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“ROAD TRAFFIC AND ILLICIT DRUGS”

“Circulation routière et drogues illicites”

**Introductory Report about Legal Provisions, Difficulties Faced by Police,
and Analysis of Prevention Attempts in Selected European Countries**

by

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The following paper provides an overview of the results of a study conducted by the research group of Krüger, Perrine, Mettke, Huessy, and Schöch. The full report comprises one portion of the conference materials. This paper addresses:

- the objectives and design of the study;
- the results concerning legislation from the perspective of drugs in society and the perspective of drugs in traffic;
- the main problem areas relating to the drug problem in traffic; and
- a short summary with conclusions that should be discussed during this symposium.

1 Objectives and Design of the Study

The study addresses illicit drugs and road safety. The term “drug” has no standard definition among the different countries. However, the most commonly understood meaning is “psychoactive substance,” which is defined as a substance that affects or alters the function of the central nervous system. This occurs via:

- medications, either prescribed by physicians or sold over the counter;
- legal drugs such as alcohol; and
- drugs that are not legally permitted, or that are otherwise used illegally.

Here, we will use the term “drug” in the sense of illegal drugs. However we are aware that most of the problems mentioned in this paper will also hold true for psychoactive substances generally.

The study by the research group tries to provide information about:

- existing and pending laws among selected European countries regarding the use of illicit drugs among drivers;
- difficulties faced by police, prosecutors, and courts with respect to illicit drugs in road traffic; and
- prevention measures.

The twelve participating countries were **Austria, Belgium, the Czech Republic, France, Germany, Italy, the Netherlands, Poland, Spain, Sweden, Switzerland, and the United Kingdom.**

The project involved three phases within each of the twelve participating Member States:

- identification of drug and alcohol specialists in agencies of justice, police, public health, and transportation, as well as research organizations;
- data gathering via questionnaire; and
- follow-up with roundtable discussions in each of the selected countries.

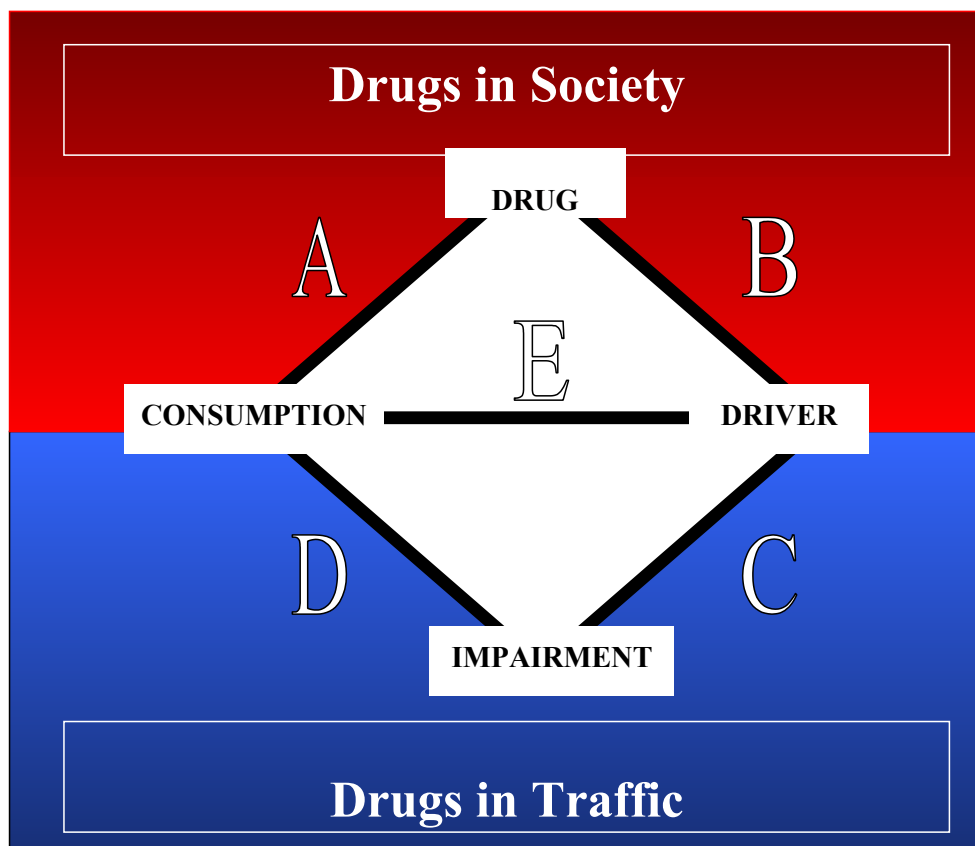
The study is a significant part of the initiative and the ongoing efforts of the Pompidou Group at the Council of Europe to combat drug driving. The project personnel greatly appreciate the creative support of Mr. Klaus Fuchs of the Pompidou Group. Also, the survey would not have been possible without the willingness of many people to contribute to this wide-ranging effort, by answering the questionnaires and / or by participating at the roundtable discussions. We are especially grateful to these individuals, whose participation made each roundtable fruitful, informative, and unique.

