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**The evolution of EU action in drug supply reduction:
From intergovernmental cooperation to transnational
networks**

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Abstract

This paper describes the evolution of illicit drug supply reduction policy as part of the European Union’s (EU) policy agenda in order to better understand how the EU adapts to domestic constraints. It serves as an introduction to a larger research project on the Europeanization of Drug Policies and is the result of an analysis of EU action in this policy area. The analysis of the policy documents produced by the EU, particularly successive Drug Strategies and Action Plans, and the evolving roles of EU agencies in this field provide a clearer picture of how the EU attempts to impact domestic drugs policy. In short, these attempts move from facilitating informal networks of law enforcement officers, which often resulted in Member-states resisting cooperation efforts, to creating Europe-wide networks of researchers producing information and intelligence, with which to better inform policy debates.

Keywords: European Integration, Drug Policy, European Agencies

Introduction

Prior to 1992, joint European action in the field of drugs was largely in the hands of a few, often secretive, expert-led networks. There was a consensus that decision-making on drug control should be intergovernmental and informed primarily by law-enforcement actors and information. Three documents fundamentally altered this situation and paved the way for an independently acting EU to play a greater role in national and international policy: the Schengen Accord in 1985, the Single European Act (SEA) in 1987 and the Treaty on European Union (TEU) signed in 1992 in Maastricht. Much has been written on the effect these instruments had on the issues of European integration and state sovereignty that, does not bear repeating here; however, the first part of this paper will briefly describe their importance to the introduction of illicit drug control in the EU policy portfolio.

The first section therefore begins by recounting joint European instruments and actions in the field of drugs in the period before 1992 when the foundations were laid. The second section describes the period between 1992 and 1999, a time in which the initial high hopes for joint action and cooperation were quickly tempered. Not only did this period see the creation of two EU agencies working in the drugs policy field but also the first Commission-authored EU drug action plan which ran from 1995-1999. The third section covers 2000 to 2008, a period of reflection and re-evaluation of the overarching aims and possibilities of European joint action in drug control. During this time the second European drug action plan was launched (2000-2005), as well as the first coordinated drug strategy (2005-2012) which was combined with two concurrent drug action plans (2005-2008 & 2009-2012). The final section examines some of the lessons drawn from these important policy documents and looks ahead to the future of European drug policy documents.

1. Pre-1992: The foundations of EU involvement

The 1957 Treaty of Rome provided a legal basis for joint European action in the field of drugs, giving (what was to become) the EU a decision-making role in the spheres of public health, trade control of chemical precursors and cooperation in development (European External Action Service, 2002). Until 1992 the topic of drugs remained a low priority, behind economic integration; indeed, it was at the initiative of the French President, Georges Pompidou, in 1969 that drugs moved onto the policy agenda. Even

then, the first steps were taken outside the formal EEC framework. An intergovernmental organization bearing his name, the Pompidou Group (PG), was created in 1971. The PG originally comprised the six members of the EEC at the time (France, Belgium, Germany, Italy, Netherlands and Luxembourg) plus the UK, whose EEC accession talks were advanced. By 1980 the group was integrated into the framework of the Council of Europe (Council of Europe, 1980a) which was a purely intergovernmental organization, emphasising the supremacy of national decision-making in this area.

The PG's initial brief was multidisciplinary, namely to study health and prevention as well as law enforcement related issues. One of its most important impacts was that it provided a forum for national law enforcement experts to meet and exchange experiences and knowledge. This forum existed at the technical level and fostered the idea of shared European policy problems. The topics discussed frequently in the PG included information and intelligence exchange, comparative repressive measures in drug control and the harmonization of national legislation. Perhaps the best example of this technical discussion group is the PG Airports Group, an annual meeting of law enforcement and customs officials aimed at exchanging operational information and trends in the detection of drugs seized at airports.

By 1985 the EEC was facing new political challenges in response to the discussions surrounding the Schengen Accord and the SEA. It was feared that the free movement of people and goods, envisaged in the Single Market, could be exploited by organized criminals to facilitate illicit trafficking. At this time, the EEC already had an organized crime and terrorism taskforce, Trevi, which had been set up in 1975. In 1985 a new working group (WG III) was added to the Trevi framework bringing drugs into their policy portfolio. Like PG, Trevi was intergovernmental in structure as it was linked to the European Council. It operated on three decision-making levels. The ministerial level and the senior official level met every six months to confirm decisions most often made at the lowest level, the working groups or technical level. The latter comprised national experts and senior national law enforcement officials (Elvins, 2003, p86).

