

IDPC Advocacy Note

European Drug Policy at Crossroads

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In recent years of global debate on policies and strategies on controlled drugs, the European institutions (European Commission and Council, and the EMCDDA) and member states have broadly been a progressive and civilizing factor in pushing for balanced, evidence based and humane drug policies and programmes. European actors were the earliest to recognise the limits of the 'war on drugs' approaches promoted in the UN Conventions, they were the earliest champions of a greater focus on social, health and harm reduction programmes, and have been most visible in promoting human rights standards and protections in drug control. European funding programmes, while still focusing on supply reduction measures, have tended to be more targeted on alternative development and social objectives.

The EU drug strategy, successive versions of which have, for almost 20 years now, laid down the principles and commitments of the member states, has been developed with the thoughtful and enthusiastic political support of EC and member state officials. Over this period, a shared European approach has emerged that, while not perfect, has been based on a commitment to balance between the reduction of supply, demand and harm; that explicitly recognises the importance of basing policy on evidence; and that, equally explicitly, places drug policy within the wider European ideals of freedom, security, and human rights.

However, just when the wider global debate (and public opinion) is shifting in accordance with these principles, and there are real political opportunities to create more balanced, humane and effective drug policies across the world, there are worrying signs that the European institutions are taking a wrong turn – the vision and leadership on this issue is notably absent, and some of the more recent positions taken seem to indicate a return to the simplistic messages and priorities of the failed policies of the past.

Institutional Weaknesses

It is a well-worn, but no less truthful, cliché that drug policy is a 'cross cutting' issue, that requires good and strong co-ordination across government departments to be effective – if any interest or discipline (law enforcement, health, or foreign affairs) dominates control of policy and resources, then unbalanced policies and expenditures often result. Both the United Nations, and the EU's own, guidance documents call for strong inter-departmental and political co-ordination to plan and execute effective drug policies and programmes.

For a variety of institutional reasons bound up with the structures and political realities of the EU, however, there has never been a strong and explicit political co-ordination of drug policy across the relevant European Commission directorates, or between them and the 27 member states. Some level of technical co-operation and partnership working has been achieved through the work of the (optimistically named) Commission Drug Co-ordination Unit currently based in DG Justice, and the relevant European Council sub-committee, the Horizontal Working Group on Drugs (HDG).

There are clear signs, however, that even these structures' ability to achieve co-ordination of policy positions and resource planning is being rapidly weakened and undermined – since the Co-ordination Unit was moved into the Directorate General for Justice, it has received much attention from the political level, but little support for its technical work (the office of the lead Commissioner, Viviane Reding, has shown little interest in the detailed drug strategy work of the unit, preferring to issue simplistic and overtly political statements and orders). Furthermore, the work of the HDG is insufficiently linked to other key areas of EU business, such as the Standing Committee on Internal Security (COSI), the relevant public health and enlargement working parties, or the External Action Service (EEAS). As a result, for example, the EU regularly pursues aid and partnership agreements with accession, neighbourhood, and recipient countries who pursue drug policies that clearly contravene EU standards and commitments to human rights, public health and social justice.

Also indicative of these concerns is the current process for review of the overall EU drug strategy. On the last two reviews (2004/5 and 2008/9), the Commission and member states pursued a structured process involving the proper evaluation of progress over the period of the previous strategy, before a new one is written. The current strategy runs out in 2012 and, while the Commission have arranged an independent evaluation, there is still confusion on who is responsible for managing the process of review – the impression gained by the civil society organisations who are eager to contribute to this process is of a lack of leadership and enthusiasm for this complex task, with neither Ms Reding nor successive presidencies showing that they consider the continued development of a broad and evidence based strategy to be a priority.

This narrowing of view has exacerbated the institutional problems caused by having the lead responsibility located within DG Justice. If the leadership of the department are committed to balance and co-ordination, then this is not a problem, but there are signs that they are not – that drug policy positions of the EU are starting to be dominated by a justice and law enforcement agenda. The initial policy reactions to the challenges raised by new psychoactive substances betray an assumption that law enforcement solutions should be prioritised. Moreover, the recent Commission Communication on this subject¹ clearly suffers from a mind-set based on outdated thinking – that drug problems are primarily solved through extending legal controls, stopping supply, and punishing users. We discuss these issues in more detail below, but mention them here to illustrate the harmful effect of creating drug policies and programmes through too narrow a lens.

This turn of events is particularly frustrating, as one of the main responsibilities of DG Justice under the Lisbon Treaty is as custodian (on behalf of the entire Commission) of the EU's commitment to fundamental human rights and freedoms. Civil society organisations have been looking forward to

¹ European Commission (2011), *Communication from the Commission to the European Parliament and the Council: Towards a stronger European response to drugs* COM (2011) 689/2 (Brussels: European Commission) http://ec.europa.eu/justice/newsroom/anti-drugs/news/20111025_en.htm [Accessed 10.01.12]

the drug strategy review as a mechanism for more explicitly incorporating human rights standards into the drug policy and programme work of the EU – for example by conducting human rights reviews on all drug control funding programmes, and promoting these standards in bilateral and multilateral relationships. However, despite attempts to persuade Commissioner Reding of the potential for closer linkages between these two responsibilities, there is little sign of any meaningful work being conducted by DG Justice on this crucial aspect of policy.

