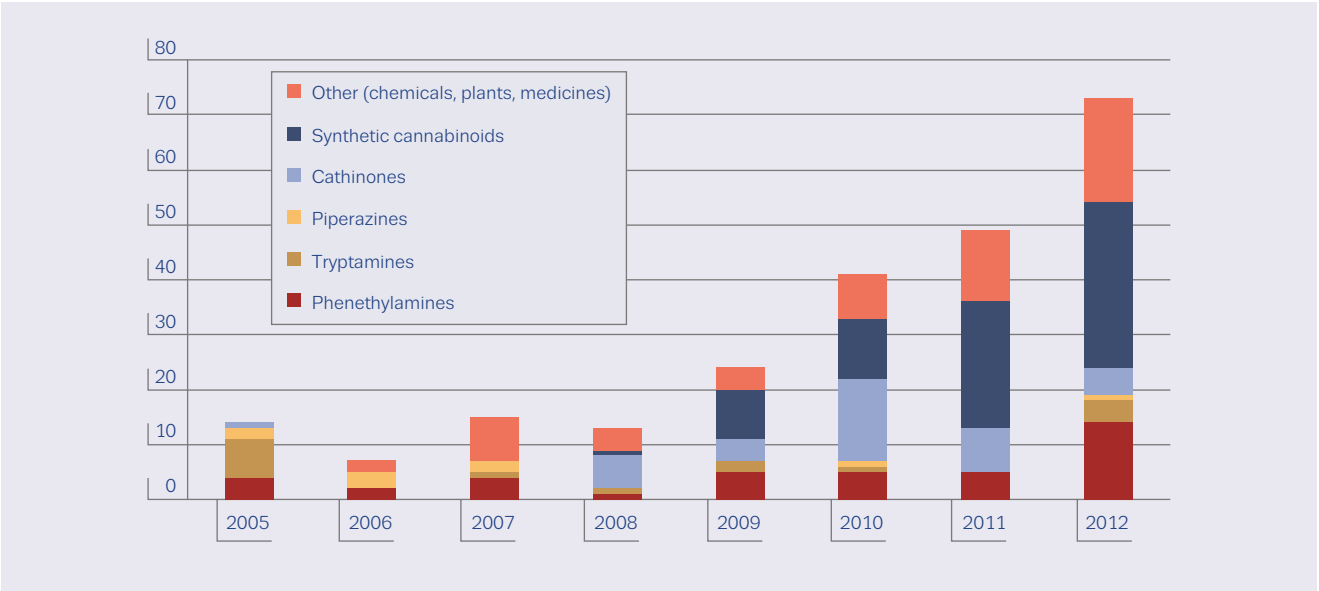
3.1. New psychoactive substances notified in 2012

During 2012, a total of 73 new psychoactive substances were formally notified for the first time through the EWS (Figure 1 and Annex 1). This continues the trend of year-on-year increases that began in 2008. In part this may be due to the increased detection and reporting capacities of Member States, arising from a growing concern about these substances and the need for high quality information by decision-makers in order to inform policy responses. The EMCDDA has supported these developments with the entire EWS network benefiting from the outputs of such national initiatives. These data can then be used by policymakers, government departments and advisory bodies in order to inform policy responses. In addition, such data can serve to provide timely harm reduction messages when appropriately contextualised.

For monitoring purposes, the EMCDDA categorises new psychoactive substances by the chemical family to which they belong. This is the case with phenethylamines, tryptamines, piperazines and cathinones. In the case of the synthetic cannabinoids, these are currently categorised on the basis of their mode of action rather than their chemical family. The remaining substances are categorised as miscellaneous 'others' (Box 2).

In 2012, the list of new substances was dominated by 30 synthetic cannabinoids and 19 miscellaneous 'others'. Together these represented two-thirds of the total number of substances reported in 2012 (Figure 1, Annex 1 and Annex 2).

Figure 1: Number of new psychoactive substances notified for the first time to the EWS since May 2005 ([22])



([22]) In some previous reports, the figure used in graphical representations for the number of new psychoactive substances notified in 2007 was 16. The correct figure, as shown above, is 15, as was reported in the EMCDDA–Europol 2007 Implementation Report. It is thought that this situation may have arisen as 16 new substances appeared in Annex 2 of that report. However, as noted in the report, nimetazepam (Annex 2, substance 12) is controlled under the 1971 United Nations Convention on Psychotropic Substances and is therefore outside of the scope of the Council Decision.

3.1.1. Synthetic cannabinoids

In 2012, 30 new synthetic cannabinoids were formally notified to the EWS. These substances make up the largest group of compounds monitored by the EWS, with 74 notified since 2008. However, this group is based on mode of action rather than chemical family and therefore direct comparisons in terms of numbers should be made with caution.

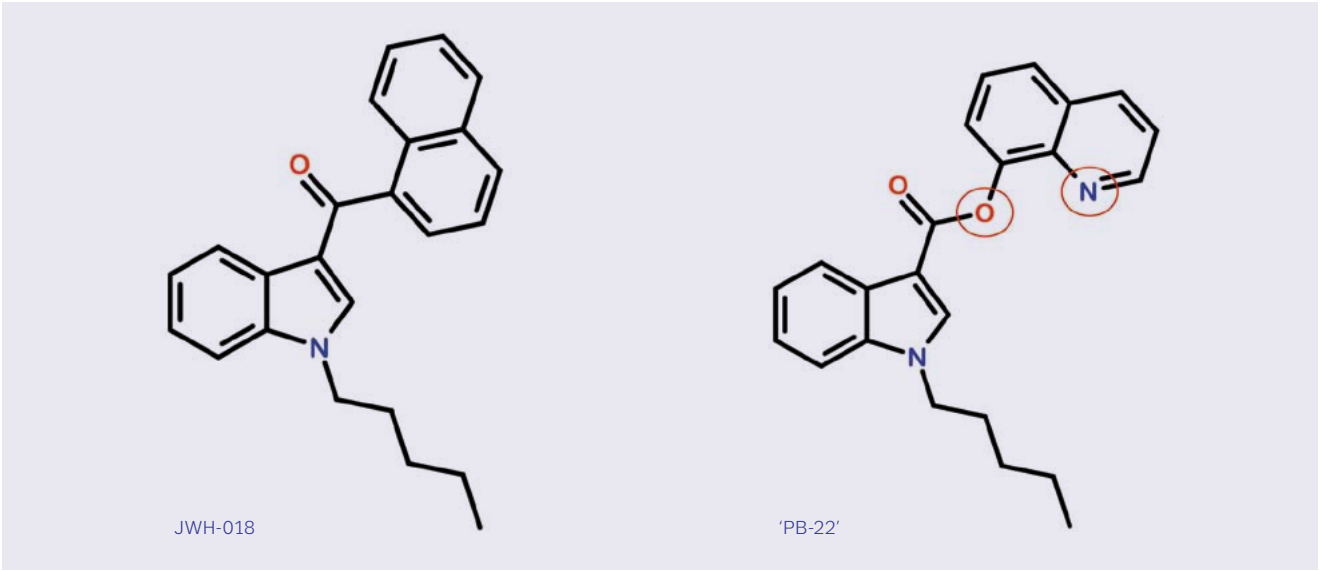
For some of the synthetic cannabinoids that have been notified, there is an existing body of scientific literature about their chemistry, structure-activity relationships, potency and effects. This literature appears to be exploited by those involved in the trade of synthetic cannabinoids leading to the appearance of a growing number of new substances with similar core structures to the studied compounds but with minor chemical modifications. These may be attempts to circumvent drug control laws, however, these new substances may exhibit different chemical and pharmacological properties compared to the synthetic cannabinoids that have been studied. Indeed, frequently in 2012, new synthetic cannabinoids were notified about which little could be found in the scientific literature, perhaps indicating a degree of experimentation on the part of the producer. One such example is JWH-018 carboxylate, quinolinyl derivative (Annex 1, substance 58), which has been offered for sale on the Internet under the name 'PB-22'. This substance is based on JWH-018, a well-studied synthetic cannabinoid named after John W. Huffman, the researcher who first synthesised and characterised the substance. In the case of the 'PB-22', two modifications have been made to the basic molecule to produce a substance with properties that can only be speculated. This substance was notified in December by the Finnish national focal point, which provided details of a case where 54 kilograms were intercepted by customs authorities. The package was sent from China, a common source of the bulk new psychoactive substances, and was en route to Russia.

3.1.2. Phenethylamines

In 2012, 14 new substituted phenethylamines were formally notified to the EWS. This is more than twice the number detected in any previous year and accounts for approximately one-third of all the phenethylamines detected since 2005.

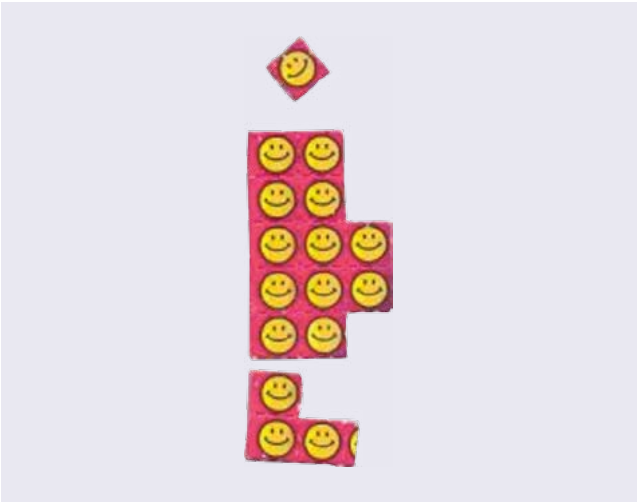
In previous years, the phenethylamines that have emerged on the new drugs market have mainly been limited to those described by Shulgin et al. ([23]). Significantly, six phenethylamine derivatives were notified in 2012 that contain a chemical group called '*N*-2-methoxybenzyl', which is often abbreviated in chemistry as '-NBOMe' ([24]). Studies on some of these compounds have shown that in terms of binding affinity these derivatives are an order of magnitude

Figure 2: Structure of JWH-018 and 'PB-22'



([23]) Shulgin, A., et al. (2011), *The Shulgin index volume 1: psychedelic phenethylamines and related compounds*, Transform Press, Berkeley.
([24]) This abbreviation has provided a convenient headline for media reports regarding the dangers of so-called 'N-bomb' drugs.

Figure 3: 25B-NBOMe 'blotters' (Annex 1, Substance 66), Norwegian national focal point



more potent than their parent phenethylamine compounds. This finding is supported by reports to the EWS detailing the seizure of 'blotters' and sugar cube dosage forms, which are typically used to administer drugs that are active in the microgram range (such as LSD).

By the end of 2012, no adverse effects had been reported to the EWS that were associated with these potent phenethylamine substances. However, media reports from the US and Australia suggest that their use has been associated with non-fatal intoxications and deaths. The EWS network is well-informed about the potential dangers posed by '-NBOMe' substances and remains vigilant in light of this new trend. In this respect, at the time of writing this report (March 2013), the first reports of non-fatal intoxications within the EU have been made to the EWS and a public health warning was issued by the EMCDDA.

3.1.3. Tryptamines

In 2012, four new tryptamine derivatives were formally notified to the EWS. Although a small number, it is more than was notified in the previous three years combined.

Three of the new tryptamine substances were detected in powders that were seized by the authorities in 2011. This illustrates that there is often a time lag between when samples are seized or collected and when the notifications are sent to the EMCDDA or Europol.

3.1.4. Cathinones

In 2012, five new synthetic cathinone derivatives were formally notified to the EWS. This compares to eight notified in 2011 and 15 in 2010.

3.1.5. Piperazines

In 2012, one new piperazine was formally notified to the EWS. The substance, 1-(3-methylbenzyl)piperazine, is a derivative of benzylpiperazine (BZP) and a structural isomer of methylbenzylpiperazine (MBZP). This new substance was detected in a urine sample along with the synthetic cathinone derivative MDPV (methylenedioxypyrovalerone), which was first notified to the EMCDDA in 2008. Notably, only two new piperazine derivatives have been notified since 2008.

3.1.6. Miscellaneous 'others' substances

In 2012, 19 new miscellaneous 'other' substances were formally notified to the EWS. This diverse group contains substances that do not fit the established EMCDDA categories described above. They are presented for ease of reference in Annex 2. Of note is the detection of several derivatives of controlled drugs within this category:

- 5-APDB, 6-APDB and 5-APDI (Annex 1, refs. 15, 17 and 54, respectively). These are mono- or di-deoxygenated derivatives of the stimulant drug methylenedioxiamphetamine (MDA);
- thienoamphetamine (Annex 1, ref. 13) a thiophene analogue of amphetamine;
- 3-MeO-PCP, 2-MeO-ketamine and N-ethylnorketamine (Annex 1, refs. 21, 50 and 53, respectively). These are derivatives of the dissociative drug phencyclidine (PCP) and closely related to ketamine; and,
- (iso)butyryl fentanyl (Annex 1, ref. 63) a derivative of the potent synthetic opioid fentanyl.

Furthermore, it is also notable that 5-APDB, 6-APDB and thienoamphetamine contain only minor structural modifications to 5-APB, 6-APB and methylthienylpropamine, respectively, which were notified in 2011 ([25]). These substances are good examples of the rapid chemical evolution seen on the new drugs market.

The miscellaneous 'others' category also contains several substances that are medicinal products or are derivatives thereof:

([25]) EMCDDA and Europol (2012), *EMCDDA–Europol 2011 Annual Report on the implementation of Council Decision 2005/387/JHA*, EMCDDA, Lisbon.

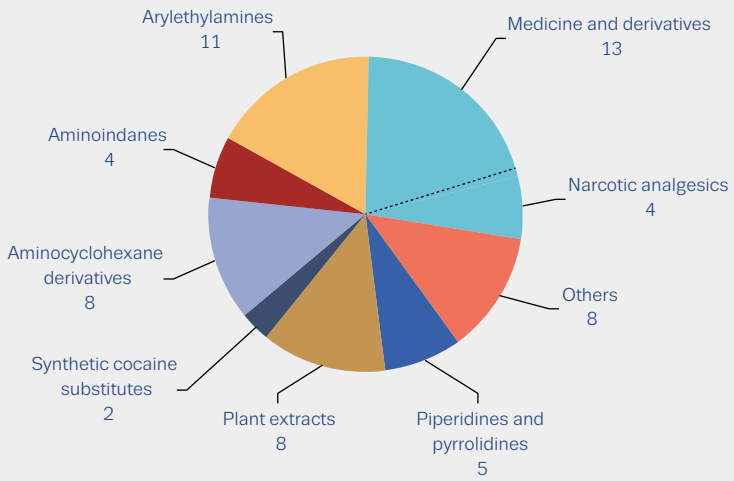
- phenibut: a derivative of the naturally occurring inhibitory neurotransmitter gamma-aminobutyric acid (GABA). Chemically, it has the parent structure of a phenethylamine. It was discovered and introduced into clinical practice in Russia in the 1960s for its anxiolytic and reported nootropic (cognition enhancing) effects. It is currently being sold both as a 'dietary supplement' and 'research chemical' in a number of EU Member States;
- zopiclone: a non-benzodiazepine hypnotic/sedative that belongs to the group of cyclopyrrolones (one of the so-called 'Z-drugs'). It is authorised as a medicinal product in some Member States for the treatment of insomnia;
- pyrazolam: a benzodiazepine of which apparently little is known. It is similar in chemical structure to alprazolam, which is authorised as a medicinal product in some Member States. However, compared to alprazolam, pyrazolam contains a bromine atom rather than a chlorine atom and contains a pyridinyl group instead of a phenyl group. It currently being sold as a 'research chemical' by Internet retailers;
- 4-fluoroephedrine: a ring-fluorinated derivative of ephedrine. Ephedrine is a sympathomimetic alkaloid of plant origin that increases the activity of noradrenaline on adrenergic receptors. It is used as a stimulant, a bronchodilator and an appetite suppressant. 4-Fluoroephedrine can also be used as a precursor for the manufacture of the new psychoactive substance 4-fluoro-*N*-methylamphetamine (4-FMA). This is directly analogous to the use of ephedrine as a precursor in the manufacture of *N*-methylamphetamine. 4-FMA was first notified to the EWS by Norway in March 2010;
- 4-methylaminorex *p*-methyl derivative: a ring-methylated derivative of 4-methylaminorex ('U4Euh', 'Euphoria'), which has been reported to be a stimulant and possess anorectic effects similar to amphetamine. The parent drug 'aminorex' was once an authorised medicinal product that was used as an anorectic agent. It was withdrawn in 1972 after its use was associated with pulmonary hypertension; and,
- 4-methylphendimetrazine: a ring-substituted derivative of phendimetrazine, which is an appetite suppressant (a

Sub-categorisation within the 'others' group

The EMCDDA has grouped these substances into sub-categories in order to convey the contents of this group in a meaningful, structured way. Some sub-categories are based on chemical family, while others are based on mode of action. Where the substance has a natural origin or is derived from medicines, these are listed separately. This is intended for illustration purposes only and these will not be adopted as official categories in the EWS.

The sub-categories are: aminocyclohexane derivatives; aminoindanes; arylethylamines (not being phenethylamines nor tryptamines); piperidines and pyrrolidines; narcotic analgesics; synthetic substitutes of cocaine; medicines and derivatives of medicines; and, plants, mushrooms and their extracts. The chart below shows the substances notified since 1997 placed into these sub-categories which, despite this exercise, still includes eight substances which do not fit into any other category.

Breakdown of the miscellaneous 'others' category of new psychoactive substances notified between 1997 and 2012



prodrug of phenmetrazine) and a known norepinephrine-dopamine releasing agent (NDRA). Phenmetrazine and phendimetrazine are controlled under the 1971 United Nations Convention on Psychotropic Substances (Schedule II and Schedule IV, respectively).

3.1.7. Information processing and analysis

Following the formal notification of each new substance a profile was created in the EDND. During 2012, 73 new substance profiles were created and more than 200 other substance profiles were updated with new information. These regularly updated profiles are accessed on a daily basis by members of the EWS network. Profiles contain a summary of what is known about the substance including: data on the nature of the substance; alerts and reports associated with it; information from the EMA and other international partners such as the United Nations; legal status; chemistry including molecular information, synthesis, manufacturing and precursor information and analytical data; known uses and risks associated with the substance; published scientific studies; reporting forms from Member States regarding seizures, collected samples and biological samples; and, any other relevant information that is available.

As noted in section 2.1.1, the EDND was expanded in 2012 to include instrumental analytical data such as GC-MS, FT-IR and NMR spectra for the 73 new substances as well as additional analytical data for substances that have been previously notified. A total of 421 reporting forms were received in 2012 ([26]).

In addition to the reporting forms, the EMCDDA also implements longer-term monitoring through the collection of six-monthly EWS reports. Based on the information collected and analysed, the list of all notified substances is reviewed regularly by the EMCDDA and Europol in order to identify those with a potential to trigger a Joint report. In 2012, two substances were considered to merit the production of a Joint report and are discussed below. In addition, a few substances are being actively and continually monitored due to some early indications of harm. Examples of these are given in section 3.3.1.

3.2. Joint reports and risk assessment

In 2012, the EMCDDA and Europol examined the available information on two new psychoactive substances, 4-MA and 5-IT, each through a Joint report based upon the following criteria:

1. the amount of the material seized;
2. evidence of organised crime involvement;
3. evidence of international trafficking;
4. analogy with better-studied compounds;
5. evidence of the potential for further (rapid) spread; and,
6. evidence of cases of serious intoxication or fatalities.

3.2.1. 4-Methylamphetamine (4-MA) — Joint report

At the beginning of 2012, the EMCDDA and Europol agreed that the information collected on 4-MA satisfied all the above criteria. The two organisations concluded that sufficient information had been accumulated to merit the production of a Joint report as stipulated in Article 5.1 of the Council Decision. In compliance with the provisions of the Decision, on 21 May 2012 the EMCDDA and Europol launched a procedure for the collection of information on 4-MA in order to prepare the Joint report.

Key findings of the Joint report

4-MA is a ring-methylated derivative of amphetamine, and belongs to the group of synthetic phenethylamines. It was first detected in Belgium in October 2009, and was notified to the EMCDDA through the EWS on 14 December 2009.

Twelve EU Member States as well as Croatia and Norway reported seizures of 4-MA to the EMCDDA and Europol. These were mostly in powder or paste form, ranging in weight from 0.02 grams up to 147 kilograms. Samples that contained 4-MA typically also contained amphetamine and caffeine in varying ratios.

According to the information provided to Europol, in recent years multiple illicit production sites and/or other indications related to the production of 4-MA have been discovered in the Netherlands. Seizures related to international trafficking of 4-MA were also reported by two Member States, with indications of trafficking from a third Member State. Furthermore, Europol also reported that no distinct difference could be made between 4-MA and amphetamine in terms of the involvement of organised crime groups, production, trade, and/or users. No specific information was reported on money laundering related to the production and/or trafficking of 4-MA and no specific information was received on incidents of violence in

([26]) These include notifications of the first time a new psychoactive substance is identified in a country (including the first report of a new substance identified in the EU) as well as significant new information on a substance (such as non-fatal intoxications, deaths, large or unusual seizures).

connection with the production, wholesale and/or trafficking of 4-MA.

Six Member States and Croatia reported that 4-MA was under drug control or equivalent legislation. Two Member States reported having legislation limiting the unauthorised supply of defined or qualifying psychoactive substances. A further two Member States reported that 4-MA was controlled under medicines legislation. It was also ascertained that 4-MA was not under assessment and had not been under assessment by the United Nations system.

The Joint report also noted that 4-methyl-benzyl methyl ketone (4-methyl-BMK), the precursor known to be used for the manufacture of 4-MA, is not under international control and appeared to be commercially available.

Although some countries noted easy access and availability of 4-MA via the Internet, it was unclear to what extent this substance was advertised and sold online. There was little evidence to suggest a specific demand for 4-MA, however, as noted, the substance was reported to be sold as amphetamine (e.g. as 'speed'). In this respect, the Joint report noted that amphetamine users may be at risk of exposure to 4-MA if the substance became more widely available, given that drug prevalence estimates suggested that about 2 million Europeans had used amphetamines during the past year.

4-MA was found to have no known medical use (human or veterinary) in the EU. There was no marketing authorisation (existing, ongoing or suspended) for 4-MA in the EU or in the Member States which responded to the request from the EMA. There were no indications that 4-MA was used for other purposes other than as an analytical reference standard and in scientific research. Further, there was no information to suggest that 4-MA was used in the manufacture of a medicinal product in the EU.

The Joint report detailed sixteen deaths and nine non-fatal intoxications related to 4-MA, reported by six Member States in a short period of time (from October 2011 to July 2012.

The literature review that was conducted for the Joint report identified a limited number of studies on the chemistry, pharmacology and toxicology of 4-MA. Interestingly, 4-MA underwent human clinical trials as an anorectic agent ('Aptrol') in the 1950s. However, its development and marketing was abandoned for unknown reasons and it was never made commercially available. It was also noted that the Belgian national risk assessment on 4-MA hypothesised that in comparison to amphetamine the more pronounced serotonergic action of 4-MA may diminish the stimulant effects of the substance leading to repeated dosing which may have played a role in some of the deaths ([27]).

The Joint report is available on the EMCDDA website ([28]).

3.2.2. 4-Methylamphetamine (4-MA) — Risk assessment

On the basis of the Joint report, on 24 September 2012, and in accordance with Article 6 of the Council Decision, the Council of the European Union requested a formal risk assessment of the substance.

The extended Scientific Committee of the EMCDDA conducted the risk assessment on 16 November 2012. The Committee considered the following information: the evidence compiled in the Joint report, updated with additional information where available; further detailed information regarding some of the deaths; case reports from Europol of production sites where 4-MA had been detected; details from the findings on the national risk assessments conducted by the Dutch and Belgian authorities; and, expert contributions from members of the Scientific Committee and invited experts.

The risk assessment report is available on the Council of the European Union website ([29]).

On 7 March 2013, after due consideration of the risk assessment report, the Council of the European Union issued a Decision to subject 4-MA to control measures across the EU ([30]).

3.2.3. 5-(2-Aminopropyl)indole (5-IT) — Joint report

At the end of September 2012, the EMCDDA and Europol agreed that the information collected on 5-IT satisfied criteria 1, 4, 5 and 6 above ([31]). The two organisations concluded that sufficient information had been

([27]) Kindly provided by the Belgian national focal point.
([28]) EMCDDA and Europol (2012), *EMCDDA–Europol joint report on a new psychoactive substance, 4-methylamphetamine*, EMCDDA, Lisbon. Available at: http://www.emcdda.europa.eu/attachements.cfm/att_191982_EN_TDAS12001ENN.PDF
([29]) Council of the European Union (2012), *Risk assessment report on the new psychoactive substance 4-methylamphetamine*, 17275/12 CORDROGUE 98 SAN 320. Available at: http://register.consilium.europa.eu/pdf/en/12/st17/st17275.en12.pdf
([30]) Council Decision of 7 March 2013 on subjecting 4-methylamphetamine to control measures (2013/129/EU), OJ L 72, 15.03.2013, p. 11.
([31]) Specifically: the amount of the material seized; analogy with better-studied compounds; evidence of the potential for further (rapid) spread; and, evidence of cases of serious intoxication or fatalities.

accumulated to merit the production of a Joint report on 5-IT as stipulated by Article 5.1 of the Council Decision. In compliance with the provisions of the Council Decision, on 3 October 2012 the EMCDDA and Europol launched a procedure for the collection of information on 5-IT, in order to prepare the Joint report.

Key findings of the Joint report

5-IT is a synthetic derivative of indole, substituted at the phenyl side of the indole ring system (position 5). It is a positional isomer of alpha-methyltryptamine (AMT), which belongs to the chemical family of tryptamines, many of which are hallucinogenic. However, 5-IT also contains the chemical sub-structure of alpha-methylphenethylamine and therefore could be considered to be a substituted phenethylamine, many of which are known to be stimulants. Limited data suggest that 5-IT has stimulant effects.

The first seizure of 5-IT was in Norway on 17 April 2012, and was notified to the EMCDDA through the EWS on 1 June 2012. Several EU Member States reported that forensic and/or toxicological laboratories did not have validated procedures for the confirmation of 5-IT due to the initial lack of certified reference material. This may have led to under-reporting of 5-IT. Seven Member States and Norway reported seizures of 5-IT, mostly as powders ranging in weight from 0.2 grams to 20.5 kilograms, tablets and capsules. It was also detected in tablets resembling 'ecstasy' in one Member State.

The information available for the Joint report suggested that common routes of administration of 5-IT were orally and by insufflation. One Member State reported that injection of the substance may also be occurring.

There was no information regarding manufacturing sites, the chemical precursors or the synthetic routes used for the 5-IT that had been detected on the drug market. One possible route of synthesis was a similar process to the reductive amination used commonly in the manufacture of amphetamines. The reactions were thought to be feasible in an amateur laboratory setting and not to require sophisticated equipment.

According to reports provided to Europol there was no information available to suggest the involvement of organised crime, nor criminal groups, in the production, distribution and trafficking of 5-IT. The substance had been seized at the border of four Member States and Norway. In one case this involved a seizure of 20.5 kilograms of powder.

One Member State reported that 5-IT was controlled under drug control legislation. Two Member States controlled 5-IT under legislation relating to new psychoactive substances. One Member State controlled 5-IT under other legislation. One Member State controlled 5-IT under medicine legislation. It was also ascertained that 5-IT was not under assessment and had not been under assessment by the United Nations system.

No prevalence data were found on the use of 5-IT. In one case, 5-IT had been found in a 'legal high' type products called 'Benzo Fury'. A non-representative Internet survey of readers of a dance music magazine found that 2.3 % of respondents reported use of 'Benzo Fury' in the last year. Some Member States reported easy access and availability of 5-IT through Internet retailers. It was noted that the substance was sold as a drug in its own right and in products branded as 'Benzo Fury'. In the latter case, there was also evidence of supply from 'bricks and mortar' head shops.

The Joint report detailed 15 non-fatal intoxications and 21 deaths associated with 5-IT in three Member States (Hungary, Sweden, and the United Kingdom). These were reported to the EMCDDA between July and December 2012. The analysis of biological samples in some of these cases showed that 5-IT may have been used in conjunction with other new psychoactive substances and controlled drugs.

There appeared to be no published studies on the toxicity, tolerance and dependence producing potential of 5-IT. Detailed studies on pharmacology also did not appear to have been published. One available *in vitro* study suggested that 5-IT inhibited monoamine oxidase. The significance of this finding in relation to humans was unclear. In some of the non-fatal intoxications and deaths associated with 5-IT, symptoms typical of monoaminergic toxicity were noted.

5-IT was found to have no known human or veterinary medical use in the EU. There was no marketing authorisation (existing, ongoing or suspended) for 5-IT in the EU or in the Member States which responded to the request from the EMA. There were no indications that 5-IT was used for other purposes other than as an analytical reference material and in scientific research. At the time of writing the report, there was no information that 5-IT was used in the manufacture of a medicinal product in the EU.

The Joint report is available on the EMCDDA website ([32]).

([32]) EMCDDA and Europol (2012), *EMCDDA–Europol joint report on a new psychoactive substance, 5-(2-aminopropyl)indole*, EMCDDA, Lisbon. Available at: http://www.emcdda.europa.eu/publications/joint-reports/5-IT

On the basis of the information provided in the Joint report, on the 24 January 2013, the Council of the European Union requested that a formal risk assessment be conducted on the substance. The risk assessment will be conducted by the extended Scientific Committee of the EMCDDA in April 2013.

3.3. Public health alerts

Providing warnings on the adverse health effects of new psychoactive substances through timely and rapid public health alerts is one of the activities of the EWS that provides added value to the Member States ([33]). In addition, the EWS stimulates the exchange of information on emerging trends in new uses of existing psychoactive substances that may pose a potential risk to public health, as well as information on possible public health related measures, in accordance with the mandate and procedures of the EMCDDA.

In 2012, the EWS issued public health alerts to the network concerning noteworthy or unusual hazards related to new psychoactive substances and controlled drugs ([34]).

3.3.1. Alerts related to new psychoactive substances

In 2012, the EMCDDA issued public health alerts concerning adverse health effects related to seven new psychoactive substances and one 'legal high' product.

5-(2-Aminopropyl)indole (5-IT)

Three public health alerts were issued in relation to the substituted indole 5-IT. These alerts were issued in July, September and October 2012 and were triggered by reports of non-fatal intoxications and/or deaths from the Swedish, Hungarian and the United Kingdom national focal points. This information also played a key role in the decision by the EMCDDA and Europol to launch a Joint report on the substance (section 3.2.3). Since the submission of the Joint report to the Council of the European Union, the European Commission and the EMA in December 2012, a further three deaths (two in Hungary and one in Germany) have been reported to the EMCDDA through the EWS.

As noted in section 3.2.3, a formal risk assessment on 5-IT will be conducted on 11 April 2013.

Methylone

In January 2012, an alert was issued after the publication of case report that described the details of a death associated with the synthetic cathinone derivative methylone (3,4-methylenedioxymethcathinone). The death involved a 16-year-old male, and was the first involving methylone to be brought to the attention of the EMCDDA.

Methylone was first notified in 2005 and was one of the first synthetic cathinones to be monitored by the EWS.

Methoxetamine

Methoxetamine is an arylcyclohexylamine and is chemically related to ketamine. The substance was first notified at the end of 2010. An alert was issued in 2011 after publication of a case series of non-fatal intoxications by researchers in the United Kingdom. In 2012, two more alerts were issued in relation to methoxetamine.

The first alert of 2012 was issued in February after the Italian national focal point reported a non-fatal intoxication associated with methoxetamine that involved a 27-year-old male. The report stated that the patient was tachycardic, confused, hallucinating and severely agitated.

The second alert was issued in June after the Swedish national focal point notified the EMCDDA of a death in which methoxetamine, synthetic cannabinoids and THC were detected in post-mortem samples.

Also in 2012, upon request from the United Kingdom national focal point, the EMCDDA launched an informal information request on this substance. The responses were used by the Advisory Council for the Misuse of Drugs in their advice to the government that methoxetamine should be controlled under drugs legislation. The legislation placing methoxetamine into the United Kingdom's drug control law was passed on 26 February 2013.

Alpha-methyltryptamine

Alpha-methyltryptamine (AMT), a substituted tryptamine, was first notified by Finland in 2001 under the 1997 Joint Action ([35]). It was developed in the Soviet Union as an anti-depressant in the 1960s. Over the past few years, it has been widely offered by Internet retailers selling new psychoactive substances.

