EUROPEAN UNION DRUG POLICY
STRIVING FOR BALANCE BETWEEN COMBATTING ILLEGAL SUPPLY AND FOSTERING PUBLIC HEALTH

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INTRODUCTION

Europe plays an important role in the international drug market, both as a consumer market for drugs like heroin or cocaine and because of the production of substances like cannabis and synthetic drugs carried out within the EU. Around one third of the European adult population have presumably consumed illicit drugs in their lifetime, with cannabis being the most widespread substance.[1] Due to the risks inherent to such consumptions and the possible harm stemming from it as well as the involvement of organised crime in the field of illicit drug trafficking, the European Union has been concerned with drug policy for the last 30 years.

While the main responsibility for implementing drug policy legislation lies with the Member States, the European Union nevertheless contributes to the fight against (organised) drug trafficking as well as the support of drug users. The following article describes the legislative and political background for actions taken by the EU in this field and outlines the different drug-related policies introduced on the European level. Ensuing, the institutions involved in the matter are portrayed, whereby special attention is paid to the European Monitoring Centre for Drugs and Drug Addiction. While the Pacific region differs from the European Union in terms of the regional legal structure among many other things, experiences in the EU might nevertheless be of interest for the Pacific, since both regions have to tackle the challenge of establishing cooperation between multiple jurisdictions and their respective traditions in terms of drug policy.

BACKGROUND

Prior to drug policy introduced on the level of the European Union, international cooperation in this field was established via the three major UN Conventions concerning drugs. The 1961 Single Convention on Narcotic Drugs paved the ground for a prohibitive approach in dealing with the substances listed within the Convention. Ensuing, the 1971 Convention on Psychotropic Substances and the 1988 Convention against Illicit Trade in Narcotics and Psychotropic Substances continued this path. Since all Member States of the European Union have signed these Conventions, they constitute a common framework after which the states model their legislation concerning illicit drugs. Aspirants for a membership within the EU also

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[1] EMCDDA, *European Drug Report 2019* (2019), 42.

have to commit to the framework of the UN Conventions, which constitutes a condition for joining the bloc.[2]

As the UN Conventions determine the basic approach towards dealing with psychoactive substances and the Member States enact these principles by formulating national legislation, the European Union does not play a primary role when it comes to drug policy and regulation. This is partly due to the application of the principle of subsidiarity which constitutes the boundaries for European activity in this field.[3] The EU is limited to setting initiatives only when the actions taken by the Member States are insufficient and the activities set out by the Union bring 'added value' in dealing with the issue at hand.[4] Thus, the initiatives taken by the European Union in the field of drug policy did not lead to a system of unified legislation or governing institutions, but rather formed an overarching framework.[5]

While the Member States vary considerably in their national policies, ranging from a rather strict and abstinence-orientated approach in Sweden[6] to a more accepting view of drug consumption, aiming at normalising the experience and including the users into society in the Netherlands[7] or Portugal[8], some basic principles can be found in most European countries which reflect the point of view taken by the European Union. For example, the principle of harm reduction is implemented in the drug policies of most countries, aiming at avoiding drug related deaths as much as harmful consequences of drug consumption like infectious diseases. Therefore, many countries offer substitution programs or needle exchange possibilities to drug users.[9] This 'balanced approach' combining the focus on fostering public health by providing support for drug users on the one hand and conducting coordinated law enforcement on the other hand sets Europe's approach to illicit drugs apart from the ones chosen by other regions of the world as for example the United States or countries in Asia.[10]

The integration of drug policies in the Member States of the European Union has increased over time. This can also be observed by the fact that in discussions about drug policy carried out in international fora the EU nowadays speaks with one voice. In 2016, a Special Session of the UN General Assembly on the World Drug problem (UNGASS) took place in New York.

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[2] Caroline Chatwin, 'Pathways to integration of European drug policy' in Renaud Colson and Henri Bergeron (ed), *European Drug Policies – The Ways of Reform* (Routledge, 2017) 27, 29.

[3] Consolidated version of the Treaty on the Functioning of the European Union (TFEU) [2012] OJ C 326/47, Art 5.

[4] Andrew Duff, 'Towards a Definition of Subsidiarity' in Andrew Duff (ed) *Subsidiarity within the European Community* (Federal Trust for Education and Research, 1993) 7; Henri Bergerson and Renaud Colson, 'European drug policies in context' in Renaud Colson and Henri Bergeron (ed), *European Drug Policies – The Ways of Reform* (Routledge, 2017) 1, 4.

[5] Caroline Chatwin, above n 2, 29-30.

[6] Ted Goldberg, 'The Evolution of Swedish Drug Policy' (2004) 34 *Journal of Drug Issues* 551; Leif Lenke and Boerje Olsson, 'Swedish Drug Policy in the Twenty-First Century: A Policy Model Going Astray' (2002) 582 *Annals of the American Academy of Political and Social Science* 64.

[7] Caroline Chatwin, above n 2, 27.

[8] Mirjam Van het Loo, Ineke can Beusekom and James P. Kahan, 'Decriminalization of Drug Use in Portugal: The Development of a Policy' (2002) 582 *Annals of the American Academy of Political and Social Science* 51; João Pedro Augusto, *Evolution of the Portuguese Addiction Treatment System 1958 – 2014* (Lisbon, 2016) 9.