In the meantime, the questionnaire has been adopted by the DG VII of the European Union and was sent to countries of the EU that had not taken part in our study. Later on, Gilles Vincent will give a summary of this supplementary study conducted by the DG VII.

2 Results Concerning Legislation

The legal regulations should be divided into two categories: (1) legal regulations concerning drugs in general and their use in society, and (2) regulations concerning drug driving. Later on, it will be shown that these two domains are not independent from one another. The following figure shows the critical targets of legal regulations and the different aspects of each problem area, identified here by letter and discussed in detail in this section.

Figure 1. Graphic model showing interrelations of drugs in society and in traffic, in terms of critical targets of legal regulation regarding the drug, the driver, consumption, and impairment aspects in five crucial problem areas.



2.1 Drugs in Society

2.1.1 Problem Area A: Legal Regulations against Drugs

Concerning the problem domain “drugs in society,” there is a general consensus among all countries that the fight against illicit drugs is founded in criminal law. All of the participating countries have agreed to the respective United Nations conventions and have incorporated those principles into their national laws. Special emphasis is given to combating organized crime. Thus, in a very formal sense, there is no difference among the countries at all. In particular, the sanctions against drug dealing are very comparable.

However, most countries are confronted with the problem of having an increasing number of drug consumers. These countries are forced to search for ways to handle the problem pragmatically,

especially regarding the use of cannabis. Obviously, it is not possible to make a large portion of a country's youth criminal without imposing serious consequences on society. This problem leads to:

- a sharp separation in legal consequences between consumers and dealers,
- discrimination between different classes of drugs as being more or less tolerable,
- differentiated determination of the specific quantity of drug tolerated for possession (from a certain number of grams to "what fits in one's hand"); and
- different legal reactions to drug consumption, based on the circumstances of where and how the drugs are used.

Large differences exist in the way in which these exceptions are legally regulated. Most countries do not punish consumption. Some allow dismissal in the case of possession of small quantities for personal use. Others recommend only small fines in "petty cases."

Thus, with regard to those pragmatic exceptions to the general rule, the formal homogeneity between the countries breaks up into a quite heterogeneous dealing with the drug problem -- more specifically, the cannabis problem -- giving the impression of more or less liberal solutions all over Europe.

Another important influence on the way in which countries address the drug problem stems from the economic resources of a country. Fighting the drug problem is very expensive and requires well-educated police forces, a high standard of toxicological testing, and well-planned and carefully implemented prevention programs. By virtue of their not being able to meet the costs of an efficient drug-fighting program, the eastern countries are especially forced to take a more liberal position, but they do this against their will. Cooperation with and support from the other countries are clearly needed.

2.1.2 Problem Area B: Using Traffic Law as a Tool for Combating Drugs

In some countries, the potentialities of administrative regulations for license suspension and regranting are used as additional tools for combating drug consumption. Even if drug use is not linked with actual road traffic activity, some countries nevertheless use the consumption or possession of drugs as an opportunity to re-examine the qualifications of the user to drive a car. For example, if only a small amount of a drug is found on a person in Germany, the court can refrain from punishing the individual. In such a case, criminal law thus waives the claim for punishment. Simultaneously, under administrative law, however, this person's driving license can be revoked, even though he or she never actually drove under the influence of drugs and his or her drug consumption was completely separate and independent from being on the road. This practice is a clear and deliberate instrumentalization of traffic legislation for drug control, because neither impairment nor endangering others by driving is the basic reason for the administrative act.

2.2 Drugs in traffic

All countries agree unanimously with the statement that road traffic without drugs is better than road traffic in which drug users are present. From the perspective of traffic legislation, the aim of the regulation is the existence of traffic in which nobody avoidably endangers another person. In the case of psychoactive substances, this aim leads to a series of questions:

- Problem C: Should only the impairment be punished, subsuming drugs under other detrimental influences?
- Problem D: Should a certain drug concentration be punished, assuming that this level causes detrimental effects in the "average driver"?
- Problem E: Should drug consumption in conjunction with traffic activity be punished?