Both PG and Trevi had limited impact in practical or operational terms on European cooperation and they operated largely at working group level; maintaining a distance between the technical experts and the upper level of decision-makers. Their reports

were rarely published¹ or widely disseminated; however, their influence lay in their legitimacy as national law enforcement experts and their ability to exchange experience and influence largely outside of national political considerations. Politicians and policy makers who did have decision-making powers frequently followed the direction of these groups as the technical expertise added legitimacy to their own decisions and it was recognised that these working groups had the broadest and most comprehensive information available on the issue. Perhaps the greatest impact of these groups was the way in which they managed to embed the principle that, as Elvins (2003, p82) puts it, “...policy design of this form should be delegated *in the first instance* to functional-technical actors to establish both strategic rationale and parameters for policy actions.” Effectively, illicit drug control is a law enforcement (repressive) activity and policy should be left in the hands of (law-enforcement) experts and not in the hands of politicians or experts from other fields. These early fora established a principle that information and evidence are of vital importance in the development of drug policy, though in these cases they gave the legitimacy for the generation of information to law enforcement actors.

In 1986 the European Commission was given a seat on the PG as a participatory member and increasingly took a lead in shaping a European policy. Whilst the PG and Trevi did much to foster informal law-enforcement co-operation, national governments remained in overall control of national policy and there was little in the way of structured or coordinated action on the European level. The creation of the European Committee to Combat Drugs (CELAD) in 1989 had an important impact on reaffirming drugs policy as a European political issue rather than simply one of law enforcement. Comprised of nominated national drug coordinators and a representative of the Commission, CELAD operated outside of the formal EU institutional structure but reported directly to the Council (Boekhout van Solinge, 2002, p24). CELAD’s main responsibility was to coordinate the EU’s drug related activities, and highlighted the fact that the existing technical groups were to be only one part of future European joint action.

CELAD had been criticized for its lack of concrete results (Boekhout van Solinge, *ibid*), although it did provide a political legitimacy to European intervention in drug policy as it was made up of Member-state (MS) governmental level officials. It was also

¹ The reports of the Pompidou Group Airport Group remain confidential to this date.

important in its advocacy of the ratification of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances by all EEC members (Elvins, 2003, p94), which went some way to harmonizing drug laws across Europe and worldwide. CELAD is also credited with two important contributions to European policy: the group was largely responsible for drafting the first two European drug strategies which in turn led directly to the creation of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the first independent European agency working in the field (Estievenart, 1995, pp68-71).

The first two European drug strategies were introduced at the European Councils of Rome (1990) and Edinburgh (1992). However, their impact was limited due to the few substantive Community powers in the field of drugs, and they also lacked specific policy programmes, objectives or indicators to allow their evaluation. These early strategies were limited to advising MS of specific key areas and they should then implement recommendations using their own powers and initiative. In terms of drug supply reduction these measures included prioritising searches at external borders as well as increasing cooperation in the surveillance of internal borders (Estievenart, *ibid*). As with the outputs from PG and Trevi, CELAD emphasized that coordination should be at the MS level and provided no formal or informal mechanism for this to take place. Although the first two strategies lacked concrete policy objectives or goals, we can observe a movement in that direction. The EMCDDA, the role of which was to gather and disseminate policy-relevant data and information, was viewed as a tool to allow future policies and interventions to be assessed using hard evidence. EMCDDA took over many of CELAD's functions, especially that of providing a forum for national drug coordinators. As Estievenart states, CELAD was 'a key factor in the political mobilisation which has grown in parallel throughout Europe' (*ibid*, p.61), effectively preparing the way for the European institutionalisation of the fight against drugs that was formalised in the Maastricht Treaty.