[9] Susanne MacGregor and Marcus Whiting, 'The development of European drug policy and the place of harm reduction within this' in Tim Rhodes and Dagmar Hedrich (ed) *Harm reduction: evidence, impacts and challenges* (EMCDDA Monographs, 2010) 59, 69.

[10] Carel Edwards and Maurice Galla, 'Governance in EU illicit drugs policy' (2014) 25 *International Journal of Drug Policy* 942, 943-5.

The European Union prepared a common position calling for 'an appropriate balance (…) between supply and demand reduction measures'.[11] The importance of the adherence to human rights was stressed, denouncing the practice of applying the death penalty for drug-related crimes in some parts of the world. Harm reduction was also featured prominently in the common position of the EU, calling on the State Parties to 'make sure that access to risk and harm reduction measures is guaranteed, as such measures have proved effective in reducing the number of direct and indirect drug-related deaths and notably blood-borne infectious diseases associated with drug use'. By unifying the voices of all Member States, the EU could represent a much stronger position than each national state by itself could have done.

EU DRUG POLICY

Since the European Union does not hold the sole competence in issuing drug policy legislation and the principle of subsidiarity has to be applied, the EU has been reluctant to adopt binding legislation in this field. Over the years, the EU has only adopted (and subsequently amended) a few binding legislations. The main instruments of European drug policy constitute a series of Drugs Strategies (the current one being valid from 2013 to 2020, the ensuing EU Agenda on Drugs being in force for 2021 to 2025) and accompanying Action Plans concretising the measures taken to fulfil the aims of the underlying Drugs Strategy. In the following section, these various initiatives as well as the foundations of legislation in this field will be explained further.

Foundation of legislation by the European Union concerning illicit drugs

The first time dealing with illicit drugs, the trafficking of these substances and the consequences stemming from consumption was mentioned in a treaty of the European Union was in 1992 in the Maastricht Treaty.[12] Today, the basis for action on the level of the European Union concerning drug policy is rooted in several articles of the Treaty on the Functioning of the European Union (TFEU)[13], also known as the Treaty of Lisbon, signed in 2009.[14]

Article 83 contains regulations for the implementation of minimum rules concerning definitions of criminal offences and sanctions in areas of specific crimes. Illicit drug trafficking is listed as one of those areas.[15] This provision enables the EU to implement Directives setting out guidelines for applied definitions and sanctions stipulated by the Member States for committing the aforementioned types of crime. However, this provision

[11] EU common position on UNGASS 2016, DS 1369/4/15 REV 4, 6.11.2015.
[12] Susanne MacGregor and Marcus Whiting, above n 9, 66.
[13] Consolidated version of the Treaty on the Functioning of the European Union (TFEU) [2012] OJ C 326/47.
[14] Henri Bergerson and Renaud Colson, above n 4, 4.
[15] "The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime."

does not go as far as providing the EU with a legal basis for harmonising the national regulations concerning drug trafficking.[16] In the field of public health, regulated in Art 168, the EU has a complementary competence and can support the Member States' actions 'in reducing drugs-related health damage, including information and prevention'. These two articles lay out the foundation for action of the EU directed towards both supply and demand reduction, following the aforementioned 'balanced approach'. Concerning drug supply reduction, Art 82 – 86 lay out the foundation for judicial cooperation in criminal matters between the Member States. Additionally, matters of trade concerning drug precursors are regulated in Art 114 providing provisions for the internal market. Trade with external partners is regulated in Art 207.

Binding legislation

Only in a few selected cases did the European Union adopt binding legislation concerning drug policies. In 2004, a Council Framework decision was taken (2004/757/JHA) by the Council of the European Union.[17] On the one hand, it aimed at unifying certain definitions, as for example the term 'drug', aligning its meaning on the definition applied by the UN Conventions of 1961 and 1971. On the other hand, certain drug related offences were listed, and the Member States were obliged to impose appropriate sanctions, including provisions concerning maximal penalties.

In 2005, the Council of the European Union passed a Council Decision (2005/387/JHA)[18], which also constituted a binding regulation for the Member States, and which aimed at regulating new psychoactive substances. These were defined as substances not listed under die UN Conventions and therefore, up to this point, not regulated accordingly to 'drugs' as defined before. The Decision included provisions for setting up an information exchange system between the Member States and European institutions (e.g. Europol, EMCDDA, European Commission, etc.) concerning the emergence of new psychoactive substances and their nature. If necessary, a risk assessment can be conducted and, where appropriate, control measures can be stipulated, which then have to be implemented by the Member States.