2.2.1 Problem Area C: The Impairment Approach

Regarding the basic aims of traffic legislation, this approach is the most straightforward one. Independent of the reasons that led to impairment, the driver is prohibited from operating a vehicle in any state of compromised fitness. All of the countries provide sanctions against driving in the case of actual impairment. Therefore, in all countries, it is possible to sanction drug driving under conditions in which impairment is proven. The grounds for penalizing the driver is the state of impairment, not the presence of the drug. From a legal point of view, this is a “clean” solution with no impact on the constitutional rights of the person and with no need to refer to the problems of drug consumption. As an internal standard of traffic legislation, the impairment approach is also independent of the public discussion about drugs.

2.2.2 Problem Area D: The Concentration Limit Approach

The basic handicap of the impairment approach is the fact that evidence of reduced fitness as a consequence of drug consumption is difficult to obtain and to prove. In earlier times, we had the same situation in the case of alcohol-induced impairment. But about 100 years of research have led to an impressive body of knowledge about the effects of alcohol on all psychophysiological functions. This knowledge yielded the bases for setting **per se alcohol limits**, above which a driver is assumed to be impaired, and law enforcement does not have to prove the behavioral impairment in each individual case. The establishment of limits for alcohol concentration could therefore be scientifically established and justified, thereby creating the basis for effectively handling the problem of drunk driving in the general population.

In the case of drugs, however, the situation seems to be almost hopelessly complicated. There are many different substances, each of them with complex pharmacokinetic properties, unknown metabolic characteristics, broad effects on heterogeneous psychological functions, and unknown tolerance from habitual consumption. Thus, all legislation based on evidence that a drug was responsible for poor driving performance presents itself with almost insoluble difficulties. This dilemma leads to the widespread practice of the courts to punish for alcohol or other offenses, even in cases where drug consumption was probably the cause of the driving violation.

The same problems hold true for medications with psychoactive effects. Their complex pharmacology will not allow simple regulation based on concentration limits, or regulation based on the definition of classes of substances prohibited for driving. Given that millions of drivers are under the influence of necessary medications, and also that the performance of most of the drivers is improved by the very medication prescribed, the problem is most likely not solvable.

The per se concentration limit approach is attractive to the extent that scientific justification of the limits is available. Only in the domain of traffic legislation can one substitute individually proven impairment with reasonably assumed impairment.

2.2.3 Problem Area E: The zero limit approach

Recognizing the difficulties of an impairment approach to the problem of drugs, some countries are attempting to introduce **zero limit regulations** for drug concentrations. To avoid the problems of the impairment approach, and lacking scientific justification for any limit, there is a tendency in some countries toward establishing a zero limit for drugs, as was introduced first in Germany. The legal limit is set to a concentration that can be uniquely detected by toxicological methods. In fact, this is actually a zero limit with a built-in error tolerance.

Another difficulty arises at this point. Concentration limits must be formulated with respect to a particular body fluid -- be it blood, urine, saliva, or sweat. Concentration limits in blood are seen as the most relevant ones because these concentrations show the highest correlations with psychophysical functioning. Drug concentrations in urine provide measurement “backward in time,” indicating previous consumption. The distribution characteristics of many important substances from blood to

saliva or sweat are as yet not fully understood. Therefore, to date, blood seems to be the most relevant specimen for determining an actual detriment in performance caused by a drug, followed by urine – which normally cannot itself be used as legal evidence of actual impairment. Therefore, if presumed impairment by a drug is the basis of a zero-limit regulation, blood will be the only specimen with evidentiary power.

At this point, the two issues of dealing with the problem of drugs in society and of drugs in traffic fall together. The inability to detect and prove impairment reliably lead to the same zero limit solution as in the case of regulations penalizing people for drug use “wherever you can find it.” It is not our aim to evaluate this result. But it must be evident that a regulation apart from the impairment approach cannot be a model for the legal treatment of licit drugs, such as medications.

3 Problem areas in fighting drug driving

The study reveals a group of problems linked with drug driving, its detection, and prosecution. All of these problems present constraints involving: (1) legal provisions (either absent or too narrowly defined to be effective), (2) practical problems experienced by police at the grassroots level, (3) medical and toxicological shortcomings, and / or (4) absent or ineffective prevention efforts. Therefore, the best way to demonstrate those problems may be to pursue a single case of drug driving, beginning with the problem of how such a driver is detected, and ending with the question: under what conditions should his license be regranted? These steps – and in the same manner, the problem areas – are displayed in **Table 1**.

Table 1. Flow diagram showing the procedures, questions, and problems in the steps of processing a suspected drug driver, from detection to medical examination to prosecution.