([33]) Such alerts are not legally binding and therefore Member States are not obliged to act upon them.
([34]) Note that detection of new psychoactive drugs in post-mortem samples does not necessarily imply a causal role in the death.
([35]) Joint Action 97/396/JHA of 16 June 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the information exchange, risk assessment and the control of new synthetic drugs. OJ L 167, 25.06.1997, p. 1.

Two alerts regarding AMT were issued in 2012 after information was received regarding deaths in the United Kingdom and Norway.

The first of the alerts was issued after the United Kingdom national focal point reported two deaths that occurred in 2011. In one case, AMT was found in two different post-mortem samples. In the other case, MDMA, fluoromethcathinone, AMT, methylone, MDPV, MDAI, methoxetamine and 5-IAI were detected post-mortem. It was reported that this case appeared to involve the use of separate products rather than one product containing all these substances.

The second public health alert was issued after the Norwegian national focal point reported the death of a 19-year-old male whose post-mortem toxicological analysis revealed high concentrations of AMT in the blood. Alcohol and other drugs were not detected.

Para-methyoxyamphetamine (PMA) and para-methoxymethamphetamine (PMMA)

PMA and PMMA are substituted phenethylamine substances which have been associated with serious toxicity including death. PMMA was risk-assessed in 2001 in the framework of the 1997 Joint Action ([36]) and consequently subject to control measures across the EU ([37]).

Alerts were issued on PMMA/PMA in both 2010 and 2011. In 2012, two public heath warnings were issued after serious non-fatal intoxications and deaths were reported from the United Kingdom and Ireland.

The United Kingdom national focal point provided a report of four serious non-fatal intoxications and one death that were believed to be associated with the use of tablets that contained PMA. In a second case, there were a further two fatalities where PMA was detected post-mortem. Further details were not available at the time of the alert. Also at that time, the United Kingdom national focal point reported three further deaths associated with PMA from 2011 that had not been previously reported to the EMCDDA.

A further alert on PMA/PMMA was issued when the Irish national focal point reported two deaths associated with the use of a drug containing PMMA and MDMA. According to the state laboratory, the urines of the decedents contained PMMA, MDMA, an anti-histamine and codeine.

4-Methylamphetamine (4-MA)

Three public health alerts were issued in 2012 in relation to 4-MA, which was the subject of a Joint report and risk assessment (sections 3.2.1 and 3.2.2). These alerts related to reports of deaths in the Netherlands, Belgium and the United Kingdom, and followed the initial alert issued in October 2011 after the Belgian national focal point reported three non-fatal intoxications and three deaths associated with the substance.

Methylthienylpropamine

Methylthienylpropamine (MPA) is the thiophene analogue of *N*-methylamphetamine. It was first notified in January 2011 by Finland. Two separate alerts were issued in 2012 when the United Kingdom national focal point reported three cases involving deaths associated with this substance.

The first alert concerned two cases. The first case involved a 'legal high' product known as 'Blow' that was suspected to have been snorted. Analysis of the product contents found MPA, MDAI (methylenedioxyaminoindane), lignocaine, and caffeine. These drugs were also detected in the post-mortem samples but mainly MPA. In the second case, MPA and methoxetamine were detected. The information from this case suggested that a 'legal high' product called 'China White' had been snorted by the deceased. The deceased had no other significant toxicological findings.

The second alert related to a case where MPA was detected in post-mortem blood along with oxycodone, temazepam, venlafaxine and its metabolite *o*-desmethylvenlafaxine. No other illicit drugs or new psychoactive substances were found.

'Annihilation'

A public health alert was issued on 'Annihilation', which is a 'legal high' product rather than a specific substance. In October 2012, as a result of media reports, the EMCDDA contacted the United Kingdom national focal point regarding a product called 'Annihilation', which was

([36]) EMCDDA (2003), *Report on the risk assessment of PMMA in the framework of the joint action on new synthetic drugs*, Office for Official Publications of the European Communities, Luxembourg.

([37]) Council Decision of 28 February 2002 concerning control measures and criminal sanctions in respect of the new synthetic drug PMMA (2002/188/JHA). OJ L 63, 06.03.2002, p. 14.

reported to be responsible for a series of non-fatal intoxications in Scotland, United Kingdom. The national focal point reported that analyses of five samples of 'Annihilation' revealed the presence of mixtures of synthetic cannabinoids, and that the contents of different packages of the product were not the same. Furthermore, a search of the EDND revealed that the German national focal point had previously reported a seized sample of 'Annihilation'. The results of these analyses are presented below.

Table 1. Synthetic cannabinoids found in 'Annihilation' 'legal high' products, October 2012

Source of data	UR-144	MAM-2201	AM-2201	JWH-122 pentenyl derivative	AM-1248
UK	✓	✓	—	✓	—
UK	✓	✓	—	—	—
UK	✓	✓	✓	✓	—
UK	✓	—	✓	—	—
UK	✓	✓	—	—	—
Germany	✓	✓	—	—	✓

Of note is that all the samples contained the synthetic cannabinoid UR-144 (first notified to the EMCDDA in February 2012 by the Finnish national focal point). However, it is not known whether this substance caused the effects that were reported to be associated with the consumption of this product. UR-144 is a synthetic cannabinoid that was developed as a selective CB2 receptor ligand with lower affinity for the CB1 receptor (the main endogenous cannabinoid receptor responsible for psychoactive effects) ([38]).

Europol also issued an alert to the network of Europol National Units regarding 'Annihilation' products.

3.3.2. Alerts related to controlled substances

In 2012, public health alerts were also issued in relation to three internationally controlled substances. These were fentanyl, heroin and methamphetamine (*N*-methylamphetamine).

Fentanyl

An alert was issued in March 2012 on the request of the German national focal point due to an observed marked increase in deaths associated with the use of fentanyl. In 2011, 24 % of all drug-related deaths recorded in the Bavaria region were associated with fentanyl use.

A further alert on fentanyl was issued following a media report that highlighted the issue of fentanyl misuse in Estonia.

A Trendspotter meeting was held in Lisbon in October 2012 to examine the use of fentanyl and fentanyl derivatives in Europe (section 4.2).

Anthrax infection associated with heroin use

Several alerts were issued during the course of 2012 regarding outbreaks of anthrax infection in users who injected heroin. The United Kingdom, German, French and Danish national focal points reported confirmed cases of anthrax between the 13 June 2012 and 19 December 2012. There were six cases in the United Kingdom, four in Germany, one in France and one in Denmark. During this period, the EMCDDA worked closely with the relevant authorities in the Member States and with the European Centre for Disease Control (ECDC). A Joint ECDC–EMCDDA rapid risk assessment was conducted in June with relevant advice and public health warnings issued on a rolling basis as updates were received ([39]).

([38]) Poso, A. and Huffman, J. W., (2008), Targeting the cannabinoid CB2 receptor: modelling and structural determinants of CB2 selective ligands, *British Journal of Pharmacology*, 153(2), pp. 335–346.

([39]) ECDC and EMCDDA (2012), *Joint ECDC and EMCDDA rapid risk assessment. Anthrax cases among injecting drug users, Germany*, ECDC, Stockholm.

Methamphetamine (N-methylamphetamine)

Three public health warnings were issued in relation to methamphetamine in 2012.

In early 2012, an alert was issued in response to a report from the Greek national focal point concerning the death of a drug user, thought to be from the use of methamphetamine. This substance has emerged onto the drug scene in Greece and is known locally as 'sisa'. Two seizures of 'sisa' by police in central Athens were found to contain methamphetamine in crystalline form (commonly called 'crystal meth').

A further alert was issued later in the year after an update by the Greek national focal point that concerned further seizures of 'sisa' along with reports of drug users approaching treatment services seeking help in relation to the substance.

The third alert was triggered by the report of a second death in Greece, which involved a female drug user. In this case, methamphetamine, methadone and morphine were confirmed in the post-mortem blood samples.

3.3.3. Emerging trend for future monitoring

The EMCDDA has noted that some of the most potent new psychoactive substances, such as the phenethylamines substituted with the '-NBOMe' group (section 3.1.2) and fentanyls, are being offered for sale online as cyclodextrin complexes.

Cyclodextrin complexes are large synthetic molecules produced from starch. They have many legitimate applications including as potential drug delivery methods. This is because they form so-called 'host-guest complexes', where a drug molecule can be chemically bound to the cyclodextrin but then released on ingestion. Such a mechanism of action could have benefits for producers, distributors and users of particularly potent new psychoactive substances as it would render them easier and safer to handle. On the other hand, the use of cyclodextrin complexes as a vehicle to carry drugs may have implications for the identification of new substances using established detection techniques. Furthermore, it is possible that this mode of delivery may also increase the capacity for further spread of these 'difficult to handle' drugs.

4. Epidemiology and new approaches

4.1. Overview of prevalence data on new psychoactive substances

Data on both the prevalence of use and associated user behaviours are essential components to monitoring, understanding, and, responding to, the phenomenon of new psychoactive substances. Such data are currently limited and may suffer from methodological limitations, including a lack of common definitions. In addition, most users do not know which substances they have actually taken. This may be a particular problem regarding 'legal high' products (such as smoking mixtures that contain synthetic cannabinoids) that are sold using brand names as normally no information is provided about the contents, and, in any case, the contents of a particular product may vary over time. Finally, data are reported with a time delay, which needs to be taken into account considering the highly dynamic and fast-moving market in new psychoactive substances.

Over the past few years some representative general population surveys have been conducted that examine the prevalence of 'legal highs' and new psychoactive substances in school students and/or adults ([40]).

A national survey of Spanish students (aged 14–18) conducted in 2010 found overall lifetime use of 'legal highs' of 0.7 % (0.6 % in the last year and 0.5 % in the last month). While the lifetime use of 'research chemicals' was 0.4 % (0.3 % in the last year, and 0.2 % in the last month), lifetime use of 'Spice' products (which contain synthetic cannabinoids) was 1.1 % (0.8 % in the last year and 0.4 % in the last month), and lifetime use of mephedrone was 0.4 % (0.3 % in the last year and 0.2 % in the last month) ([41]).

The 2010/11 British Crime Survey ([42]) found that among the general population (16–59) in England and Wales, last year use of mephedrone (1.4 %) was at a level similar to that of ecstasy. Among the 16–24 age group, last year prevalence of mephedrone was the same as that of powder cocaine (4.4 %). Most of those who reported using mephedrone in the last year also reported having used another illicit drug (mainly cannabis, cocaine or ecstasy). An important caveat to understanding the significance of these results is that the data collection for the survey covered some time before and after the period when mephedrone was controlled. The 2011/12 survey ([43], [44]) found that last year use of mephedrone among adults aged 16 to 59 was 1.1 %. Mephedrone was found to be the fourth most prevalent drug measured. Among 16- to 24-year-olds, last year use was 3.3 %, the same level as ecstasy, the third most prevalent drug used within this age group. Estimates of use of recently controlled drugs (GBL/GHB, BZP and synthetic cannabinoids) in the last year ranged between 0.1 and 0.2 % for each type of drug.

Mephedrone and 'legal highs' were included for the first time in a joint household survey in Ireland and Northern Ireland (United Kingdom) conducted in 2010/11, after mephedrone was controlled ([45]). The sample included over 7 500 respondents, aged 15–64. In Northern Ireland, lifetime prevalence was estimated at 2 % and last year prevalence at 1 % for both mephedrone and 'legal highs'. Lifetime prevalence levels were higher among those aged 15–24, reaching 6 % for both mephedrone and 'legal highs.

([40]) For some new drugs that are sold directly on the illicit market, the user groups and prevalence may, to some degree, reflect those for established controlled drugs (such as amphetamine and MDMA). A recent example of this was 4-methylamphetamine, which was usually sold as amphetamine (e.g. 'speed'), even though users were mostly unaware of this.

([41]) Clinical Committee of the Government Delegation for the National Plan on Drugs (2011), Emerging drugs. Report 6 of the Clinical Committee, Ministry of Health, Madrid. Available at: http://www.pnsd.msc.es/Categoria2/publica/pdf/DROGAS_EMERGENTES_ingles_WEB.pdf

([42]) Smith, K. and Flatley, J (2011), *Drug Misuse Declared: Findings from the 2010/11 British Crime Survey*, Home Office, London.

([43]) In 2012, the British Crime Survey was renamed the Crime Survey of England and Wales.

([44]) UK Home Office (2012), *Drug Misuse Declared: Findings from the 2011/12 Crime Survey for England and Wales,* Home Office, London.

([45]) National Advisory Committee on Drugs (NACD) and Public Health Information and Research Branch (PHIRB) (2011), *Drug use in Ireland and Northern Ireland: first results from the 2010/11 Drug Prevalence Survey. Bulletin 1.* NACD & PHIRB, Dublin.

In Ireland, new psychoactive substances (last year use, 4 %) were the second most frequently reported illicit drugs after cannabis (6 %). The highest levels of last year use of new psychoactive substances were reported by 15- to 24-year-olds (10 %).

In addition, a 2011 Eurobarometer survey of youth attitudes to drugs, which interviewed more than 12 000 young people aged between 15 and 24, estimated that 5 % of young Europeans had used 'legal highs' at some time, with about half of the countries falling in the range 3–5 %. The highest estimates were reported by Ireland (16 %) followed by Latvia, Poland and the United Kingdom (all at nearly 10 %) ([46]).

Surveys have also examined the use, availability and associated user behaviours in targeted populations such as nightclub patrons and dance music fans. The targeted populations tend to include 'early adopters' of new drugs. The findings of these surveys are not generalisable to other groups and populations. Nevertheless, the use of new drugs in these targeted populations can be very high and such studies may provide insights into the harms a drug may have, as well as an indication of substances that may be attractive to other user groups and which could become more widespread.

A survey of individuals attending 'gay friendly' nightclubs in south-east London in 2011 found that, among 313 participants, lifetime use of a 'legal high' was reported by 65.8 %. Lifetime use of mephedrone was reported by 63.8 % of the sample (last month use was 53.2 % and use during the day of the survey was 41 %). In addition, lifetime use of BZP was 9.3 % (1.6 % in the last year); lifetime use of MDAI was 7.7 % (1.3 % in the last year); lifetime use of 'synthetic cocaine' was 9.9 % (3.5 % in the last year); lifetime use of 'Spice/K2' was 9.9 % (2.2 % in the last year); lifetime use of methoxetamine was 6.4 % (1.9 % in the last year); and lifetime use of 'pipradrols' was 1.6 % (1.0 % in the last year) ([47]).

An online survey on 'legal highs' conducted among 860 respondents with experience in 'legal highs' in Germany showed that 'herbal blends' were the most prevalent 'legal high' products, followed by 'research chemicals' and 'bath salts' and similar products. Similarly, a study carried out in nightlife settings in the Czech Republic found that 4.5 % of a sample of 1 091 Internet users aged 15 to 34 reported use of a new psychoactive substance ([48]).

In 2011, the online drug-use survey for the UK clubbing magazine Mixmag and the Guardian newspaper ([49]) which draws on previous Mixmag surveys collected 15 500 responses from around the world, but mostly from the United Kingdom. In 2010/11, reported levels of use of mephedrone in the last year and last month were three times higher among clubbers (30 % and 13 %) than non-clubbers (10 % and 3 %).

4.2. Trendspotter study: fentanyl in Europe

The second EMCDDA Trendspotter study was conducted in October 2012 and examined the availability and use of fentanyl in Europe, including: the extent and patterns of use; illicit production and diversion; harms and deaths; and, responses to the problem. Twelve experts from 10 Member States (Bulgaria, Czech Republic, Germany, Estonia, Greece, Italy, Slovakia, Sweden, Finland, United Kingdom) attended the meeting, presenting their experiences and contributing to an analysis of the topic, providing insights from law enforcement, forensic science, treatment, research and monitoring, and drug user perspectives.

The EMCDDA Trendspotter study methodology incorporates a number of different investigative approaches and data collection from multiple sources. This study included: a review of the international literature; data collection from the 30 national early warning systems; data collection on fentanyl-associated deaths; 12 expert presentations (from 10 countries); an electronic survey of experts attending the meeting; and, three facilitated working groups. Analysis was based on triangulation of the available data, with a view to providing as complete and reliable a picture as possible, with an important caveat being that much of the data are preliminary and many of the results are based on expert opinion and the grey literature.

The report from the meeting is available on the EMCDDA website ([50]).

([46]) Gallup Organization (2011), *Youth attitudes on drugs, Flash Eurobarometer 330*. Available at: http://ec.europa.eu/public_opinion/flash/fl_330_en.pdf
([47]) Wood, D. M., Hunter, L., Measham, F. and Dargan, P.I. (2012), 'Limited use of novel psychoactive substances in South London nightclubs', *Quarterly Journal of Medicine*, 105(10), pp. 959–64.
([48]) EMCDDA (2012), *Annual report 2012: the state of the drug problem in Europe*, Publications Office of the European Union, Luxembourg, p. 92.
([49]) No authors listed (2012), 'Global drug survey', *Mixmag*, 251, pp. 68–73.
([50]) http://www.emcdda.europa.eu/scientific-studies/2012/trendspotters-report

This meeting built upon the success of the first EMCDDA Trendspotter meeting which took place in Lisbon in October 2011, and examined the recent shocks in the European heroin market ([51]).

4.3. Sewage epidemiology

Sewage epidemiology, also known as wastewater analysis, is a rapidly developing scientific discipline. It has been supported by the EMCDDA as it was recognised that this may be a useful epidemiological technique to help support the Agency's work. Monitoring population-level trends in illicit and new drug consumption using this technique is now feasible given the recent advances in analytical chemistry and applied research that allow the identification of illicit and new drugs as well as their main metabolites in wastewater at very low concentrations. This is comparable to taking a much diluted urine sample from an entire community (rather than from an individual user). With certain assumptions, it may be possible to back-calculate from the amount of the metabolite in the wastewater to an estimate of the amount of a drug consumed in a community. Early research focused on identifying cocaine and its metabolites in wastewater, but recent studies have shown that this technique shows promise for monitoring consumption of new psychoactive substances.

Two expert meetings on wastewater analysis were organised by the EMCDDA in 2011. These were followed up with a demonstration project commissioned by the EMCDDA (2012) that aimed to explore the applicability of the technique through the analysis of wastewater in 19 European cities. In December 2012, the EMCDDA hosted a workshop that examined how illicit drug use in populations could be determined through wastewater biomarker analysis. The workshop brought together some of the leading researchers in this field and was an effective platform for the kick-off meeting of the SEWPROF (sewage profiling) project group ([52]).

4.4. Computer-aided prediction of pharmacological properties

The EMCDDA–Europol 2011 Annual Report on the implementation of Council Decision 2005/387/JHA discussed the potential of using computer-based modelling to assist with the monitoring and risk assessment of new psychoactive substances.

This technique is based on the fact that molecules with similar chemical structures may possess similar physicochemical properties and biological activities. The concept of molecular similarity has been exploited in drug discovery, and similarity methods have been used in the prediction of physicochemical properties (solubility, partitioning coefficient), as well as estimating absorption, distribution, metabolism, excretion and toxicity.

This method may be useful, both at an early stage in the process of assessing new psychoactive substances and as a complementary technique during the risk assessment. However, it is not a tool that can be used on its own in the risk assessment process.

Using the computational modelling method, 4-MA was examined and was predicted to have properties similar to other substituted amphetamine stimulants. Other compounds assessed using this technique in 2012 were 5-IT, alpha-PVP and methoxetamine.

5-(2-Aminopropyl)indole (5-IT)

The computational modelling method predicted that the 5-HT_{2C} and 5-HT_{1D} receptors were possible targets of 5-IT. These receptors are known to be involved in the reward circuit of the limbic part of the brain. In addition, the model predicted that 5-IT may cross the blood–brain barrier.

Alpha-PVP

Alpha-PVP belongs to the group of pyrrolidinophenone type drugs, structurally similar to pyrovalerone (4-methyl-α-pyrrolidinovalerophenone) which acts by releasing dopamine and norepinephrine. It was predicted that this compound would affect the dopaminergic and norepinephrinergic systems, in agreement with data from *in vitro* studies. In addition, the model predicted that alpha-PVP may be able to cross the blood–brain barrier.

Methoxetamine

The target prediction algorithm was not able to predict the expected targets for ketamine and methoxetamine. The limitations of the technique at the present time for certain groups of compounds must be acknowledged.

([51]) http://www.emcdda.europa.eu/scientific-studies/2011/trendspotters-report

([52]) SEWPROF is a research project funded by the European Commission, Marie Curie Actions, Seventh Framework Programme and the Initial Training Network to develop interdisciplinary and cross-sectoral research capability for the next generation of scientists working in the newly-emerging field of sewage epidemiology.

5. Production and distribution of new psychoactive substances

5.1. Europol

As a key partner in the system set up under the Council Decision, Europol is at the forefront of monitoring, knowledge sharing and awareness of the regional supply of new psychoactive substances. The role that Europol plays under the Council Decision allows it to have a regional overview and develop expertise concerning the production, trafficking and organised crime involvement in both the 'traditional' synthetic drugs market as well as on new psychoactive substances. Europol has several expert systems which incorporate synthetic drug related data, including new psychoactive substances.

The extensive involvement of organised crime in the production, trafficking and marketing of synthetic drugs is well-known. Further to this, information gathered by Europol shows that organised crime continues to exploit new market opportunities, with production or packaging, mixing and trafficking of new drugs posing an emerging threat to the EU.

Moreover, the Internet has become a major new marketplace for such new psychoactive substances as well as an information hub for sharing knowledge on their synthesis, effects and availability. However, Europol has noted that new psychoactive substances advertised on the Internet as 'legal highs' are not always consistent with the substance sought, and in some cases may actually contain controlled drugs.

The new psychoactive substances seized by European law enforcement agencies are sourced mainly from China and to a lesser extent from India. The illicit production of new drugs inside the EU is rarely reported to Europol by Member States. This may perhaps be due to the requirement for more sophisticated methods of synthesis and equipment required, when compared to the 'traditional' synthetic drugs such as amphetamine and MDMA. In the majority of cases reported by Member States, 'illicit production' of new psychoactive substances in the EU has referred to professional mixing and packaging sites, rather than synthesis of the substances.

During the preparation for the EMCDDA–Europol Joint report on 4-MA, an interesting finding was noted regarding the precursors for new drugs. The Netherlands reported that in recent years multiple illicit production sites and/or incidents related to the production of 4-MA had been discovered (three sites in 2010 and one site in 2011). In each case it was not clear whether the criminals involved in the illicit production were aware that they were producing 4-MA. According to Dutch intelligence, there were suggestions that some producers believed that they were producing amphetamine using the precursor BMK, when they were actually using the precursor 4-methyl-BMK and consequently producing 4-MA.

6. Conclusions

Until about a decade ago, most new psychoactive substances were typically sold directly on the illicit market. They were produced in illicit production facilities and called 'designer drugs' or were sourced from diverted medicines. To some degree, this continues to be the case, with 4-MA being the latest example of a new drug produced in illicit production facilities within the EU. However, the emergence of 'legal highs', beginning with BZP and methylone, and followed by mephedrone, marked a fundamental shift in the drug markets. Now many new psychoactive substances are produced in bulk in China and India and imported into Europe, where they are processed, packaged and sold on the growing 'legal highs' market. These developments have been fuelled by globalisation and technological advancement, which have also allowed a more open market to develop. This includes advertisement and sale through the Internet and 'bricks and mortar' head shops. In addition, for suppliers, the Internet is also facilitating communication as well as providing access to knowledge, expertise and logistics. For users, the Internet has made it easier to learn about 'legal highs', share their experiences of using them and provide advice and support to other users. Overall, these developments have played a role in the dramatic increase in the number, type and availability of new psychoactive substances in Europe. In 2012, 73 new substances were officially notified for the first time in Europe through the EWS, with more than 280 substances now being monitored by the EMCDDA.

The globalised nature of the new drugs phenomenon makes it particularly difficult to control and reduce supply. Differences in drug laws between EU Member States and third countries, such as China and India, where the substances are manufactured, compound the problem. Retailers exploit gaps in existing control and regulatory measures and rapidly adapt to new measures. Insufficient capacity for screening freight and postal packages makes it difficult to prevent new drugs entering the EU. The decentralised and transnational nature of the Internet means that enforcement measures may have a limited impact due to displacement of online shops to countries outside the EU, where legal and regulatory systems may be inadequate to address this phenomenon.

Now, more than ever, the EWS provides added value to the Member States by playing an essential role in ensuring that they have access to the most up-to-date information on new psychoactive substances both from across Europe and beyond. The EWS network continues to grow, as does the amount and quality of the information that it collects. The network now includes not only new forensic science and toxicological laboratories, but also a range of health and law enforcement professionals, as well as many academic researchers. It is clear that the EWS functions efficiently and effectively due to the structure that is underpinned by the Reitox national focal points, the technical expertise that has been built up by members of the network, the clear operating guidelines and the coordination provided by the EMCDDA and Europol.

Further, where necessary, the system allows for the progression through the scientific risk assessment phase to control measures across the EU. In 2012, this sensitive monitoring system provided the EMCDDA and Europol with the signals required to trigger Joint reports for 4-MA and 5-IT. After the risk assessment conducted by the extended Scientific Committee of the EMCDDA, and following opinion of the European Commission, the Council of the European Union decided to control 4-MA across the Union. The risk assessment of 5-IT will be conducted in April 2013.

Sound scientific data are essential to the system set up by the Council Decision. In order to better inform the responses that are likely to be needed to address the new drugs phenomenon, there are some key areas of the EWS that need to be strengthened. These include:

- the data collection and data management infrastructure of the EWS, including the EDND (which was not designed to handle the quantity and range of data that is now generated by the new drugs phenomenon);
- provision of a mechanism to produce and share analytical reference standards across the EU;
- improving the capacity for investigative analysis and applied research at the European level; and,
- epidemiological studies, particularly targeted and general population prevalence surveys.

Finally, advances in the fields of pharmacology and toxicology now allow for the more rapid assessment of the properties of new substances. These data can be used to improve the knowledge and understanding of these substances, including, critically, for the risk assessment process. Such an assessment may include the study of the pharmacological and toxicological properties of new psychoactive substances (such as receptor binding and mode of action studies) that will help provide the evaluation of potential acute and chronic toxicity in humans. While the EMCDDA has applied such techniques on an ad hoc basis in the past, it is clear that such information will be required on a routine, systematic basis in the future.

Annexes

Annex 1. New psychoactive substances notified to the EMCDDA and Europol for the first time in 2012 under the terms of Council Decision 2005/387/JHA

1. **HU-331** ((3*S*,4*R*)-3-hydroxy-2-*p*-mentha-(1,8)-dien-3-yl-5-pentyl-3,4-*p*-benzoquinone) – 12 January 2012 – France
2. **AM-679** ((2-iodophenyl)(1-pentyl-1*H*-indol-3-yl) methanone) – 27 January 2012 – Italy
3. **WIN 55212-2** ((*R*)-(+)-[2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-napthalenylmethanone) – 27 January 2012 – Italy
4. **UR-144** ((1-pentyl-1*H*-indol-3-yl)-(2,2,3,3-tetramethyl-cyclopropyl)methanone) – 1 February 2012 – Finland and Poland
5. **JWH-370** ([5-(2-methylphenyl)-1-pentyl-1*H*-pyrrol-3-yl]-1-naphthalenyl-methanone) – 1 February 2012 – Finland
6. ***N*-propylamphetamine** (*N*-(1-phenylpropan-2-yl) propan-1-amine) – 3 February 2012 – Austria
7. **3-(*p*-Methoxybenzoyl)-*N*-methylindole** – 3 February 2012 – Austria
8. **trans-Diastereomer of CP 47,497-C8 homologue** – 3 February 2012 – Austria
9. **1-Cyclohexyl-*x*-methoxybenzene** – 3 February 2012 – Austria
10. **3-Fluoro-isomethcathinone** (1-(3-fluorophenyl)-1-(methylamino)-2-propanone) – 13 February 2012 – Czech Republic
11. **1-(3-Methylbenzyl)piperazine** – 17 February 2012 – Sweden
12. **2-Fluoroamphetamine** (1-(2-fluorophenyl)propan-2-amine) – 21 February 2012 – Sweden
13. **Thienoamphetamine** (1-(thiophen-2-yl)propan-2-amine) – 24 February 2012 – Czech Republic
14. **URB754** (6-methyl-2-[(4-methylphenyl)amino]-1-benzoxazin-4-one) – 27 February 2012 – Bulgaria
15. **5-APDB** (5-(2-aminopropyl)-2,3-dihydrobenzofuran) – 5 March 2012 – Bulgaria
16. **Phenibut** (4-amino-3-phenyl-butyric acid) – 8 March 2012 – Sweden
17. **6-APDB** (6-(2-aminopropyl)-2,3-dihydrobenzofuran) – 8 March 2012 – Spain
18. **2-FMA** (2-fluoro-*N*-methyl-amphetamine) – 12 March 2012 – Finland
19. **ECX** (1-ethynyl-1-cyclohexanol) – 26 March 2012 – United Kingdom
20. **4-Fluoroephedrine** (1-(4-fluorophenyl)-2-(methylamino) propan-1-ol) – 26 March 2012 – United Kingdom
21. **3-MeO-PCP** (1-[1-(3-methoxyphenyl)cyclohexyl] piperidine) – 29 March 2012 – United Kingdom
22. **5FUR-144** ((1-(5-fluoropentyl)-1*H*-indol-3-yl) (2,2,3,3-tetramethylcyclopropyl)methanone) – 30 March 2012 – Latvia
23. **25D-NBOMe** (2-(2,5-dimethoxy-4-methylphenyl)-*N*-(2-methoxybenzyl)ethanamine) – 16 April 2012 – United Kingdom
24. **A-796,260** ([1-[2-(4-morpholinyl)ethyl]-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone) – 18 April 2012 – Belgium
25. **4-AcO-DALT** (4-acetoxy-*N*,*N*-diallyltryptamine) – 20 April 2012 – Finland
26. **1-Phenyl-2-(piperidin-1-yl)butan-1-one** – 7 May 2012 – Spain

27. **2,4,5-Trimethylmethcathinone / 2,4,5-TMMC** (2-methylamino-1-(2,4,5-trimethylphenyl)propan-1-one)) – 8 May 2012 – Germany

28. **APINACA** (*N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide) – 21 May 2012 – Bulgaria

29. **5-IT** (5-(2-aminopropyl)indole) – 1 June 2012 – Norway

30. **Zopiclone** (6-(5-chloro-2-pyridyl)-6,7-dihydro-7-oxo-5*H*-pyrrolo[3,4-b]pyrazin-5-yl 4-methylpiperazine-1-carboxylate) – 1 June 2012 – United Kingdom

31. **UR-144 (-2H)** ([1-(pent-4-en-1-yl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone) – 14 June 2012 – France

32. **25I-NBOMe** (4-iodo-2,5-dimethoxy-*N*-(2-methoxybenzyl)phenethylamine) – 21 June 2012 – Sweden

33. **4-HO-DPT** (4-hydroxy-*N,N*-dipropyltryptamine) – 21 June 2012 – Sweden

34. **5-MeO-MET** (5-methoxy-*N*-ethyl-*N*-methyl-tryptamine) – 21 June 2012 – Sweden

35. **STS-135** (*N*-(1-adamantyl)-1-(5-fluoropentyl)-1*H*-indole-3-carboxamide) – 26 June 2012 – Hungary

36. **MPHP** (1-(4-methylphenyl)-2-(pyrrolidin-1-yl)-hexan-1-one) – 26 June 2012 – Sweden

37. **APICA** (*N*-(1-adamantyl)-1-pentyl-1*H*-indole-3-carboxamide) – 13 July 2012 – Finland

38. **JWH-018 carboxamide derivative** (1-pentyl-*N*-(naphthalen-1-yl)-1*H*-indole-3-carboxamide) – 16 July 2012 – Finland

39. **MDDM** (3,4-methylenedioxy-*N,N*-dimethylamphetamine) – 17 July 2012 – Austria

40. **MAM-2201 chloropentyl derivative** ([1-(5-chloropentyl)-1*H*-indol-3-yl](4-methyl-1-naphthalenyl)methanone) – 18 July 2012 – United Kingdom

41. **JWH-122 pentenyl 2-methylindole derivative** ((4-methylnaphthalen-1-yl)[2-methyl-1-(pent-4-en-1-yl)-1*H*-indol-3-yl)]methanone) – 18 July 2012 – United Kingdom