In 2006, the European Parliament and the Council adopted a Regulation (Regulation (EC) No 1920/2006) which established the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) in the current form, defining its tasks and also introducing Reitox, a system of national focal points collecting information on behave of the EMCDDA.[19]

Subsequently, the European Commission conducted an evaluation of the impact the Framework Decision of 2004 had had on the national legislation of the Member States and concluded: 'Implementation of the Framework Decision has not been completely

[16] European Parliament, Directorate-General for Internal Policies – Policy Department C – Citizens' Rights and Constitutional Affairs, '*A review and assessment of EU drug policy'* (2016) 26.
[17] 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 [2004] OJ L 335/1.
[18] Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances [2005] OJ L 127/1.
[19] For further explanation, see 'Institutions concerned with drug policy on the European level'.

satisfactory'[20]. Its importance was judged as weak by experts in various Member States and national legislation were not always amended in a sufficient way for meeting the demands of the Decision. Ensuing, the Commission proposed two legislations in 2013, which would include new psychoactive substances into the Framework Decision of 2004 and further regulate the handling of those substances.[21] Due to disagreements between the Member States concerning the legal basis for the proposal (Art 114 TFEU was chosen as a proposed legal basis), no conclusion was found. After adapting the legal basis to Art 83 TFEU and introducing additional changes, a consensus was reached between the Member States and in 2017 two new legislations were adopted, amending the Council Framework Decision of 2004 and the Regulation of 2006, while the Council Decision of 2005 was repealed. These two new legislations (Directive (EU) 2017/2103 of the European Parliament and of the Council[22] and Regulation (EU) 2017/2101 of the European Parliament and the Council[23]) now constitute the legal basis for the EMCDDA, the Reitox-network, the risk assessment procedure and the early warning system (EWS). New psychoactive substances are included in these provisions.

Drugs Strategy/Agenda on Drugs and Action Plans

Since the 1990ies, the main instrument used by the European Union in the field of drug policy were Drugs Strategies, which are generally implemented for the course of four to eight years. These Strategies do not comprise binding legislation, but rather constitute an overall framework concerning drug-related matters and serve as a point of reference and comprehensive structure for further initiatives. Until the end of 2020, the Drugs Strategy 2013 – 2020[24] is in place, laying out the general approach of the EU and forming the basis for further action in this field. Accompanying, two four-year Action Plans were issued, the first being in place from 2013 to 2016[25] and, after an evaluation[26], the second following for the years 2017 to 2020[27]. In July 2020, the new EU Agenda on Drugs 2021 – 2025 was published, again

[20] Commission of the European Communities, 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, COM(2009)669, 9.
[21] Proposal for a Directive of the European Parliament and 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, COM(2013)0618; Proposal for a Regulation of the European Parliament and the Council on new psychoactive substances, COM(2013)0619.
[22] Directive (EU) 2017/2103 of the European Parliament and of the Council of 15 November 2017 amending Council Framework Decision 2004/757/JHA in order to include new psychoactive substances in the definition of 'drug' and repealing Council Decision 2005/387/JHA [2017] OJ L 307/12.
[23] Regulation (EU) 2017/2101 of the European Parliament and of the Council of 15 November 2017 amending Regulation (EC) No 1920/2006 as regards information exchange on, and an early warning system and risk assessment procedure for, new psychoactive substances [2017] OJ L 307/1.
[24] EU Drugs Strategy (2013 – 2020) [2012] OJ C 402/1.
[25] EU Action Plan on Drugs 2013-2016 [2013] OJ C 351/1.
[26] European Commission, Communication from the Commission to the European Parliament and the Council - Evaluation of the implementation of the EU Drugs Strategy 2013-2020 and of the EU Action Plan on Drugs 2013-2016: a continuous need for an EU Action Plan on Drugs 2017-2020, COM(2017)0195.
[27] EU Action Plan on Drugs 2017-2020 [2017] OJ C 215/21.

accompanied by an Action Plan.[28] Ensuing, the Drugs Strategy 2013 – 2020 will be described in detail before providing an overview of the policies contrived for the period of 2021 to 2025.

The Drugs Strategy 2013 – 2020 focusses on two policy areas (*drug demand reduction* and *drug supply reduction*) and three cross-cutting themes (*coordination, international cooperation* and *research, information, monitoring and evaluation*). This structure is also applied in the Action Plans, where the overall aims expressed in the Strategy are transferred into more or less concrete measures, each assigned with a timetable, the parties responsible for the implementation and indicators applied for evaluating the success of the action. In order for a concrete action to be included in the Action Plan, the following criteria have to be fulfilled (Article 12 EU Drugs Strategy):

'(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.'

Initially, EU drug policies mainly focused on drug supply reduction, which was seen as part of the ongoing cooperation of the Member States in the areas of police work and law enforcement. Demand reduction originally came into focus because of the spread of infectious diseases associated with drug use, most prominently HIV/AIDS.[29]

Drug demand reduction comprises various different approaches aiming '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' (Art 18). In order to achieve these goals, measures concerning prevention as well as harm reduction, treatment, rehabilitation and social reintegration shall be implemented. The Drugs Strategy lists ten priorities where actions are specifically required, ranging from broadly defined goals like raising awareness about risks associated with drug use and expanding preventative efforts (Art 19.2) to more specialised areas like increasing the accessibility of drug treatment programs for prison inmates (Art 19.6).

Drug supply reduction is the second policy area listed in the Drugs Strategy. While demand reduction focusses on consumers of illicit drugs, supply reduction aims at preventing drugs from entering the European market in the first place. Here the aim 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.' (Art 21). Focus shall be laid upon organised crime, operating across the borders of the Member States. Eleven priorities are described, stressing the importance of cooperation of law enforcement agencies through actions taken by Joint Investigation Teams or Joint Customs and Police Operations, also taking into account

[28] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - EU Agenda and Action Plan on Drugs 2021-2025, COM(2020) 606 final.
[29] Carel Edwards and Maurice Galla, above n 10, 943.

the role ‘new communication technologies’ play in the field of drug trafficking (Art 22.4). Concerning supply reduction, national drug policies are also mentioned in the Drugs Strategy, where the EU is called upon enhancing policy evaluation and analysis as well as encouraging ‘where appropriate, the use, monitoring and effective implementation of drug policies and programmes’ (Art 22.11).