In the pre-Maastricht era, policy networks within the EU were largely informal and intergovernmental in nature. Groups like PG, Trevi and CELAD had little or no decision-making power but were vital in creating a shared policy space and defining drug trafficking as a Europe-wide problem with Europe-wide policy responses. These networks also formed a bridge between law enforcement actors, who had the technical knowledge and legitimacy, and political elites, who had the political and decision-making legitimacy. While enthusiastic to participate in informal groups, the MS had

had shown reluctance to commit themselves to specific action either through common legislation at the European level or through the Drug Strategies. This period is marked by evolution towards a more institutionalized and formal policy network consisting of national experts and ‘technocrats’; it demonstrates that the EU was moving towards a situation in which the production of information would remain in the hands of legitimate national experts, but a significant degree of legitimacy in the design of data collection, and its subsequent analysis, moved from the MS to the EU.

2. 1992-2000: Towards a modern drug policy

The effects of the TEU on the EU’s competence in the field of drugs cannot be underestimated. Etievenart (1995), Boekhout van Solinge (2002) and Elvins, (2003, pp100-139) provide detailed accounts of the formal institutional changes during this period. There is not the space here to go into any depth but it is enough to reiterate that much of the pre-Maastricht joint action in the field of drugs had taken place informally either outside of the EEC framework or between national experts who reported to intergovernmental fora. Besides the seat on the PG, the Commission was largely removed from decision-making in drugs and MS remained in full control of their own policies, and any initiatives from the Commission were non-binding for the MS.

With the adoption of the EU pillar system, drugs policy was divided across all three pillars and supply-reduction fell nominally under the intergovernmental Third Pillar. Under this system, both the Commission and the newly created EMCDDA retained an influence in all drug related issues but decision-making powers ultimately resided with the MS. The EMCDDA was formed on ‘the understanding that the brief of this Centre would cover not only the social and health aspects but also other drug-related aspects, including trafficking and repression’ (Council for the European Union, 1993, p2). At the outset, the regulations also made it clear that although the Centre existed to provide both ‘the Community and its Member States with objective, reliable and comparable information at European level concerning drugs and drug addiction’, it ‘may not take any measure which in any way goes beyond the sphere of information and the processing thereof’ (Article 1). Whilst a role of simply producing information may appear limiting, in effect the EMCDDA constrains the ability of MS to evaluate and produce drug policy using their own evidence. This has a major impact on the Europeanization of drug policy because, as March and Olsen (1989) argue, information is one of the fundamental ways in which populations hold their decision-makers to

account. This information must be seen both internally and externally as legitimate and accurate, and the EU was increasingly taking responsibility for the production of information on which national governments could be evaluated.

The EMCDDA also acted as a multilevel forum for a wide variety of national drug experts, from practitioners and academics to policy-makers and political elites. The agency was supervised at the highest level by a Management Board comprised of nominated MS officials as well as representatives of the Commission and European Parliament. In addition to this, there was also a Scientific Committee to ensure the standard and integrity of the work conducted and thus increasing the agency's scientific legitimacy. The EMCDDA was also granted powers to arrange expert meetings and conduct pilot studies on the entire field of drugs and, vitally to the functioning of the agency, it was given some authority over a network of national focal points (NFP) that would gather data in their respective countries. The EMCDDA was also given the task, *in conjunction* with the NFP, of coordinating the development of common indicators of the drug problem and a data collection system.

This increased emphasis on the sharing of information in an independent institutional mechanism was also evident in the creation of Europol, initially through Article K.1(9) of the TEU. As Fijnaut (1992, p105) and Woodward (1993, p12) describe, the idea of a European police force was not new. It was pushed forward by Germany, who wanted a force run on similar lines to their own federal BKA (*Bundeskriminalamt*); it would have operational and investigative powers throughout the Union to combat drug trafficking, participate in cross border chases and coordinate national police responses. However, the idea of an international police force with cross-border operational powers was heavily contested not only at the political level by some MS, but also by senior police officers who felt that such an international force would compromise their own ability to allocate resources. There were also criticisms that Europol could simply be replicating the role of Interpol in many cases. Europol's initial role, as defined originally in the annex to the Treaty on European Union and later confirmed in the Europol Convention of 1995 (Article 3), would be:

- support for national criminal investigation and security authorities, in particular in the coordination of investigations and search operations;
- creation of databases;
- central analysis and assessment of information in order to take stock of the situation and identify investigative approaches;

- collection and analysis of national prevention programmes for forwarding to Member States and for drawing up Europe-wide prevention strategies;
- measures relating to further training, research, forensic matters and criminal records departments.