42. **JWH-122 pentenyl derivative** ((4-methylnaphthalen-1-yl)(1-(pent-4-en-1-yl)-1*H*-indol-3-yl)methanone) – 18 July 2012 – United Kingdom

43. **AM-694 methyl substituted for iodine** (1-(5-fluoropentyl)-3-(2-methylbenzoyl)indole) – 18 July 2012 – United Kingdom

44. **AM-694 ethyl substituted for iodine** (1-(5-fluoropentyl)-3-(2-ethylbenzoyl)indole) – 18 July 2012 – United Kingdom

45. **JWH-018 *N*-(5-chloropentyl) derivative** ([1-(5-chloropentyl)-1*H*-indol-3-yl](naphthalen-1-yl) methanone) – 31 July 2012 – Germany

46. **JWH-018 *N*-(5-bromopentyl) derivative** ([1-(5-bromopentyl)-1*H*-indol-3-yl](naphthalen-1-yl) methanone) – 31 July 2012 – Germany

47. **AH-7921** (3,4-dichloro-*N*-[[1-(dimethylamino) cyclohexyl]methyl]benzamide) – 2 August 2012 – United Kingdom

48. **4-AcO-DPT** (4-acetoxy-*N,N*-dipropyltryptamine) – 21 August 2012 – Finland

49. **Pyrazolam** (8-bromo-1-methyl-6-phenyl-4*H*- [1,2,4] triazolo[4,3*a*][1,4]benzodiazepine) – 22 August 2012 – Finland

50. **2-MeO-Ketamine** (2-(2-methoxyphenyl)-2-(methylamino)cyclohexanone) – 30 August 2012 – Sweden

51. **Hydroxyamphetamine** (4-(2-aminopropyl)phenol) – 5 September 2012 – Poland

52. **3-Methylmethcathinone / 3-MMC** (1-(3-methylphenyl)-2-(methylamino)propan-1-one) – 5 September 2012 – Sweden

53. **N-Ethylnorketamine** (2-(2-chlorophenyl)-2-(ethylamino) cyclohexanone) – 17 September 2012 – United Kingdom

54. **5-APDI** (1-(2,3-dihydro-1*H*-inden-5-yl)propan-2-amine) – 17 September 2012 – United Kingdom

55. **AM-1248** (1-[(*N*-methylpiperidin-2-yl)methyl]-3-(adamant-1-oyl)indole) – 24 September 2012 – Germany

56. **AKB-48F** (*N*-(1-adamantyl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide) – 27 September 2012 – Latvia

57. **AM-2201 indazolecarboxamide analogue** (*N*-1-naphthalenyl-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide – 30 October 2012 – Finland

58. **JWH-018 carboxylate analogue, quinolinyl derivative** (quinolin-8-yl 1-pentyl-1*H*-indole-3-carboxylate) – 20 November 2012 – Finland

59. **AB-005** ([1-[(1-methyl-2-piperidinyl)methyl]-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone) – 20 November 2012 – Germany

60. **AB-005 azepane isomer** ((1-(1-methylazepan-2-yl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone) – 20 November 2012 – Germany

61. **4-HTMPIPO** (4-hydroxy-3,3,4-trimethyl-1-(1-pentyl-1*H*-indol-3-yl)pentan-1-one) – 30 November 2012 – Sweden

62. **(Iso)butyryl-F-fentanyl N-benzyl analogue** (*N*-(1-benzylpiperidin-4-yl)-*N*-(*x*-fluorophenyl)-butanamide) – 4 December 2012 – Finland

63. (**Iso)butyryl fentanyl** (2-methyl-*N*-phenyl-*N*-[1-(1-phenylpropan-2-yl)piperidin-4-yl]propanamide) – 4 December 2012 – Finland

64. **UR-144 N-(5-chloropentyl) analogue** ((1-(5-chloropentyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone) – 7 December 2012 – Hungary

65. **4-CA/4-chloroamphetamine** (1-(4-chlorophenyl) propan-2-amine) – 7 December 2012 – Hungary

66. **25B-NBOMe** (2-(4-bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine) – 6 December 2012 – Sweden

67. **2C-G** (1-(2,5-dimethoxy-3,4-dimethylphenyl)propan-2-amine) – 6 December 2012 – Poland

68. **2C-N** (2,5-dimethoxy-4-nitrophenethylamine) – 6 December 2012 – Poland

69. **25E-NBOMe** (2-(4-ethyl-2,5-dimethoxyphenyl)-*N*-[(2-methoxyphenyl)methyl]ethanamine) – 6 December 2012 – Poland

70. **25G-NBOMe** (2-(2,5-dimethoxyphenyl-3,4-dimethyl)-*N*-[(2-methoxyphenyl)methyl]ethanamine) – 6 December 2012 – Poland

71. **25N-NBOMe** (2-(2,5-dimethoxyphenyl-4-nitro)-*N*-[(2-methoxyphenyl)methyl]ethanamine) – 6 December 2012 – Poland

72. **4-Methylaminorex *p*-methyl derivative** – 10 December 2012 – the Netherlands

73. **4-Methylphendimetrazine** – 12 December 2012 – Poland

Annex 2. New psychoactive substances in the category of miscellaneous 'others' that were notified to the EMCDDA and Europol for the first time in 2012 under the terms of Council Decision 2005/387/JHA

Name	Annex 1 ref	Type of substance
3-MeO-PCP 2-MeO-ketamine N-ethylnorketamine	21 50 53	Aminocyclohexanes
Zopilcone Pyrazolam	30 49	Medicinal products
5-APDI	54	Arylethylamine (indenyl derivative of an aminoalkylbenzofuran)
5-APDB 6-APDB	15 17	Arylethylamine (aminoalkylbenzofuran)
4-Methylphendimetrizine	73	Derivative of a medicinal product
ECX	19	Alkynyl cyclohexanol
4-Methylaminorex p-methyl derivative	72	Derivative of a withdrawn medicinal product
Thienoamphetamine	13	Arylethylamine (thiophene derivative of amphetamine)
AH-7921	47	Narcotic analgesic (cyclohexylmethylbenzamide)
Phenibut	16	Derivative of gamma-amino butyric acid
4-Fluoroephedrine	20	Derivative of ephedrine
(Iso)butyryl fentanyl	63	Narcotic analgesic (derivative of fentanyl)
5-IT	29	Substituted indole
1-Cyclohexyl-x-methoxybenzene (Iso)butyryl-F-fentanyl N-benzyl analogue	9 62	Potential intermediates or precursors of other drugs

Annex 3. Legal and working definitions used by the EMCDDA to classify and describe new drugs

The Joint Action 97/396/JHA and the Council Decision 2005/387/JHA provide legally binding definitions of the substances they cover; however, there are a number of other terms in common usage in this area which may cause confusion. For example, at least historically, new psychoactive substances have often been referred to as 'designer drugs' although today the term 'legal highs' is used more often. Much overlap exists between these terms but for practical purposes it is worth delineating the concepts.

The term 'new' in all definitions is not intended to refer exclusively to newly invented or newly synthesised substances, but rather should be understood as 'newly available' or 'newly misused'.

New synthetic drug (Joint Action 97/396/JHA)

The 1997 Joint Action 97/396/JHA ([53]) concerned new synthetic drugs 'which are not currently listed in any of the Schedules to the 1971 United Nations Convention on Psychotropic Substances ([54]), and which pose a comparable serious threat to public health as the substances listed in Schedules I or II thereto and which have a limited therapeutic value' (Article 2).

The Joint Action 'relates to end-products, as distinct from precursors in respect of which Council Regulation (EEC) No 3677/90 of 13 December 1990 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances ([55]) and Council Directive 92/109/EEC of 14 December 1992 on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances ([56]) provide for a Community regime' (Article 2).

New psychoactive substance (Council Decision 2005/387/JHA)

Council Decision 2005/387/JHA broadened the scope of, and replaced, the 1997 Joint Action. Like the Joint Action, it takes the United Nations drug control Conventions as a point of reference, both to define the scope of the Council Decision (Article 2) and for the definition of a new psychoactive substance (Article 3).

Council Decision 2005/387/JHA ([57]) defines a new psychoactive substance as 'a new narcotic drug or a new psychotropic drug in pure form or in a preparation, that has not been scheduled under the 1961 United Nations Single Convention on Narcotic Drugs, and that may pose a threat to public health comparable to the substances listed in Schedule I, II or IV' (new narcotic drug) or 'under the 1971 United Nations Convention on Psychotropic Substances, and that may pose a threat to public health comparable to the substances listed in Schedule I, II, III or IV' (new psychotropic drug). A preparation is defined as 'a mixture containing a new psychoactive substance' (Article 3).

The wording of this definition has a number of implications, for example, substances already listed under the UN Conventions are by definition excluded from the scope of the Council Decision. An important difference to the 1997 Joint Action is the inclusion of narcotic drugs (1961 UN Convention) and psychotropic substances which pose a comparable threat as substances listed in Schedules III or IV of the 1971 UN Convention.

'This Decision relates to end-products, as distinct from precursors in respect of which Council Regulation (EEC) No 3677/90 of 13 December 1990 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances ([58]), and Regulation (EC) No 273/2004 of the

([53]) Joint Action 97/396/JHA of 16 June 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the information exchange, risk assessment and the control of new synthetic drugs. OJ L 167, 25.06.1997, p. 1.
([54]) 1971 United Nations Convention on Psychotropic Substances.
([55]) Council Regulation (EEC) No 3677/90 of 13 December 1990 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances. OJ L 357, 20.12.1990, p. 1. Regulation as last amended by Commission Regulation (EEC) No 3769/92 (OJ L 383, 29. 12. 1992, p. 17).
([56]) Council Directive 92/109/EEC of 14 December 1992 on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances. OJ L 370, 19.12.1992, p. 76. Directive as amended by Directive 93/46/EEC (OJ L 159, 1. 7. 1993, p. 134).
([57]) Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances, OJ L 127, 20.5.2005, p. 32.
([58]) OJ L 357, 20.12.1990, p. 1. Regulation as last amended by Commission Regulation (EC) No 1232/2002 (OJ L 180, 10.7.2002, p. 5).

European Parliament and of the Council of 11 February 2004 on drug precursors ([59]) provide for a Community regime' (Article 2).

'The new psychoactive substances covered by this Decision may include medicinal products as defined in Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community Code relating to veterinary medicinal products ([60]) and in Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community Code relating to medicinal products for human use ([61])' (point 5 of the recital to the Council Decision). However, 'substances of established and acknowledged medical value are therefore excluded from control measures based on this Decision' (point 8 of the recital to the Council Decision) as are psychoactive substances used to manufacture a medicinal product (Article 7.3).

New drugs

New psychoactive substances (new drugs) make up a broad range of substances that are not controlled under international drug laws. Often they are intended to mimic the effects of existing controlled drugs. This is reflected in the fact that many are chemically similar to controlled drugs, but, at the same time, sufficiently different that they fall outside of the scope of drug laws. In addition, a growing number of new substances from entirely different chemical families, including stimulants and substances that mimic the effects of cannabis or opioids, have also recently been detected.

The term 'new' refers to the fact that these substances are new to the drug market or newly misused. Many new drugs have previously been described in the scientific and patent literature as part of legitimate research and development. Some have been used in experiments designed to better understand the complex signalling pathways in our bodies, while others have been studied as potential medicines. However, a common feature is that there is usually limited information about the effects of these drugs in humans and the harms that they may cause. Nonetheless, it appears that those involved in supplying new substances are increasingly searching this literature for potential new drugs. Some of these are then sold directly on the illicit market, while others, the so-called 'legal highs', are sold more openly. A further development to this phenomenon is the detection of non-controlled psychoactive medicines on the market. The way in which some of these new drugs are marketed and distributed is also becoming more sophisticated. This includes their advertisement and sale on the open market, such as through the Internet (with delivery via courier and postal services), as well as sale in 'bricks and mortar' head shops.

'Designer drugs'

The way in which new drugs are produced, marketed and supplied can differ significantly. Some are sold directly on the illicit drug market. Here, they may be produced from chemical precursors in illicit production facilities of varying size and sophistication. In the past, these have typically been referred to as 'designer drugs' ([62]) — drugs that are intentionally designed to mimic the effects of controlled drugs but by slightly altering their chemical structure they circumvent existing controls. Examples include PMMA (*para*-methoxyamphetamine) and 2C-I (2,5-dimethoxy-4-iodophenethylamine), which are now controlled across the EU because of the harm they pose. New drugs sold on this market may also be tableted or otherwise packaged from bulk substances that are bought from legitimate sources; these include *m*CPP and BZP.

Both precursors and the substances themselves have been sourced from third countries and from within Europe. This market is dynamic, with source countries changing over time and place. While the source countries for precursors are often unclear, in some cases, the precursor is offered for sale on the Internet by chemical suppliers that appear to be based in China.

Overall, these new drugs are believed to be largely used surreptitiously by producers as replacements for established controlled drugs which may be in short supply, such as MDMA (ecstasy). This supposition is supported by the finding that many of them are found as tablets that use the same logos as ecstasy tablets. In some cases, new drugs may also be found in combination with controlled drugs, possibly in an attempt to 'bulk up' the drug and thereby reduce the amount of controlled drug. An example of both uses is the identification in 2004 of the piperazine

([59]) OJ L 47, 18.2.2004, p. 1.
([60]) OJ L 311, 28.11.2001, p. 1. Directive as last amended by Directive 2004/28/EC (OJ L 136, 30.4.2004, p. 58).
([61]) OJ L 311, 28.11.2001, p. 67. Directive as last amended by Directive 2004/27/EC (OJ L 136, 30.4.2004, p. 34).
([62]) The term 'designer drugs' emerged in the 1980s in relation to some novel fentanyl compounds and became particularly popular with the emergence of the 'ecstasy' compounds (MDMA, MDA, MDE, etc) on the illicit drug market, although strictly speaking these drugs were around long before the term 'designer drug' became popular.

derivative *m*CPP in tablets sold as ecstasy. One possible reason for the emergence of *m*CPP was the decreased availability of the chemical precursors used in the synthesis of MDMA. This, coupled with the fact that *m*CPP appears to mimic some of the subjective effects of MDMA and that it could be legally sourced in Europe and elsewhere, may have made it an attractive substitute to producers. Similarly, although BZP came to prominence as 'party pills', and was commonly sold on the open 'legal highs' market as such, some of the tablets that were seized on the illicit market were clearly intended to be sold as ecstasy, bearing typical ecstasy logos. It is also important to note that some of these new substances are also sold as drugs in their own right (e.g. 2C-B, also known as 'Nexus', which is now under international control) or as a 'special type' of ecstasy (such as *m*CPP).

'Legal highs'

Another group of new psychoactive substances — the so-called 'legal highs' — are legally sourced and sold as replacements for controlled drugs on the open market by exploiting existing laws. This group includes a wide range of synthetic and plant-derived substances that are often sold as branded products. They are also sometimes sold in combination with other new substances. This may be an attempt to better mimic the effects of controlled drugs, or to achieve novel psychoactive effects, or as a result of accidental contamination or deliberate substitution. These so-called 'legal highs' are usually sold through the Internet and in 'bricks and mortar' head shops. They may also be sold by street-level drug dealers. Mostly, they are advertised with aggressive and innovative marketing strategies. Often, in order to disguise the fact that they are psychoactive drugs, and circumvent 'grey areas' in consumer protection and marketing regulations, they are sold under various product labels, including 'research chemicals', 'bath salts' and 'plant food', and usually with an accompanying disclaimer that they are not intended for human consumption. However, describing these substances as 'legal' may not be strictly correct, as some may be regulated by medicines, food safety or other consumer protection laws; some may even contain controlled drugs.

Information from border seizures and law enforcement investigations in the EU Member States indicate that substances sold as 'legal highs' are typically imported, sometimes in multi-kilogram quantities, from China and, to a lesser degree, India. Moreover, facilities for the processing and packaging of these substances have also been seized within the EU.

As part of the marketing strategy to offer a replacement for controlled drugs, distributors and retailers may use names for 'legal high' products that allude to, or sound like, controlled drugs: 'Snow blow' for cocaine or 'Xtacy' and 'Doves Red' ([63]) for MDMA. Common street names of controlled drugs are also used (e.g. calling products 'Charlie', which is also a street name for cocaine). There have also been attempts to deceive consumers by marketing synthetic drugs as 'natural' herbal products, such as in the case of 'Spice' products that contained synthetic cannabinoids. In the majority of such cases, the substances are not listed on the product packaging. It is also clear that retailers are exploiting the Internet as a vehicle for the marketing and sale of 'legal highs'.

Importantly, some online shops sell not only retail products but also bulk quantities of substances, presumably for resale. In order to raise the profile of their products, Internet retailers use a range of marketing techniques. Many focus around selling the idea that 'legal highs' are good replacements for controlled drugs. Social media are also used a marketing tool. This includes posting videos on YouTube of 'real people' using the drugs and reviewing their effects. Some of these are set at music festivals, where traditionally the use of illicit drugs is common. In some cases, these videos are shot as 'before' and 'after' reviews to emphasise the effects of the drugs.

The 'legal highs' market is characterised by the speed at which suppliers circumvent drug controls by offering new alternatives to restricted products and advertising them with modern marketing strategies.

Finally, the term 'legal highs' is often used to refer to the phenomenon, rather than to a specific substance, similarly to the 'Spice' phenomenon, which is used to describe the marketing and sale of herbal products containing synthetic cannabinoid receptor agonists.

A further dimension of the new drug phenomenon is the growing number of psychoactive medicines that are being misused. Some of these are authorised as medicinal products within the EU (such as pregabalin) and are either diverted from the regulated market or imported from third countries. They may also include substances and products that are not licensed within the EU, such as phenazepam and etizolam (benzodiazepines).

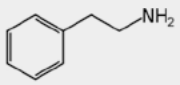
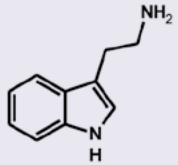
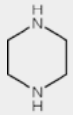
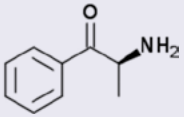
([63]) 'Doves' is a street name for ecstasy.

Annex 4. Main groups of new psychoactive substances monitored by the EU Early warning system

It is scientifically sound practice to categorise new psychoactive substances based on their chemical structure (i.e. by chemical families, see table below). Exceptions to this are the group of synthetic cannabinoids, which are currently categorised based on their mode of action and the group of miscellaneous 'others' (section 3.1.6). Described below are the main families of psychoactive substances notified through the EU Early warning system (EWS) to date. For further details on these categories see the EMCDDA drug profiles ([64]).

- Phenethylamines encompass a wide range of substances that may exhibit stimulant, entactogenic or hallucinogenic effects. Examples include the synthetic substances amphetamine, methamphetamine, MDMA (3,4-methylenedioxymethamphetamine) and mescaline (the latter of which occurs naturally).
- Tryptamines include a number of substances that have predominantly hallucinogenic effects. The main representatives are the naturally occurring compounds dimethyltryptamine (DMT), psilocin and psilocybin (found in hallucinogenic mushrooms) as well as the semi-synthetic lysergic acid diethylamide (LSD).
- Piperazines are represented by *m*CPP (1-(3-chlorophenyl) piperazine) and BZP (1-benzylpiperazine), both of which are stimulants.
- Cathinones have stimulant effects. The main cathinone derivatives are the semi-synthetic methcathinone and the synthetic compounds mephedrone, methylone and MDPV (3,4-methylenedioxypyrovalerone).
- Synthetic cannabinoids share some functional similarities with Δ9-tetrahydrocannabinol (THC), the active principle of cannabis. Like THC, they can have sedative, depressant and hallucinogenic effects. They have been detected in herbal smoking mixtures such as 'Spice' as well as resins that mimic cannabis resin.
- Other substances reported to the EWS include various plant-derived and synthetic psychoactive substances (e.g. indanes, benzodifuranyls, narcotic analgesics, synthetic cocaine derivatives, ketamine and phencyclidine derivatives), which do not strictly belong to any of the previous families. Also included here are a number of medicinal products and derivatives.

([64]) Available at: http://www.emcdda.europa.eu/publications/drug-profiles

Family	Parent compound	Chemical structure of the parent compound	Effects	Representatives	No of substances notified (2005–12)
Phenethylamines	phenethylamine (N)		stimulant and/or hallucinogenic	amphetamine, methamphetamine, MDMA, mescaline (N)	40
Tryptamines	tryptamine (N)		hallucinogenic	psilocin and psilocybin (N), dimethyltryptamine/DMT, lysergide/LSD (S)	16
Piperazines	piperazine		stimulant	mCPP, BZP, TFMPP	9
Cathinones	cathinone (N)		stimulant	cathinone (N), mephedrone, methylone, methcathinone (S)	39
Synthetic cannabinoids	N/A – the category includes a number of chemically unrelated but functionally similar families of cannabinoid receptor agonists that mimic the effects of Δ9 – THC	N/A	depressant, sedative, hallucinogenic	JWH-018, CP 47,497, HU-210	74
Miscellaneous substances	N/A – the category includes new psychoactive plants as well as synthetic psychoactive substances, derivatives of well-established drugs not belonging to any of the families listed above, designer medicines, narcotic analgesics, etc.	N/A	stimulant, hallucinogenic, narcotic analgesic / opiate, depressant, etc.	N/A	58

(N) naturally occurring, (S) semi-synthetic, (N/A) non applicable

Appendix

Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances, OJ L 127, 20.5.2005, p. 32.

Available at:

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005D0387:EN:HTML

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About this report

The unprecedented growth in the number, type and availability of new drugs over the past few years has seen the phenomenon take on global significance. Overall, the number of substances notified in the last two years accounts for more than half of the total number of substances notified to the EU Early warning system since May 2005. Driven by globalisation, technological advancement and the Internet, an open market for new drugs has now developed which presents challenges to public health, law enforcement and policy making. The rapid appearance of non-controlled alternatives to controlled drugs underlines the ability of the market to respond to changes in the legal status of psychoactive substances and has been accompanied, in some cases, by serious adverse health consequences. It is well established that organised crime is involved in some of these activities and continues to exploit the opportunities presented by the market in new drugs. This report presents the key activities performed by the EMCDDA and Europol in 2012 and includes details of all the relevant activities in support of the implementation of Council Decision 2005/387/JHA on the information exchange, risk assessment and control of new psychoactive substances.

About the EMCDDA

The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) is the hub of drug-related information in Europe. Its mission is to provide the EU and its Member States with 'factual, objective, reliable and comparable information' on drugs, drug addiction and their consequences. Established in 1993, it opened its doors in Lisbon in 1995 and is one of the EU's decentralised agencies. With a strong multidisciplinary team, the agency offers policymakers the evidence base they need for drawing up drug laws and strategies. It also helps professionals and researchers pinpoint best practice and new areas for analysis. As well as gathering information on the demand and reduction of the demand for drugs, the agency in recent years has extended its monitoring and reporting on drug supply, supply reduction and illicit drug markets.

www.emcdda.europa.eu

About Europol

Europol is the European Union's law enforcement agency. Its aim is to improve the effectiveness of, and cooperation between, the competent authorities in the EU Member States in preventing and combating serious international organised crime and terrorism. Operational since 1999 and based in The Hague, the organisation employs some 600 staff to support national law-enforcement agencies in their everyday work, including efforts to tackle illicit drug trafficking, money laundering, cyber crime and terrorism. Europol comes into play when an organised criminal structure is involved and two or more EU Member States are affected. Among others, it facilitates cross-country information exchange and provides analysis of operations.

www.europol.europa.eu

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EUROJUST

January 2012

Strategic Project on:

"*Enhancing the work of Eurojust in drug trafficking cases*"

Final Results

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Foreword

The fight against drug trafficking is naturally a priority for Eurojust's work in helping fight cross-border crime. Almost every hour a person in the European Union dies from a drug overdose, and a fifth of all cases referred to Eurojust by national authorities concern drug trafficking.

This report carefully reviews Eurojust's experience in dealing with the drug trafficking cases referred to it over a two-year period ending in September 2010. It aims to identify the most common challenges facing judicial cooperation in the fight against drug trafficking, and to suggest possible solutions. A wide range of judicial cooperation issues (exchange of information, coordination, conflicts of jurisdiction, execution of mutual legal assistance requests, European Arrest Warrants, joint investigation teams, controlled delivery, asset recovery and relations with third States) are considered with reference to concrete cases. The report draws particularly on those cases where Eurojust brought together investigators, prosecutors and judges from Member States and beyond, its own experts and those from other EU bodies, at meetings to coordinate action against drug traffickers. From this experience, the report attempts to draw conclusions which could be of value and interest to investigative and judicial authorities.

There are encouraging signs that practitioners are making greater use of the tools provided to fight drug trafficking and cross-border crime generally at EU level. For example, last year Eurojust evaluated and supported 37 Joint Investigation Teams (6 on drug trafficking), which facilitate the work of Member State authorities in serious cross-border cases. However, as the report makes clear, much remains to be done. Accordingly, the study also contains an Action Plan on how to enhance Eurojust's work with national authorities and third States.

Thanks are due not only to those at Eurojust who contributed to this study but also to the Member States and other experts (in particular from Europol and EMCDDA), who provided valuable inputs on the preliminary results of this project at the strategic seminar held in Krakow on 5 and 6 October 2011.

Aled Williams

President

Executive summary

Purpose and objectives

This report collects the results of the "*Strategic Project on enhancing the work of Eurojust in drug trafficking cases*". A primary goal of the project, covering the two-year period 1 September 2008 to 30 August 2010, was to identify the main challenges and related solutions in Eurojust coordination meetings involving drug trafficking. A second objective was to prepare the workshops for the "*Strategic Seminar on Drug Trafficking*", which took place in Krakow, Poland, on 5 and 6 October 2011. A third objective was to provide a sound basis for an Action Plan with recommendations on how to enhance Eurojust's work with national authorities and third States (see Appendix III of the report).

Methods and sources

The report is based on a quantitative analysis of the Eurojust Case Management System (CMS) and a qualitative analysis of materials available from Eurojust coordination meetings (findings, case evaluation forms, presentations, etc). The conclusions of these analyses have been further validated with the feedback received during the "*Strategic Seminar on Drug Trafficking*", which is included in the conclusions of the present report.

Scope

The analysis is necessarily restricted to available information on drug trafficking cases dealt with at Eurojust, and seeks to stimulate reflection and discussion. Clearly, it does not purport to provide analysis of all drug trafficking in the European Union, or of cross-border judicial cooperation in criminal cases generally.

Main findings

The detailed conclusions of this report can be found in Section 10. They focus on how to improve coordination of judicial responses to cross-border drug trafficking from Eurojust's practitioner viewpoint.

For the two-year period under consideration, drug trafficking was the most common crime type in Eurojust's casework in general, and at coordination meetings in particular. 5 Member States were involved in more than half of the cases under analysis. About 25% of Eurojust's drug trafficking cases overall were multilateral (involving more than two countries), while about 80% of coordination meetings which dealt with drug-trafficking were multilateral. Europol participated in about a fifth of the coordination meetings. The same applies to the participation by third States. In half of the cases analysed in this report, the outcome of a case at national level (in terms of arrests, seizures, convictions, etc) is unknown. In a lower, but still significant, number of cases, Eurojust is not informed about the follow-up at national level of the decisions taken during the coordination meetings.

The most frequent judicial cooperation topics discussed during coordination meetings were the following: exchange of information, coordination, conflicts of jurisdiction and letters rogatory. To a much lesser extent, European Arrest Warrants (EAWs), Joint Investigation Teams (JITs), controlled deliveries and asset recovery were also dealt with during these meetings.

For each of these topics, the most common obstacles and related solutions identified during Eurojust's coordination meetings have been described in dedicated sections of this report.

Areas for improvement at Eurojust

Practitioners in general reported positively on their experience with Eurojust's services. However, the report's conclusions also identify the following areas for possible improvement:

1. Preparation and follow up of coordination meetings
2. Solutions for handling sensitive data
3. Involvement of Europol and third States
4. Use of JITs and other coordination tools
5. Early assessment (and solution) of conflicts of jurisdiction
6. Focus on cross-border asset recovery
7. Role of Eurojust in controlled deliveries
8. Number of judicial coordination versus mere cooperation cases

Key recommendations

The Action Plan, included in Appendix I of the report, addresses each of the above areas with recommendations for Eurojust, which are briefly summarised below:

AREA 1. Coordination meetings	*Draft and promote use of good practice for consistent preparation, conduct and follow-up of coordination meetings.*
AREA 2. Secure channels	*Develop further secure channels for communication between Eurojust, national judicial authorities and Europol.*
AREA 3. Europol and third States	*Promote, where appropriate, participation of Europol and/or third States in coordination meetings.*
AREA 4. JITs and other coordination tools	*Enhance use of JITs, videoconferences (in combination with or instead of coordination meetings) and coordination centres via Eurojust.*
AREA 5. Conflicts of jurisdiction	*Prepare, before coordination meetings, an analysis of possible overlapping of investigations and develop guidelines for Eurojust College opinions on conflicts of jurisdiction.*
AREA 6. Cross-border asset recovery	*Encourage consideration of cross-border asset recovery procedures in cases referred to Eurojust.*
AREA 7. Controlled deliveries	*Provide a practical overview of controlled deliveries' procedures and competent authorities (in cooperation with EMCDDA and Europol).*
AREA 8. Number of coordination cases	*Increase the number of proactive coordination cases rather than reactive cooperation cases.*

Next steps

An evaluation of the follow-up to these recommendations will be carried out at the beginning of 2014 for the period 2012-2013.

1. Introduction

Purpose

This report collects the results of the "*Strategic Project on enhancing the work of Eurojust in drug trafficking cases*". The goal of the analysis, covering the two-year period 1 September 2008 to 30 August 2010, is to identify the main challenges and related solutions in Eurojust coordination meetings involving drug trafficking.

Structure

The next chapter provides an overview of Eurojust's casework on drug trafficking in the period under consideration and addresses the question, "*What types of drug trafficking cases are referred to Eurojust in general and for coordination purposes in particular?"*

Chapters 3 to 9 cover the specific topics listed below to answer the questions "*Which judicial topics are most often discussed in coordination meetings? Which obstacles are most frequently dealt with? Which solutions are proposed and with what outcome*?":

- Exchange of information and coordination
- Conflicts of jurisdiction
- MLA requests and EAWs
- Joint Investigation Teams
- Controlled deliveries
- Asset recovery
- Third States

Chapter 10 summarises the main conclusions of the analysis in light of the feedback received at the "*Strategic Seminar on Drug Trafficking*" held in Krakow, Poland, on 5 and 6 October 2011.

Scope

The report is based on data from a quantitative analysis of the Eurojust Case Management System (CMS)[1] and a qualitative analysis of materials available from Eurojust coordination meetings (findings, case evaluation forms, presentations, etc). The analysis is necessarily limited to available information on drug trafficking cases dealt with at Eurojust, and seeks to stimulate reflection and discussion. Clearly, it does not purport to provide analysis of all drug trafficking in the European Union, or of cross-border judicial cooperation in criminal cases generally.

Next steps

An Action Plan for Eurojust will be drawn up on the basis of the conclusions of this report, with recommendations on how to enhance the work of Eurojust with national authorities and third States in drug trafficking cases.

[1] The Case Management System is used at Eurojust to manage cases and process related information.