Concerning *coordination*, the Drugs Strategy aims both at establishing and deepening the exchange of information and communication between the Member States as well as the European Union and inspiring ‘active political discourse and analysis of developments and challenges’ concerning drug policies both on the European as on the international level (Art 23). Additional to the EU institutions and the Member States, civil society shall be included in this discourse, as shall non-governmental organizations and people with experience of using drugs (Art 24.5). Furthermore, the Drugs Strategy calls on the European Union to ensure a joint appearance in talks on the international level and representing the approach towards drug policy in a unified way (Art 24.6).

These objectives are further strengthened by the goals concerning *international cooperation*, the second cross-cutting theme of the Strategy. Here, the specific role of the European Union and its ability in adding value to efforts undertaken by the Member States is emphasised. Drug policy is seen as part of the general framework adopted by the EU concerning foreign policy and once again the necessity for representing this approach with one voice both in discussions on a multinational level and with individual third countries is stressed. Concerning third countries, the Strategy also mentions the aim of the EU striving to support these countries in their tackling of drug related problems, both on a security and a public health level. Furthermore, this cross-cutting theme also contains provisions regarding the handling of funds given out by the EU and the Member States, including a list of criteria applicable for alternative development programs in case of the EU providing financial support to source countries, as for example that those programs ‘set realistic rural development-related objectives and indicators for success, ensuring ownership among target communities’ (Art 30.9).

Finally, *information, research, monitoring and evaluation* is introduced as the third cross-cutting theme. Here, the emphasis lies on gaining and collecting information, monitoring the development of drug supply and use and disseminating this information between the Member States. The importance of evidence-based approaches is stressed throughout the Drugs Strategy[30] and is once again prominently featured in this cross-cutting theme. In order to achieve these goals, the EMCDDA plays a vital role in administering this cooperation, but also Europol is mentioned as an essential institution concerning information on drug-related crime and organisations operation in this field. The importance of research is stressed and the necessity for funding in this area and education is emphasised.

The first Action Plan accompanying the Drugs Strategy was implemented for the years 2013 to 2016. In 2016, an evaluation was carried out, simultaneously assessing the validity of the Drugs Strategy as well as the impact the first Action Plan had produced in the five areas described above. The Action Plan contained 54 measures, of which by 2016 53 % had been

[30] EMCDDA, *Perspectives on Drugs: The EU drugs strategy (2013-20) and its action plan (2013-16)* (2015) 3.

completed or were currently put into practice, whereas 47 % were initiated but lagging behind.[31] Differences were observed between the policy areas defined in the Action Plan. While the majority of measures tackling supply reduction, coordination, international cooperation and information, research, monitoring and evaluation were either completed or in due progress, the majority of measures concerning demand reduction was rated as having been initiated, but currently being behind schedule. Concerning the resources allocated for the implementation of the measures the interviewed stakeholders overall judged them as being sufficient. In terms of coherence with related EU policies, the stakeholders viewed the Drugs Strategy and Action Plan as coherent with the majority of EU policies and strategies, as for example the Internal Security Strategy (ISS) and the European Agenda on Security.[32] However, more coherence with the EU Health Strategy[33] was assessed to be desirable, since some current challenges like the ageing population or the role of new technologies concerning demand reduction were not discussed in the drug policy. Additionally, limitations in the coherence were criticized stemming from the missing consideration of the abuse of licit drugs such as alcohol or nicotine. Concerning the goal of adding value to the efforts undertaken by the Member States, the evaluation concluded that by implementing the Drugs Strategy this added value was created and the development of drug policies in the Member States during the validity of the policies on the European level was shaped by this common framework, while concurrently the Member States were free to take regional differences into account.[34]

The assessment led to the conclusion that the goals laid out in the Strategy were still valid and that a new Action Plan should be introduced by the European Commission. Some current challenges were pointed out, which ought to be addressed in the new Action Plan, as for example the emerging role of the internet regarding trafficking of illicit substances or the ongoing debate about the handling of cannabis. Building on the results of the evaluation, a new Action Plan was proposed and subsequently adopted by the Council of the European Union in 2017, addressing inter alia the aforementioned issues.