Europol's first priority (Europol Convention, Article 2) was the suppression of drug trafficking, and was originally designated 'the Europol Drug Unit'; it would serve as a liaison to facilitate the flow of information between MS investigations. Staffed by seconded national law enforcement officers, the initial Convention did not give Europol any independent operational or investigative powers and the organization was reliant of the initiative and compliance of the MS. The office was required to produce an annual report on the work done in the past year and was given the important function of coordinating joint training of national law enforcement officers from across the EU.

The creation of both the EMCDDA and Europol for the first time instituted European networks, nominally independent from the MS, for the gathering of drug related information. The former would provide comparable current and historical data on the nature of the drug phenomenon across Europe, along with trends in use and current responses, and the latter would provide real-time, operational, intelligence to be used by domestic agencies. The future of European joint action in drugs was outlined in the European Action Plan to Combat Drugs (European Commission, 1994). The first 'modern' European drug strategy was published in 1994 and covered 1995-1999. It can be considered modern in the sense that it was comprehensive and cross-pillar, encompassed the whole range of drug related issues including health, education and criminal policy, and was drawn up with contributions from actors working in a range of fields. Its importance is above all that it was produced at the initiative of the Commission and focused on Community action. The contribution of all MS ensured that the final document was a compromise but this also strengthened the document's power. MS compliance with the strategy was seen as important to maintaining trust amongst EU partners.

Whilst the section of the action plan on supply-reduction defers to the responsibility of the MS under Title VI TEU, action related to police-cooperation emphasizes the Community as shown by the wording of the introduction (European Commission, 1994, p.iii):

Action for the purpose of tackling the problem of trafficking in drugs will require action at both the level of the Community and in

the context of the implementation of the provisions of Title VI of the TEU on Cooperation in the field of Justice and Home Affairs.

The document gives primacy to MS whilst explicitly carving out an independent role for Community action; whilst maintaining a leading role in policy-making the MS acknowledge the ‘added-value’ of the EU in complimenting domestic action. At the Community level, this mainly consists of the ‘development of networks for the rapid exchange of information, training etc.’ (ibid) There are, however, opportunities for further cooperation envisaged, even within the constraints of the treaty structure, ‘Title VI of the TEU also creates new possibilities for action at Union level in areas traditionally the preserve of inter-governmental cooperation’ (ibid). The Commission also shares the right of initiative with the MS in those areas of drug policy not expressly covered by Title VI; in the first drug action plan this was manifested in the desire to create greater interdisciplinary groups, exchanging information and experience in demand reduction and supply reduction and cementing a move away from a problem defined largely in terms of law-enforcement.

Strategy documents, such as the Drug action plans, reveal Europeanization processes in drug policy. In line with Bulmer and Radaelli’s definition of Europeanization (2005), action plans explicitly demonstrate the formalization, construction and institutionalisation of shared beliefs and norms in the form of specific policy goals and objectives at the European level, and they shape domestic policy in line with this. This is a particularly effective ‘soft-law’ approach to policy convergence because it gives MS the opportunity to promote their own preferences whilst any measures that deviate too far from the majority can be vetoed. It is also the case that the strategies and action plans give MS the opportunity to work on community goals within their own domestic political, legal and social contexts, thereby maintaining differentiated integration patterns.

In terms of ‘hard-law’, the Community was severely constrained in the measures it could adopt due to the primacy of the MS. The specific area of supply-reduction policy which the EU impacted most was in the trafficking of precursor chemicals. Provisions of the SEA and TEU gave the Community greater initiative and decision-making power on the regulation of licit trade into the community. This led to a number of agreements

and regulations restricting the trade in chemicals used in the preparation of illicit drugs between MS and third countries².

Aside from customs controls in licit and regulated substances, the EU had little influence on MS drug legislation. The UN conventions still provided the framework of control, but otherwise the ways in which conventions were both adapted into domestic law and implemented varied greatly. Joint Action 96/750/JHA in 1996 again attempted to institute better comparability in national law and practice. The Action contained three main objectives, the approximation of laws, the closer cooperation of domestic legal agencies and the creation of an early warning system for new illicit drugs entering the market. The early warning system is still in operation and acts as a joint project run by Europol and the EMCDDA. The other objectives were prescribed in more vague terms and neither were achieved.