Domain	Procedures	Questions	Problems
DETECTION	Traffic	Control mode? Random block allowed?	Police strategy and tactics
	↓		
	Selecting one driver	Suspicion necessary?	Constitutional rights
	↓		
	Field testing	Behavioral tests? Instrumented test? Which specimens?	Differential experience Drug recognition programs
	↓		
MEDICAL EXAMINATION	Testing by the physician	Behavioral tests? Toxicological methods?	Experience of the physician Standardization
	↓		
PROSECUTION	Immediate consequences	License suspension? Seizure of the car?	Legal regulations
	↓		
	Further consequences	Severity of punishment? Discretion? License revocation? Non-penal consequences (e.g., insurance costs)?	Effectiveness of legal measures

3.1 Police strategies

The first and primary problem is to detect the drugged driver. Which police strategies are efficient? Is it, for example, a good idea to apply the successful experiences and strategies used with drink driving?

A number of studies have shown that drugs are common among adolescents and young adults whose lifestyles are closely tied to popular culture. The typical drinking driver is quite different from the typical driver under the influence of drugs. Many of these latter drivers are young people traveling long distances to attend special events such as rock concerts or raves; driving to local or distant discos; and driving with several passengers headed for the same destinations, with the intention of consuming drugs together.

Given these lifestyles, police detection strategies must be shown to be effective. What is the typical pattern of a drug driver's trip? For example, when does the trip take place? Which types of cars are used? Does such a trip typically involve single drivers or cars with passengers? Although the exchange of experiences among the traffic police from different countries has begun, it needs to be intensified, especially between eastern and western countries. Such working groups should also include experts who are not in law enforcement.

3.1.1 The problem of field testing

Once the police stop a driver, the officer typically experiences further difficulties in detecting the level of intoxication and obtaining sufficient evidence for a successful prosecution. There are many different regulations governing the circumstances under which a driver can be required to give a blood or urine sample. While some countries allow biological testing without the person's consent (i.e., the test is forcibly administered), the majority require specific consent. However, these countries create pressure on drivers to cooperate by imposing sanctions in case of refusal.

These different approaches are based on different assumptions about the constitutional rights of the person. Such rights might be based on the assumption that preserving the physical integrity of the person is of paramount importance, or they might be based on the assumption that a person cannot be forced to incriminate him- or herself by actively cooperating in providing a sample. Usually, however, these sampling procedures can be undertaken only if there is sufficient evidence that an offense has been committed, so-called "probable cause." However, because the police are the ones who must obtain such evidence, the officers themselves have to take responsibility for doing so. This situation frequently results in very cautious, conservative practice -- as a way to avoid errors. The same holds true for police procedure in testing behavior impairment at roadside.

Thus, the effectiveness of drug-driving enforcement depends not only on unequivocal regulations about which drugs are prohibited at what concentrations, but also on clear-cut regulations for the police, regarding proper procedures for obtaining evidence. Regulations that facilitate detection and evidence of drug driving will necessarily also create burdens for the average driver who does not use drugs -- a price that must be paid if society wants effective enforcement of drug driving.

Two important ways to improve the effectiveness of enforcement appear possible. The first is to introduce screening devices for drug consumption (analogous to breath analyzers); the second is to implement drug recognition programs for police. Most of the current screening devices sample saliva, but some use urine or sweat. The most reliable screening results are obtained from urine tests, but they impose interpretation limits on the assessment of the actual state of impairment. In addition, the urine sampling procedure does not seem to be appropriate for field use. Saliva and sweat testing devices are still under development and have not yet reached an acceptable level of validity. Thus, there is currently no rapid, valid, feasible screening device for use in the field. In the meantime, however, an interim aid is available in lieu of such a device: drug recognition programs for police.

Although the need for drug recognition programs is widely accepted in the participating countries, it is clear that significant differences will arise in how they would be developed and

implemented. The modification and adaptation of programs already in place in the United States, where they were first developed and implemented, would be costly and subject to legal constraints if they were simply transferred wholesale for use in Europe. Therefore, the drug recognition program is still only just beginning in some countries. Nevertheless, there is a clear, recognized need and a unanimous willingness throughout all of the participating countries to cooperate in the development of an appropriate European version of the drug recognition program.

3.2 Problems with medical examination and toxicological procedures

The next problem area is reached when the suspected driver confronts the forensic physician. In some countries, strong efforts are in place to develop and evaluate standard procedure and protocol for the medical examination, including the selection of appropriate behavioral tests and meaningful observations of the driver's behavior. Here, a common effort among all European countries toward such standardization would be highly desirable. Comparable efforts have been undertaken in the field of toxicology. That is, currently two initiatives by the EU have been made that would standardize toxicological procedures and quality control of the laboratories that examine drugs in body fluids. Despite this positive beginning, more still needs to be done.