The Drugs Strategy 2013 – 2020 as well as the second Action Plan were evaluated in 2020, resulting in an assessment only partially favourable concerning the effectiveness and impact of the policies.[35] It was concluded that 'the Strategy did not make significant contributions towards achieving its planned overall impact to *ensure a high level of human health protection, social stability and security*'[36]. This was mainly due to the two policy areas of drug demand reduction and drug supply reduction not reaching their goals. Drug use among European citizens was not successfully reduced while the Strategy was in force and an increase in drug-related deaths also became apparent. Furthermore, drugs were available even more easily

[31] EMCDDA, *Perspectives on Drugs: The EU drugs strategy: a model for common action* (2019) 2.
[32] European Commission, Commission Staff Working Document - Evaluation of the implementation of the EU Drugs Strategy 2013-2020 and the EU Action Plan on Drugs 2013-2016 accompanying the document Communication from the Commission to the European Parliament and the Council - Evaluation of the implementation of the EU Drugs Strategy 2013-2020 and of the EU Action Plan on Drugs 2013-2016: a continuous need for an EU Action Plan on Drugs 2017-2020, COM(2017)0195, SWD(2017)095, 26.
[33] Commission of the European Communities, White paper - Together for Health: A Strategic Approach for the EU 2008-2013, COM(2007)0630.
[34] European Commission, Commission Staff Working Document, above n 32, 28.
[35] European Commission, Commission Staff Working Document - Evaluation of the EU Drugs Strategy 2013-2020 and EU Action Plan on Drugs 2017-2020, SWD(2020) 150 final.
[36] European Commission, Commission Staff Working Document, above n 35, 38.

across the European Union than at the time of the Strategy's implementation. However, in some areas improvements were made, for example concerning coordination of law enforcement efforts as well as international cooperation and to some extend also research, information, monitoring and evaluation. Both the EMCDDA and Europol reported insufficient funding in order to fulfil the tasks allocated to them, especially in light of rapid developments concerning drug use, new substances and the work of organised crime groups. The evaluation did however find that the Strategy provided added value, because the progression that the Member States made by cooperating would not have been possible on a national level alone. Overall, the evaluation concluded that the Strategy 2013 – 2020 and the accompanying Action Plans were in part too vague and unspecific. It was recommended to adjust the following Strategy in a way that would make it more concrete and focused. The Action Plan should be designed more operational. Finally, the duration period should be shortened, allowing to react more rapidly to fast evolving changes in the field.

In setting up the new Agenda on Drugs 2021 – 2025, the EU aimed at addressing and reacting to the criticism expressed in the evaluation, stating in the introduction: "The EU needs a paradigm-shift in drugs policy. Therefore, this Agenda strengthens the EU approach to drugs and delivers a bold drugs policy agenda to drive concrete and ambitious change. It steps up efforts on all dimensions of drugs policy, in particular on the security side, where it is more robust and provides for concrete actions to address previous shortcoming."[37] The duration of the Agenda was shortened to a period of four years. The internal structure differs notably from the Strategy before, stipulating three main strands which comprise eight strategy priorities.

While the Strategy listed drug demand reduction as the first objective, the Agenda starts by focussing on security. The first group of priorities is embedded in the overall goal of "Enhanced Security – Disrupting the Drug Markets". This objective addresses organised crime groups involved in the illicit drug trade and lists targeting those groups and disrupting their illegal activities as the first goal. Stronger priority should be given to confiscating profits made through drug offences which subsequently can be utilised for supply and demand reduction efforts. Concerning drug trafficking, the Agenda aims at enhancing the monitoring of specific points of entry into the European Union by land, air and sea. This should entail better cooperation between the Member States as well as European Union agencies and mainly focus on border control and exchange of necessary information. Stronger attention should be paid to the fact that the online drug market is increasing, exploiting the postal service and using newly established payment services like cryptocurrencies. Finally, drug production within the European Union is also listed as an area where action is required, targeting specifically the cultivation of cannabis as well as the production of synthetic drugs, which by means of chemical waste also leads to a significant burden for the environment.

The second part of the Agenda focusses on "Prevention and Awareness Raising", acknowledging the rising drug demand within the EU and calling for effective and comprehensive prevention programmes. Awareness raising should target both the general public and groups particularly vulnerable as for example young people. The prevention of

[37] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, above n 28, 2.

drug related crime as well as the encompassing harmful consequences such as violence and corruption should also be included into those efforts.

Finally, the Agenda lists "Addressing Drug-Related Harms" as a third group of objectives. This includes ensuring the access to treatment programmes and healthcare for all drug users in need of support. Women are singled out requiring specific support services stemming from being exposed to violence as well as issues such as pregnancy and childcare. Generally, it is acknowledged that drug users come from various backgrounds and treatment programmes should reflect this diversity in order to provide appropriate and effective care. Harm reduction is also featured in the Agenda, calling for an expansion of initiatives such as opioid substitutions treatment and needle and syringe programmes. Alternatives should be preferred before applying coercive measures. Other issues listed concern topics such as driving under drug influence or the prevention of drug-induced deaths by means of overdosing. Finally, the Agenda focusses on drug use in prisons. Drug-related care should be provided both within prisons and after release. On the other hand, the supply of illicit drugs within prisons should be targeted more effectively.

Together with the new EU Agenda, an Action Plan for the same period of time was published, again listing concrete actions executing the targets laid out in the Agenda as well as defining a timeline and the responsible institutions. The Agenda stipulates the conduct of an evaluation in 2025 before deciding on the future development.

INSTITUTIONS CONCERNED WITH DRUG POLICY ON THE EUROPEAN LEVEL

Various institutions attached to the different legal entities of the European Union are concerned with the implementation and monitoring of European drug policies. While some are responsible for developing new policies, others are engaged in operational actions or the collection and dissemination of scientific data. The different institutions will be described in the following paragraphs, with the EMCDDA as an especially valuable organization being discussed in detail.