3. 2000-2008: A comprehensive and concrete approach

The first European action plan provided the first formal mechanisms for independent Community action in drugs at the Union level since the TEU came into force. The EU would still be working under the constraint of the MS, who retained the right of initiative in matters related to Justice and Home Affairs; nevertheless, even in this field the Commission could act in areas not covered by the TEU and in which it was felt there was a Community interest. In order to establish this Community interest, the Commission was assisted in its work by the institutions it had previously helped create: the EMCDDA and Europol; they contributed by helping frame policy problems in the context of a larger regional picture. Whilst MS still had the decision-making capacity to police drug trafficking according to their own legal and political traditions, they were now provided with a body of evidence that demonstrated the importance of acting together and coordinating responses.

Community action up to 1999 was strongly criticised for its lack of concrete terms and objectives, especially in the field of supply reduction; actions were described vaguely without any objective indicators or measures of assessment. In 2000 this approach changed with the publication of two complimentary documents: the European Union

² For examples see Council Regulation (EEC) 92 No 900/92 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances, as well as Council Decisions 95/567/EC, 95/568/EC, 95/569/EC, 95/570/EC and 95/571/EC regulating trade with Bolivia, Columbia, Ecuador, Peru and Venezuela.

Drug Strategy (2000-2004) (Council of the European Union, 1999) was produced to outline the approaches to be taken and the outcomes to be achieved, this was complimented by the European Action Plan on Drugs (2000-2004) (European Commission, 1999). These documents were produced by the Commission after consultation with the MS and the European agencies working in the area. The Action Plan is an important document which links the general aims of the drug strategy for the first time, to around 100 concrete tasks which will structure the actions of the EU and the MS.

Not only does the Action Plan translate the aims of the strategy into tasks but, in most cases it also designates responsible parties, either EU or MS institutions, and gives timeframes for completion. Great emphasis is placed on the evaluation of policies and their outcomes as demonstrated by a complimentary document on the implementation of the Action Plan (European Commission, 2001), prepared jointly by the Commission, EMCDDA and Europol. The document strengthens the Commission's role in the evaluation of the EU Action Plan through five key actions:

- 1) proposing a progress evaluation tool;
- 2) outlining evaluation methods;
- 3) outlining strategies in applicant countries;
- 4) reinforcing information exchange;
- 5) examining ways of improving coordination.

In the field of supply reduction, the emphasis is on the creation of joint methods for presenting information, including the development of a standardized method of recording drug seizures (p.17); MS, with the assistance of Europol, to develop crime-related policy indicators (p. 19); and the Commission to take a lead in establishing common definitions and penalties for drug trafficking (p.39). These actions are further evidence of the consolidation of shared norms and 'ways of doing things' at the European level and they consolidate a common European approach to drug policy that is focused on information and evidence.

The implementation of the Action Plan was comprehensively assessed in line with its indicators by both a mid-term (European Commission, 2002) and final evaluation (European Commission, 2004). Both evaluation documents emphasise the achievements at the EU and national levels in the more traditional aspects of action on supply reduction, e.g. precursor control, the mutual recognition of new synthetic substances and improved cooperation in drug-related money laundering. The

evaluations make it clear that joint operations in law enforcement or judicial action takes place on a largely informal institutional basis, or through Memoranda of Understanding, at the national level (European Commission, 2002, pp13). Moreover, institutionalized, joint action between law enforcement agencies is encouraged; this includes greater use of instruments such as the European Arrest Warrant, “Mechanisms for co-operation which do exist must be made to work in practice” (ibid, pp14). Such sentiments are echoed in the final evaluation which again stresses the need for more and better use of existing formal instruments to facilitate law enforcement cooperation and the Commission stresses the political importance of improving reporting on successful operations: “Further developing joint operations between law enforcement agencies of the Member States should be discussed. The establishment and results of these operations should be reported to the Council and the Commission” (European Commission, 2004, pp9). In this aspect, the adaptational pressure from the EU is being successfully contested by coalitions of domestic actors, specifically law enforcement agencies, and the Commission again recognises the importance of information in encouraging a stronger commitment to European action and in the process of transferring European norms to the domestic level.