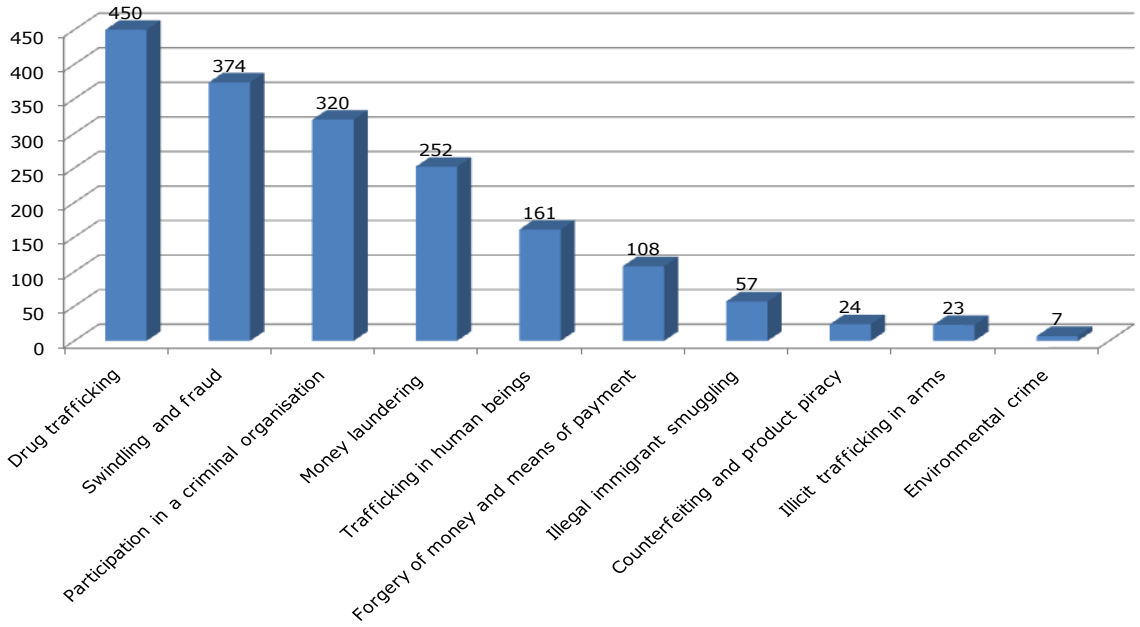
2. Overview

This chapter provides a brief overview of the type of drug trafficking (DT) cases registered at Eurojust during the two-year period between 1 September 2008 and 30 August 2010.

Some of the information contributed by Eurojust to the Organised Crime Threat Assessment 2011 (OCTA) has been utilised in this exercise, as it covers the same period. 450 cases involving drug trafficking were registered at Eurojust during this time and 50 coordination meetings involving drug trafficking were held.

As shown in Chart 2.1, drug trafficking was the most common crime type in Eurojust's casework for the two-year period under consideration. The 450 cases involving drug trafficking represent 17% of the 2578 operational cases registered. This finding is consistent with Eurojust's previous contribution to the OCTA.

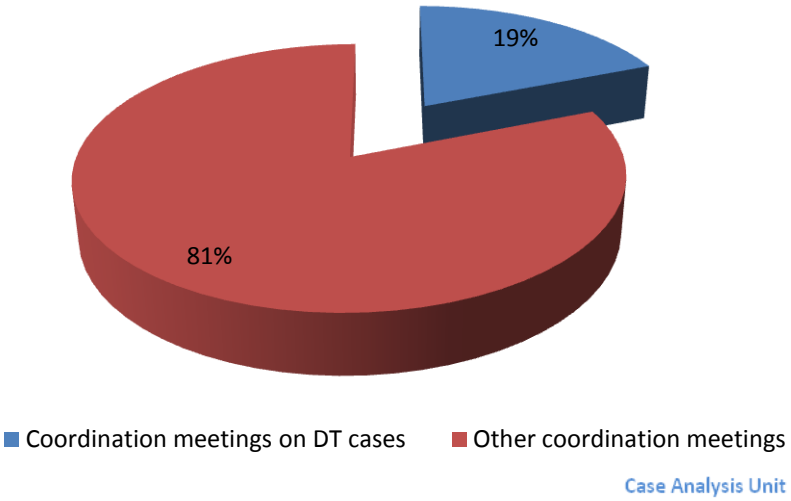
Chart 2.1: Distribution of crime types



Case Analysis Unit

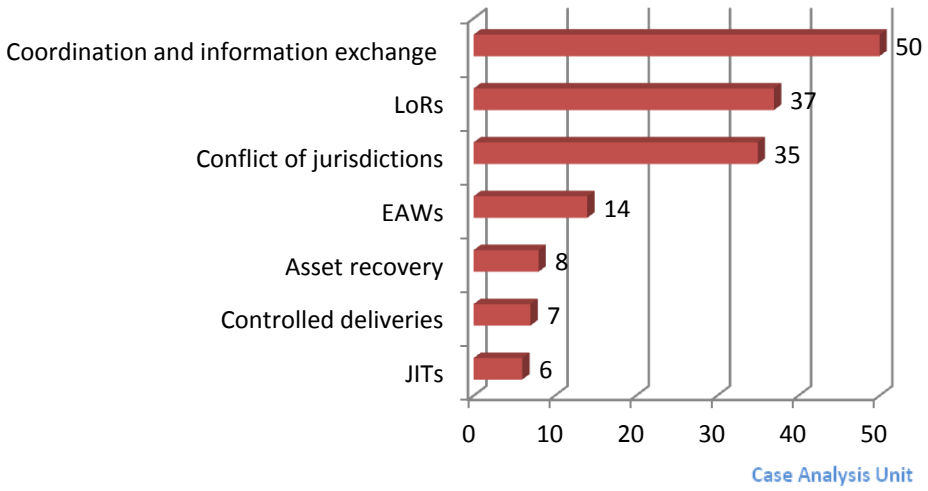
In 50 of the total 450 drug trafficking cases, at least one coordination meeting took place in the reported period. The total number of coordination meetings held by Eurojust in the two-year period was 263, and drug trafficking was also the crime priority most commonly dealt with in coordination meetings (Chart 2.2).

Chart 2.2: Coordination meetings on DT cases compared to other coordination meeting cases



The 50 drug trafficking cases with a coordination meeting have been selected for an in-depth analysis of judicial issues, with reference to the following topics: coordination and exchange of information, conflicts of jurisdiction, letters rogatory and European Arrest Warrants (EAW), Joint Investigation Teams (JITs), controlled deliveries and asset recovery. Letters rogatory and EAWs have been considered together, because both are requests towards another jurisdiction. Chart 2.3 illustrates how often these topics were discussed in coordination meetings.

Chart 2.3: Judicial coordination topics discussed in DT coordination meetings



All the above topics were also specifically analysed with regard to cases involving third States [2] (20 out of 50 cases).

[2] The term "third States" in this report refers to all non-EU countries.

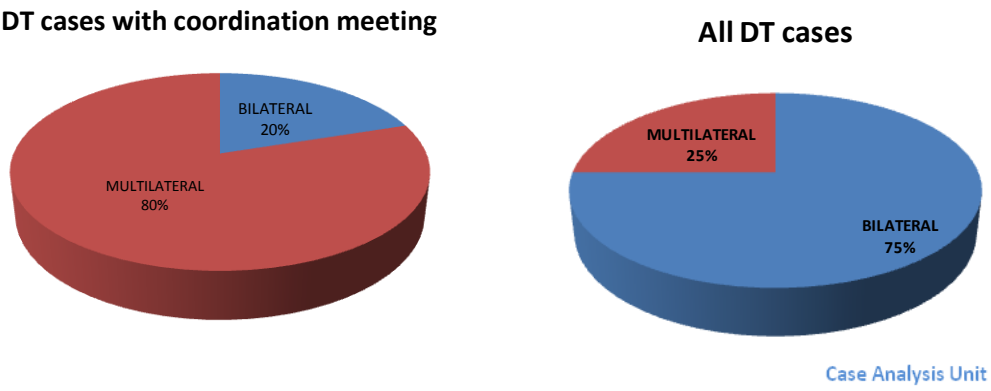
In approximately half the cases selected for in-depth analysis, Eurojust had no information on the final outcome of the case at national level and/or of the operational agreement reached during the coordination meeting.

General findings

The following findings have appeared from the quantitative data extracted from the Case Management System regarding drug trafficking. Whenever possible, these general findings have been compared with those available for the cases with a coordination meeting that were selected for more in-depth analysis.

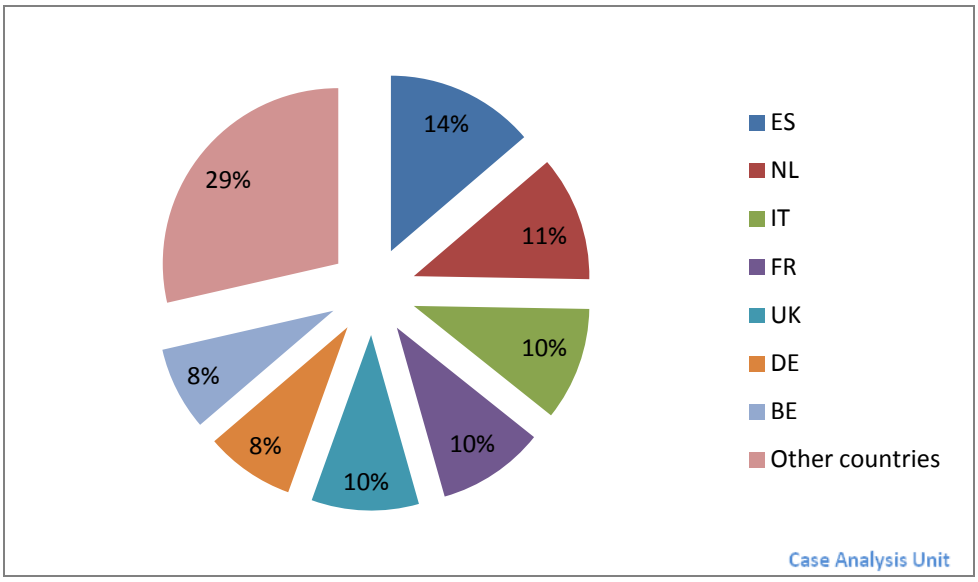
- **Multilateral and bilateral cases:** 75% of all DT cases registered during the reported period were bilateral; however, 80% of DT cases with a coordination meeting were multilateral. In some bilateral cases, more than two countries had ongoing investigations or proceedings on the same organised crime group (OCG), but judicial coordination was needed only between two countries.

Chart 2.4: Bilateral compared to multilateral cases



- **Overall involvement in Eurojust's casework:** Italy, the Netherlands, France and Spain were involved in approximately 45% of the cases with a coordination meeting in this crime type. This finding represents a trend consistent with previous analysis of Eurojust's casework (covering the period from 1 September 2008 to 31 August 2010). In addition, UK, Germany and Belgium have frequently participated in coordination meetings, either as requesting or requested Member States. In total, these seven National Desks have been involved in almost three-quarters of the total number of coordination meetings in DT cases (Chart 2.5).

Chart 2.5: DT cases with a coordination meeting



- **Requesting and requested desks**: The map in Chart 2.6 provides an overview of involvement of National Desks as requesting or requested in all drug trafficking cases registered in the period under consideration. The following National Desks are more frequently *requested* than others in this crime type: Spain, the Netherlands and Italy. Similarly, among the cases with a coordination meeting, the most requested countries were Spain, the Netherlands, Germany, Belgium and UK.
  The following National Desks are more frequently *requesting* than others in this crime type: Italy, France and the Netherlands. Similarly, among the cases with a coordination meeting, the most frequently requesting countries are Italy, France, Spain and UK.

- **Third States and international/European bodies:** Eurojust has registered cases with 54 different third States and organisations during the time under consideration. The 10 with the largest number of contacts were Europol, Switzerland, the USA, Norway, Croatia, the Russian Federation, Turkey, Albania, Ukraine and OLAF. Chart 2.7 provides figures on the involvement of third States and organisations in Eurojust's casework as a whole during the period under consideration. Among the drug trafficking cases with coordination meetings, third States were involved in 13 cases and the following third States have been requested in more than two cases: Norway, Switzerland, Turkey and Colombia; 22% of the drug trafficking cases with a coordination meeting also involved Europol (Chart 2.8).

Chart 2.6: Requesting and requested countries - All drug trafficking cases

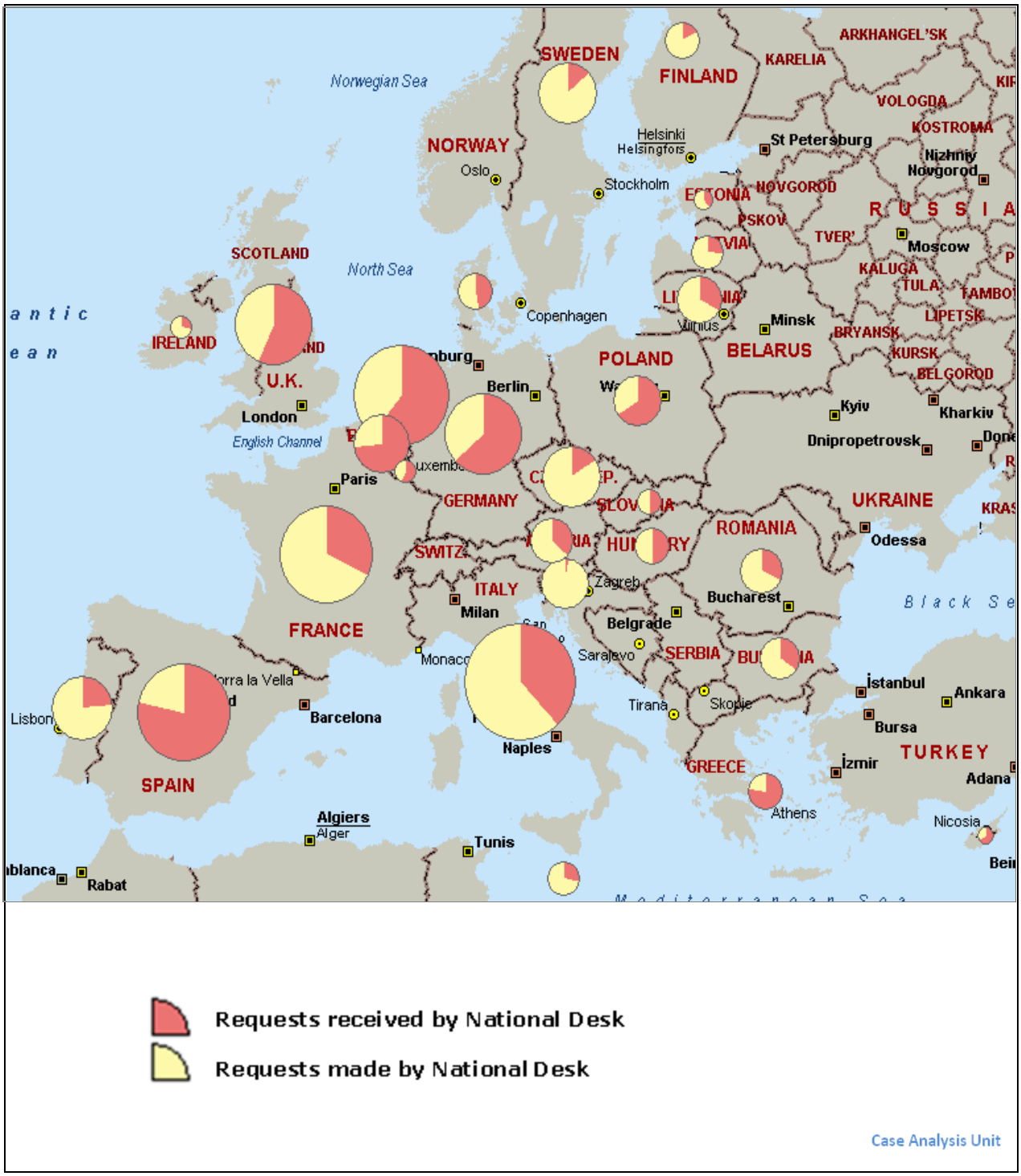


Chart 2.7: Third States and other territories (green) and European bodies (yellow) in all Eurojust casework (involvement under 3 cases is not detailed in the chart)

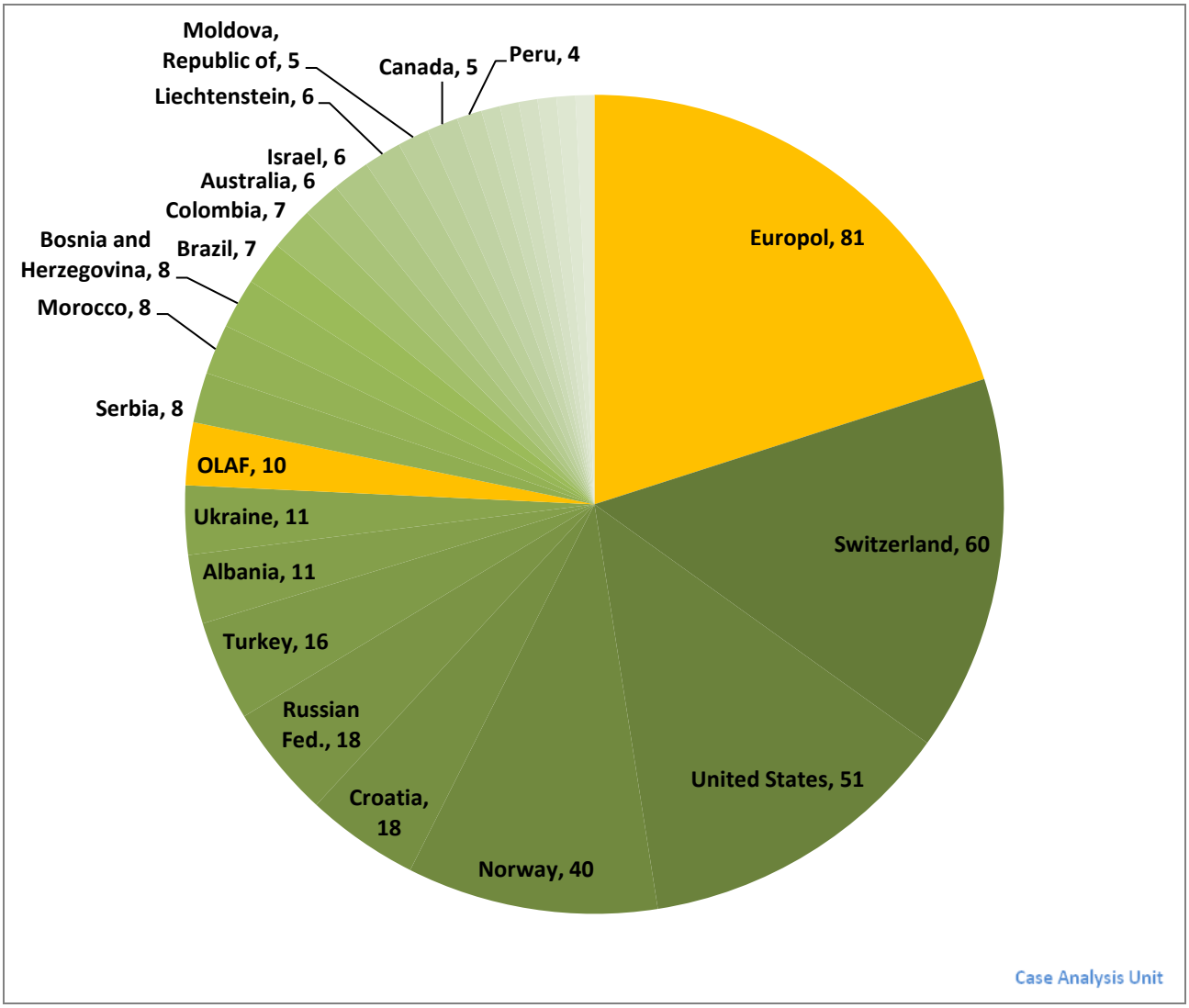
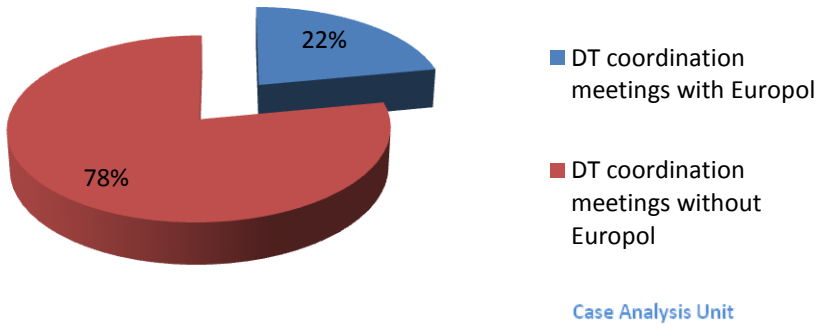
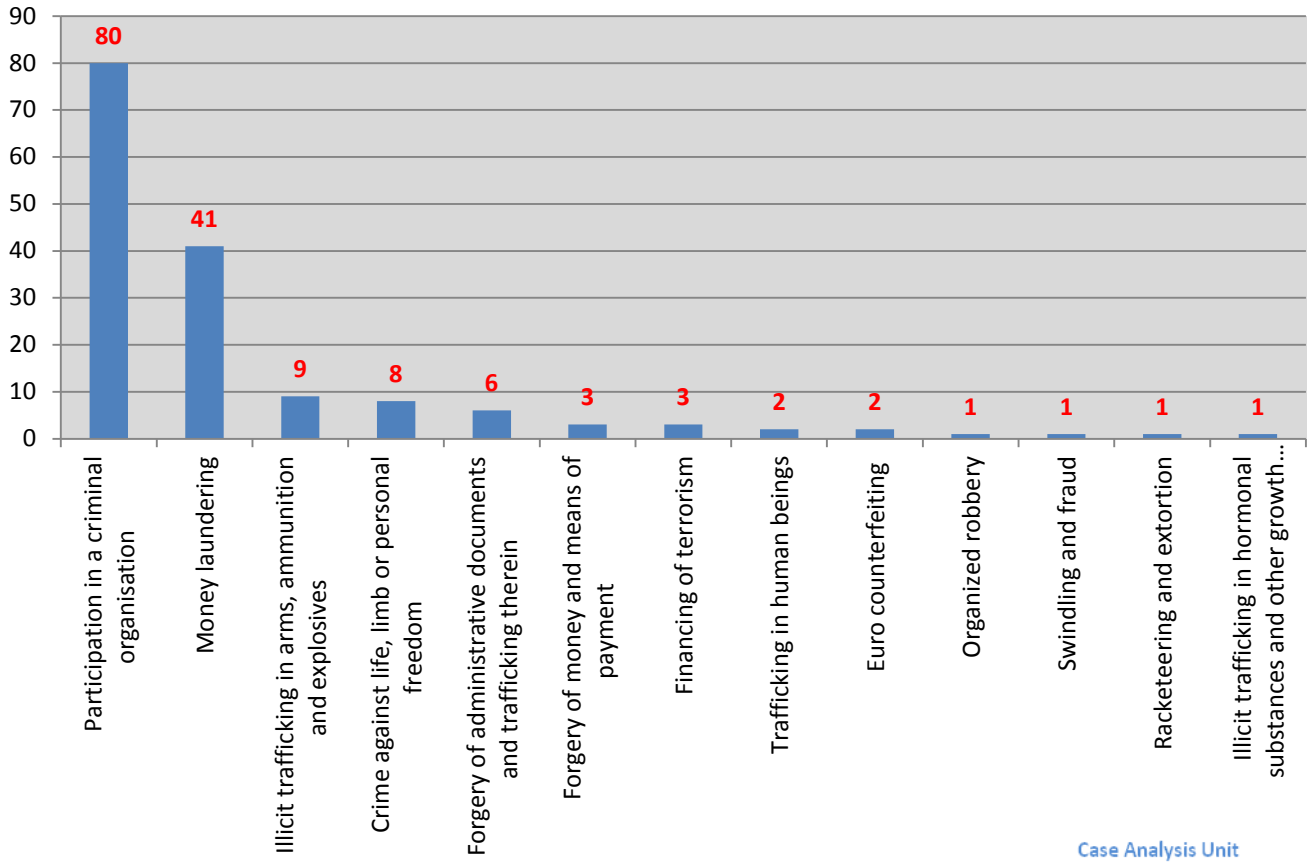


Chart 2.8: Drug trafficking cases with coordination meetings involving Europol



- **Crime type association:** The crime type most frequently associated with drug trafficking is, by a large margin, *Participation in a criminal organisation*, followed by *Money laundering* and *Illicit trafficking in arms, ammunition and explosives*. Violent crimes (against life, limb or personal freedom), including *grievous bodily harm* and *murder*, are also frequently associated with DT. Financing of terrorism also appears in the list of crime types associated with DT (Chart 2.10).

Chart 2.9: Incidence of other crime types in all DT cases



This type of association also occurs in cases where coordination meetings were held: 30% of the drug trafficking cases which had a coordination meeting are associated with *Participation in a criminal organisation*, 18 per cent with *Money laundering* and 10% with both *Participation in criminal organisation* and *Money laundering*.

3. Exchange of information and coordination

Introduction

Coordination of investigations and prosecutions among Member States is relatively recent in judicial cooperation, and its evolution may be traced in the development of international legal instruments, through the following phases:

- *Phase 1 (end 1950s/mid-1980s):* judicial cooperation, where country A has a prosecution and requests evidence and/or extradition of a person from country B via formal letter rogatory, with need for double criminality and observance of the formalities of the requested state (e.g. Article 5 of the 1959 European Convention on Mutual Assistance in Criminal Matters).
- *Phase 2 (mid-1980s/early 2000):* judicial cooperation, where exchange of information becomes more direct and spontaneous between judicial authorities (e.g. the Schengen Convention, the 2000 Convention on Mutual Assistance in Criminal Matters, and EU mutual recognition instruments in general, the most prominent of which is the EAW).
- *Phase 3 (early 2000/present):* judicial coordination, where investigations and prosecutions are undertaken with regard to proceedings in different jurisdictions and where arrangements are established for the simultaneous retrieval of evidence (e.g. JITs).
- *Phase 4 (possible development):* supranational judicial authority taking the lead and directing prosecutions in a specific field (e.g. the establishment of a European Public Prosecutor's Office from Eurojust, provided for in article 86 of the Treaty on the Functioning of the European Union – TFEU).

Article 3 of the Eurojust Decision lists, as its first objective, the improvement of coordination of cross-border investigations and prosecutions concerning two or more Member States. Eurojust's coordinating action is carried out at three levels:

- Information level: to overcome "information asymmetries" among the Member States affected by a cross-border crime case and promote a European perspective to the case.
- Operational/tactical level: to define a common strategy that enables all competent authorities involved to focus on the entire criminal network.
- Judicial/jurisdictional level: to encourage the opening of parallel investigations when appropriate and to prevent or resolve conflicts of jurisdiction.

This chapter highlights the problems and solutions identified during coordination meetings in drug trafficking cases with specific reference to the first two levels (information exchange and joint operations). The third level (conflicts of jurisdiction) will be dealt with in the next section. Due to their importance, specific coordinating tools (JITs and controlled deliveries) will be also dealt with in separate sections.

Problems *Exchange of information*:

In all 50 cases under examination, one reason for holding a coordination meeting was to exchange information among the countries involved. Indeed, the first challenge in achieving coordination among authorities affected by a common criminal phenomenon is to address the possible lack of awareness of ongoing investigation(s)/prosecution(s) and to clarify how investigations and prosecutions are linked in order to ensure a shared understanding of the case. Fragmented information about common targets can be addressed via an open exchange of information among competent national authorities. Exchange of information can take place upon request (following the traditional mechanism of letters rogatory (LoR) or spontaneously (as foreseen by the more recent instruments of judicial cooperation). Eurojust's coordination meetings can be used as a venue to exchange information under Articles 6(1)(b) and (7)(1)(b) of the Eurojust Decision and Title II of Eurojust's Rules of Procedure (2002/C 286/01). The most common challenges encountered at this level are the following:

- Difficulties in identifying counterparts in a cross-border case;
- Different procedural stages in linked investigations/prosecutions or lack of investigation in the Member States involved;
- Reluctance to exchange information spontaneously;
- Differences in laws governing the confidentiality of investigations/prosecutions;
- Lack of ratification of basic legal instruments;
- Technical limitations (e.g. secure channels of communication);
- Timely transmission of information; and
- Inclusion of information exchanged spontaneously in national files.

Coordination:

Coordination at operational/tactical level very often follows the exchange of information facilitated by coordination meetings at Eurojust. Specifically, the information provided by a country where the investigation is more developed might prompt other jurisdictions to open related investigations. These activities will need to be coordinated so as to prevent disruption of each other's investigation/prosecution strategy. The most common challenges encountered at this level are the following:

- Need to agree on a common strategy to avoid the possibility that investigative activities in one country impair those in another country;
- Need to execute simultaneous EAWs and investigative activities that are the object of LoRs (e.g. searches and seizures) to avoid loss of evidence;
- Setting up and coordination JITs;
- Logistical problems (e.g. delays experienced in the organisation of a coordination meeting, availability of resources, etc); and
- Language issues during an action day, when information needs to be passed on as quickly and clearly as possible.

Solutions

Eurojust exercises its coordination role in different ways. Among the most important is the coordination meeting, which provides an official setting to exchange information and discuss judicial cooperation problems among the competent authorities of the countries involved, with the assistance of their National Desks at Eurojust. During such meetings, opportunities are provided for a spontaneous exchange of information, facilitated by secure translation/interpretation facilities. The representatives from the Desks, who are in most cases prosecutors with relevant international experience, assist in suggesting possible solutions, preventing future problems and moderating the discussion. The meeting will normally be chaired by a Eurojust representative of the Member State organising the meeting. By the end of the meeting, an operational agreement, allocating follow-up actions to responsible authorities, is usually reached and included in the findings.

In this setting, competent authorities are more willing to exchange information and coordinate, as confirmed by the findings of this study. In the majority of the cases under examination, the coordination meeting itself led to a positive outcome in terms of information exchange, coordination and initiation of investigations. More precisely, in 33 out of 50 cases, solutions to most of the problems highlighted above were identified and followed by the participants. In four cases, no positive outcome was reached. In three of these cases, the information was not exchanged or was only partially exchanged; in the fourth case, information was exchanged, but coordination of investigations was not fully achieved. In the remaining cases, whether the solutions identified during the coordination meeting were followed is not known.

Besides providing the formal setting and the facilities for the exchange of information and discussion on how to coordinate, Eurojust's coordination meetings led to positive results in countering some of the problems highlighted in the previous section of this chapter by identifying the following specific solutions:

- Related investigations: Initiation of related investigations was discussed in 31 of the 50 cases under examination, with the following results: positive in 17 cases, negative in 8 cases, unknown outcome in 6 cases. More details are given in the next section from the perspective of conflicts of jurisdiction (almost always potentially present when several investigations focus on the same targets). In this section, the opening of investigations is considered as correcting the often fragmented investigative picture about an organised crime network which operates in several countries. By opening an autonomous investigation, the lengthy procedures associated with the formal mutual legal assistance procedures (LoRs) can be overcome. Information can then be exchanged spontaneously, allowing the other authorities leading related investigations to identify exactly which acts and information could be inserted in their files for a successful prosecution. In this way, the overall investigation becomes more effective, because it is not confined to specific requests. Additionally, MLA requests can then be focussed on specific pieces of information, allowing for speedier execution.
- Joint Investigation Teams: JITs are a powerful tool for exchanging information and coordinating the activities of parallel investigations without resorting to traditional MLA requests. More details on this instrument and its use in the cases under examination can be found in Chapter 6.
- Europol's involvement: Europol was involved in approximately one-fifth of the cases under examination. Europol's involvement in the early stages of a case allows a better identification of the links between existing investigations and the discovery of related investigations, which need to be coordinated. Europol's role is thus potentially important in reconstructing the overall investigative picture, although sometimes the information transmitted to Europol is of very poor quality. In addition, Europol can support joint

operations by deploying a mobile office for the fast and secure exchange of information during days of action.

- Preliminary case analysis: In addition to the reconstruction of the investigative picture from information contributed by the countries involved, another useful analytical tool consists of a simple comparison of the persons/legal persons that are the subject of investigations in the countries involved, the corresponding preliminary charges and the period of the criminal acts under investigation. When this information is available prior to the coordination meeting, strategic decisions can be made regarding the coordination of the investigations and division of tasks to avoid possible conflicts of jurisdiction.
- Common strategy: For the positive outcome of a case involving several jurisdictions, reaching an agreement on a joint action by national authorities during one or more action day(s) may be crucial. By acting at the same time in different countries, loss of evidence and flight of criminals can be avoided. Furthermore, relevant information can be obtained by judicially authorised simultaneous wiretapping of the targets during the operation. As mentioned above, one aim of meetings at Eurojust is to coordinate joint actions even when investigations are at different stages in different countries. Additionally, National Members are available during an action day to help solve potential judicial cooperation issues arising during the execution of a joint action.

Case illustration

In Operation "Andromeda", more than 30 drug traffickers were arrested in a Europe-wide operation against a drug trafficking network run by an ethnic Albanian organised crime group. Cocaine was transported from Peru to the Netherlands and then on to Belgium; from Belgium, the drugs were sent mainly to UK, Italy and other European countries. The identified network consisted of 42 persons, of whom 10 were in leadership positions, 4 were involved in logistics, 5 were couriers, 20 were pushers and 3 performed a mixed role. They used vehicles specifically designed for transporting drugs.