The Wrong Turn at the Wrong Time

Drug policy is a controversial subject, in which consensus is hard to achieve. There will always be disagreements between governments, within governments, and with civil society, on the details of the best mix of policies and programmes to implement. In this situation, it is important to conduct debates, and decide on actions, with serious regard for research and evidence instead of politics and ideology.

While the evidence in this field is complex, there are certain conclusions that can be drawn from research and experience over the last 10 years to support rational policy making:

- It has not been possible to stifle the flow of drugs in to and around the European Union, either through action in source countries, interdiction, or domestic enforcement.
- It has not been possible to reduce demand for drugs through the deterrent effect of arrest and punishment of users.
- Attempts to eradicate drug markets can have significant adverse consequences on health and social problems.
- Drug dependence treatment strategies can effectively reduce crime and other social problems.
- Harm reduction strategies can effectively reduce drug related public health problems such as HIV and overdoses.

These are not the advocacy opinions of a small section of civil society, but are also the conclusions of the EUs own scientific work - from the EMCDDA, and the seminal review of drug policy commissioned by the European Commission to inform its position at the United Nations in 2009.² However, there has been no concrete action to reflect the conclusions of this important review into future EU policy, and there is little sign that these realities are being acknowledged in the current thinking around the drug strategy review. For example, the previous drug strategy evaluation specifically pointed out that the law enforcement activities pursued by the EU and its member states had never been evaluated to assess what they had achieved in terms of reducing the scale of drug markets, and with what social and financial impact. Four years later, no such evaluation has been conducted, despite the fact that these same strategies form the core of the Commission statement on future plans.

² Reuter, P. & Trautmann, F., Eds. (2009) *A Report on Global Illicit Drug Markets 1998-2007*
http://ec.europa.eu/justice/anti-drugs/files/report-drug-markets-short_en.pdf [Accessed 10.01.12]

The EMCDDA is conducting a review of law enforcement indicators, and this work needs to quickly assemble a set of indicators that gives a real picture of the impact of drug supply reduction and law enforcement impact on drug availability, and related levels of crime and health problems.

New Psychoactive Substances

There is undoubtedly a major challenge emerging in Europe due to the rapid diversification in patterns of use of a wide range of synthetic substances that have not been traditionally controlled under national or international legislation. Existing strategies and legislation are not well equipped to deal with the rapid changes in fashion, and the ability of dealers to manufacture drugs close to consumer markets, and move quickly between different substances and methods of distribution.

This rapid development of new markets underlines the limited actual, and potential, impact of law enforcement dominated drug strategies – it is clear that, where there is a demand for the use of psychoactive substances, and the ability to profit from their production and distribution, there will always be a method of supply that gets around the barriers created by our supply reduction efforts. Furthermore, we see in many countries that, on the rare occasions when the supply of a particular drug is temporarily restricted, users move to new substances and supply routes that may be more dangerous.

It is appropriate, therefore, that policy makers and law enforcement agencies should be working hard to develop new strategies to protect users' health. The law and its enforcement are clearly an important aspect of any co-ordinated response – the licensing (and where necessary closure) of retail and website outlets for these substances, for example, has already figured strongly in government responses. But there are worrying signs that European policy makers are making the mistake of returning to old (and failed) solutions to new problems. The rush to find ways to include the dozens of new substances under traditional drug control legislation; the calls for crackdowns on the latest substance that has caught the eye of the media or politicians; and the indiscriminate attempts to close down any outlet for these substances; all run the risk of making the risks of accidents or overdoses worse (presumably the objective of these policies is to reduce these risks). We know from previous experience that generating panics about new drug trends can actually increase their popularity, and that focusing law enforcement attention on particular substances or markets can lead to displacement – where users turn to alternative substances or sources of supply that may be much more harmful. These strategies therefore need to be very carefully designed, and intertwined with public education and health programmes.

In their statements on new psychoactive substances, the European Commission and HDG have focused on these traditional drug control measures, and have given little serious attention to the potential for better management of the health and social risks through public health education, licensing of production and distribution, or consumer protection regulations. The lessons of the past 50 years do not seem to be being heeded.

The Commission Communication – Stronger or just Misdirected?

With the delays in the process of structured review and re-launching of the EU drug strategy, the policy vacuum in Brussels has been filled by the publication of a Commission Communication entitled 'Towards a Stronger European Response on Drugs'.³ This document covers the usual spread of Commission activities in this field – supply reduction, demand reduction, harm reduction and international co-operation – but it is clear from the text and the proposed actions that the focus and priority areas for action relate to the passage of new EU legislation, and the increase of law enforcement powers and procedures. Not only does this threaten the hard won balance in EU drug policy, but it runs the risk of repeating failed policies and programmes.