A new and interesting problem has arisen in some of the countries that have recently developed improved police training procedures for detecting drugs. With the increase in training, the number of drivers detected with drugs has increased. However, when the suspected drivers appear before forensic physicians who have had less training in drug detection, the physicians have failed to detect the same symptoms as the officers and have concluded that such drivers were "not impaired." This happens particularly in rural regions where no specially trained physicians are available. Thus, improved training techniques for police officers should also be taught to forensic physicians.

3.3 Problems in prosecution

3.3.1 Immediate consequences

The effectiveness of deterrence is founded on three bases: (1) certainty (of detection), (2) celerity (of reaction), and (3) severity (of consequences). Apart from the lack of certainty, police officers often complain that they are unable to proceed with processing a driver they know to be under the influence, because of the time it takes to obtain a result from toxicological testing. There are few legal regulations available – for example, for preliminary suspension of the license or seizure of the car – that allow processing based alone on behavioral signs of impairment or based alone on positive results from a screening device.

3.3.2 Further consequences

Detection of drug impairment by police does not necessarily result in a judicial conviction, which depends instead on the discretion that prosecutors and judges exercise in such cases. Across all nations in this survey, there is a lack of statistical data regarding this question.

Statistics about police reports of drug drivers, dismissals of prosecutors' decisions, and charges or indictments before courts either do not exist or -- if they do exist -- are maintained for internal purposes only and are not available to the public. Different national approaches exist regarding prosecutors' discretion in deciding whether to prosecute a case or to dismiss it. Some use a **legality principle**, whereby prosecutors are generally obliged to proceed with prosecution in each case, assuming sufficient evidence exists. However, these countries also allow prosecutorial discretion under certain circumstances, particularly in petty cases. In contrast, other countries not using the legality principle generally allow prosecutorial discretion.

In practice, however, these different theoretical approaches do not lead to major differences in how laws are enforced. In petty cases, a prosecutor working under the legality principle can use his or her discretion; and in serious cases, a prosecutor who theoretically has discretion will decide to prosecute, anyway.

Often more important than the punishment itself are the consequences of license revocation, suspension, and regranting. In all countries, drug-impaired driving leads to suspension or even revocation of the driver's license; but restrictions for regranting vary. In the majority of countries, the decision to suspend and / or regrant is up to the administrative licensing authorities, who can require the offender to undergo medical examination, including urine and hair testing for post-arrest determination of his pre-arrest drug consumption habits. Often, license regranting is conditional upon a prerequisite of "proven abstinence" across a long period of time, and assumes that drug consumption and participation in road traffic are incompatible. This is in obvious contrast to alcohol, where the assumption that "controlled drinking" – in which drinking is separated from driving – is possible and allows for regranting of the driver license.

4 Prevention

Last, but not least, the problem of prevention must be emphasized. The basic question here is: do the classical countermeasures and instruments for deterring drink driving also apply to combating drug driving successfully? The typical drinking driver is quite different from the typical driver under the influence of drugs. Little is known about the extent to which young drivers are influenced by, or are even aware of, legal regulations, especially given that detection rates are so low. Very little effort has been expended either on understanding or addressing (not to mention solving) the problem of drugs and driving from the perspective of the most common drug consumer: the young user. There is a complete lack of research comparing and contrasting drug-driving behavior, attitudes, and perception of sanctions in the different European countries.

Prevention policy is also confronted both by the divided popular attitudes towards drugs and the political approaches to drug problems. Despite basic and official rejection of drugs, there is a practical need to tolerate at least some degree of drug consumption, especially cannabis. This willingness to tolerate some level of drug use, but reluctance to legalize it, makes it nearly impossible to address the problem of drug driving with the same effectiveness of relatively simple alcohol campaigns such as "If you drink, don't drive." The strategy of silently tolerating a drug in general and outside the road traffic domain, but officially penalizing its use prior to or during driving, hinders the implementation of traffic-specific prevention programs with clear-cut recommendations for young people on how to handle drugs-and-driving situations.

5 Summary

To conclude a paper that identifies many problems and deficiencies, we want to emphasize some points that have been discussed throughout all of Europe.

- Drugs seem to be nearly everywhere in Europe.
- No country is immune from the effects of drugs on its young people.
- There is a general willingness among the surveyed countries to counteract the drug-driving problem.
- There is a clear and distinct willingness to cooperate on this issue across the fields of law, law enforcement, medicine, and public policy.
- In order to achieve goals in reducing drug driving, less developed countries seem to expect support from more developed countries.
- There is unanimous agreement that drug driving is a Europe-wide problem that should be solved on a common European basis.