The investigation began with an Italian operation of the *Guardia di Finanza* of Pisa under the direction of the Anti-Mafia District Directorate (DDA) of Florence, which referred the case to Eurojust at the end of 2008 due to the links with other jurisdictions (UK, the Netherlands, Belgium, Germany, Lithuania, Sweden and Norway). Europol was immediately involved and provided key support from a very early stage of the police investigations, while Eurojust coordinated the judicial portion of the case. Europol analysts identified network contacts in 42 countries, and links across the entire criminal network.

Three coordination meetings were held at Eurojust throughout 2009, during which preparations for joint operations were made. On 2 December 2009, a day of synchronised action took place in Italy, the Netherlands, Germany, Belgium, UK, Lithuania and Norway. A Europol mobile office was set up in Pisa and an Operational Room was activated at the offices of AWF Copper, with Eurojust's participation.

The simultaneous execution of European Arrest Warrants and requests for mutual legal assistance led to the arrest of 30 persons and seizures of significant amounts of drugs (49 kg of cocaine, 10 kg of heroin and 101 kg of hashish). A trial took place for the targets arrested in Norway, and, in late spring 2010, they were convicted of drug trafficking.

4. Conflicts of jurisdiction

Introduction

Three elements in the investigation and prosecution of DT offences indicate that conflicts of jurisdiction have a particular importance in this crime type compared to others:

- When regulating DT offences, most States provide for extraterritorial jurisdiction, on the basis of certain conditions being met (*inter alia* nationality or residence of the offender, location of legal entities involved, links of the investigation with the State or infringement of its interests, impossibility of granting an extradition request)[3]. Various international and European instruments establish extraterritorial jurisdiction in DT and offences involving participation in criminal organisations[4].
- Globalisation has affected every form of criminality. However, drug trafficking is by its nature a transnational activity, because the whole process of cultivation, production, manufacture, transport, distribution and consumption normally involves different countries.
- The 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is the leading instrument in the fight against these crimes from an international perspective and has had a particular impact in raising awareness amongst practitioners regarding the need to have an international approach to tackling DT. Prosecutors, investigative judges and law enforcement bodies are nowadays willing to investigate and prosecute DT crimes to their full extent, which involves the concomitant cross-border dimension of the crimes.

Given the extended scope of national jurisdictions and willingness to prosecute DT offences, positive rather than negative conflicts of jurisdiction are likely to arise before or during coordination meetings in DT cases[5].

Eurojust has been allocated a particular role in preventing and resolving conflicts of jurisdiction under art. 7.2 and art. 13.7(a) of the Eurojust Decision, under art. 12 FD of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, and under art. 85 TFEU. To date, only three DT cases of unsolved conflicts of jurisdiction have been dealt with by Eurojust, but with the application of the provisions mentioned, a significant increase in the referral of these types of cases to Eurojust can be anticipated. As highlighted in the Budapest strategic seminar, "in cases of transnational crime, conflicts exist 'by nature', and the focus should be on solving them".

General remarks:

Pursuant to art. 1.2(a) of the FD on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, conflicts of jurisdiction may arise in "situations where the same person is subject to parallel criminal proceedings in different Member States in respect of the same facts, which might lead to the final disposal of the proceedings in two or more Member States thereby

[3]Some of these criteria (nationality, impossibility to grant extradition) are applicable to other or even all offences.
[4] Art. 8.1 of FD of 24 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, art. 7.1 of FD of 24 October 2008 on the fight against organised crime at EU level, art. 4 of Convention against illicit traffic in narcotic drugs and psychotropic substances of 1988, and art. 15 of Convention against transnational organized crime of 2000 at UN level.
[5] In fact, only one negative conflict has been identified but insufficient information is available to make a suitable assessment of the reasons for this negative conflict.

constituting an infringement of the principle of 'ne bis in idem'". The *ne bis in idem* principle as defined in art. 54 of the Convention implementing the Schengen Agreement has been considered by the ECJ in various cases including Van Esbroeck and Van Straaten in 2006, and Kraaijenbrink in 2007, all significantly involving DT prosecutions.

Among the 50 cases subject to analysis, examples of parallel investigations with identical scope and suspects are rare; in only two bilateral cases is the scope of the investigation roughly the same,[6] and, in a few cases, the national investigation is actually a minor aspect of a broader investigation conducted in another Member State[7]. As for the rest, although there may be some factual overlap in related cases, it is more appropriate to talk of linked investigations rather than parallel investigations.

After an analysis of the outcomes of the coordination meetings:

- In 35 cases, there was discussion of the linked/parallel investigations conducted in the Member States involved; in the remaining 15 cases, discussion centred on a single investigation by the Member State that was the "owner" of the case and assistance was needed from the other Member States involved, so that in these instances no potential conflict of jurisdiction existed.
- Among those 35 cases, the majority were related to linked/parallel investigations opened by three States (16 cases), followed by bilateral investigations affecting only two States (10 cases), four States (7 cases) and finally five States (1 case) and six States (1 case).
- Most investigations subject to analysis had been opened by Member States; only in six cases were investigations conducted by third States discussed in coordination meetings (3 for Norway, 1 for Switzerland, 1 for Colombia and 1 for Iceland).

The issues related to possible conflicts of jurisdiction were dealt with on a case-by-case basis; the main finding is that concentration of proceedings in one jurisdiction was considered in very few cases:

- In 29 out of the 35 cases mentioned, national investigations continued as independent proceedings after the coordination meetings, and concentrating the investigation in one jurisdiction was not considered.
- In 6 out of the 35 cases, the conflict was approached with a proposition to transfer the proceedings from one or more jurisdictions to another, and:
    - In three cases, an agreement to concentrate the proceedings in one jurisdiction was reached. On two occasions the decision affected two jurisdictions and in the other case it affected three jurisdictions[8].
    - On another two occasions, the concentration and further transfer was proposed by one jurisdiction, but this proposal was not acceptable to the other jurisdiction.
    - Finally, in one case, a proposal was made to transfer part of the case (relating only to charges of participation in a criminal organisation), but the proposal was not accepted.
- A negative conflict of jurisdiction arose in one case where two jurisdictions did not investigate and prosecute, mainly because of other priorities and

[6] Neither of these two cases is related to investigations of large or sophisticated groups.
[7] The usual profile of the case involves the arrest of one member of the group in one MS, often when transporting or delivering drugs to another MS where the main investigation is being conducted.
[8] In this latter case, although an agreement was reached in the coordination meeting, only two proceedings were eventually merged.

application of the opportunity principle. This illustrates a conclusion of the Budapest strategic seminar, namely that "the different priorities set at national level – and the way in which such priorities are dealt with by the MS - can lead to negative conflicts of jurisdiction."

In most cases of parallel/linked investigations analysed, the competent national authorities at coordination meetings did not consider the concentration of proceedings as adding value. This view was mainly taken because the scope of all national investigations was clearly defined, with little risk of separate prosecutions infringing the *ne bis in idem* principle, and because possible duplication of work could be avoided by coordination and division of tasks. Concentration of prosecutions is not always the appropriate response to a possible conflict of jurisdiction. In fact, the experience of Eurojust might suggest the contrary: normally, possible overlap is overcome by efficient and effective coordination leading to a clear definition of the scope of the investigation. Instances that support this can be found in:

- investigations related to different cells or sub-groups, each cell or sub-group being interconnected but active in a different jurisdiction as part of a bigger organisation and linked hierarchically through one or various leaders: each national investigation would focus on the cell operating in its territory,
- same organisation whose different activities (import/production, manufacturing, transport, storage, distribution) are carried out in different jurisdictions: each jurisdiction would focus on the part of the process carried out within its territory, and
- division of the investigations according to the crimes investigated: some crimes would be investigated by one jurisdiction and others by another jurisdiction. In some cases, tasks are divided between jurisdictions: one jurisdiction focuses on drug trafficking, while the other focuses on money laundering. However, this arrangement might weaken the collection of the necessary evidence in the money laundering investigation where proof of the predicate offence is required. Merging the investigations could facilitate the gathering of evidence required for both drug trafficking and money laundering prosecutions.

Analysis and diagnosis should always take into account that most OCGs are linked at some point. Links among many of the OCGs exist because they share common objectives and use the same criminal resources. The existence of these links does not mean that conflicts of jurisdiction necessarily follow; sharing all relevant information is fundamental to a proper assessment of the case both to identify a possible conflict of jurisdiction and to ensure that it is managed adequately.

Problems when proceedings are concentrated

A general finding from Eurojust's analysis is that bringing investigations and prosecutions from different Member States together in one jurisdiction can help resolve *bilateral* conflicts of jurisdiction. This is so even when cases or coordination meetings are multilateral, because experience suggests that strong data linking investigations usually affect two jurisdictions. If three or more jurisdictions are involved, the links are less strong and concentration is less likely to provide added value.

Concentration of proceedings may create problems for national authorities. The most relevant issues, according to the information gathered, are the following:

- Existence of equally complex investigations in separate jurisdictions. The more complicated the investigations are in different jurisdictions, the more difficult it is to merge them in a single concentrated investigation. This is because of the difficulties of evidence handling when the investigation affects many subjects and facts, leading to an extremely complicated trial. Eurojust's experience leads to the conclusion that transfer is considered and eventually agreed upon when a broad investigation is being conducted in one Member State and a smaller, very limited investigation is being conducted in another Member State which is identified as a branch of the main investigation. In this situation, concentration could lead to a successful outcome. When two or more important investigations are being conducted that at some point have coincidental targets, concentration is less likely to occur.

- Admissibility of the evidence obtained in the Member State transferring the proceedings to the receiving Member State. Here, most problems in coordination meetings (and subsequent development of the case) are related to use of intercept evidence (a frequently vital element in DT investigations) especially when the content of the intercepts is deemed necessary evidence in the receiving Member State. Examples of difficulties which arise in practice are:

  - impossibility of providing telephone records which are only kept for a short period of time and are no longer available when the transfer is decided[9],
  - legal prohibition against using intercept evidence in the transferring Member State, which means that such evidence cannot easily be forwarded to the receiving Member State[10],
  - unacceptability in the receiving Member State of the way the information has been managed in the transferring Member State, i.e. selection of parts of conversations or subjective comments made by police[11], and
  - differences in the constitutional standards related to judicial control: if national law imposes judicial controls every 15 days, intercepts not following this pattern would be difficult to use.

- Obstacles and difficulties in providing trial evidence. After the transfer of the file to the receiving Member State, the transferring Member State may experience difficulties in providing the necessary evidence, e.g. in cases where, according to national legislation, police officers cannot give statements in foreign proceedings or can do so only under certain circumstances and protocols.

Another type of difficulty is that transferring proceedings will almost always entail that some evidence will come from the transferring Member State. LoRs must be issued for witness or expert interviews, etc, creating additional problems[12] such as the lesser weight that evidence by videoconference might be accorded in some jurisdictions.

- Difficulties related to the management of the transfer of the entire file. If the proceedings to be transferred contain too much information, documents,

[9] Compliance of national legislation with Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks should be established.
[10] In UK, domestic intercept product cannot generally be used as evidence. However, intercepts ordered abroad according to the relevant national law may be used as evidence in UK proceedings. Nonetheless, a general reluctance to base an investigation only on this sort of evidence has been demonstrated.
[11] This information comes from the only case where a final judgement has been accessible for this assessment.
[12] This circumstance can also occur when investigations are followed up separately, but the likelihood of this type of obstacle decreases.

pieces of evidence, etc, normally in a foreign language, sending the file without any filter might be overwhelming for the receiving Member State and increase difficulties in an investigation already broadened by the addition of the new file. On the other hand, provision of only part of the file may raise fair trial concerns: what material has not been provided? On what basis has the decision to provide only part of the file been made? Member State differences in the protection of, for example, informant material could be an additional issue.

- Concentration only for the crime of participation in criminal association. When the members of an OCG in different jurisdictions are liable to prosecution, both for participation in a criminal organisation and for substantive DT offences, the decision of where to prosecute for participation in a criminal organisation has been, on at least two occasions, very complicated. Unless prosecutions for both participation in a criminal organisation and substantive DT offences are concentrated together, prosecution for the substantive offence alone may be prejudiced[13]. Equally, prosecution for a substantive DT offence in one jurisdiction and for participation in a criminal organisation in another may create problems of *ne bis in idem.*
- Transmission of seized property or evidence to the receiving Member State. Property and evidence may be seized in a jurisdiction's own proceedings, or following a request by LoR either before or after a decision to concentrate. Either circumstance can give rise to both legal and logistical problems of transfer, which may not be apparent until after the coordination meeting at which the agreement for transfer is reached.
- The need to issue EAWs against the suspects in custody or on bail in the Member State that will transfer the proceedings. The issue of EAWs may complicate proceedings in both jurisdictions and is a matter normally addressed during coordination meetings. Coordination and issuance of the necessary EAW simultaneously with the transfer of proceedings are needed for effective execution.
- Legal instruments to channel the transfer of proceedings. When the legal instruments applicable to one Member State are not the same as the legal instruments for other Member States, obstacles can arise[14]. Different rules on the mechanics of transfer of proceedings may create obstacles to concentration.
- Variety of transmission channels. Once transfer of proceedings has been agreed, different possibilities exist for securing transfer: via request from the Member State giving up jurisdiction, via request from the Member State assuming jurisdiction, or via requests issued simultaneously by all Member States involved. The variety of approaches available may not be efficient.

Problems when proceedings are not concentrated

When a decision has been reached that the investigations should remain separate but coordinated, some issues may arise, such as:

- Lack of perspective. Fragmented investigations focused on one segment of the

[13] In one case, prosecution for participation in a criminal association along with the substantive offence of DT was vital, as the substantive offence of DT had difficulties, whereas the evidence for participation was stronger; thus, there was no possibility to proceed only for the substantive crime and to transfer the investigation for participation in a criminal organisation to the other jurisdiction involved.

[14] CoE Convention of 1972 on the transfer of proceedings in criminal matters has only been ratified by 13 Member States; and the 2000 MLA Convention has still not been ratified by all Member States.

OCG sometimes lack perspective of the full dimension of the group and can leave its structure unharmed if the targets are medium- or low-level associates.

- Lack of direct contacts among national authorities. Although an important added value of coordination meetings is fostering the establishment of direct contacts among national authorities, a frequent occurrence, even after coordination meetings, is that direct contacts are not set up and communication continues, for linguistic or other reasons, to be via Eurojust.
- Possibility that an investigation is jeopardised if efficient coordination is lacking. When the investigations are at different stages and pursued separately, the decision to proceed with an operation involving detentions, house searches, etc, without previous notification to all authorities involved, can seriously harm the successful outcome of the other investigations. This situation has actually occurred. Coordination meetings are a very useful way to prevent this "short circuit" from occurring.
- Legal obstacles to obtaining the necessary information from the other investigations involved. Different jurisdictions have different rules on the secrecy of prosecution and court files, which may prevent or make difficult the transmission of information. This can lead to one national court dealing with a case without a complete picture of the circumstances of the offence or offender before it. In one case examined, this circumstance was a reason for the imposition of an inappropriate sentence; the necessary information, requested via a LoR, was not provided by the requested Member State because the secrecy of proceedings in its case was a legal obstacle, and thus the sentencing court did not have all the necessary information regarding the scope of criminal activities in which the subject was involved[15].
- Possible legal obligation to disclose information obtained via LoR from another jurisdiction where the proceedings are secret. An important issue that has been identified in the study is the extent to which evidence gathered during an investigation must be disclosed to the defendant; when part of the evidence comes from an investigation in another Member State obtained via a LoR or spontaneous exchange of information, the need to disclose this information can jeopardise the investigation in the Member State from which the information comes, e.g. intercept evidence if this investigation is still secret.
- Limited use of the spontaneous exchange of information. An important and underused channel for international judicial cooperation is the spontaneous exchange of information at judicial level by competent authorities.[16]. This spontaneous exchange of information is particularly relevant in the coordination of parallel/linked investigations where a conflict of jurisdiction has been or is likely to be identified; nevertheless, information flow between authorities is on most occasions via LoRs. Even when information is exchanged informally at coordination meetings, arrangements are then made to formally transmit the information upon receipt of a LoR rather than using the spontaneous exchange provisions. Moreover, the information exchanged during the meeting normally provides a sufficient basis for all the involved parties to be aware of the scope of the other investigations, but only

[15] No study has been made regarding the regulation of the secrecy of proceedings in different jurisdictions and the impact that this can have in the field of MLA; further research is required.

[16] Legal bases for spontaneous transfer applicable to DT cases are to be found in: UN Conventions (Art. 9.1 of 1988 UN Convention against illicit trafficking in narcotic drugs and psychotropic substances, Art. 18.4 of 2000 UN Convention against transnational organized crime) and EU instruments (Art. 7 of 2000 Convention on mutual legal assistance in criminal matters between Member States of the EU).

occasionally do the authorities in the course of an investigation after a coordination meeting forward spontaneously new information that would be important for the linked investigations in another Member State. Having said that, Eurojust National Desks actively encourage the exchange of information during and after coordination meetings.

Brief analysis of reasons for lack of agreement on the transfer of proceedings

An assessment of the reasons for the lack of a common approach on the concentration of proceedings must be tentative given the limited information available. Nevertheless, some reasons can be suggested:

- Unwillingness to transfer proceedings. National authorities are still very much focused on their own domestic proceedings and, in general terms, are highly cautious when dealing with international cooperation. This is so even when investigating a case with extraterritorial jurisdiction. When dealing with a conflict of jurisdiction, national authorities are sometimes reluctant to give up jurisdiction for a number of very different reasons: lack of knowledge of how to proceed, lack of experience in such decisions, lack of trust in their counterparts, unwillingness to lose control of a case based on a "feeling of ownership", and a belief that their system of justice would respond more efficiently. Some of these reasons are not based on legal or technical considerations but are nonetheless very powerful. As a result, unwillingness is more often encountered from the transferring Member State than from the receiving Member State.
- Failure to make an adequate assessment of the advantages and disadvantages. When addressing problems related to transfer of proceedings, national authorities at times may fail to adequately assess the advantages or disadvantages of concentrating the proceedings; this failure could be due to, *inter alia,* lack of basic information regarding the content and scope of the other investigations involved, misunderstandings due to differences in legal systems, or lack of a cross-border approach leading to a fragmented perception of the case.
- Opportunity vs. legality. Member States governed by the opportunity principle are more open to the decision to transfer than Member States governed by the legality principle.
- Concerns about admissibility of evidence and other factors in prosecution decision-making. Different jurisdictions have different rules regarding the institution of proceedings. A national judicial authority may have to decide whether to accept a case on the basis of evidence gathered according to rules which differ from its own, and in the light of general principles which are differently expressed to its own.
- Differences in the stages of national proceedings. When national investigations have reached different procedural stages, the likelihood of agreement to concentrate proceedings in one jurisdiction is smaller. This is particularly so when one of the proceedings is nearing conclusion or has concluded, and the indictment is ready to be produced or is only awaiting the trial to be scheduled. Even when the investigation at national level is still ongoing but close to its finalisation, competent authorities are reluctant to transfer jurisdiction or to accept the transfer from other jurisdictions.

  National legislations regulate the time limits for the investigative phase of proceedings in different ways: some Member States do not establish time

limits at all and offences are only time-barred by the statute of limitations or judicial control. Other Member States establish strict terms for investigations that cannot be breached[17]. Even when linked investigations have been initiated at the same time in Member States (which is a very common situation due to the effectiveness of police-level information exchange), the fact that the investigations may have developed at different "speeds" can cause difficulty in reaching a common approach. If national investigations are undertaken at widely differing times, then the problems become even more difficult to resolve. Different timelines in proceedings has been given as the ground for not accepting the concentration of the proceedings in at least one case, and in others it has been a reason for not even considering the transfer of proceedings by any of the parties involved.

Solutions The first lesson to be drawn from this assessment is that prevention is the best solution for the settlement of conflicts of jurisdiction. The earlier the problem is identified and addressed, the greater the likelihood of reaching a consensus that satisfies the expectations of all parties involved and serves the interest of justice in a more effective and efficient way[18]. Among the cases analysed, some examples can be found where Eurojust has been involved for coordination purposes since the beginning of the investigation. In these instances, early Eurojust coordination has facilitated decision-making about the scope and measures to be taken for each investigation; and Eurojust has promoted JITs as a valuable tool for the coordination of parallel/linked investigations. Eurojust's contribution can be vital to raising awareness about the real dimension of criminal organisations, and making practical proposals on the way to combat such organisations.

Other elements in managing possible conflicts of jurisdiction are listed below:

- Crucial to a successful solution to this challenging problem is the motivation and training of practitioners, who should become familiar with the legal instruments applicable[19], in order to ensure a cross-border vision of organised crime phenomena. Eurojust's experience in the practical coordination of cross-border prosecutions can assist practitioners in this respect.

- The adoption of a "common strategy" or "investigative model" and the establishment of a list of contact points to avoid lack of coordination that could jeopardise the outcome of one national investigation when actions are taken in another national investigation have been agreed at coordination meetings. The practical application of "common strategy" and "investigative model" as agreed at coordination meetings remains unclear because detailed feedback on the investigations and prosecution outcomes of such meetings in

[17] Breaches of time limits have different consequences depending on national law: in some jurisdictions, the consequence is the cancellation of the investigative measures taken; in others, there is no consequence beyond a possible negative appraisal of the prosecutor.

[18] This perspective is very much in line with the 2009 FD on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

[19] CoE Convention on mutual assistance in criminal matters (art. 21), CoE Convention on the transfer of proceedings in criminal matters of 1972 (arts. 8 and 11), UN Convention against illicit traffic in narcotic drugs of 1989 (art. 8), UN Convention against transnational organized crime of 2000 (art. 21), Convention on mutual assistance in criminal matters between the MS of the EU of 2000 (art. 6, Guidelines for deciding which jurisdiction should prosecute, included as an Annex in Eurojust Annual Report 2003), FD on the fight against organized crime of 2008 (art. 7.2), FD on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings of 2009 and Eurojust Decision (arts. 6 and 7).

Member States is not available.

- Spontaneous exchange of information should be fostered. This is valuable, both after the coordination meeting where the information needs have been identified, as well as at any later stage when information relevant to parallel/linked investigations where possible conflicts of jurisdiction may arise. Here, again, Eurojust has an important role to play through its coordination meetings. The issue of a LoR implies that the requesting authority already knows what is sought. Spontaneous exchange within the scope of a coordination meeting can provide avenues for enquiry which had not previously been apparent.
- One reason for concentrating investigations is to increase the chances of reaching the upper-level members of the OCG. Another is to provide the responsible court with a full picture of the OCG. Concentration of prosecutions allows the profile of the OCG to be more clearly depicted and its extent to be revealed; with a fragmented investigation, the court is deprived of information which would allow it to exercise its judgement and sentencing powers appropriately. (National authorities underlined this point when they became aware of a sentence delivered in another jurisdiction in a specific case linked to their own investigations.)
- When transferring proceedings with a voluminous amount of documents, proposals have been made during coordination meetings that a follow-up meeting at police level should be held to assess which documents are necessary in order to conduct the transfer in a structured and organised way. This procedure would indeed help the receiving authority in managing the additional information. Eurojust may add value by ensuring awareness of the differing legal secrecy and disclosure requirements in Member States which will arise in such information exchange.
- Following agreement to transfer the proceedings, a comprehensive strategy among the involved parties should be established to ensure that the transfer promotes a better administration of justice; the creation of this strategy involves close cooperation with and full involvement of the authority in the Member State that is surrendering jurisdiction. The receiving Member State should inform the transferring authority of the outcome of the case (no information is available about whether this strategy has been followed in the cases analysed).
- A consistent approach to transfer of proceedings at EU level is advisable; some of the problems regarding concentration listed here could be reduced or resolved with common rules for such transmission.
- Art. 7.2 of the Eurojust Decision provides that Eurojust may issue a non-binding opinion where a conflict of jurisdiction has not been resolved. This could provide a useful instrument for analysing the gaps and problems to be overcome whenever national authorities have failed to reach an agreement on a conflict of jurisdiction. Eurojust may also issue opinions where recurrent refusals or difficulties in judicial cooperation have occurred. Both tools, although general in application, may be of particular help in the fight against DT.

Case illustrations

Conflict of jurisdiction affecting three Member States.

UK, the Netherlands and Spain were investigating an OCG devoted to transporting cocaine and hashish from Spain to UK, using vehicles previously modified in UK to transport a commodity undetected. The leader and close collaborators resided in UK, while the members of the OCG in charge of receiving the drugs from abroad and of contacting drivers were located in Spain. Four operations against the OCG had been conducted in Spain from August to December 2009. Significant quantities of cocaine and hashish and four cars were seized, and four persons were arrested. In the Netherlands, in September 2009, a van with a large quantity of hashish was seized, but the driver fled to Spain to carry out another drug transport, and therefore was not arrested. In the meanwhile, the mastermind of the organisation remained in UK.

During the coordination meeting, a comprehensive description of the scope of the three national investigations was provided and a consensus was reached to concentrate the three proceedings in Spain, as in this jurisdiction the main activities of the OCG had taken place, most evidence had been gathered against all suspects (including those based in UK where the leaders had so far only been charged with participation in a criminal association and where the mastermind was on bail), and most of the suspects were living or had been arrested.

The investigation in the Netherlands was considered a relatively minor episode and very little information was available; no particular problem arose regarding evidence transmission and the use of applicable legal instruments (Spain and the Netherlands have both ratified the 1972 CoE Convention on the transfer of proceedings in criminal matters). An in-depth discussion took place regarding the evidence needed from UK in the Spanish proceedings; concerns were raised regarding the difficulty of providing Spain with the content of the intercepts[20] compared to the provision of details of the numbers, dates and lengths of the conversations. Other issues discussed were related to the legal instruments applicable to the transfer of the proceedings. The Spanish court decided to accept the transfer of the files from UK and the Netherlands and merge them with the Spanish file, but eventually only the file from UK was transferred and the Dutch case remained as a separate investigation.

[20] UK can provide intercept evidence at the request of a Member State. The exception is when a UK warrant to intercept was already in existence before the other Member State's request.

5. MLA requests and EAWs

Introduction

The fight against drug trafficking always includes an important cross-border element. The drugs are produced in different countries worldwide. They must be transported and distributed, meaning that in a serious drug case, investigations take place in several Member States and with frequent links to third States. To achieve good results in this fight, mutual legal assistance (MLA) is crucial.

The Council of Europe and the European Union have both been prominent in developments in this field. Many treaties and agreements, such as the 1959 and the 2000 Conventions on Mutual Legal Assistance, now govern the exchange of information and entitle Member States to ask for action to be taken in other Member States. In addition, many bilateral agreements between the Member States are in force.

In the future, the European Investigation Order (EIO) will concentrate most agreements and treaties in one piece of legislation, to facilitate the processing of MLA and to replace the MLA scheme based on requests with mutual recognition of judicial orders. This aim will only be reached if all Member States involved adhere to the terms of the EIO.

Following the introduction of the European Arrest Warrant (EAW), also based on the principle of mutual recognition, the time needed for the surrender of suspected and convicted persons within the European Union has been dramatically reduced. The speed of EAW execution has afforded opportunities for the authorities in charge of a drug investigation to gain information from the surrendered persons; it has also demonstrated that criminals can no longer hide outside national borders.

Eurojust has made a significant contribution to improving coordination and cooperation in the fight against cross-border drug-trafficking, as evidenced by the number of cases referred to it by Member State authorities and EU partners. Its work has helped mitigate some drawbacks of traditional MLA tools in fighting cross-border crime, while its coordination meetings have been an important practical development in helping ensure that international drug trafficking is met by a corresponding judicial response.

Problems

Delay in the execution of MLA: Problems with traditional judicial cooperation tools are very often related to slowness in execution of the requests. Common reasons for delays are:

- *Translation issues*: Accurate translations of LoRs take time. When this step is rushed due to operational needs, the results are often poor, creating difficulties in understanding exactly what is being requested. Additional questions about the contents or sense of the LoR must then be sent to the requesting authority, leading to further delay in execution. Translation of some legal terms can create difficulties because they have a technical meaning, with important procedural consequences. For instance, the difference between "suspect" and "accused" can be vital to the execution of a European Arrest Warrant. In some jurisdictions, the term "suspect" does not exist as a legal term in criminal proceedings, and any difference with "accused" has no legal consequence for extradition; in others, "suspect" suggests that a decision to prosecute has not been made, and that surrender is either barred or that further enquiry as to the precise legal status of a fugitive is necessary. Such important practical distinctions can easily be lost in translation.
- *Identification of the authorities responsible for the execution of the requested measure of legal assistance*: A frequent issue in Eurojust cases is the identification of the authority competent for the execution of a particular request, especially when rapid execution is needed. This problem may be particularly acute when a measure needs to be executed in several places that are subject to different territorial jurisdictions within a Member State. To mitigate the problem, in the case of direct transmission of the LoR to the judicial authorities, clear identification of the activities to be carried out and their location are necessary.
- *Lack of resources/prioritisation*: A frequent problem encountered is a lack of resources, both human and financial, in the requested Member State to execute the request. This problem is especially pronounced in Member States that receive many requests or are relatively small. Solutions are constantly sought. For instance, the implementation of the 2001 Protocol to the 2000 MLA Convention is designed to make bank searches much simpler (see, in particular, the provisions included in articles 5 and 6, which are aimed at simplifying mutual legal assistance). Prioritisation is another way to tackle the problem of capacity, but the criteria are not always known by the requesting countries. Differing judicial policies might create misunderstandings. For instance, the amount of money to be seized (a concept used to prioritise freezing orders) can be considered huge in some countries, but small in others. Seizures of bank documents might not be considered a priority, because no risk of disappearance of evidence in established banks can occur, unless the bank itself is a suspect.

Ratification of the main international cooperation instruments: Some of the most relevant conventions on judicial cooperation, such as the European Convention on the Transfer of Proceedings in Criminal Matters of 1972,[21] the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU of 2000[22] and the Protocol to the Convention on Mutual

[21] The current state of play of ratification can be viewed at: http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=073&CM=8&DF=10/14/2008&CL=ENG).
[22] The current state of play of ratification can be viewed at: http://www.consilium.europa.eu/App/accords/Default.aspx?command=details&id=297&lang=EN&aid=2000023&doclang=EN).

Assistance in Criminal Matters between the Member States of the EU of 2001[23], have not been ratified by all Member States. This lack of ratification has caused some difficulties in the application of recent cooperation instruments. More specifically, in some cases referred to Eurojust, the creation of a JIT, considered by many of Eurojust's representatives to be a very effective tool for the exchange of information and evidence, was impaired by the lack of ratification of the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU of 2000. Similarly, in one case, a Member State was unable to obtain assistance with cross-border interception of communication.

Approximation of *procedural* provisions related to judicial cooperation in criminal matters: The need to approximate procedural provisions was mentioned several times at the coordination meetings under consideration. Procedural difficulties are often encountered in Eurojust cases during the coordination of simultaneous searches and seizures. In some Member States, for instance, a mere LoR is not enough to carry out search and seizure activities; a certified translation of a search warrant (or even a confiscation order) from a judicial authority also needs to be included. Additionally, the level of description of the grounds on which such measures can be authorised varies greatly.

Mutual recognition tools[24] could be used to overcome differences in criminal procedures, but their implementation has been slow and patchy. As a result, mutual recognition instruments are not often used in this field for various reasons, which range from the need to respect the constitutional principles of the Member States to the limited scope and lack of flexibility of some of these instruments.

Approximation of legal definitions: Although the substantive criminal law provisions seem to present fewer problems in Eurojust's casework, some relevant issues were identified in the harmonisation of organised crime legislation. In spite of the Framework Decision on the Fight against Organised Crime (to be implemented in domestic law by 10 May 2010), national legislation on this topic continues to differ greatly between Member States. There are notable differences on specific matters (e.g. type of predicate offences, continuity, penalties, etc), with some Member States lacking any criminal organisation offences in their criminal codes.[25]

European Arrest Warrants: Unlike some mutual recognition tools, the EAW is widely used by practitioners. Still, several issues have been identified in the practical application of the EAW. The most frequent problems are listed below:

- *Request to re-issue an EAW* to amend possible mistakes or integrate additional information: in some countries, reissue of an EAW is not possible and the only option is to draft a separate act correcting the already-issued EAW, a procedure which may not be acceptable to the receiving authority.
- *Different national implementations*, which lead to continual requests for clarifications and weaken the principle of mutual recognition.

[23] The current state of play of ratification can be viewed at: http://www.consilium.europa.eu/App/accords/Default.aspx?command=details&id=297&lang=EN&aid=2001090&doclang=EN.