Agencies within the European institutions

Within the work of the European Commission, drug policy falls under the responsibility of the *DG Migration and Home Affairs*, where it features as part of the policies concerning *Organised Crime and Human Trafficking*. As can be seen by the allocation, the work of this unit is concerned with policies to combat organised crime and serious drug offences.[38] Working closely with other European and national institutions, the responsibility for developing drug policy also lies with this unit, and it takes part in the implementation of the EU Drugs Strategy and the respective Action Plans. Additionally, the unit also functions as a representative for the Commission in questions touching upon drug policy in front of various international institutions, as for example the United Nations Office on Drugs and Crime.[39] The EU provides a certain budget for drug-related issues, including funding various projects in

[38] EMCDDA, above n 30, 3.
[39] European Parliament, Directorate-General for Internal Policies, above n 15, 26-7.

fields like judicial cooperation[40] or drug-related research conducted under the framework of programs like Horizon 2020[41]. This funding is administered by the unit within the DG Migration and Home Affairs.

At the level of the Council of the European Union, two entities are engaged with drug policy. The *Horizontal Working Party on Drugs (HDG)*, established 1997, comprises of representatives of the Member States, the European Commission, the EMCDDA, Europol and the European External Action Service (EEAS).[42] It is involved in the preparation of the EU Drugs Strategy and the Action Plans for the Council.[43] Furthermore, it facilitates the exchange of information between the Member States and third parties about national drug policies and coordinates drug-related actions initiated by the Member States.[44] Secondly, the *Standing Committee on Operational Cooperation on Internal Security (COSI)* is also involved in the Union's handling of drug-related question. The Committee is based on Art 71 TFEU[45] and is concerned with the internal security within the EU. Since drug trafficking features into this mandate, the Committee is involved in drug-related matters concerning law enforcement, judicial cooperation and border control.[46] The Committee focusses on operations and supporting the Member States in their efforts to ensure internal security.[47] Concerning these tasks, two other European institutions are involved: the *European Law Enforcement Agency (Europol)*[48] and the *European Union Judicial Cooperation Unit (Eurojust)*[49], who cooperate closely with the International Criminal Police Organisation (Interpol).

The *Committee on Civil Liberties, Justice and Home Affairs (LIBE)* is involved in drug-related measures on the level of the European Parliament.[50] Whenever binding legislation concerning drug policies shall be adopted by the Parliament, the LIBE Committee contributes to the preparation of this regulations.[51] In these cases, the Parliament is entitled to a co-decision with the Council of the European Union.[52]

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[40] European Commission, 'Justice Programme' https://ec.europa.eu/justice/grants1/programmes-2014-2020/justice/index_en.htm (accessed 23 June 2020).
[41] European Commission, 'Horizon 2020', https://ec.europa.eu/programmes/horizon2020/en (accessed 23 June 2020).
[42] Martin Elvins, 'The politics of expertise and EU drug policy' in Renaud Colson and Henri Bergeron (ed), *European Drug Policies – The Ways of Reform* (Routledge, 2017) 13, 21.
[43] Susanne MacGregor and Marcus Whiting, above n 9, 65.
[44] Council of the European Union, 'Horizontal Working Party on Drugs (HDG) https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/horizontal-working-party-drugs/ (accessed 23 June 2020).
[45] „A standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article 240, it shall facilitate coordination of the action of Member States' competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee. The European Parliament and national Parliaments shall be kept informed of the proceedings."
[46] https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/standing-committee-operational-cooperation-internal-security/ (accessed 24 June 2020).
[47] Martin Elvins, above n 42, 22.
[48] Europol, 'Drug Trafficking' https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/drug-trafficking (accessed 24 June 2020).
[49] European Union Agency for Criminal Justice Cooperation http://www.eurojust.europa.eu/Pages/home.aspx (accessed 24 June 2020).
[50] European Parliament, 'Committees – Civil Liberties, Justice and Home Affairs' https://www.europarl.europa.eu/committees/en/libe/home (accessed 24 June 2020).
[51] European Parliament, Directorate-General for Internal Policies, above n 15, 27.
[52] Martin Elvins, above n 42, 21.

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)

The EMCDDA, which is based in Lisbon (Portugal), is a European agency solely concerned with collecting, processing and disseminating data concerning drug-related issues. The idea for such an agency goes back to 1989, when French President François Mitterrand in a letter to the other then eleven heads of states and the president of the Commission proposed certain measures concerning the handling of combatting illicit drug supply. Subsequently, the European Committee to Combat Drugs (CELAD) was set up, which enabled 'for the first time in Europe a genuine cross-disciplinary, 'cross-ministerial' and 'cross-national' dialogue on drugs'[53]. After conducting a feasibility study concerning the installation of a European Drug Monitoring Centre[54], it was decided to establish such a centre and the respective Regulation came into force in 1993[55]. Since then, the founding regulation was firstly recast in 2006[56] and then, after including new psychoactive substances into the focus of the Centre's work, amended in 2017[57].

