

# EUROPE AND DRUGS

## European measures against drug trafficking

Across Europe, the systems of control and care of drug users are varied, sometimes uncertain and in flux. Measures against drug trafficking, on the other hand, are converging in their methods and deepening in their intensity of control.

Users are generally being down-tariffed. In Britain, there is a well established trend towards the use of the police caution for drug possession offenders, so although the possession of drugs such as cannabis, amphetamines and similar drugs, cocaine and heroin remains criminalised, there is a degree of *de facto* decriminalisation (at the discretion of the police). Indeed, it is fair to say that throughout most of Europe there is more toleration of the user than in the US, for example.

So, as far as the user is concerned, justice is tempered with mercy. Not so, however, as far as the drug trafficker is concerned: no mercy there. Now there are many arguments to be had about the rights and wrongs of heavy sentencing for those found guilty of a trafficking offence but these are not my primary concern here. Rather, I turn attention to the impetus given by anti-trafficking measures to innovations in law, policing and police cooperation in Europe.

### Shift of gravity

At EC level, the political emphasis upon anti-trafficking measures results in drug policy being defined rather more in terms of the justice issue. There is a corresponding shift of the centre of gravity at Member State level towards leadership by Ministries of Justice, with criminal law sanctions of increasing intensity (*in terms of sentence*), supplemented by administrative or civil law measures (asset confiscation). Taking our examples close to home, we find that since the early 1980s the Home Office has been the lead department on drug policy in Britain, that sentences were increased to a maximum of life imprisonment, and that asset confiscation as introduced by the Drug Trafficking Offences Act 1986 will shortly be considerably strengthened by the new Criminal Justice Act 1993. These trends are not confined to Britain. For example the Netherlands recently passed the baton to its Ministry of Justice, thereby emphasising its commitment to anti-trafficking policy (and perhaps seeking to off-set some of the criticisms directed

at the earlier policy emphasis on its user-toleration policy).

So, whilst the EC Member States may continue, as far as drug users are concerned to, emphasise a welfarist approach (with some local flexibility, illustrating 'subsidiarity'), anti-trafficking measures are hardening up and increasingly centrally determined.

### Police cooperation

Today in Europe there are three main arenas in which police cooperation is being encouraged. These are the Schengen group (all EC countries other than Britain, Ireland and Denmark, with Greece having observer status), the TREVI group on police cooperation (in which all EC countries participate), and Maastricht (the third 'pillar' of which is on Justice and Home Affairs, and Britain will soon be the last Member State to ratify).

Through Schengen, Maastricht and Europol, the police services (and especially the police *intelligence* services) of EC countries are becoming increasingly linked through information systems; rapidly converging in their methodologies; and, more slowly, harmonised in terms of their formal rules. Harmonisation of systems of law in Europe has proved quite problematic in the experience of the Schengen countries, and may continue to be a very slow process. This slowness may turn out not to be much of a brake on police cooperation in practice, since there is nothing to stop collaborating police teams, or even unified multi-country units, varying their operational practice according to the various legal contexts through which they must pass.

### Tilt of advantage

Within the EC, policies on drug users may be locally determined, at least to some extent. But all Member States are going down the one road, as far as anti-trafficking measures are concerned.

Illustrations of this process are close to hand. At the drugs conference of the Association of Chief Police Officers in May 1993 there was spirited discussion - shall we say agenda-setting? - on the merits of a 'national drugs investigation unit' and a pan-European counterpart. The British government is said to be ambivalent on this score, partly because of worries about practicality but also for perceived constitutional and sovereignty reasons. The Germans, by contrast, are in favour of Europol developing beyond its current limited competence in drugs

intelligence matters, and becoming an operational unit, Europe-wide.

Whatever the short-term outcome of this debate, we are justified in concluding that criminal justice policy, and particularly police action against drug traffickers, is the site for the convergence and eventual harmonisation of EC drug policy. Or, to put the other way around, drugs policy is the site today for the convergence of policing systems in Europe, as was anti-terrorist cooperation in the 1970s.

What are the consequences, in terms of the balance of justice? It is certainly the case that in terms both of informal working relationships and development of formal organisational linkages, European police forces are networking much more closely than any other professional group within the criminal justice system. Defendants, defence lawyers, probation officers and court personnel are, by comparison, stuck in their national milieux. Drug trafficking and counter-measures against it have provided a major spur to the development of this imbalance in European linkages, and seems likely to continue to do so. European action against drug trafficking demonstrates how the relative ease of European police cooperation, in the context of the relative difficulty of harmonisation of criminal laws of Member States, results in a tilt of advantage towards the prosecution.

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