[24] COUNCIL FRAMEWORK DECISION 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence. Practitioners also need to send a traditional MLA request following a freezing order according to FD 2003/577/JHA.

[25] *See* the study "Organized Crime Legislation in the European Union. Harmonization and Approximation of Criminal Law, National Legislations and the EU Framework Decision on the Fight Against Organized Crime" carried out in 2009 with the cooperation of Eurojust (Calderoni: 2010, Springer).

Language barriers: In addition to the delays due to translation issues, language in itself might be an issue in some requests. For example, in one case, the interception of communications of Nigerian OCGs was complicated by the lack of trustworthy translators from the dialects spoken in that region. This difficulty makes the execution of MLA almost impossible, because no available translators for that dialect are available.

Solutions

The problems mentioned above have been addressed in the following ways in the cases under examination:

Delay in the execution of letters rogatory: For urgent cases, some National Desks have developed a practice that involves asking the competent authority to open an investigation (according to article 6.a.i of the Eurojust Decision) and to attach a report detailing the reasons for this action (together with the MLA request). In this way, certain activities can be anticipated within the framework of domestic law pending the decision of the court on the MLA request. This is also a good practice in non-urgent cases, because it allows the investigations to go beyond mere execution of the LoR (*see* Chapter 3). Another way to mitigate the lengthy execution periods associated with LoRs is to use JITs (when appropriate), since the information exchanged in that context can be considered officially included in the proceedings of the participating countries without the need for a LoR. For more details about this instrument and its use in the cases under examination, *see* Chapter 6.

Translation problems: Eurojust's prosecutors, judges and police officers, who are seconded from all executing Member States, can help counter these problems by advising on the language and content of especially sensitive requests before they are forwarded by their issuing authorities.

Identification of the executing authorities: A second-level meeting at Eurojust (where prosecutors, judges and police officers of the National Desks involved establish how a case is to be progressed) can help in the identification of the territorially competent authorities. If necessary, several different LoRs (instead of one) should be drafted with different content according to the recipients/requested activities.

Lack of ratification of judicial cooperation instruments. Eurojust's role in these cases has been to find alternative ways to accomplish the same results using the other international cooperation instruments available (for instance, the provisions on spontaneous exchange of information in article 18 of the UNTOC Convention).

Coordination meetings: This is a unique tool in the European Union. Solutions at judicial level are mostly generated during these meetings, which also facilitate mutual understanding and allow participants to communicate freely through expert simultaneous interpretation. In most cases, draft LoRs have been prepared to provide all parties with the relevant information for the best possible execution in the different jurisdictions. This reduces delays and enables the parties to improve the quality of the LoRs and to overcome obstacles during the coordination meeting. In most of the cases under consideration, due to direct contacts and trust between the parties developed during the coordination meetings, no further meetings were needed. The creation of a better understanding of the needs of the colleagues from other Member States and third States has been regarded by all practitioners as very valuable.

Case illustration

This case involves heroin trafficking between Turkey and Spain. The drugs were put in a hidden compartment in a car prepared and loaded in the Netherlands by a Turkish national living in the Netherlands. He appeared to be a member of a network. The deliveries were made to Spain and the money was transported back to Germany.

Links to Belgium, Germany, the Netherlands, Spain and Turkey demonstrated the need for coordination. LoRs were exchanged with France, Turkey, Germany and Belgium. In addition, the Turkish authorities took part in the coordination meeting at Eurojust, and helped to identify the Turkish counterparts.

The meeting brought immediate results: execution of the LoRs was accelerated, and the exchange of information led to the execution of EAWs. Investigations in other countries were launched. Due to the involvement of Europol, forwarding information via police channels was fast and easy and helped to prepare the mutual legal assistance in the involved country.

The involvement of Turkey with the help of the contact point was very successful, as Turkey immediately agreed to join the meeting and offered the relevant information. As a result, the level of trust between EU and Turkish authorities has been raised.

6. Joint Investigation Teams

Introduction

The legal framework for setting up Joint Investigation Teams (JITs) can be found in article 13 of the 2000 MLA Convention and in the Framework Decision of 2002. The overall goal of the Convention is to improve cooperation between judicial and law enforcement authorities within the European Union, Norway and Iceland.

Ratification of the Convention took considerable time, which led Member States to agree on the JIT provisions in the Framework Decision of 2002. Quicker implementation was needed to combat serious cross-border crime more efficiently.

Member States have implemented the Framework Decision in different ways. Some countries have adopted specific laws on JITs or inserted JIT provisions in their criminal procedural law; others have referred to the applicability of the 2000 MLA Convention in their national law. The Framework Decision itself will cease to have effect when the 2000 MLA Convention has entered into force in all Member States. Italy has not yet implemented the Framework Decision or ratified the 2000 MLA Convention. Greece has implemented the Framework Decision but has not ratified the 2000 MLA Convention.

In article 13(1) of the 2000 MLA Convention, JITs are approached from an international and cross-border perspective. According to article 13(1), the seriousness of the crime is not the sole criterion for setting up a JIT. Consequently, national jurisdictions may have different approaches to the use of JITs.

Member States, Eurojust and Europol can suggest establishing a JIT[26]. The involvement of Eurojust and Europol in a JIT is not mandatory, but the involvement of both organisations can bring added value and even prove essential to the success of the investigation. Community funding of JITs is conditional on the involved Eurojust National Member being asked to participate.

For a period after the adoption of the JIT Framework Decision in 2002, Member States were cautious about the use of JITs. Several actions have subsequently been taken to promote the use of JITs. The Hague Programme called upon the Member States to designate experts on JITs to exchange best practices and encourage the use of JITs, which led to the establishment of a Network of National Experts on JITs in July 2005. The Network has held annual meetings since then.[27] Since mid-January 2011, the JITs Network has a Secretariat to promote its activities and to support the National Experts in their work.

A JIT manual for practitioners has been produced by Eurojust and Europol and is available in 22 official languages. Eurojust and Europol have also collaborated in producing a compilation of Member State legislation and practice on JITs.

[26] Eurojust Decision (articles 6 and 7).
[27] More information about JITS and the legal framework for JITs is available in the Joint Investigation Team Manual, prepared by Eurojust and Europol (Council of the European Union, doc. no. 13598/09, 23 September 2009).

Problems

Analysis suggests that there may be room for further use of the JITs tool. In the 50 drug trafficking cases with a coordination meeting considered in this report, two JITs were established. In 10 cases, creation of a JIT was not discussed. In 34 cases, no information is available as to whether formation of a JIT was discussed. In six cases, formation of a JIT was discussed, leading to agreement to establish a JIT in two cases.

The analysis shows that, in some cases, a JIT was not established because the proposal for it came too late. The coordination meetings, where the JITs were proposed, were arranged just before the case was going to be concluded in one of the participating countries. Clearly, when the investigations in a Member State are nearing conclusion, there will be less interest in forming a JIT. A JIT will have greater added value the earlier it is formed in the investigation phase.

In some cases, a JIT was not considered because of past disappointments in judicial cooperation with Member State partners. However, once established, working in a JIT usually builds mutual trust and understanding between practitioners from different jurisdictions.

In one case, a JIT was not created due to the lack of legislative implementation in one Member State. This type of problem should be avoided in the future, when all Member States have implemented the Framework Decision or the 2000 MLA Convention.

The Framework Decision stipulates that each participating country may appoint a leader to the JIT. The JIT leader changes according to the Member State on whose territory the action takes place. When simultaneous actions are taking place in different Member States, there may be several JIT leaders at one time.

Solutions

The results of the study show that awareness of the tool itself and the advantages of using it should be promoted further.

Discussion and common agreement on establishing a JIT as early as possible are essential.

Sharing positive experiences and feedback about JITs among the Member States should be encouraged. Eurojust National Desks, which are frequently involved in advising and drafting JIT agreements, have an important role to play in developing a positive attitude towards JITs.

It is clear that successful JITs need the active support of all parties involved, and should not be established without a shared commitment to their operational efficiency. In the two cases where a JIT was established, cooperation improved and the JITs brought true added value. Although 80% of drug trafficking coordination meetings involved more than two Member States, JITs could be considered more often in bilateral cases.

The leadership issue has been resolved by coordinating the actions with the help of Eurojust. Eurojust has helped JIT leaders to coordinate when conducting the actions simultaneously in many countries.

In Eurojust's general drug-trafficking casework, its assistance was often requested to facilitate or accelerate MLA requests. If a JIT had been set up, the Member States in most cases could have shared information and

requested investigative measures directly between the team members without formal LoRs. Facilitation of MLA requests would have been necessary only when addressed to countries outside of the JIT.

Case illustration

Establishing a JIT first between Member State X and Member State Y and later extending it to Member State Z was essential to operational success when investigating large-scale cocaine trafficking from South America to Europe. The JIT agreement was signed first for six months, but extended later several times, allowing the JIT to work continuously for more than two years. The three jurisdictions exchanged information and evidence without sending MLAs to each other, and met regularly to decide on common strategies. The prosecutors and law enforcement authority from Member State X were present during the hearings of some of the suspects in Member State Y. Mutual understanding and willingness to find optimum solutions for all helped the team to overcome problems. One leader for the JIT was selected from each country. Agreement from all three leaders was needed to decide on allocating funding and other common issues. At operational level, following the legal framework, the leadership was divided, giving to the JIT leaders the power to head the entire JIT when operating in their own countries. Eurojust coordinated the work of the leaders and facilitated an agreement on the strategy to be followed by holding several coordination meetings. Europol was also actively involved in the case. The JIT received funding from Eurojust to cover costs such as interpretation during meetings, translation of documents, transportation and accommodation. The communication between the JIT members was also supported by Eurojust, e.g. by lending secure communication devices for the period of the JIT. The close cooperation in the JIT led to the arrest of approximately 30 suspects in several countries around the world, seizure of more than 1000 kg of cocaine and the recovery of millions of euros in assets.

7. Controlled deliveries

Introduction

A controlled delivery is a specific form of MLA that is potentially very effective in DT cases. Controlled deliveries are defined as[28]

> "*(…) the technique of allowing illicit or suspect consignments of (…) drugs (…) or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences (…)*".

At European level, two legal provisions are especially relevant. Article 73 of the Convention implementing the Schengen Agreement of 14 June 1985 provides for controlled deliveries of drugs and psychotropic substances. Article 12 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000) states that Member States shall undertake to ensure that controlled deliveries may be permitted in their territories in the framework of criminal investigations into extraditable offences. Furthermore, the new Eurojust Decision (articles 9c and 9d) gives National Members the power to authorise and coordinate controlled deliveries in their Member States.

According to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), controlled delivery is an investigative technique infrequently regulated by national legislation. Many countries prefer to work with administrative rules, guidelines, etc. An overview of the legal framework for controlled deliveries is provided in a table on the EMCDDA website. Member States differ considerably in their legal requirements for authorisation. Some Member States need details about the criminal investigation in order to assess the proportionality of the measure. A number of Member States ask for details about the type and quantity of drugs. In some cases, permanent surveillance during the delivery is required. Some Member States maintain the right to seize the drugs at any moment.

Controlled delivery was discussed at seven of the 50 drug trafficking coordination meetings under consideration. Five cases were multilateral and two cases were bilateral. Italy was the requesting country in three instances. Germany, France, Lithuania and Slovenia were the other four requesting countries. Germany, France, Spain, Belgium and the Netherlands were the Member States most frequently requested to attend, followed by Italy, Portugal, Greece, Czech Republic, Luxembourg, Latvia, Poland and UK. Third States whose participation was requested were Albania, Colombia and Venezuela.

In two cases, the controlled delivery was successful. Important evidence was gained from these controlled deliveries. In one case, the controlled delivery enabled an OCG to be dismantled. In another, the controlled delivery did not occur, as the suspects were arrested in a third State before the shipment was made. A legal obstacle was encountered in two cases. In one case, wiretaps could not be directly conveyed to Italy since Italy had not implemented the 2000 MLA Convention. In another case, the time needed to

[28] Article 1 g) of the 1988 UN Convention against illicit Traffic in Narcotic Drugs and Psychotropic Substances.

follow the transport to the market exceeded the time allowed by the legal framework.

Problems

Only two successful controlled deliveries occurred in the 50 drug trafficking cases with a coordination meeting. In practice, controlled deliveries are not often agreed between countries. Various factors might hinder the full use of controlled deliveries.

In a number of Member States, a judicial authorisation is needed for the execution of a controlled delivery; in other Member States, the police authorise controlled deliveries. At the international level, this situation can create uncertainty in identifying the appropriate interlocutor.

Because information about the timing and route of the controlled delivery may be uncertain, operations often carry a high risk, and the investment of resources to comply with legal requirements of different jurisdictions may be considerable.

Both tactical and judicial issues were at stake in the selected cases. First, the specific operational details concerning practical implementation of the controlled deliveries were dealt with. Available resources in the requested country determined whether full cooperation was possible, especially when the controlled delivery took place at an unexpected moment or during the weekend. Second, the legislative framework of involved countries needed to be taken into account. For instance, in the Netherlands, postponement of drug seizure is possible, but drugs must be seized after a maximum of three days. In some cases, arrangements were made to place GPS devices in cars used by suspects. Requesting permission from each country on the route of the drug delivery was sometimes cumbersome.

Solutions

At Eurojust, coordination meetings, tactical solutions and answers to questions about legal possibilities concerning controlled deliveries can be found relatively easily, even in complicated cases. Direct contacts between law enforcement authorities of different countries may follow coordination meetings.

If a controlled delivery cannot be carried out, another investigative strategy may be applied, such as following the money trail instead of the drug trail, or using other forms of surveillance.

JITs provide an efficient tool for executing controlled deliveries in countries conducting simultaneous investigations.

The execution of controlled deliveries is a task assigned to national law enforcement bodies, but as mentioned above the procedure for authorisation of controlled deliveries varies by Member State. In some Member States, a prosecutor needs to be involved, while in other Member States, the police force can act independently. Because powers to authorise controlled deliveries have been allocated to different levels and authorities throughout the Member States, a situation arises that could lead to overlap or even miscommunication. These problems may be mitigated but not resolved by the new On Call Coordination facility established by the revised Eurojust Decision, which allows prosecutors from all Member States to have 24/7 access to Eurojust experts when urgent authorisation of controlled

deliveries is needed. A high-level structural solution to this possible recurring issue could be considered, such as establishing a central point for the authorisation of controlled deliveries in each Member State.

To counter problems of admissibility of evidence, Eurojust could facilitate judicial cooperation in controlled deliveries by providing information on different systems and requirements.

Case illustration

Information was obtained about persons suspected of setting up companies in different countries to produce and trade counterfeit synthetic drugs using false certificates of authenticity. The main target and his accomplices were also suspected of using violence and extortion. A controlled delivery was carried out, which led to arrests. Eurojust held a coordination meeting, as different jurisdictions had arrived at the stage when the findings of separate investigations needed to be exchanged and decisions taken about prosecution. During the coordination meeting at Eurojust, the available evidence was assessed against legislation in different countries, including regulations concerning controlled deliveries. An agreement was reached about transfer of proceedings from France to Germany. Tactical details such as secure destruction of the seized chemicals, admissible evidence of illegal transactions and exchange of evidence were discussed. At national level, the case is ongoing (trial phase). The controlled delivery was an essential part of the case and provided strong evidence.

8. Asset recovery

Introduction

This section considers the recovery of the proceeds of crime in the DT cases analysed by the project, and examines the role played by Eurojust in assisting the Member States in recovering the assets/property derived from criminal activities in these cases.

Drug traffickers often conceal money in bank accounts in other jurisdictions or convert cash into assets or property to hide their illegal origin. An important element in any coordinated attack on drug trafficking is to ensure that crime does not pay: judicial seizure and confiscation of criminal property are important deterrents. Equally important, seizure and confiscation can help disrupt the activities of OCGs by starving them of the assets with which to finance further criminal activity.

This section considers the process of asset recovery from the perspective of the efforts of Member States to confiscate and repatriate the proceeds from DT that are hidden in other jurisdictions, either within the European Union or in a third State. Proceeds from DT constitute any economic advantage/gain acquired through such an offence (it may consist of any assets/property, such as money in bank accounts, real estate, vehicles, artworks, etc). This section does not deal with the seizure of narcotic drugs or psychotropic substances.

Asset recovery is a complex process, involving identifying, tracing, freezing, confiscating, returning and sharing assets that have been unlawfully acquired.

The European Union has put in place a package of measures to ensure that criminals cannot enjoy their illegally obtained profits and to reduce the damage that criminals cause by shrinking their working capital. In 2001, the Council adopted Framework Decision (FD) 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime. This Framework Decision provided for the approximation of national legislation on confiscating assets derived from organised crime. Further, the Council adopted FD 2003/577/JHA of 22 July 2003, which allows the execution in the European Union of orders freezing property or evidence, and FD 2006/783/JHA of 6 October 2006, which applies the principle of mutual recognition to confiscation orders. Additionally, FD 2007/845/JHA builds on the informal cooperation taking place in the CARIN network, requiring Member States to set up or designate a national Asset Recovery Office (ARO).

Problems

Despite measures adopted at EU level, implementation of existing legal instruments and application of the mutual recognition principle to freezing and confiscation orders are still problematic in many Member States. Fuller implementation of these instruments would be needed for efficient confiscation actions and subsequently for successful management of confiscated proceeds of crime (repatriation of assets and asset sharing).

Differences in both substantive and procedural rules in the Member States constitute major obstacles in the investigation, identification, tracing and recovery of assets stemming from cross-border organised criminal

activities. Further, the identification and tracing of assets require the execution of MLA requests that often touch upon sensitive issues (e.g. access to banking data, interception of communications). Moreover, assets are often hidden in countries outside the European Union that might not share the same level of focus and commitment to retrieving such assets and might not be responsive to requests for legal assistance. Many countries can freeze, but not return, money or assets.

All the problems described above mean that effective coordination and international cooperation are extremely necessary for the successful recovery of proceeds of crime. In the 50 DT coordination meetings considered, eight featured issues related to identification, tracing, freezing, confiscation, return and/or sharing of criminal assets. This statistic suggests (while the statements are not mutually exclusive) that either:

- the Member States refer only a very limited number of DT cases to Eurojust where matters related to confiscation and asset recovery need to be solved, preferring instead to work bilaterally with other countries, or
- insufficient focus is placed on asset recovery by the Member States as an effective tool to deal with DT.

A summary of some of the main problems identified and the support provided by Eurojust is presented below:

- The requesting Member State focussed on the confiscation of the OCG profits that were located abroad, which in itself presented major problems of seizure and repatriation. Eurojust's coordination of the asset recovery process was considered essential for a successful action. A detailed illustration of this case, and of the role played by Eurojust is presented at the end of this section.
- €1,600,000 had been frozen in a bank account in a third State during investigations of DT taking place in a Member State. A final confiscation order was issued, and a decision about ways to transfer/return the confiscated money from the third State to the requesting Member State could not be easily reached. A Eurojust coordination meeting allowed consideration of these matters and agreement to be reached on the return and sharing of confiscated money between the parties.
- An investigation encountered difficulties in the exchange of relevant information needed to identify and trace the assets unlawfully acquired by an OCG and to begin a money laundering investigation. With Eurojust's support through a coordination meeting and after information exchange with the relevant Analysis Work Files at Europol, LoRs to trace the illegal funds laundered in other countries were sent and executed successfully.
- A Eurojust coordination meeting clarified that not only were freezing and confiscation orders needed, but also that legal obstacles to their execution existed. Eurojust provided advice on execution and on how the return of confiscated assets to the requesting Member State could best be accomplished.
- DT proceeds were laundered in several Member States and in third States, which led to considerable practical difficulties in tracing and restraining assets. Eurojust was requested to support the work of several countries in conducting simultaneous searches and seizures

of assets. Eurojust's assistance was also requested in drafting the freezing orders to ensure that the orders were acceptable to both issuing and executing authorities.

- In two other cases, difficulties arose in obtaining information and details about bank accounts of the leaders of the OCG and in identifying their vehicles and properties. Eurojust was requested to assist in facilitating this information, which was a condition precedent to the issue of freezing orders in the jurisdiction in question.

Solutions

As illustrated in the examples above, Eurojust played an important role in facilitating and accelerating MLA requests for executions of freezing and confiscation orders. It assisted the Member States in exchanging information needed for identification and tracing of assets belonging to the OCGs. It provided advice on practical solutions to overcome legal obstacles for the execution of freezing and confiscation orders and encouraged common understanding and cooperation among the authorities concerned. It assisted Member States in drafting freezing orders, taking into consideration the specific requirements of each jurisdiction. In one case, Eurojust successfully assisted a Member State in concluding a bilateral agreement with a third State for disposal of confiscated property and for asset sharing.

As Eurojust receives little feedback from the national authorities as to how the case evolves, and whether confiscation occurs, more assets may have been seized and confiscated by the national authorities than were reported by the project.

Case illustration

In a large money laundering case related to DT and tax evasion, a national criminal investigation started in parallel with an international asset recovery investigation. Priority was given to the confiscation of illegally acquired assets by the OCG as having greater impact than imprisonment. A confiscation strategy was also adopted because of its deterrent effect, as it makes committing crimes less attractive, and because it would deprive the OCG of the financial resources needed to commit organised crimes. Most of the illegal assets were located abroad; a request was sent to a Member State to execute several LoRs: (1) to identify users of local telephone numbers and trace addresses; (2) to check the ownership of certain real estate properties; (3) to check the trade register and hand over relevant documentation; (4) to verify the existence of any other illegally acquired assets; (5) to check several bank accounts of the criminal group; (6) to provide data from tax authorities; (7) to hear witnesses; (8) to seize assets; and (9) to perform house searches, etc. The requesting Member State registered the case at Eurojust and held a coordination meeting with the requested Member State to discuss the state of play of the LoRs and to agree on a coordinated asset recovery process. A simultaneous action day, which was agreed during the coordination meeting, involved house searches, telephone intercepts, and freezing of assets in two Member States. With support from Eurojust, the action day led to arrests of three members of the criminal group, and seizure of all the money in bank accounts, real estate properties, luxury vehicles and other assets belonging to the leader of the OCG (assets estimated at €1,200,000).

9. Third States

Introduction

Links with third States are particularly relevant in DT cases because, with the exception of domestic cultivation of cannabis or production of synthetic drugs within the European Union, drug trafficking affecting the European Union usually starts in third States where either cultivation or manufacture is located, or which are used as transit routes by OCGs because of the permeability of their frontiers[29].

Given its structure and its agreements with third States and international judicial cooperation networks, Eurojust has been identified in the Council Drugs Action Plan for 2009-2012 as a responsible party in the action related to the EU focus on *coordinated and joint efforts between the MS and regions most highly exposed to particular drug production/trafficking phenomena*[30].

From analysis of the coordination meetings in cases involving third States, three regions have figured as the main areas of drug production and transit:

- the Balkan region and Turkey in connection with the regions of the Golden Triangle and the Golden Crescent in Asia (Turkey, Serbia and fYROM were present in coordination meetings),
- Morocco and West African countries, particularly Nigeria (not present in coordination meetings), and
- Latin America and the Caribbean (Colombia was present in a coordination meeting).

This finding is in line with the Council Conclusions setting EU priorities in the fight against organised crime based on the OCTA 2009 and the ROCTA; the Council states in one of the conclusions that *drug trafficking, especially using the West and Central African Route (including drugs from Latin America and Caribbean), for storage and transit, but also processing, trading and/or production* should be one of the priorities of the European Union in the fight against organised crime for 2009/2010. This priority was adopted by Eurojust in Decisions taken in 2009.

The involvement of third States in Eurojust cases has been variable. Some Member States are more likely to involve third States as soon as the third State is identified in the national investigation, while other Member States are more reluctant to do so. Eurojust should play a role in ensuring consistency in this approach. Consideration of the Eurojust cases under review shows the following :

- Cases opened towards third States in general casework: 20 cases have been opened towards third States; with one exception, all these cases are multilateral, frequently involving a large number of Member States[31]. This suggests that whenever third States are involved in a coordination meeting, the profile of the OCG subject to investigation is extremely high. On two occasions, the case was extended to the third State involved as a result of the information exchanged during the coordination meeting, and the representatives from those third States were invited to a follow-up coordination meeting.

[29] See EMCDDA Annual Report 2011 and UNODC World Drug Report 2011 for the situation of the drugs market in Europe and worldwide.
[30] Objective 13 (supply reduction): *respond rapidly and effectively at operational, policy and political levels to emerging threats (e.g. emerging drugs, new routes).*
[31] The exception is a case related to execution of a confiscation order, and thus not related to the investigative phase of the proceedings.

- Cases with participation of third States in coordination meetings: in 13 of those cases, a coordination meeting was held with participation of a third State: Norway attended six meetings; Turkey three; Switzerland two; and fYROM, Iceland, Serbia, Colombia and the USA each attended one meeting[32].
- Cases not opened towards third States in which the investigation led to the identification of third States where the criminal activities were being conducted: in the majority of the cases subject to analysis, the third State from where the illicit substances originated or which served as transit areas have been identified, but only on some occasions have third States then been involved. In some instances, pending LoRs or extradition requests with third States where problems and obstacles were identified have not justified opening the case towards them. On one occasion, the contacts with the third State had been smoothly made at police level, but at judicial level, the contacts were not maintained.

Problems and solutions

From consideration of Eurojust's coordination meetings involving third States, the following comments can be made:

Exchange of information and coordination

The goal of most coordination meetings with attendance by third States was to exchange information regarding investigations and prosecutions carried out in the Member States, and, in particular:

- To provide the counterparts from third States with information related to the criminal activities conducted by the investigated OCG in the territory of those third States and to raise awareness of the criminal activities. On some occasions, the lack of effective and efficient communication channels with competent authorities in third States to follow the thread of OCGs in those third States has sometimes been identified as a recurring obstacle; coordination meetings have provided an ideal opportunity to convey the relevant information. This obstacle has been particularly serious when high-ranking members of the OCGs were based in third States and the cooperation of these third States was regarded as essential for dismantling the OCGs. On at least three occasions, the exchange of information was the basis for the institution of a criminal investigation in the third State, and on one occasion led to the leaders of the OCG being arrested.
- To exchange information on the national investigations conducted in the involved Member and third States. This situation affected mainly the cases involving Norway and, to a lesser extent, Turkey; the objectives were to exchange information on the national proceedings, but no conflicts of jurisdiction were identified apart from the case referred to in the following paragraph.
- To seek assistance and coordination for the execution of LoRs in the third State involved (Colombia) and at the same time to exchange information on the national investigations conducted in the Member States and in the third State. This particular case is one of the most relevant examples of exchange of information about both national investigations and the execution of measures requested in LoRs. Exchange of information allowed an agreement to be reached about operational issues, leading to the arrest of the suspects, the establishment of a communication channel for exchanging information in

[32] Ukraine was invited once but did not attend.

real time regarding intercepts, and the execution of judicial requests for assistance in the third State in a coordinated way.

Conflicts of jurisdiction

The UN Convention against transnational organised crime foresees in art. 21 the possibility for States Parties to transfer criminal proceedings when this transfer is considered to be in the interest of the proper administration of justice. Similarly, the Council of Europe Convention on the transfer of proceedings in criminal matters has been ratified by several European third States in close proximity to the European Union[33].

Nevertheless, the comparatively low level of interaction with third States (apart from Norway) has impeded a thorough exchange of information which could lead to the proper identification of parallel investigations at coordination meetings attended by third States and which could have fostered proposals for the concentration of proceedings.

In the coordination meetings considered, on only one occasion was a proposal made to concentrate proceedings involving a third State. The case affected a number of Nordic countries, including Norway. All third States involved considered but did not accept the proposal and investigations were continued separately, but with awareness of the other proceedings. The Member State proposing the concentration considered that the outcome was not wholly satisfactory due to the fragmentation of investigations and impossibility to reach the higher echelons of the OCG.

Letters rogatory

The main issues regarding the execution of LoRs issued towards third States are the following:

- Obstacles and difficulties in execution, such as undue delays or requests to comply with additional formal procedures,
- Difficulties contacting the competent executing authorities or the central authority of the third State to gather information regarding the state of play of the request, and
- Wrong identification of the authority competent to receive and route the requests (in some third States, the central authorities competent for the execution of requests vary, depending on the international instrument employed).

Most of the difficulties relate to LoRs issued for the purpose of financial investigations in off-shore jurisdictions where proceeds of crime are allegedly invested.

Extradition

The main extradition problem related to third States that has been raised in coordination meetings is the impossibility for many third States, unless otherwise stated in bilateral treaties, to extradite their nationals. In one case, this legal obstacle was an impediment to enforceability of decisions taken by Member States (both extradition requests for the purpose of prosecution and requests for the

[33] Albania, Bosnia and Herzegovina, fYROM, Liechtenstein, Moldova, Montenegro, Serbia, Turkey, Ukraine.

purpose of execution of penalties). Enforcing sentences rendered *in absentia* has also been identified as an obstacle to surrender of the requested persons under the jurisdiction of the third State requested.

An extradition issue was the subject of discussion with the third State in one coordination meeting. An agreement was reached to investigate and prosecute the targets (who could not be extradited for the purpose of prosecution as requested by a Member State) in compliance with the principle of *aut dedere, aut iudicare*. The agreement also provided for the execution of a sentence issued in another Member State as foreseen in the international instruments[34] ratified by the third State (Serbia).

Extradition issues involving third States arose in other two coordination meetings but without their attendance (Morocco and Dubai); in one of these cases, obstacles and difficulties in the extradition process had been raised during the meeting.

Joint investigation teams

International instruments applicable in this field, such as the UN Convention against illicit traffic in narcotics (art. 9.1 c) and the UN Convention against transnational organized crime (art. 19), foresee the possibility of forming JITs. These instruments have been ratified by most third States[35] which are likely partners in JITs in the fight against DT (regardless of the existence of the necessary implementing instruments). An initiative at ministerial level in Latin America has been introduced to create JIT agreements among different third States following the EU model.

Although no EU framework decision provides for setting up a JIT between a Member State and a third State other than by a bilateral treaty[36], formation of a JIT was proposed and considered in two cases involving Norway. Both involved investigations into OCGs operating in the Nordic countries. In one of the cases, a proposal to set up a JIT was made by one of the Member States involved. This proposal was extended to Norway. Although no national legislation is in force in Norway regarding JITs, practical arrangements have permitted the participation of Norway in some JITs affecting Nordic countries. Nevertheless, the proposal was not adopted. Norway considered that the difference in the stage of the proceedings there and the lack of manpower were reasons against involvement in the JIT. In the other case, the proposal to form a JIT was accepted by all at the coordination meeting, including Norway. However, no further information about the outcome of the case is available. Norway's relationship with Member States is qualitatively different than the relationship between most other third States and Member States. This special relationship allowed such a proposal to be considered.

Controlled deliveries

Controlled deliveries constitute a particularly relevant special investigative technique in DT cases involving third States where cultivation, production or manufacture are located or which are used as transit routes. Most of these third States have signed and ratified the UN Convention against illicit traffic in narcotic drugs and the UN

[34] Art. 6.9 of UN Convention against illicit traffic in narcotic drugs and psychotropic substances, and arts. 16.10 and 16.12 of UN Convention against transnational organized crime.
[35] For status of ratifications, see: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&lang=en and http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en.
[36] There are bilateral cooperation agreements in criminal matters that foresee the possibility of setting up JITs.

Convention against transnational organized crime, both of which foresee the possibility to adopt measures to allow controlled deliveries when deemed appropriate (arts. 11 and 20, respectively).

This particular topic was addressed during one coordination meeting attended by a competent national authority from a third State. The competent national authority from the source country (Colombia) reached an agreement with the national authorities from the Member States involved to conduct a controlled delivery with the assistance of an undercover agent. The participation of foreign undercover agents in criminal investigations and operations involving controlled deliveries is a practice with which Colombia is familiar[37]. For operational reasons, proceeding with the agreed controlled delivery was not possible.

In other cases, the third States acting as source or transit areas were identified and in some cases information regarding a particular shipment or consignment being sent by the OCG to Europe was obtained, but a controlled delivery was not taken forward operationally and those third States were not contacted. In a particular case involving Russia, the authorities of the Member State involved had frequent contacts with the Russian authorities in order to conduct a controlled delivery. Premature arrests could have been avoided by Russian attendance at Eurojust's coordination meeting.