The creation of stronger policy networks amongst law enforcement personnel was falling behind progress made in other areas and had been an area of concern since the Tampere Council in 1999. One reason for this was that Europol remained separate from the day to day working of most police officers and there was still little trust placed in it by either higher ranking officers or politicians. One solution to tackle this problem was the creation of The European Police College (CEPOL), established after recommendations in the conclusions of the Tampere Council and designated a European Agency from 2005. This training institute provides an institution for the exchange of experience and techniques amongst European law enforcement officers and encourages cooperation through facilitated communication.

One of the most important results of the evaluation of the 2000-2004 Action Plan was the way in which it directly influenced the drafting of a new, long-term European strategy. This consisted of a Drug Strategy for 2005-2012 which would be divided into two Action Plans, the first covering 2005-2008 and the second 2009-2012. Again both Action Plans were drawn up by the Commission with support from the EMCDDA and Europol (European Commission, 2005: p3), each of which would take part in the evaluation process. The basic structure of the 2005 Action Plan followed that of

previous documents and divided actions into five sections: Coordination; Demand Reduction; Supply Reduction; International Cooperation; and Information, Research and Analysis. As can be seen in Annex A, these documents provided very detailed actions and indicators, and the responsible parties for each action are clearly labelled.

The responsible party for 12 of the 14 specific supply reduction actions in the 2005-2008 Action Plan is either the Commission or a European agency (EMCDDA, Europol, Eurojust or CEPOL). The only actions in which MS are the sole responsible parties are those which involve working with third countries (Actions 28.1 & 28.2); these are explicitly second pillar areas, or Common Foreign and Security Policy, and are entirely intergovernmental in governance. The Commission's increased role in shaping policy decisions is also demonstrated by the number of studies, pilot schemes and reports it is either commissioning or authoring (Actions 18, 20, 21, 22, 23 & 25.2). These cover sensitive issues such as exploring the possibility of establishing a fund for confiscated assets to finance joint operations; this demonstrates a goal on the part of the EU to be financially independent in this area. One of the remaining powers that MS retain over all agencies is that their resourcing and budgetary matters which remains an area of contention.

The EU action plans of this period point to the European Commission's increased involvement in the formation of a formal and distinctive European drug policy. They establish clear policy goals, linked to precise actions, that emphasise the value of coordinating national and community actions. They also seek to create a better body of information and evidence through which indicators for policy evaluation at the domestic and European level can be established. It is also evident in this period that there is a difference between the specificity of actions in the fields of supply and demand reduction, and also the evaluations point to more modest success in the former. The action plans indicate that there is still cause for concern about MS use of European instruments to facilitate law enforcement cooperation, and that most operations took place in an informal or *ad hoc* manner. MS still put little trust in organizations such as Europol, and Europol was far from taking any kind of operational role. This was further demonstrated by the creation of the Maritime Analysis Operations Centre – Narcotics (MAOC-N) in Lisbon, Portugal in 2006. MAOC-N is an intergovernmental taskforce aimed at coordinating the naval and law enforcement forces of member countries in the apprehension of drug traffickers in the Atlantic; it operates on a multilateral institutional basis outside of formal EU institutional arrangements. The original participating states

were Portugal, Spain, the UK, France, Ireland, Netherlands, and Italy, and the Centre circumnavigated Europol's control structures and frameworks. Despite this, the Commission was outwardly supportive of the Centre,

*“While full-heartedly supporting the setting up of MAOC-N, we should not lose sight of the need for overall coherence of maritime law enforcement developments and notably coherence of MAOC-N with Europol activities. In the medium term, synergies and close cooperation of regional law enforcement initiatives with Europol are essential.”*³

MS were equally reluctant to make regular use of EU judicial instruments such as Eurojust. Between 2004 and 2008 the number of Drug Trafficking cases recorded by Eurojust grew from 77 to 198 (European Commission, 2009a, pp49). Whilst undoubtedly positive that the number of cases doubled, to put these figures in context England & Wales alone sentenced 1020 offenders for drug importation or export in 2004 (Mwenda, 2005, pp6). The distribution of cases amongst the MS is also uneven, with Italy, France, the Netherlands and Germany making 81, 72, 71 and 65 requests respectively compared with the UK, Belgium and Spain (who together make some of the largest seizures in the EU) which made 42, 19 and 18 requests respectively (European Commission, 2009a, pp52). The reluctance of MS to engage in operational cooperation at the level anticipated by the EU shows that, in this aspect at least, Europeanization processes have stalled. Contestation by actor coalitions at the domestic level has resulted in an underutilisation of European instruments, which in turn has prevented those institutions from gaining trust and legitimacy.