As the Commission Communication acknowledges, the authorities are faced with well-established routes of supply of plant based drugs – cocaine through the Caribbean and West Africa, and Heroin through Central Asia and the Balkans – that have been remarkably resistant to all our supply reduction efforts. These are now increasingly supplemented by rapidly changing cannabis and synthetic drug markets where production is increasingly taking place within the EU, and patterns of distribution and use change faster than our ability to react.

The core of the Commission's proposals in reaction to these complex challenges is to make small amendments to the legislative and law enforcement frameworks. While addressing the current weaknesses in law enforcement powers and operations is commendable, it is difficult to see how any of these measures will make any significant difference to the scale and nature of European drug markets – creating legislation to increase punishments for drug trafficking does not deter potential traffickers; and tighter controls on synthetic drugs and precursors do not stop the use of these substances, simply altering the pattern of distribution and use in ways that may either increase or decrease harms. There are signs that more effective action on money laundering and asset seizure can influence traffickers' behaviour, but once again the best that these strategies can hope to achieve is to displace and reshape the business, not reduce its scale.

Meanwhile, there are no significant new proposals in the areas of demand and harm reduction – the communication proposes to continue developing best practice guidelines for demand and harm reduction services. The main challenge in this regard is to promote the expansion of these best practices across member states, but there are no serious proposals in the Communication to address this challenge. Combined with the announcement that the Commission intends to cease the only budget line that is specifically designed to support these activities (the Drug Prevention and Information Programme – only a modest 3 million Euros per year, but money that has primarily supported academic and civil society activities on demand and harm reduction), the impression given is that Commission activity to support the health and social programmes that have been shown to be most effective in reducing drug related harms is no longer a priority.

European officials have convinced the rest of the world that the most effective responses to drug problems lie in health and social programmes instead of constant tinkering with criminal laws and procedures, but it seems that they are now forgetting their own lessons. We are concerned,

³ See note 1.

therefore, that the Commission Communication represents a return to the 20th century language of 'tough on drugs' – a series of statements and commitments to clamp down on drug markets to protect citizens, made in the full knowledge that the proposed actions will have very little positive effect. These largely symbolic approaches to reducing drug problems have thankfully been less evident in European policy making in recent years, with the focus moving to smarter law enforcement to manage drug markets, and to the development of comprehensive health and social programmes, but the messages currently emerging from the EU have the worrying tone of a return to the drug policy politics of 20 years ago. With the clear evidence and experience now amassed across EU institutions and member states, such a narrow and limited approach is unacceptable, and certainly does not represent the 'stronger approach' and 'scaled up response' that the Commission Communication claims.

Recommendations

If the European Commission believes that the package of measures outlined in its communication will truly improve the health and security of European citizens, then we call on them to publish the rationale behind this belief, with reference to evidence and experience of how these strategies have been successful in the past.

In the meantime, we urge European leaders and member states to engage, both within the EU and in external engagement, in a fundamental debate on the future objectives, direction and effectiveness of drug policies, based on the following principles:

- **The recognition that the market for psychoactive drugs cannot be eradicated, so needs to be managed in a way that minimises the damage to the health and welfare of EU citizens.**
- **The recognition that the arrest and punishment of drug users has minimal deterrent impact, while being discriminatory, and creating significant social and financial costs.**
- **The refocusing of law enforcement strategies on reducing the health and social harms of drug markets, and increasing human security, rather than simply reducing the flow of drugs.**
- **The recognition that the use of certain recreational drugs – in particular cannabis - has become so widespread and socially accepted in large categories of the population that the idea of reducing consumption through prohibition has become unrealistic.**
- **The wider use of Europe's external affairs and donor capacity to promote humane and effective drug policies and programmes in other countries and regions, and in multilateral forums such as the United Nations.**
- **The improved coordination and delivery of drug policy at EU level through the creation of a truly system wide co-ordinating and resource allocation mechanism.**

Big changes are happening in drug policy at local and national levels, in particular in North and Latin America. It would be a tragedy if the European voices, that have done so much to improve the effectiveness and humanity of drug policies and programmes in the last 20 years, were absent from these positive developments or, worse, came to represent the blind faith in outdated strategies. On drug policy, Europe needs to avoid making the wrong turn at the wrong time.

The International Drug Policy Consortium is a global network of non-government organisations and professional networks that specialise in issues related to illegal drug production and use. The Consortium aims to promote objective and open debate on the effectiveness, direction and content of drug policies at national and international level, and supports evidence-based policies that are effective in reducing drug-related harm. It produces briefing papers, disseminates the reports of its member organisations, and offers expert consultancy services to policy makers and officials around the world.

International Drug Policy Consortium
Fifth Floor, 124-128 City Road, London
EC1V 2NJ, United Kingdom

Telephone: +44 (0) 20 7324 2975

Email: contact@idpc.net

Website: www.idpc.net