Asset recovery

Raising awareness about the need to foster the exchange of information with third States where the OCG may have assets and proceeds of crime in order to conduct financial investigations in those States is extremely important. A spontaneous exchange of information can be considered a basis for the institution of civil confiscation proceedings by some third States.

Only one case involving third States was devoted to asset recovery issues. The goal of the coordination meeting was to break the deadlock in the execution of a confiscation order on a frozen account in Switzerland[38]. Following the meeting, and enforcing the provisions foreseen in one of the applicable national laws, the Swiss authorities decided to share the confiscated account and transferred 50% of the amount to the requesting Member State.

No other specific issues have been raised in coordination meetings attended by a third State regarding assets to be seized or confiscated in that third State.

Final remarks

An important conclusion to be drawn from this assessment is the infrequent participation of third States in coordination meetings, despite the fact that third States are normally part of the production, transport and delivery process in DT cases. Awareness should be raised regarding the need to involve third States more frequently in coordination meetings, in order to fight more efficiently and effectively against DT OCGs through a more comprehensive perception of the threat posed by OCGs. Third States from the three major drug source or transit regions, whose presence might provide added value in terms of widening the scope of the case, have been infrequently present at coordination meetings. Turkey was the third State from a priority route which attended most coordination meetings (3); fYROM, Serbia

[37] Particularly in operations with the USA.
[38] One case assessed was devoted to issues related to execution of a sentence rather than the investigative phase of the proceedings.

and Colombia each attended one coordination meeting. National authorities from Morocco were invited to one coordination meeting, but did not attend.

The reasons for not involving third States in coordination meetings are varied. They include lack of trust, perceptions of the vulnerability and permeability of some third State administrations to the immense power of corruption of criminals dealing with drugs (such a case was identified in one coordination meeting), and data protection issues. These circumstances can lead Member States and Eurojust to discourage involving third States, but arguments for and against the decision need to be carefully balanced, with analysis of all the circumstances on a case-by-case basis.

Contacts among law enforcement agencies/bodies of Member States and third States are more frequent than those at judicial level; Eurojust has an important role to play in ensuring that appropriate judicial contacts are maintained through the stages of a case. This is linked to fostering the spontaneous exchange of information which constitutes one of the most relevant coordination instruments for Member States and third States. Coordination meetings provide a secure and effective venue for promoting this exchange.

Case analysis also indicates that Eurojust has little involvement in controlled deliveries involving third States. Their use must be evaluated extremely carefully in light of the risks involved, but the tool is nevertheless a particularly suitable investigation technique in the fight against DT. Hundreds of shipments with EU destinations are intercepted in third States every year, and no action is taken to carry out controlled deliveries due to lack of contacts with third State partners. Eurojust should facilitate contacts between Member States and third States to promote this technique.

Making full use of existing Eurojust contact points in third States is an important means of facilitating the involvement of competent national authorities; their participation in coordination meetings can be arranged via these contact points[39]. Action is also needed to ensure that Eurojust's requests for nomination of contact points in those third States considered as particularly relevant to drug cultivation, production and/or transportation (e.g., Morocco, Colombia, Mexico, Golden Crescent and Golden Triangle regions[40]) are responded to promptly. The current list of Eurojust contact points needs revision to include these key third States[41].

Similar considerations apply as regards the Ibero-American Network for International Legal Cooperation (IberRed); the Memorandum of Understanding signed with this network has provided the basis for contacts by which valuable information can be provided. So far, 36 consultations have been channelled via the central contact point for the Memorandum of Understanding at Eurojust.

Involvement and interaction with EU liaison magistrates in third States is highly advisable and their participation in coordination meetings should also be considered[42], especially when the competent authorities from the third States cannot attend. The added value of the participation of liaison magistrates in third States is their expertise in the national legal systems of their places of secondment as well as

[39] Contact point for Turkey has assisted successfully in the identification of competent national authorities to be invited to coordination meetings.
[40] Of the Golden Triangle region countries, Thailand has designated a contact point.
[41] Current list as of 31/01/2012: Albania, Argentina, Bosnia and Herzegovina, Brazil, Cape Verde, Croatia, Canada, Egypt, fYROM, Iceland, India, Israel, Japan, Kazakhstan, Korea, Liechtenstein, Moldova, Mongolia, Montenegro, Norway, Russian Federation, Serbia, Singapore, Switzerland, Thailand, Turkey, Ukraine and USA.
[42] In fact, in one French case, the French liaison magistrate to Morocco attended a coordination meeting, and in an Italian case, the Italian liaison officer in Bogotá attended a coordination meeting.

their relationships with competent authorities and central authorities in their places of secondment with whom they can liaise.[43].

In order to agree upon a common EU approach to threats from third States, Eurojust can play a fundamental role by bringing together judicial practitioners from Member States; such was the case in a meeting devoted to particular OCGs from existing Nigerian DT groups operating in the European Union.

Case illustration

With the support of Colombian authorities, a complex transnational network active in the trafficking of cocaine and heroin using different routes from Peru, Argentina and Colombia via Nigeria and Turkey to several Member States was uncovered. After disruption of a large part of the group, the criminal activity continued and the traffic route was modified, involving mainly Colombia, the Netherlands and Italy. At this point, the case was referred to Eurojust with the following objectives: (1) agreeing on a common strategy for the investigations, (2) clarifying the links between the OCG and Colombia, the origin country for the drugs, and (3) coordinating controlled deliveries and other actions. Eurojust's assistance was requested to set up a coordination meeting to which Colombia, one of the main transit countries for cocaine coming from South America to Europe, was invited. Europol's Analysis Work File (AWF) COLA actively participated by providing analysis reports. Colombian officials provided insight into the links of Nigerian targets with Colombian traffickers, the relationship with other South American countries and the existence of a two-way route, in which cocaine was exchanged for Ecstasy. The leaders of the OCG were Nigerian nationals, some of them resident in Italy and some of them in African States, the Netherlands, Colombia and Turkey. The couriers were either Africans or Europeans. Money laundering activities of the OCG were also detected. Member State authorities agreed to use an undercover informant to organise controlled deliveries on the Colombia-the Netherlands-Italy route. The objectives of the case were reached successfully, a large number of arrests were made and the OCG was dismantled. The secondary objectives of the case were to pave the way for improved strategic cooperation between the European Union and Colombia with regard to operational and legal aspects of international investigations and prosecutions. Questions regarding the interception of telecommunications, exchange of investigative information, documentary evidence in the form of laboratory analysis of seized drugs, transfer of seized objects, extradition and surrender and asset recovery were clarified.

[43] In this regard, the Council Drugs Action Plan for 2009-2012 identifies Eurojust as one of the responsible parties to make "more systematic use of Member State liaison officers and liaison magistrates, where appropriate, in third countries for the exchange of information and intelligence". Objective 11 (supply reduction): *enhance effective law enforcement cooperation in the EU to counter drug production and trafficking.*

10. Conclusions

The following conclusions bring together the analysis of Eurojust's case and coordination work in this report and the input from participants at the strategic seminar held in Krakow on 5 and 6 October 2011. The focus is on how to improve the coordination of judicial and law enforcement responses to cross-border drug trafficking from Eurojust's practitioner viewpoint.

Eurojust's support in general

- *Case follow-up*: In half of the cases analysed in this report, the outcome of a case at national level (in terms of arrests, seizures, convictions, etc) is unknown. In a lower, but still significant, number of cases, Eurojust is not informed about the follow-up at national level of the decisions taken during the coordination meetings. One possible explanation for this lack of feedback is that many issues are resolved during the coordination meeting and Eurojust's continued assistance is thus no longer necessary. In such cases, the follow-up to coordination meeting conclusions is dealt with at bilateral level. In more complex cases, where coordination was to continue beyond the meeting, a follow-up by National Desks helped ensure that issues arising during a day of action were managed expeditiously. A balance clearly needs to be struck between the need for feedback (to enhance Eurojust's usefulness in ensuring cooperation and coordination) and overburdening practitioners with reporting duties. Informal contact between the National Desks and national authorities on a case-by-case basis may suffice.

- *Videoconferences and telephone conferences*: Practitioners advocate a more frequent use of these tools to make best use of scarce judicial and law enforcement resources. However, practitioners recognise that these tools may have limitations and might not be appropriate for complex cases.

Exchange of information

- *Preliminary analysis* is a key to a successful coordination meeting, a tool for triggering parallel investigations and a basis for issuing MLA requests to acquire and use information in proceedings:

    - *Europol* is involved in one-fifth of Eurojust's coordination meetings, but its analytical contribution in constructing the criminal investigative picture should be more proactively pursued as providing the basis for coordination efforts and the opening of parallel investigations where appropriate. If a coordination meeting is prepared on the basis of an earlier operational meeting among investigators at Europol, a clearer picture can be presented during the coordination meeting, allowing the participants to focus on the judicial aspects of the case.
    - A preliminary *analysis* of the state of play of judicial cooperation represents a good starting point for the discussion and strategy formulation during the meeting.
    - *Article 13*: the proper implementation of article 13 of the Eurojust Decision (including the obligation for Member States to notify Eurojust of serious cross-

border cases) should improve the ability to establish links between criminal proceedings on the same targets and to coordinate responses.

- *List of contact points*: the identification of contact points per country on both judicial and police level facilitates the rapid exchange of information and resolution of issues.

- *Spontaneous exchange of information:* promoting the use of article 18.4 of the UNTOC Convention as the fastest way to exchange preliminary investigative results; this can then be the subject of LoRs if specific elements need to be acquired formally in the national proceedings.

- *Secure channels* should be made available to all practitioners involved in a judicial coordination case for the fast transmission of operational information, LoRs, amendments to draft EAWs, etc.

- *Confidentiality of the information exchanged*: some practitioners raised concerns about access by defendants and their lawyers. Differing practices and requirements in relation to disclosure of information to suspects and defendants should be clarified at the beginning of coordination meetings. These requirements should not normally affect the exchange of information between law enforcement and judicial authorities in the investigation phase. Use could be made of national provisions allowing a delayed disclosure of investigative proceedings when they could harm other proceedings.

Coordination

- *Preparatory meetings (Level II meetings)*: these meetings are organised internally at Eurojust among the representatives of the National Desks of the countries involved in a case. They are a useful preparatory phase that allows later consideration of issues at a coordination meeting to be properly focussed. In some cases, these meetings may even make travel of investigators and prosecutors from Member States to Eurojust unnecessary.

- *Coordination meetings (Level III meetings)*: this type of meeting is one of the main tools used by Eurojust to ensure cooperation and coordination among the national authorities involved in a case.

    - *Feedback from participants*: Practitioners who have participated in one or more coordination meetings have appreciated the opportunity to meet with their colleagues, to exchange information, to discuss judicial cooperation problems and to find solutions with the assistance of Eurojust's representatives and expert interpretation facilities. Experience is generally positive as problems can be solved in one coordination meeting, and subsequent contact is made easier. In complex cases, the possibility of having more than one meeting with the national authorities involved ensures continuity in coordination actions. In this sense, a series of coordination meetings to some extent mirrors the context in which a JIT works.
    - *Results*: one of the keys to the success of coordination meetings is their flexibility in finding practical solutions to working with different judicial systems and legislation. However, different opinions exist on the use of findings and the nature of the agreements reached during coordination

meetings. Some practitioners value the informality of these meetings as opportunities to freely exchange information and ideas. With a clearer picture of the case at European level, they can focus on retrieving formally what is needed for their proceedings. Other practitioners feel that the results of these meetings can be immediately incorporated into their files. The use of the findings and their format should be thus discussed in the beginning of the coordination meeting. A coordinated approach to this topic is currently being considered at Eurojust.

- *Improvements*: National authorities manage a variety of factors which may militate against their taking the cross-border view of a case which is offered by Eurojust. These include financial problems, busy agendas (making it difficult to find a suitable date for a meeting), reluctance to share information, the potential complexity of introducing evidence and suspects from other jurisdictions into the case, and the natural familiarity with domestic procedures. All these factors encourage a focus on the domestic dimensions of a case. The establishment of guidelines on setting up coordination meetings with faster procedures combined with the use of different tools (e.g. videoconferences) might help to reduce these obstacles.

- *Coordination centre* at Eurojust: this recently created tool offers a central point for all parties on the specific day of action, with dedicated telephone contacts/e-mail addresses and persons able to speak the languages needed to distribute and forward any information in real time. This tool is already popular with practitioners and will play an important role in the future.

- *On-Call Coordination (OCC)*: Article 5a of the Eurojust Decision provides for a 24 hour/7 day mechanism to receive and process requests referred to Eurojust in urgent cases at all times. OCC became available in the summer of 2011. Its use is anticipated, at least initially, to be limited to contacts outside normal office hours. It formalises the practice which allows practitioners in Member States to make urgent contact with national representatives at Eurojust in appropriate cases.

Conflicts of jurisdiction

- *Early assessment and identification of the problem*. As mentioned, most DT cases will involve a potential conflict of jurisdiction issue because factually growth, production, transport and distribution normally involve different countries and due to the existing extraterritoriality principles included in national legislations, exercised in different ways by the Member States. The earlier the problem is identified and addressed, the greater the likelihood of reaching consensus.

- *Parallel investigations and common strategy*. Concentration of proceedings is not appropriate in all cases. With early coordination and an agreed strategy about division of tasks, targets, timeframes and crimes, the continuation of autonomous investigations might bring better results. Where this is the better approach, coordination meetings can add value by addressing some problems linked to the decision not to concentrate (lack of overall perspective and possible inadequate penalties, scarce use of the spontaneous exchange of information, lack of direct contacts, risk of jeopardising one investigation with measures taken in another investigation, etc).

- *Concentration of investigations.* Where concentration of proceedings is appropriate, a strategy to address potential difficulties must be in place. These difficulties will vary from case to case but may include, *inter alia*, admissibility of the evidence gathered, identification and management of documents to be transferred, and the transfer of seized property or evidence. The transferring Member State must be in a position to provide proactive assistance to the receiving Member State, so that the transfer is conducted for the better administration of justice. A major benefit of concentrating investigations is that concentration provides the trial court with a more comprehensive picture of the criminal network, which may allow the upper echelons of the OCG to be tried in one venue, and allows the court to administer justice on a more informed basis. The decision to concentrate proceedings is not straightforward, and needs to be taken into consideration bearing in mind the full exchange of information and contact between participants that a coordination meeting can offer.

- *A common EU procedure to transfer proceedings* could mitigate various problems such as, *inter alia*, differences in the instruments applicable depending on the Member States involved[44], validity of evidence, the transfer of materials in a structured way, solutions for the measures taken in the Member States transferring jurisdiction, i.e. provisional custody of suspects, freezing orders (taken in own proceedings or upon request from the other jurisdiction involved) or procedures for transfer.

- *Role of Eurojust in decisions on concentration versus separation of proceedings.* Practitioners confirm the important role of Eurojust in helping prevent and resolve conflicts of jurisdiction. Guidelines could be further developed for the issuance of Eurojust's opinions in this area under article 7(2) of the Eurojust Decision. Practitioners differ in their opinions about whether a need exists for Eurojust to issue binding decisions.

- *Training of practitioners*. Raising awareness of the international aspect and motivating national authorities to encourage an international approach to their prosecutions are very important policy steps. This training should cover recurrent issues in judicial cooperation in criminal matters; the principal modes of cooperation and how to make appropriate use of EU resources such as Eurojust and the EJN could be dealt with by a manual.

- *Common rules on new psychoactive substances* could avoid emergence of safe havens and the risk of a negative conflict of jurisdiction when delays are encountered in penalising substances in the different Member States. Safe havens could be avoided by strengthening the existing mechanism, Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances, which is currently under revision by the Commission. This FD intends to create a mechanism for rapid exchange of information on new psychoactive substances and provides for an assessment of the risk associated with these new substances in order to permit control measures[45].

[44] As stated in the report, only 13 Member States have ratified the 1972 CoE Convention on the transfer of proceedings in criminal matters.

[45] *See* the EMCDDA report "Responding to new psychoactive substances" of 2011 for the current situation of these substances in Europe. According to the EMCDDA, the new substances are included in national lists of controlled drugs in the Member States in different ways and at differing speeds, a circumstance that is considered an issue for a harmonised drug control policy.

MLA requests and EAWs

- *Evaluation of judicial cooperation via Eurojust*: Eurojust is regularly consulted when the execution of MLA requests is critical for the outcome of a case. Eurojust should consider the development of an evaluation tool with a view to drawing conclusions which can improve performance. Eurojust has similar experience in assisting with the execution of European Arrest Warrants upon which practical guidance could be formulated.

- *Common definitions* of "organised crime" are needed to focus on large-scale cross-border drug trafficking cases, but are still lacking at national level due to the differences in the implementation of the Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime.

- *Controlled drugs*: in spite of the EU and international instruments aimed at creating a coherent framework for controlling drugs, discrepancies persist at national level. For instance, criminalisation and control of certain substances (e.g. "new psychoactive substances" or anabolic substances) vary greatly across the Member States.

- *Common understanding of legal terms*: a common lexicon among practitioners is needed to avoid misunderstandings. Some technical terms are particularly prone to causing confusion, and may lead to requested measures not being executed (e.g. the difference between the term "accused" and the term "suspect" in the EAW context). To this end, appropriate training initiatives aimed at the key players and focussing on the most common terminology pitfalls need to be further enhanced.

- *Availability of resources:* Cross-border investigations in drug trafficking cases are expensive. Resources might not be available to the same extent across the Member States. For this reason, promotion of the priorities concerning drug-related crimes in line with the decisions agreed upon by the Member States during the EU policy cycle would be desirable.

JITs

- *Awareness* of JITs as a tool and the advantages of its use must be promoted further in Eurojust cases. JITs may bring particular benefits to multilateral DT cases where coordinated work over time is essential.

- Discussion should take place about establishing a JIT at *as early a stage* of investigation as possible and when there is sufficient time to prepare for it. Eurojust has an important facilitating role in this process.

- Positive experiences and *best practices* related to working in JITs must be shared. The National Desks could take an active role in developing a positive attitude towards JITs. A monitoring instrument could be created with regard to the results of the JITs and the relevant jurisprudence in the Member States. The location of the JITs Network Secretariat at Eurojust should become the channel for this process.

- The *leadership* issue, which may arise when working in a JIT, can be solved by coordinating actions via Eurojust. Multilateral JITs may be difficult to lead. Eurojust has helped JITs to take into consideration all aspects (including judicial) when conducting actions simultaneously in many countries.

- *Flexibility* is important when cooperating in JITs. Initially, JITs were seen as unduly bureaucratic in both formation and action and this perception discouraged their use. While this perception has changed (Eurojust supported 37 JITs between October 2010 and October 2011), flexibility should be maintained in the operation of the JIT. Not all cross-border investigations require a JIT. Similar results may sometimes be achieved by using more agile tools, such as coordination meetings. A preliminary evaluation of potential benefits of the one or the other coordination instrument is thus advisable.

- JITs are vital tools for exchanging information and evidence in cross-border drug trafficking cases, but they are also expensive. The need for more funding was mentioned in the workshops in Krakow. Although Eurojust currently evaluates and administers JIT funding, the sum is limited both in terms of time (2013) and amount (2.3m euros).

Asset recovery

- International asset recovery depends on a *timely and close collaboration* between the requesting and requested jurisdictions. Once illegally acquired assets are transferred and/or hidden abroad, recovery can be very difficult and requires concerted action.

- *Eurojust*, with its growing number of cooperation agreements and contact points, should play a greater *role in facilitating a successful asset recovery process*. The results of the project show that in cases where Eurojust has been requested to assist, the outcome is positive. However, the results of the project also show that Eurojust's role in facilitating international cooperation in recovering proceeds from DT is limited. By involving Eurojust in cases requiring international cooperation for the identification, tracing, freezing, seizure and confiscation of proceeds from crime, many problems in making sure that crime does not pay could be resolved.

- Eurojust's immediate practitioner impact in this area is both to facilitate (and accelerate) the execution of MLA requests and also to provide national authorities with *relevant information and advice needed to resolve legal or practical issues*. An added value of Eurojust coordination meetings is to bring together the competent national authorities, Eurojust National Members and representatives from relevant EU partners, so that such problems can be identified and managed at the appropriate stage. In light of this role, participants in a Krakow seminar workshop recommended that Eurojust provide more assistance in asset recovery.

- Accordingly, more asset recovery cases should be referred to Eurojust by Member States and, equally importantly for the effectiveness of cross-border action to be evaluated, more information on the outcome of the cases registered at Eurojust, including whether a confiscation and a return of assets occur, should be provided.

- The results of the project show that freezing and confiscation orders based on Council Framework Decisions 2003/577/JHA and 2007/783/JHA are infrequently used. The fact that these instruments are not widely used in practice requires reflection and possible solutions, including perhaps stronger, more effective EU legislation on confiscation of criminal assets (including their repatriation).

Controlled deliveries

- Eurojust can facilitate judicial cooperation by providing practical input on dealing with different systems and requirements. Beyond this immediate practitioner role, the Eurojust Decision requires Member States to notify Eurojust of controlled deliveries in certain multilateral cases. The application of this provision should bring together information about DT cases which would be of use to policymakers and allow Eurojust both to provide an overview of the effectiveness of the tool and to coordinate cases from an early stage.

- The Eurojust Decision also provides for National Members to authorise controlled deliveries in certain circumstances and in accordance with national powers. With early referral to Eurojust, the existence of these powers may be useful in operational cases where controlled deliveries deviate from expected routes into different jurisdictions and where immediate assessment and response is required. Establishing central points in each Member State to authorise controlled deliveries may also be considered where these do not already exist.

- In DT cases, an international dimension in a controlled delivery case is almost always present. If this dimension is borne in mind, opportunities will arise to invest resources more effectively in attacking an organisation rather than single instances of drug seizure at national level.

Third States

- *Participation of third States in coordination meetings* has been limited principally due to lack of trust, difficulties in communicating with counterparts, corruption concerns and data protection issues. Nevertheless, participation of third States should be fostered, given that the DT process, including growth, production, transport and distribution of drugs, almost always involves third States. Eurojust can play a role in raising awareness among practitioners about the need to involve third States, thus building bridges and enhancing contacting mechanisms with them, particularly with those third States identified in this report as key areas. An internal meeting at Eurojust, at which an analysis of possible legal obstacles with third States and an assessment of pros and cons regarding their involvement is discussed, can precede a coordination meeting to which third States are invited. When the case is closed, Eurojust could evaluate the performance of the third State. Subject to data protection considerations, this information could be used by other National Desks at Eurojust whenever that third State is involved in another case. Initiatives coming from third States to cooperate with Eurojust are welcome in the framework provided for in the Eurojust Decision.

- *A common approach to the decision to involve third States in Eurojust cases* should be fostered, as decisions about this involvement have not always been consistent. A distinction between third States nearing accession to the European Union or with similar data protection standards and other States would be useful when building a common approach. Possible third State involvement should be assessed on a case-by-case basis but with consideration of common factors such as fundamental rights, data protection and past experience. Eurojust can play a role by encouraging consistency in approach and build trust toward third States also by use of its contact points.

- *Early contact with competent third State authorities and Eurojust in MLA and extradition requests.* This approach is clearly advisable where the execution is expected to be lengthy and entail complicated measures. Eurojust should be involved, particularly if obstacles or difficulties are likely to arise. For the future, the posting of Eurojust liaison magistrates to certain third States may provide Member States with an important additional resource in combating global crime threats to the European Union.

- *Investigative techniques,* such as controlled deliveries, which may allow the tracking of a DT organisation from its activity in third State sourcing to final Member State retailing of drugs, should be promoted among practitioners. *Spontaneous exchange of information* should also be fostered with a view to instigating criminal proceedings for asset recovery purposes in those source and/or transit States where criminal assets are invested. Legislation on civil confiscation in some third States already provides for international cooperation for the same asset recovery purposes. It should be borne in mind, given Member State practice that some third States may insist upon asset sharing as a condition to proceeding with a national investigation after spontaneous exchange of information with another State.

  JITs could be similarly important in developing effective third State involvement. However, apart from the agreement with the USA, no EU legal instrument for setting up JITs with third States exists. The possibility of setting up a JIT is included in some bilateral agreements between individual third States and individual Member States. Initiatives to set up JITs are ongoing in the Western Balkans. Given that Community funding of JITs requires that Eurojust be invited to participate, Eurojust could be tasked to develop third State involvement through its contacts, as indicated below.

- *Liaison magistrates*, *liaison officers*, *Eurojust contact points and IberRed* are especially useful when liaising with national competent authorities and central authorities in third States. Since communication between judicial authorities has its own particularities and might not always be smooth, Eurojust can assist in enhancing contacts with third States. Efforts should be made with some third States to counter the need to rely merely on individual willingness to cooperate. All available avenues should be explored, including informal networking, and the use of all existing contacting mechanisms should be encouraged. Exploring the existence of other judicial networks with which to liaise could prove to be valuable. Member States with bilateral agreements with a third State could provide assistance to other Member States needing to contact that third State. In key regional areas serving as source or transit countries or safe havens, new Eurojust contact points should be designated. In the future, the posting of Eurojust liaison magistrates to certain third States may be the optimum solution.

- *When the nationality of the requested person is an obstacle to extradition*, the principle of either surrender or prosecute (*aut dedere, aut iudicare)* should apply. Where prosecution – or execution of a sentence - in a third State is to be considered, active steps must be taken to ensure that all relevant material is made available. A Eurojust coordination meeting may provide the appropriate forum where the difficult issues in such a course of action can be fully considered. Where no formal extradition agreement exists, *ad hoc* surrender may be possible when reciprocity applies. However, reciprocity will not be possible with all third States.

- *Assisting third States in strengthening their judicial infrastructure* to fight more efficiently and effectively against crime within their jurisdictions is a fundamental

precondition for international cooperation. *Technical assistance for capacity building* for judges and prosecutors could be coordinated by Eurojust to foster a coherent and consistent EU-wide approach. Technical assistance has so far mainly been focussed on training of law enforcement bodies. EU initiatives to provide training for prosecutors and judges should be encouraged, ensuring continuity and stability. Awareness should be raised about the need to cooperate with third States regarding international relocation of victims/witnesses as foreseen in international instruments and bilateral agreements.

- Eurojust can provide an excellent *forum* by bringing together judicial practitioners from Member States where general issues related to threats from third States affecting at EU level could be addressed in order to reach a common European approach.

Appendix I. Action Plan (main features)

Sections 3 through 9 of this report describe how Eurojust's intervention in drug trafficking cases has helped to find a solution to some of the most recurrent judicial cooperation challenges.

Although the experience of practitioners with Eurojust's services is generally regarded as positive (as confirmed by the feedback received during the Strategic Meeting on Drug Trafficking in Krakow on 5 and 6 October), this report's conclusions (Section 10) also point to areas for improvement. Some of them can be addressed by Eurojust with recommendations on how to enhance its work with national authorities.

The table in the following page summarises the main features of the Action Plan for 2012 and 2013, which has been developed on the basis of this report, to address some of the key areas for improvement directly related to Eurojust's work. For each identified area, a recommendation for action has been drafted, together with a Key Performance Indicator and a target date to measure the progress.

This Action Plan remains a high-level document, the goal of which is to guide a more detailed planning of activities in each of the identified areas (responsible actors, risks, budget implications etc will be specified at that stage).

At the end of the two-year period, an evaluation will be carried out by comparing the results of the present analysis (covering two years) to an analysis to be conducted for the period 2012-2013.

Areas for improvement	Recommendations	Key Performance Indicators	Target
AREA 1. **Coordination meetings**	*Draft and promote use of good practices for a consistent preparation, conduction and follow-up of coordination meetings.*	Collection of good practices. Revised guidelines on coordination meetings (including documentation handling). Outcome of Eurojust's interventions known in 75% of the coordination meeting cases.	June 2012 December 2012 Period 2012-2013
AREA 2. **Secure channels**	*Develop further secure channels for communication between Eurojust, national judicial authorities and Europol.*	Secure and user-friendly connections established with key Member State judicial authorities.	December 2013
AREA 3. **Europol and third States**	*Promote, where appropriate, participation of Europol and/or third States in coordination meetings.*	Number of coordination meetings attended by Europol and/or third States increased by 10%.	Period 2012-2013
AREA 4. **JITs and other coordination tools**	*Enhance use of JITs, videoconferences (in combination with or instead of coordination meetings) and coordination centres via Eurojust.*	Increase by 20% in the use of JITs, videoconferences and coordination centres. Report on JITS results (and relevant jurisprudence) in cases referred to Eurojust.	Period 2012-2013
AREA 5. **Conflicts of jurisdiction**	*Prepare, before coordination meetings, an analysis of possible overlapping of investigations and develop guidelines for Article 7.2 of the Eurojust's decision*	Preliminary analysis to be provided before coordination meetings. Guidelines for Article 7.2 of the Eurojust's decision.	Period 2012-2013 Spring 2012
AREA 6. **Cross-border asset recovery**	*Encourage consideration of cross-border asset recovery procedures in cases referred to Eurojust.*	Analysis of asset recovery possibilities included in 30% of the coordination meeting agendas.	Period 2012-2013
AREA 7. **Controlled deliveries**	*Provide a practical overview of controlled delivery procedures and competent authorities (in cooperation with EMCDDA and Europol).*	Joint report on practical experience with controlled deliveries.	December 2013
AREA 8. **Number of coordination cases**	*Increase ratio between the number of coordination cases vs. simple cooperation cases.*	Increase number of coordination cases to one-fourth of total number of cases.	Period 2012-2013

Appendix II – Methodology

Objectives

On 17 February 2011, the College agreed on the following objectives for the project:

1. Identify the main obstacles and difficulties faced in coordination meetings organised by Eurojust in DT cases.
2. Identify the problems and obstacles encountered in the application of existing cooperation mechanisms with third States in the field of DT.
3. Organise a strategic meeting with the participation of specialised prosecutors and investigative judges in the field of DT, find possible solutions to the identified problems and contribute to the exchange of information and good practices.
4. Prepare an action plan for implementing solutions related to problems and obstacles identified and execute the plan.

Sources and methods

In the first phase of the project, the project team carried out the following activities to achieve these objectives:

- *Quantitative analysis of all drug trafficking cases*: the results of Eurojust's contribution to the OCTA (based on CMS statistical information) were used to determine the basis for analysis (types of drug trafficking cases referred to Eurojust).
- *Selection of cases for in-depth study*: 50 DT cases with a coordination meeting held in the period 1 September 2008-31 August 2010.
- *Collection of available documents*: findings of the meetings, presentations, case evaluation forms, etc.
- *Identification of the main research questions:* 7 research topics dealing with the judicial issues most commonly encountered during coordination meetings.
- *Identification of the related areas of analysis/indicators* (specific problems encountered on the judicial cooperation topic, solutions proposed during coordination meetings, outcome of the coordination meetings, outcome of the cases).
- Preparation of a *standardised case report* to collect the information in a uniform way.
- *Consolidation* of the case reports in one matrix, collecting all results per indicator and area of analysis.
- *Drafting* of the report.

Appendix III – Staff acknowledgments

Project Team

Ola Laurell, National Member for Sweden and Chair of the Trafficking and Related Crimes Team

Benedikt Welfens, Deputy National Member for Germany

Pedro Peréz Enciso, Seconded National Expert for Spain

Filippo Spiezia, Deputy National Member for Italy

Federica Curtol, Case Analysis Unit

Virve Toivanen-Schagen, Case Analysis Unit

Helena Huisken, Case Analysis Unit

Ioana van Nieuwkerk, Legal Service

Proofreading

Jacalyn Birk, Press & PR Service

EUROJUST News
Issue No. 3 - December 2010

Dear reader,

I am pleased to present the third issue of Eurojust News. Following priorities set by the European Union, Eurojust's work focuses on the fight against terrorism, drug trafficking, trafficking in human beings, fraud, corruption, cybercrime, money laundering, and other activities related to the presence of organised crime groups in the economy.