The Council Framework Decision 2004/757/JHA of 25 October 2004 was perhaps the most important legal instruments developed by the EU in the 2004-2008 period; this lay down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking. As mentioned previously, hard law in the area of supply reduction was rare and, where it existed, usually coincided with other well established areas of community competence such as customs or trade control in which the EU had the power of initiative. Previous attempts at legal harmonization across the

³ Taken from a speech made by the Director General for the European Commission for Justice & Home Affairs recovered from <http://www.mj.gov.pt/sections/documentos-e-publicacoes/doc-e-pub-2/speech-director-general/downloadFile/file/Speech-Director-General-of-the-European-Commissions-Justice-Freedom-and-Security.pdf?nocache=1191325110.51>

EU had also faced domestic opposition and the legal framework established by the UN conventions remained in force.

Existing political, cultural and legal traditions in the MS had allowed subtle differences in the interpretations of the UN conventions. Variations in interpretation have helped create a diverse legal landscape across the Union. This Council Framework Decision was something of a concession to those seeking better legal coordination at the European level which would facilitate the operation of Eurojust and other European legal instruments. The first section of the Decision, which outlines ‘the constituent elements’ of various offences, merely incorporates the wording of the UN Convention of 1988 into EU law (Article 2). The section on specific criminal penalties (Article 3) requires MS to punish traffickers with ‘a maximum sentence of at least between 1 and 3 years’ and serious traffickers with ‘a maximum sentence of at least between 5 or 10 years’. However, the decision does not give a precise definition of ‘seriousness’ but merely makes reference to large quantities of drugs and harm thereof; the MS are left to define these so as to fit their existing criminal law. MS are also given the freedom to reduce these penalties according to a number of mitigating factors listed in Article 5, all of which give MS greater flexibility in interpretation and reduce harmonization.

When the Commission assessed the implementation of the Framework Decision, the authors of the report emphasised the lack of progress made by MS and also highlighted the regular discrepancies between legislation (in this context maximum sentences) and institutional practice (European Commission, 2009a, pp4). The conclusions to the report are explicit and frank in their assessment of the impact of this Framework Decision on domestic provisions, “There has been little progress in the alignment of national measures in the fight against drug trafficking” (p.10).

Hard law and formal instruments of operational cooperation at the EU level have so far had little impact on domestic drug policies. In practice, MS retain enough decision-making power and flexibility to put their own domestic preferences ahead of EU policies, and the EU has not had the power to make its actions in this area binding. The EU has failed to dismantle existing domestic policies and institutions and as a result these compete on an operational level in the area of law enforcement. Appropriate action at the domestic level is still dictated by domestic policy as this is the source of not only financial resources but also the specific knowledge and intelligence fundamental to law enforcement. The EU had greater success in the area of facilitated communication and the institutionalisation of policy networks. Although Europol’s

actions on the operational level were weak, it became better established as a source of intelligence and information in the period, and advances were made towards the EU goal of increasing its information base.

4. 2008-present: Beyond the comprehensive approach

The most recent period has been marked by the MS's sustained distrust in the European institutions created to facilitate cooperation and coordination of the supply reduction policy and activities at the operational level. Europol's original function as a forum for MS law enforcement to share intelligence and operational information remains underused; this is largely due to MS wishing to retain control over this type of information, as reported to the European Commission (European Commission, 2009b, p16):

56. There are however a number of issues to overcome before all MS are prepared to share operational intelligence with Europol, such as reservations due to security concerns, ownership, primacy and the understandable reluctance to share live-time operational intelligence.