The EMCDDA collects information on a wide range of drug-related issues, from drug supply and consumption in the Member States, over measures taken to combat trafficking as well as addiction to best practice examples and national drug policies. In doing so, the EMCDDA informs policy makers as well as the interested public and provides researchers in this field with both valuable data and a platform for exchange and development.[58] While not a research institution, the collected and disseminated information nevertheless contains high-quality, reliable and objective data. In an external evaluation in 2018, which has to be carried out every six years following Art 23 of the founding Regulation, the agency's work was assessed very positively: 'Taking into account the overall impression from the stakeholder consultations, the evaluation showed that the Agency is well recognised and highly regarded by its stakeholder communities as a centre of excellence in providing information on the drugs phenomenon, not only in Europe but also internationally. The information produced is considered factual, objective, reliable and robust, as evidenced by the targeted survey for civil society and the scientific community as well as by the public consultation.'[59] Since the EMCDDA is a European institution and aims at informing policy makers, its independence in conducting its tasks is of vital importance. Over the course of the years, the agency managed to both be

[53] Georges Estievenart, 'The EC and the global drug phenomenon' in Georges Estievenart (ed), *Policies and Strategies to Combat Drugs in Europe* (Kluwer Academic Publishers, 1995) 50, 60.
[54] Commission of the European Communities, Proposal for a Council Regulation (EEC) on the establishment of a European Drugs Monitoring Centre and a European Information Network on Drugs and Drug Addiction (REITOX) (presented by the Commission), C0M(91)463.
[55] Council Regulation (EEC) No 302/93 of 8 February 1993 in the establishment of a European Monitoring Centre for Drugs and Drug Addiction [1993] OJ L 36/1.
[56] Regulation (EC) No 1920/2006 of the European Parliament and of the Council of 12 December 2006 in the European Monitoring Center for Drugs and Drug Addiction [2006] OJ L 376/1.
[57] Regulation (EU) 2017/2101 of the European Parliament and of the Council of 15 November 2017 amending Regulation (EC) No 1920/2006 as regards information exchange on, and an early warning system and risk assessment procedure for, new psychoactive substances [2017] OJ L 305/1.
[58] Paul Griffith et al, 'Addiction Research Centres and the Nurturing of Creativity – Monitoring the European drug situation: the ongoing challenge for the European Centre for Drugs and Drug Addiction (EMCDDA)' (2011) 107 *Addiction* 254, 257.
[59] European Commission, Report from the Commission to the European Parliament and the Council - Evaluation of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) 2018, COM(2019) 228, 3-4.

attentive to the political circumstances of its work and at the same time to maintain high scientific standards.[60]

In order for the EMCDDA to be able to fulfil the assigned task of collecting comparable data about the drug situation in the Member States the recast Regulation (EC) No 1920/2006 installed a European information network called 'Reitox', which stands for 'Réseau Européen d'Information sur les Drogues et les Toxicomanies'.[61] Apart from the Member States of the European Union, Norway has been a member of Reitox since the year 2000 and Turkey joined the network in 2007. Additionally, the European Commission is also a member of Reitox.[62] According to Art 5 of the Regulation, a National Focal Point (NFP) has to be set up in every member state, appointed and financed by the national state.[63] These NFPs are responsible for collecting a wide range of national data concerning drugs and drug addiction as well as national drug policies. Ensuing, the data is analysed by the NFP and annually reported to the EMCDDA. For the collection of the data technical guidelines are applied which the EMCDDA and the NFPs agreed upon beforehand.[64] Thereby, the NFPs also contribute to further developing the research methodologies used in this field.[65] The information submitted to the EMCDDA contains both quantitative data sets as well as qualitative information.[66] Through Reitox it is possible for the EMCDDA to remain in close contact with experts in all member states, who need to have comprehensive access to the national data.[67]

Using the data provided by the National Focal Points, the EMCDDA compiles numerous reports and publications concerning the various topics of relevance for policy makers and the public. Every year, a European Drug Report is published, containing information about drug markets in the European Union as well as the use of illicit drugs, harmful consequences stemming from this consumption and measures taken as response to that. Additionally, national drug reports are published as well, examining the situation in the different Member States following a specific structure and thereby enabling comparisons between the nations. Furthermore, reports are compiled and published concerning either specific substances or other specialized topics, as for example drug use and driving[68] or drug use and treatment opportunities in prison[69].

Additionally to the tasks describes so far, the EMCDDA is responsible for operating the EU Early Warning System in New Psychoactive Substances (EWS). Regulations concerning psychoactive substances, who are not regulated under the UN Conventions listed above, have existed since 1997. They first became necessary with the rise of MDMA (Extasy) in the 1980s and 1990s. In 1997, the EU adopted the so-called Joint Action on New Synthetic Drugs,

[60] Paul Griffith, above n 58, 257; Henri Bergerson, 'The soft power of the European Monitoring Centre for Drugs and Drug Addiction' in Renaud Colson and Henri Bergeron (ed), *European Drug Policies – The Ways of Reform* (Routledge, 2017) 40.
[61] Despite the french name, the working language of the network is English, see EMCDDA, *'The Reitox network'* (2012) 2.
[62] EMCDDA, *'Reitox Development Framework'* (2018) 7.
[63] EMCDDA, above n 61, 4.
[64] EMCDDA, above n 62, 8.
[65] EMCDDA, above n 61, 2.
[66] Paul Griffith, above n 58, 256.
[67] EMCDDA, above n 62, 7.
[68] E.g. EMCDDA, *'Cannabis and driving: questions and answers for policymaking'* (2018).
[69] E.g. EMCDDA *'New psychoactive substances in prison'* (2018).