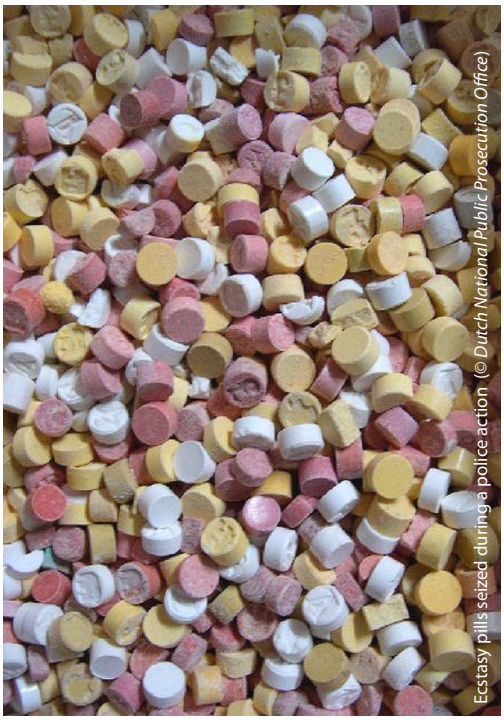
This issue of the Eurojust News is concerned with the fight against drug trafficking. It illustrates some aspects of Eurojust's contribution to the struggle against a criminal activity that generates human suffering on a global scale. If you have any comments regarding this newsletter, please contact our Press & PR Service at info@eurojust.europa.eu.

Aled Williams, President of Eurojust

IN THIS ISSUE

Drug trafficking

The movement of illegal drugs worldwide has increased in recent years, with the freedom of movement principle of the EU creating more opportunities for cross-border organised crime.



Ecstasy pills seized during a police action (© Dutch National Public Prosecution Office)

Worldwide, the UN Office for Drugs and Crime (UNODC) estimates that in 2009 between 172 million and 250 million people used illicit drugs. Of these it is estimated that between 18 million and 38 million people were dependent on drugs. For organised crime, the whole world is a single marketplace. As borders disappear or become unimportant, criminals are taking advantage of globalisation. The four freedoms, which form part of the substantive law of the European Union, allow goods, capital, services and people to move freely. This freedom of movement has many positive elements, but criminal networks exploit that freedom to distribute their "merchandise" and to link up with other criminal organisations.

Drug trafficking is a common and unifying theme of much transnational organised crime. Both the smuggling of drugs into Europe and their production within the European Union continue to pose significant threats to its citizens.

To disrupt these criminal networks, a coordinated, integrated and transnational response is required. Eurojust is the forum where decisions to resolve possible conflicts of jurisdiction and to prosecute efficiently can be most effectively made.

Since 2003, in terms of number of cases, Eurojust has dealt with more drug trafficking than any other type of crime. The number of drug trafficking cases referred to Eurojust increased from, from 77 in 2004 to 230 in 2009, representing a three-fold increase.

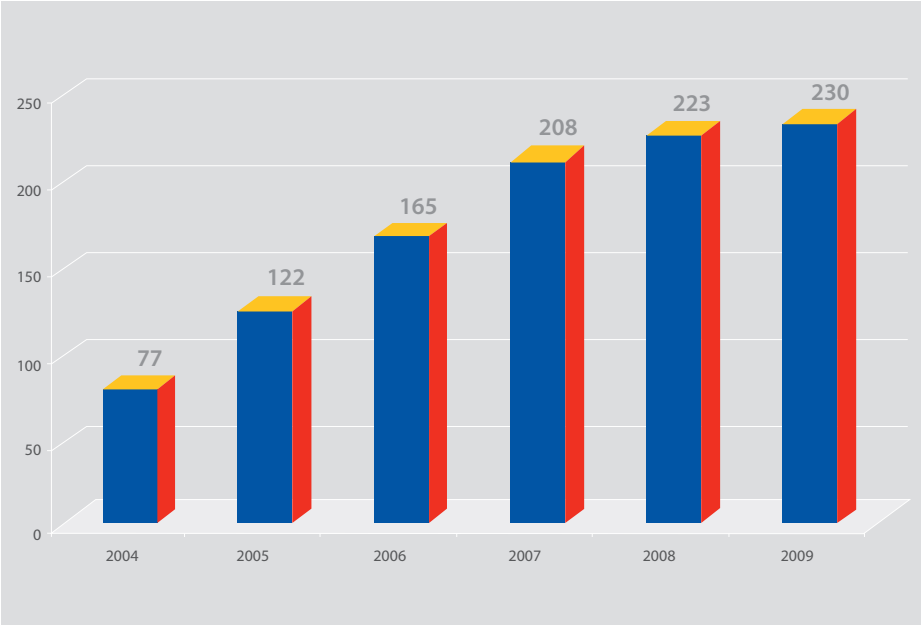
In 2009, of the 230 cases registered at Eurojust concerning drug trafficking, Italy requested Eurojust's assistance most

EUROJUST
Maanweg 174
NL - 2516 AB The Hague

Tel: +31 70 412 5000
Fax: +31 70 412 5005
info@eurojust.europa.eu
www.eurojust.europa.eu

frequently, with 30 cases; Spain was the country most frequently requested by other Member States, followed by the Netherlands and again Italy. Eurojust held 40 co-ordination meetings on drug trafficking cases in 2009, where decisions on cross-border investigations and prosecutions were made. Europol was invited to 6 of these meetings; and 13 meetings involved participants from third States (Colombia, Iceland, Norway, Switzerland, Turkey, the USA, Ukraine and Serbia).

Final figures for 2010 are not yet available, but preliminary figures show that drug trafficking remains the most frequent crime type at Eurojust (116 out of 681 cases registered in the first six months of 2010). In this same period, 15 of the 70 co-ordination meetings held were concerned with drug trafficking.



Number of drug trafficking cases addressed by Eurojust in the period 2004-2009 (*source: Eurojust*)

Legal obstacles

A purely national approach to combating organised crime is no longer sufficient; today we need to understand justice and the rule of law in ways that transcend borders. As with all crimes committed by criminal networks operating across borders, prosecution of drug trafficking cases frequently gives rise to jurisdictional problems (with producers and distributors usually located in different countries and many significant seizures and arrests being made in the transit countries).

Controlled deliveries, joint investigation teams (JITs), and interceptions of communications are co-operation tools frequently used to fight drug-trafficking. Problems can arise in using these tools because of differences in national law and practice. For example, controlled deliveries are subject in some Member States to judicial co-operation, in others to police co-operation, and yet in others to the co-operation of customs authorities.

In such cases, a requested Member State, whose system for controlled deliveries implies judicial co-operation, may not be able to comply with a police request. Eurojust provides solutions to difficulties of this type. It also draws on its daily casework experience to resolve difficulties caused by delay in implementing the 2000 EU Convention on Mutual Assistance in Criminal Matters.

> Drug trafficking is a common and unifying theme of much transnational organised crime.

Illegal drug lab: manufacturing of precursor chemicals (© *Dutch National Public Prosecution Office*)

Because drug cartels control such immense amounts of money, they have the power to influence politics and business at the highest levels, gaining control of entire regions. One of the most effective ways to weaken these criminal syndicates is to attack their finances. Eurojust works closely with its partners to strengthen existing crime control agreements and to promote stronger measures against money laundering.

Co-operation at European level

Eurojust works with the analyses provided by its law enforcement partner Europol to fight drug trafficking. Europol is empowered under Article 14 of its Decision to open

analysis work files (AWFs). AWFs are repositories of data used for detailed analysis of specific crime areas, accessed under strict data protection guidelines. Europol has invited Eurojust to participate in three of its AWFs dealing with specific drug trafficking networks, as well as an AWF dealing with organised crime networks in relation to drug trafficking. Co-ordination between Eurojust and Europol has led to excellent strategic and operational successes in 2010: one operation concluded with the arrest and trial of more than 50 people; a second operation dismantled a criminal organisation of 100 people involved in cocaine trafficking. At a more strategic level, Eurojust is involved in the AWF which deals with the phenomenon of West African drug trafficking networks.

Joint Investigation Teams

Eurojust plays an important role in supporting Joint Investigation Teams (JITs), providing legal advice and administering funding from the European Commission. Eurojust has run a pilot JIT Funding Project on "financial, logistical and administrative support to JITs with the establishment of a centre of expertise with a central contact point", which ends in 2010.

This support consists of two common types of expenses incurred in fighting cross-border crime: travel and accommodation costs for the JIT members, and translation and interpretation costs. Eurojust has also loaned equipment (laptops and BlackBerrys) to ensure communication and information exchange.

Eurojust considered 34 applications for financial and logistical support during the first JIT Funding Project. Applications included a request for support for a JIT to investigate drug trafficking from South America to Europe and laundering the proceeds by a criminal organisation. Eurojust approved the application and funding was made available. Another successful application related to a JIT investigating a drug-related killing.

Because of the success of the first JIT Funding Project, the European Commission has granted Eurojust further funds to support JITs. This second grant of over 2 million euros from the European Commission runs from October 2010 until September 2013.

> Eurojust is the forum where decisions to resolve possible conflicts of jurisdiction and to prosecute efficiently can be most effectively made.

Police and experts investigating a drug lab (© *Dutch National Public Prosecution Office*)

Case example 1: Trafficking cocaine

When investigation showed a Colombian criminal organisation was trafficking cocaine, via Spain and France, to Italy, the *Direzione Antimafia* in Rome asked Eurojust to assist in the co-ordination of investigations in the three Member States, and two co-ordination meetings were held. One issue resolved was a potential conflict of jurisdiction.

After consideration of relevant factors, the participants agreed to transfer the case to the Italian authorities. The Italian investigations discovered that all persons arrested were linked to the same criminal organisation. It was discovered that the same route through France was used several times.

The case resulted in the arrest of 32 suspects and the seizure of 100 kg of cocaine, and was a successful example of co-operation between the Italian, Spanish and French National Members at Eurojust, the Spanish *Guardia Civil* and French Customs agents, police, investigative judges and prosecutors.

This case confirmed the existence of one of the main drug trafficking routes, from Colombia as the source country, with Spain, Belgium, France and the Netherlands acting as very important gateways into the EU. The drugs were then sold in other EU countries, such as Italy. The international dimension of illicit drug trafficking, with the differing legal and procedural requirements of the involved countries, required a co-ordinated approach. Eurojust played a crucial role.

Eurojust Trafficking and Related Crimes Team (© *Eurojust*)

Trafficking and Related Crimes Team at Eurojust

The mission of the Trafficking and Related Crimes Team is to provide expertise, ideas, best practice, etc, especially in the fight against Trafficking in Human Beings and Drug Trafficking linked to organised crime and to support the Contact Point for Child Protection.

The team has set objectives for 2010 and 2011 based on the priorities of Eurojust, the Council Conclusions on the eighth Eurojust Annual Report 2009, the Stockholm Programme, the Organised Crime Threat Assessment (OCTA) and the experiences of its members.

The first objective of the team is to improve the regular reporting tools on Eurojust cases related to Trafficking in Human Beings (THB), sexual exploitation of children and child pornography, drug trafficking and trafficking in firearms and other related crimes as foreseen in the new Council Decision on Eurojust. This objective will be achieved by implementing the strategic project "Eurojust's Contribution to the European Drug Policy Action Plan 2009-2012"; by developing a similar project in the field of THB; and by monitoring the number of trafficking and related crimes cases registered, the number of relevant co-ordination and other operational meetings held at Eurojust, and identifying underlying problems encountered in trafficking and related crimes cases.

The second objective is to support and monitor the EU legislative and policy process in the relevant fields of interest to the team. In particular, the team analyses the obstacles to judicial co-operation in the areas of drug trafficking and THB and contributes to the identification of criminal trends and priorities needed to shape an effective policy to fight trafficking.

Following the adoption by the Council on 03 June 2010 of the *European pact to combat international drug trafficking-disrupting cocaine and heroin routes*, the Trafficking and Related Crimes Team will also participate at expert meetings convened by the EU institutions, in particular the European Commission, and contribute to the Eurojust report to the Presidency of the Council on the implementation of the EU priorities in the fight against organised crime in the areas of drug trafficking and THB, and to the OCTA 2010 and 2011.

The team's third objective is to develop a closer relationship with relevant EU institutions and international organisations, by organising at least one tactical and/or strategic meeting in 2011; by ensuring regular updates of existing legal information on national, European and international legal instruments related to trafficking and related crimes; by enhancing co-operation with the European Commission, the Council and the European Parliament; by strengthening co-operation with Europol in light of the European pact to combat international drug trafficking-disrupting cocaine and heroin routes to support the reinforcement of political co-ordination between Member States, European Union institutions and relevant European agencies in the area of drug trafficking; and by enhancing co-operation with the European Fundamental Rights Agency, Frontex, EMCDDA, UNODC and Interpol.

The Contact Point for Child Protection, whose creation was suggested at the informal Justice and Home Affairs meeting in Lisbon in October 2007, is part of the team; therefore, the fourth objective is to enhance the role as much as possible. Eurojust has undertaken important co-ordination work in this area in 2010. The "Lost Boy" case at Eurojust resulted in the dismantling of a global criminal network using the internet to disseminate child pornography and promote child abuse.

Interview with Mr Cees van Spierenburg, National Prosecutor, Dutch National Public Prosecution Office

Mr Cees van Spierenburg is a National Prosecutor in the Dutch National Public Prosecution Office, which is responsible for the fight against international organised crime. He holds a unique position as the National Public Prosecutor for Synthetic Drugs & Precursors.

Can you tell us something about the work of the National Public Prosecutor's Office?

Cees van Spierenburg: The Dutch Public Prosecution Office's policy towards international drug crime focuses on the fight against production and trade in heroin, cocaine, synthetic drugs (e.g. ecstasy and amphetamine) and their precursors (basic substances), as well as the growth of cannabis. We also deal with the fight against smuggling and trafficking of human beings, terrorism, war crimes - including piracy at sea - cybercrime and money laundering.

Why is the fight against drugs so important?

CvS: First of all, there is the health risk caused by the use of drugs. Secondly, we see that international organised crime has taken over this trade and is making a great deal of money out of it. This money, when poured into 'regular' activities, affects the economy in an unfavourable way. For example, the illegal growth of cannabis and hemp in the Netherlands amounts to €2 – 5 billion. And this is only a small part of the huge economic power behind this trade.
Moreover, this phenomenon also has other criminal sides to it. It is all about money, and money is power: there are real drug wars taking place on a global scale. At least 20 murder cases in the Netherlands have been linked to the growth of and trade in cannabis in just the last few years.

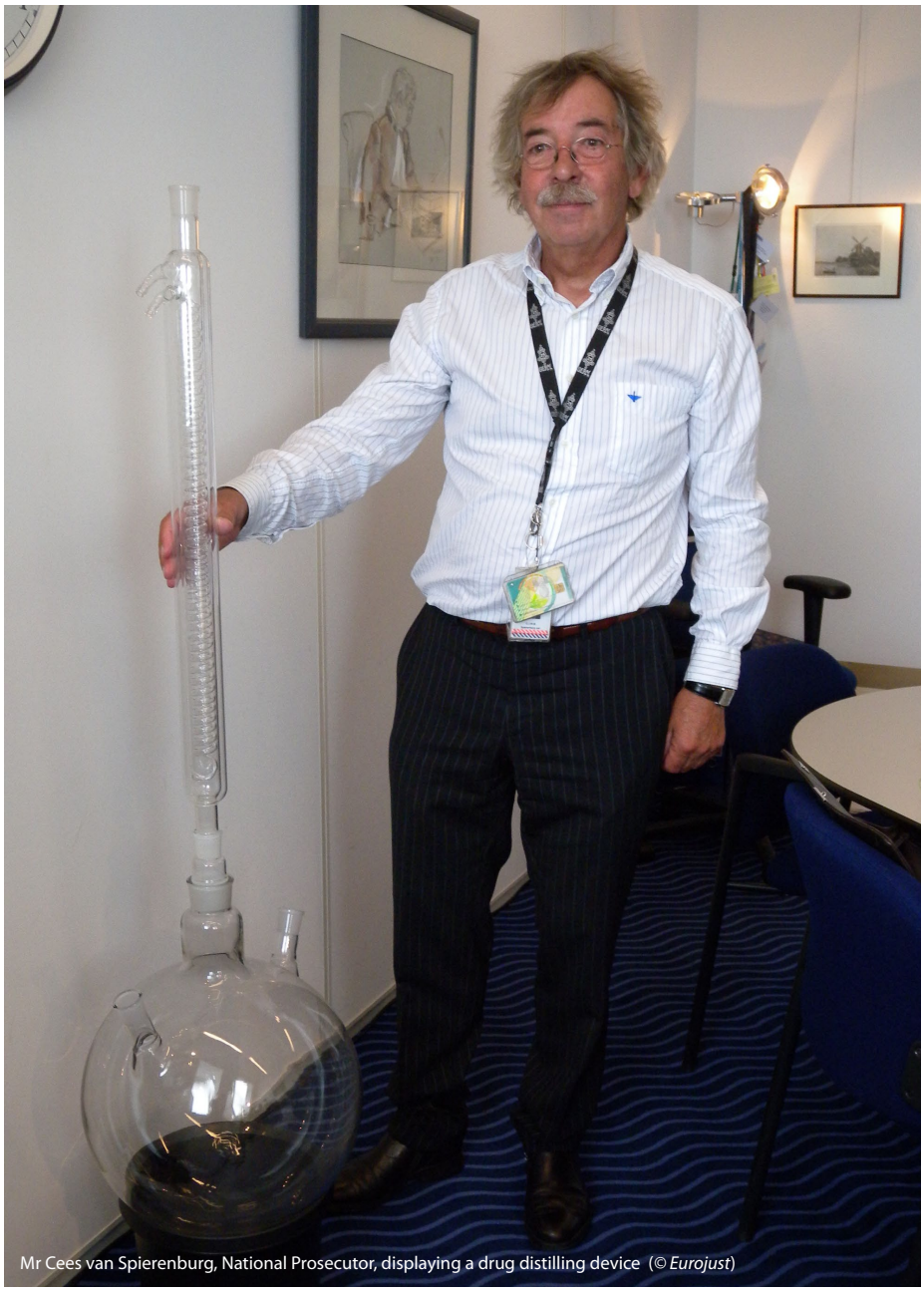
When I attended the International Drug Enforcement Conference hosted by the US Drug Enforcement Agency in Rio de Janeiro this year, I was not happy to see and hear about the limited progress we are making in fighting drugs on a global level. We have achieved partial results, but at an international level we are still running behind the criminals.

In what way do criminals have an advantage?

CvS: Drug crimes generate an enormous amount of money. For example, if a criminal invests €10 million in 1000 kilos of cocaine, at every new step in the trading process, the price of the goods increases by 100 per cent. The same happens with any drug, whether it is heroin, cannabis, ATS (amphetamine-type stimulants) or even their precursor chemicals; every person involved makes a 100 per cent profit, from those who harvest coca leaves to the last dealer at the end of the chain.

What can you really do?

CvS: Drug trafficking is all about logistics. Coca leaves, for instance, are grown somewhere in Colombia, and



Mr Cees van Spierenburg, National Prosecutor, displaying a drug distilling device (© *Eurojust*)

these become cocaine for individual users in Europe. To achieve that end result, many processes are needed: criminals need equipment, laboratories, and transport. We must monitor this transport activity. If we look, for example, at Rotterdam Harbour, and other large harbours in the world, every year approximately 11 million containers are handled. We know that only a small part of these containers are linked to drug trafficking. You understand that we cannot stop normal economic activity to check every container for drugs. The same situation occurs in the harbours in countries known to be the origins of precursors: China, Colombia and India. Criminals also rely on other means of transportation, such as trains and trucks. Due to the threat of terrorism, freight is thoroughly checked at airports.

This is one of the negative aspects of the 'freedom of movement' in Europe. Our outside borders are now the borders of the EU Member States. My backyard is in Romania, or in Lithuania or Italy, so to speak. It makes no sense to have strict checks in Rotterdam, as we have no idea how checks are made on the outside borders of Europe. I do not intend to blame others, but this freedom of movement makes the issue very difficult to deal with.

Taking all this into account, how do you start an investigation?

CvS: The approach should always be multi-disciplinary. In the synthetic drugs approach in the Netherlands, we co-ordinate and co-operate among customs, national police, and the financial investigation service. We know that the criminal and judicial systems of the various European countries are very different. In every country, responsibilities are allocated differently and even national power is organised differently. If I just look at our neighbours, Belgium and Germany, there are already significant differences between them and the Dutch system.

I am in contact with my counterparts in China, Russia, the USA, Austral-

Case example 2: Trafficking cannabis

Eurojust acted to help overcome a conflict of jurisdiction in a case concerning trafficking of cannabis from Spain through France into the UK. An initial decision had been taken to conduct simultaneous investigations in France and the UK on different aspects of the case. In 2009 a co-ordination meeting was held at Eurojust to decide which judicial authority would be in a better position to undertake investigations against the entire network to avoid overlapping investigations and a resulting conflict of jurisdiction. The French judicial authority agreed during the meeting to transfer the case to the UK. The French investigating magistrate was invited to present the French investigation results in the UK court. Five individuals were convicted in the UK and sentenced to a total of 37 years.

We have achieved partial results, but at an international level we are still running behind the criminals.

Illegal drug distilling lab (© *Dutch National Public Prosecution Office*)

ia, and many EU Member States. In addition, with a grant from the European Commission, we have been able to assemble a network for prosecutors dealing with ATS and precursors: the European Network for Prosecutors in Synthetic Drugs & Precursors (ENPSDP). This network, started in September 2009, will continue this year and we are currently preparing for the 2011 conference. In 2009, prosecutors from 19 different countries attended the meeting, including non-EU countries such as Switzerland, Norway and the Russian Federation.

There are no clearly identifiable victims in this kind of organised crime, and therefore no official complaints are introduced against it. Of course, we are aware of the crimes, but there is no information from the victims or witnesses. So, we have to look for information ourselves – this is of paramount importance. We need informants, criminals who talk about criminals, intercepts, observations, etc. Investigating is gathering information. In most countries, this information-based type of investigation is still at beginners' level.

Sometimes, in our country, we even know too much. For example, we have information on five criminal organisations, but we cannot attack them all at the same time because we do not have the capacity to do so. This is the dark side of information-led investigating. We need to make a choice, set priorities. In the Netherlands, we have much information on organised crime, but our resources allow us to handle only 20 per cent of it effectively. In other countries, the situation may be completely different. A while ago, we participated in a JIT with Belgium and noticed that our Belgian colleagues worked three years to infiltrate a criminal organisation. I can only dream of having that much time to devote to a single case.

How is the transportation of drugs organised?

CvS: As we are more and more following in the tracks of the criminal activities, criminals are always on the lookout for other paths. At the moment, the majority of amphetamine trafficking is directed to the UK and Scandinavia. Spain, Portugal and the Netherlands are nowadays the main transit countries for cocaine. Heroin comes via Eastern European countries, such as Turkey. Criminals are looking for other pathways; West Africa is now becoming an important stop for cocaine, which is then shipped via the Mediterranean and Black Sea to Romania.

Another example: precursors, coming from India and transported to Mexico, the main producer of methamphetamine for the USA, are transported via DR Congo and other West African countries. Ecstasy produced in the Netherlands is transported to Australia through Italy. On one occasion, 15 million tablets were seized, giving the Netherlands the dubious honour of being placed on the list of major drug-producing countries. All this has led to a political decision on judicial priorities for the Dutch Public Prosecution Service.

From a transportation point of view, all countries in the world are involved in the world drug problem.

What is the most effective approach?

CvS: We must attack the production and export of precursors. China was the main producer of PMK and BMK, the major chemical substances needed to produce ecstasy and amphetamine. Bowing to international pressure, China changed its laws, making production illegal. The main component of PMK is safrol, a natural product extracted from trees. Criminals are quick to adapt to changes in market demand and are now looking for ways to transport safrol from other Southeast Asian countries to the producing countries. On a global level, the fight against precursors is important, as chemicals are necessary to produce all sorts of drugs, including heroin and cocaine. The relevant legal basis is the UN Treaty of Vienna of 1988 (Final Act of the United Nations conference for the adoption of a convention against illicit traffic in narcotic drugs and psychotropic substances), which is the most global tool in the fight against chemical drugs, with an important role for the UNODC.

As to the European Union system, European Union legislation on classification is limited to precursors, via Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors, which regulates intra-Community trade, and by the Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors. These rulings oblige nations to implement laws against the misuse of chemicals.

Most of the chemicals used to produce illicit drugs are legal and easily available. They are in fact normal chemical substances used to produce medicines, perfumes, plastics or other legal products. The chemical industry plays a huge role in the world economy. And there is the economic aspect again: the production, export and transportation of substances must be regulated and controlled, entrepreneurs must be warned against the misuse of chemicals and suppliers must be warned against individual orders placed over the telephone, and by anonymous cash transactions.

The International Narcotics Control Board of the United Nations provides instructions in its 'Guidelines for Governments on Preventing the Ille-

Case example 3: THB and drug trafficking

Following co-ordination meetings at Eurojust, the Italian, Dutch and Colombian authorities, led by the Antimafia Public Prosecutor in Naples, made simultaneous arrests in a case of THB to finance drug trafficking. The criminals trafficked human beings from Nigeria to the Netherlands, to finance their drug operations. With the money earned from prostitution, the criminals were able to buy large amounts of cocaine in Colombia, to be shipped to Europe. The co-ordination meetings at Eurojust identified all the legal and factual difficulties for extradition and surrender of the suspects after arrest, and uncovered the links between the THB, the exploitation of women and the financing of drug activities by criminals.

gal Sale of Internationally Controlled Substances through the Internet'.

From a precursor point of view, all countries that trade in chemicals are co-responsible for the drug problem in the world.

How do you see the future?

CvS: Our strategy is the following: without precursors, the basic substances, there can be no drugs. But we cannot make precursor chemicals illegal if there are legal uses for them. When the Chinese government took measures against the production of PMK, there was a 'dip' in drug production and trade. Unfortunately, criminals started to look for other substances to produce drugs, and turned to dangerous products like mephedron.

There is a "need for speed". Our reaction time on new drug substances should be much shorter. At the EU level, we now have the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), located in Portugal, but, in my view, this organisation represents just another bureaucratic approach.

We can get results through close co-operation between the police and judiciary on a European and global scale. Every country should have a prosecutor, like me, specialised in drugs and precursors. Also, the role of Europol is quite crucial; there is an Analysis Work File (AWF) called 'Synergy', a huge database of information about all synthetic drug investigations in Europe. For other drugs, there are other databases like this, but national investigators must provide the information; this does not always happen. There are international conferences and global networks of drug fighters, but I know that this fight is bound to continue forever.

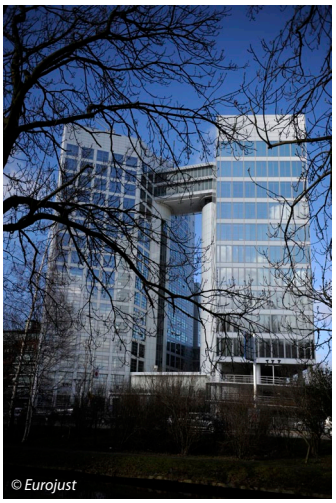
In your opinion, what can be the role of Eurojust?

CvS: Eurojust can play a vital role in building bridges between the different legal systems in the EU, the investigations and the prosecutions, the responsibilities and the power. My team has already co-operated with Eurojust in drug-related cases with Spain, Lithuania and Poland.

For example, in Belgium I sometimes need to deal with a local prosecutor, in another case with the national prosecutor, in another case with an investigative judge. This process works because Belgium is our close neighbour, they (mainly) speak the same language and we made a co-operation agreement between our office and the Federal Prosecution Office (Fedland). The same could happen when I would need to work with French colleagues, but would be far more difficult. In Spain, prosecutors have completely different responsibilities and powers compared to mine. Between the three Baltic States, we see a great difference in the way they fight organised crime. There I see an important task for Eurojust, i.e. to create links between the Member States to solve these system problems. We also need names and contact details, or we end up lost in bureaucracy.

Case example 4: Europe-wide cocaine trafficking

After more than a year of investigations in Belgium, France, Germany, Italy and the Netherlands, a cocaine-trafficking network of nearly 100 people was dismantled in five operations involving extensive co-operation between international judicial and police authorities. Eurojust served as the platform for judicial co-operation, facilitating the activities of the prosecuting authorities, including the execution of the European Arrest Warrants. Heroin, cannabis, cutting substances, firearms and cash were seized in addition to significant quantities of cocaine.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Eurojust is a European Union body established in 2002 to stimulate and improve the co-ordination of investigations and prosecutions among the competent judicial authorities of EU Member States when they deal with serious cross-border crime. Each Member State seconds a judge, prosecutor or police officer to Eurojust, which is supported by its administration. In certain circumstances, Eurojust can also assist investigations and prosecutions involving an EU Member State and a State outside the European Union, or involving a Member State and the Community.

Eurojust supports Member States by:

- *co-ordinating cross-border investigations and prosecutions in partnership with judges, prosecutors and investigators from Member States, and helping resolve conflicts of jurisdiction;*
- *facilitating the execution of EU legal instruments designed to improve cross-border criminal justice, such as the European Arrest Warrant;*
- *requesting Member States to take certain actions, such as setting up joint investigation teams, or accepting that one is better placed than another to investigate or prosecute; and*
- *exercising certain powers through the national representatives at Eurojust, such as the authorisation of controlled deliveries.*

Colophon

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Editor in Chief: Joannes Thuy, Press Officer & Spokesperson
Editing: Jacalyn Birk, Samantha Munroe
Design and layout: Michèle Wilks-Speer

For enquiries:
Phone: +31 70 412 5509
E-mail: info@eurojust.europa.eu
Website: www.eurojust.europa.eu

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INTERPOL

FACT SHEET

Drug trafficking

Large-scale drug abuse and the problems associated with it affect much of the world and continue to grow in certain regions.

The drug trade affects almost all INTERPOL's member countries, be it in a capacity as producer transit or destination country.

Drug trafficking has provided criminal organizations with unprecedented opportunities to generate enormous profits which are at times used to finance other criminal or even political activities.

▶ ENHANCING INTERNATIONAL COOPERATION

INTERPOL's primary drug intelligence role has been and continues to be the identification of new drug trafficking trends and criminal organizations operating at the international level and to alert INTERPOL National Central Bureaus (NCBs) to their criminal activities. Investigations into the production of illicit drugs and the street-level sale of drugs are handled by the relevant local and national authorities.

INTERPOL provides several types of support to national and international police bodies concerned with countering the illicit production and trafficking of controlled substances and precursor chemicals. For example:

- Collecting and analysing post-seizure data provided by member countries and national drug law enforcement agencies;
- Issuing drug alerts via I-24/7, INTERPOL's secure global police communications system, to warn the law enforcement community of unique cases, new trafficking techniques or emerging trends — within minutes, information and images can be distributed to NCBs all over the world and then shared with national drug law enforcement agencies;
- Producing analytical studies to highlight criminal links between reported cases;
- Running regional or global conferences on specific drug topics, to assess the extent of a particular drug problem, share the latest investigative techniques and strengthen cooperation within law enforcement communities;
- Organizing investigative training courses for national drug law enforcement agents.

INTERPOL also maintains close working relationships with the United Nations, its specialized agencies and other international and regional organizations, such as the World Customs Organization, involved in drug-control activities.

▶ PROJECTS AND OPERATIONAL SUPPORT

INTERPOL's criminal intelligence officers focus on the most commonly used and trafficked narcotic drugs – cannabis, cocaine, heroin and synthetic drugs – as well as precursor chemicals and doping substances. Examples of ongoing initiatives are:

- **Project Drug.net** - to tackle the growing area of drug trafficking via the Internet. Having achieved its initial aim of creating a global network of specialists, this Project now concentrates on supporting ongoing operations in the field.
- **Project White Flow** - to boost intelligence exchange on South American-produced cocaine smuggled into Europe via West Africa. Project White flow aims to gather identification material on mid- to upper-level cocaine traffickers linked to Africa and to better disseminate this data among INTERPOL's member countries.
- **Operation Ice Trail** - to target organized crime groups trafficking huge quantities of methamphetamine by courier and/or cargo shipment from Iran via Turkey to destination countries in Southeast Asia and the Pacific.
- **Anti-doping initiatives** - INTERPOL works in partnership with the World Anti-Doping Agency to fight the use of performance-enhancing drugs in sport. A Memorandum of Understanding signed in 2009 formalizes the sharing of information and expertise with a view to dismantling the organized networks behind trafficking in doping substances.

In an operational case from 2010, known as Siska, INTERPOL helped coordinate the investigative activities and flow of information between Belgium, Germany, Sierra Leone, Switzerland and the USA to successfully dismantle an organized crime group trafficking cocaine from South America to Europe via Sierra Leone. In July, a number of involved member countries began coordinated, targeted operational activity against several members of this syndicate, resulting in several arrests, house searches and seizure of numerous exhibits.

INTERPOL also responds to and helps coordinate international drug investigations by organizing operational working meetings and dispatching Incident Response Teams to assist national investigators subsequent to a significant drug seizure.

INTERPOL

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