Divergent MS preferences have also resulted in the efficiency and effectiveness of the day to day running of Europol being compromised. From the outset, Europol had concentrated its limited resources on what it viewed as 'high value' crimes, which in terms of drugs had consisted of trafficking in cocaine, heroin and synthetic drugs; however, this has recently been expanded due to the insistence of a number of MS. In 2010, discussions took place at the highest level on including cannabis in Europol's competencies but two distinct camps emerged regarding this expansion: Spain and France headed one group who believed that trafficking in cannabis resin (hashish) should take precedent, whereas the UK and Netherlands were at the fore of a group advocating that the increased cultivation of herbal cannabis should be a priority. In the event, two 'Analysis Work Files' (the standard analytical component of Europol's work) on cannabis were opened⁴, and as a result Europol's scarce resources are now

⁴ Europol's new interest in Cannabis was reported in the EMCDDA Annual Report for 2010 (EMCDDA, 2010a, pp36); however, the author was informed of the MS preferences by a European official present at the meetings.

divided. This incident demonstrates the conflict of national preferences that such organizations must deal with on a regular basis.

Europol has also seen the nature of its role change as it has operated as an independent EU Agency since 1st January 2010.; Although empirical analysis of the institutional frameworks has shown Europol to be one of the least independent of the 29 EU agencies (Wonka & Rittberger, 2010), the indicators used in this study alone are not a sufficient measure of practical independence, focussing instead on institutional constraints. Agencification allows a degree of autonomy in both resources and staffing and also in the drafting of strategic documents, and this move represents a further severing of the ties between Europol and the MS. This would also confirm the argument made by Majone that agencification, specifically the move to agencies producing information rather than hard regulation, has successfully impacted MS activities in particular areas (Majone, 1997). Further to this, the operational and investigative work of Europol has been reduced and the emphasis placed more firmly on it being a focal point and disseminator of criminal information and intelligence to other MS law enforcement agencies.

Europol's role as an information producer rather than an information user has been an important change in recent years and comes in response to sustained MS constraints on operational duties. Europol's work is no longer published in the form of a yearly activity report which accounts for actions *ex post*; it now provides an annual 'risk assessment' of the situation in Europe, monitoring emerging criminal trends and responses (Europol, 2009). The focus of the agency has therefore changed from responsive to pro-active and agenda setting and thus increases Europol's independence from the MS by giving it legitimacy as a source of criminal intelligence. Europol has also been collaborating more with other agencies, including the EMCDDA, publishing joint reports and taking part in increasing numbers of expert meetings; for example, it published a series on European perspectives on the global drugs trade in conjunction with the EMCDDA (EMCDDA/Europol, 2009; EMCDDA/Europol, 2010). This has resulted in the law enforcement world working more closely with the scientific community and provides for a better exchange of methods and experience.

The 2009-2012 Drugs Action Plan has emphasized this movement towards information gathering by including the following task:

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.

(Council of the European Union, 2008, pp18)

The EU is making a concerted effort to increase the information on drugs, and making it available regularly to the public and policy makers; this includes not only data on health and social responses, already covered by the EMCDDA, but also reliable and comparable data on crime and the responses to crime. The first conference to discuss the gathering of scientifically rigorous data on drug supply and supply-reduction was held in Brussels in 2010. The conference was attended by both academics and police officers from across Europe. The conclusions of the conference pointed to the need for better coordination between law enforcement agencies and academics in the gathering and analysis of data but also stressed the difficulties this entailed and the extremely early stage of the state of the art (EMCDDA, 2010b).

Conclusions

EU involvement in drug supply appears to have undergone a radical change since the late 1980s. At that time, there were high hopes of close cooperation among MS; this encompassed visions of harmonizing legislation and practices, a European police force with investigative and operational powers, and a comprehensive and functioning criminal justice system which worked alongside national systems, protecting specifically vulnerable EU initiatives such as the Single Market. However, the lack of sustained consensus amongst the MS means that such EU instruments have rarely been operationalized. In seeking to retain the initiative, the Commission has moved from a regulatory framework to one based on removing the legitimacy of MS to control information, thus enabling them to frame policy arguments in their own terms.

This now appears the path that both the Commission and independent European agencies will be taking in the near future. The impact of Europeanization in the field of drugs cannot therefore be assessed solely on the participation of MS in joint operations, on legal harmonization or other forms of practical cooperation; EU instruments in these areas have proven weak and non-binding and they still vary greatly across the EU. Domestic change must be sought in the importance placed on information, how this is produced, disseminated and used in policy (and political) relevant consequences. The

next section will demonstrate how, through this period, the UK's policy preferences have placed drug information and intelligence at the forefront of its supply reduction policy and, in doing so, have incorporated European norms into its domestic institutions.

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