introducing a system of three steps of monitoring these substances: exchange of information (early warning), risk assessment and implementation of control measures.[70] This structure has been retained until today. Council Decision 2005/387/JHA replaced the Joint Action in 2005 and in the years that followed, a constant increase of substances could be detected on the drug market, peaking 101 new substances in 2014.[71] Since then, the numbers have been declining, while still one new substance is detected on average every week.[72] In 2017, the above described legislations (Directive (EU) 2017/2103 and Regulation (EU) 2017/2101) were introduced, amending the system of monitoring new psychoactive substances and repealing the Council Decision of 2005.[73] Since November 23rd, 2018 an amended system of control is in place, operated by the EMCDDA with support of the National Focal Points. The EMCDDA is responsible for the first two steps of the process (early warning and risk assessment), while responsibility for the introduction of control measures lies with the European Commission. In case of the detection of a new substance not observed before, the Member State notifies the EMCDDA via the National Focal Point. Ensuing, the EMCDDA starts a process of closely monitoring the substance, whether there should be reason for concern it might pose a risk to public health. Upon request of the Commission, a majority of the Member States or by its own decision, the EMCDDA can produce a so-called initial report, which is submitted to the Commission and the Member States. Based on this initial report, the Commission has to decide whether the EMCDDA should conduct an assessment of the risk posed by the substance, resulting in a risk assessment report, again submitted to the Commission and the Member States. Should it be deemed necessary, the Commission than can decide to subject the substance to further control measures which have to be implemented into national law by the Member States.[74] By the end of 2018, the EMCDDA was monitoring over 700 new psychoactive substances. An increase in the risk associated with the substances can be observed when looking at the number of risk assessments carried out by the EMCDDA. In 2017 and 2018 more risk assessments were carried out than in any other year.[75]

CONCLUSION

Due to both the wide-ranging differences between the Member States in their approaches towards illicit drugs and the applicability of the principle of subsidiarity in this field, the European Union does not provide a strong legislative basis when it comes to drug policy. By adopting the EU Drugs Strategy and recently the EU Agenda on Drugs, an overall framework was created which simultaneously displays the common ground of the various national strategies and at the same time leaves the Member States enough room and flexibility to take their particular traditions into account. National legislation has existed in all Member States

[70] Joint Action 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 [1997] OJ L 167/1.
[71] Amy Peacock et al, 'New psychoactive substances: challenges for drug surveillance, control, and public health responses' (2019) 394(2) *The Lancet* 1668, 1671.
[72] EMCDDA, '*EMCDDA operating guidelines for the European Union Early Warning System on new psychoactive substances'* (2019) 9.
[73] See 'EU Drug Policy - Binding Legislation'.
[74] EMCDDA, above n 72, 13.
[75] European Commission, above n 59, 4.

prior to the European Drugs Strategy and its implementation did not lead to major amendments being carried out within these national provisions. However, the Drugs Strategy and the Agenda on Drugs allow for countries seeking to join the EU to adapt their national regulations to the European standards in order to fulfil the admission criteria. Additionally, the EU can form a common position concerning drug policy to represent in international fora as for example in discussions on the level of the United Nations. By speaking with one voice the Member States can display a much stronger position than they could achieve when solely representing their national views.

The main asset of European Union initiatives in this field for policy makers as well as researchers, practitioners and the public comprises of the work done by the European Monitoring Centre for Drugs and Drug Addiction in cooperation with the National Focal Points. By collecting, analysing and disseminating high-quality data concerning various drug-related topics, from supply to demand, treatment and policy, truly 'added value' is obtained. No national state would be able to gather and process this amount of data and information, let alone gain access to the data providing systems of the various Member States. The impact this system has on policy decision just as much as on other fields of drug-related action can be observed by envisioning the situation in the UK after the completion of Brexit. In an article in 2019, a group of researchers warned about the dire consequences impending if no solution is found to keep the UK in the information exchange system comprising of the EMCDDA, the NFPs and the EWS.[76] Not only is the shortage in information about organised crime groups involved in drug trafficking daunting, information about newly detected substances and their risks for public health will also no longer be available if no agreement about continuing the cooperation is found. This information system constitutes a valuable achievement of EU drug policy and the Member States as well as the Commission should ensure its functioning and further development in the years to come.

The outlined actions taken by the European Union and its Member States might comprise some interesting experiences for other regions aiming at fighting illicit drug trafficking as well as drug-related harm. This involves various complex policy fields, such as law enforcement, international cooperation and health related measures. While the main responsibility concerning binding legislation rests upon the UN Conventions and, taking into account different jurisdictions, remains with the Member States, the European Union by establishing the EMCDDA created the basis for evidence-based initiatives and policy developments within this field. In order to create effective regulation, reliable data is of vital importance. The experience in Europe and in particular the creation of the EMCDDA suggests that for the Pacific region, the improvement of common data collection and the exchange of relevant information – carried out in a regionally appropriate way - might help to better oversee the current situation as well as optimize future resource deployment.

[76] Andres Roman-Urrestarazu et al, ‚Brexit threatens the UK's ability to tackle illicit drugs and organised crime: What needs to happen now?' (2019) 123 *Health Policy* 521.