THE OVERVIEW AND LEGAL BACKGROUND OF NEW PSYCHOACTIVE SUBSTANCES IN EUROPEAN COUNTRIES

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Keywords: designer drugs; new psychoactive substances; forensic laboratories; European Union.

Abstract: The analysis is based on European and national data of the last 5 years and aims at investigating the effectiveness of regulations. It aims at investigating whether legal intervention has substantive effects on the availability of these substances, whether it influences their supply, effects the appearance of new ones, or is able to confine the spread of designer drugs.

INTRODUCTION

Since the mid-1990s, the European Union has been proactive in its response to the new drug phenomenon — 'designer drugs' — with the introduction of a mechanism for information exchange (known as the early warning system — EWS) and control of new substances across Member States. With Council Decision 2005/387/JHA, the European Council established an EU-wide system for tackling problems connected to new psychoactive substances (synthetic and natural) which raise concerns at the EU level.

The supply of these psychoactive substances — which are legally not regarded as drugs and are mainly synthetic — has increased to an unprecedented size in the last 4 to 5 years. These substances cannot be found in drug registries of international agreements, hence, their production, commerce and even their advertising is unsupervised. These substances are mainly produced outside Europe (China, India) and are advertised through online retailers or in specialist shops. However, at times, they appear on the market together with 'classic' drugs but they can also be produced in an illegal European laboratory and are directly sold on the market.

The spread of designer drugs can be explained with their easy availability, low black-market price and the limited and slow response of the legal system due to their legality. Therefore, an obvious shift can be seen in the markets from 'illegal drugs' to 'designer drugs'. Designer drugs are in many cases misleadingly labelled as 'chemicals' or 'plant nutrients' in order to avoid inspection. In these cases the label of 'not suitable for human consumption' is usually stated on the packaging. Because of their escalation, EU members have been trying to fight against them with various regulative tools. Establishing an adequate legal regulation by the European Parliament's and the Council's COM(2013) 619 proposal on new psychoactive substances is more difficult.

METHODS AND RESULTS

The research is based on the 2009–13 annual reports of the Hungarian National Drug Focal

Point, the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Europol's analyses and data of the Hungarian Institute for Forensic Science.

It can be said that the number of new psychoactive substances has been continuously increasing in Europe. The EU's early forecast system has registered more than 250 000 new substances; approximately one substance per week was reported in 2013. Furthermore, the appearance of substances belonging to less known chemical groups is getting bigger and bigger. The products for sale mostly contain a mixture of materials, and the lack of pharmacologic and toxicological data means that long-term consequences of their usage are not known. The data show that some of these substances can cause problems that need clinical intervention, moreover, cases of death have also happened. For instance, substance 5-IT, a substance which imitates amphetamine, reportedly killed 24 people in four EU countries in just 5 months between April and August 2012. This substance was associated with 21 deaths in four EU countries in 2010–12 alone.

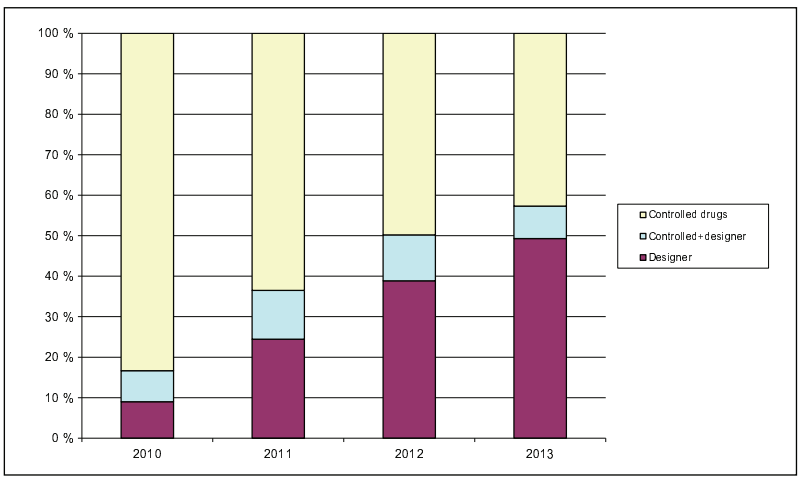
The growing number of new drugs is now controlled in EU Member States. However, their availability, coupled with the fact that there are limited data on their effects and harm, continues to pose serious challenges to drug policy and practice in Europe. This is compounded by the speed at which they appear, as well as by differences in national drug laws. 'Controlling' systems operating in Europe vary between each other in many instances regarding their legal basis, sphere of competence and resources assigned to them.

Generally, countries list the chemical names of substances individually in their national legislation. Legal sanctions are only applied if the substance is chemically equivalent to the controlled list. Some Member States have opted to schedule families of substances on the basis of their chemical makeup. This is known as 'generic legislation'. The 'analogue system' addresses more general aspects of similarity in the chemical structure of a substance. This aspect might be supplemented by a requirement for similarity in pharmacological activity, attempting a more specific delineation of the analogue system's sphere of control.

According to a 2011 Union report, the current system is unable to keep track of the great number of new substances which appear on the market. Placing a single substance under measure takes approximately 2 years, during which time criminals may change the substance's chemical content to some extent, which does not decrease its seriously harmful effects but the substance gets out of the effect of legal investigation.

In Hungary, the regulation of new psychoactive substances entered into force in 2011. Substances that are reported by a formal notification will be rapidly assessed by experts, who will subsequently decide whether they should be listed, and, if so, whether they should be categorised as individual substances or as a family. Based on the analyses results of confiscated substances, the market share of new psychoactive substances (designer drugs) has been continually increasing since 2009. This tendency has not slowed down due to the 2011 legislative changes. In confiscated samples the ratio of classic drugs in the past 5 years has decreased from 95 % to 44 %, while the ratio of designer drugs has increased from 1 % to 49 %. The confiscation ratio of new substances overtook the ratio of classic drugs in 2013 (Figure 1).

Figure 1 — **Ratio of the new psychoactive substances in Hungary (2010–13)**



Regardless of regulation attempts, the number of new psychoactive substances has increased in other European countries, as well. The number of substances annually registered at the EMCDDA tripled between 2009 and 2012 (from 24 to 73).

CONCLUSION

There is no mechanism for effectively regulating new psychoactive substances before they reach the market. New psychoactive substances can be manufactured, imported and sold without restriction until they are proven to be harmful, and can be scheduled either as restricted substances or controlled drugs.

Criminalisation is not able to considerably confine these substances' supremacy. This statement can be supported with both European and national data. Based on the results, we can state that the continuous and dynamic spread of new substances not only keeps pace with legal regulations but the ban of a substance practically generates the appearance of a new one.

As a consequence of the abovementioned phenomenon, working out a system which enables Member States to hold back new substances before getting to the market with legal tools, hence, to hinder their spread, is a more urgent task.

Knowing this, the European Parliament and regulation plan COM(2013) 619 on new psychoactive substances is worthy of consideration, with the following declared aim: 'Proposal for a regulation aims at improving the functioning of the internal market regarding licit uses of new psychoactive substances, by reducing obstacles to trade, preventing the emergence of such obstacles and increasing legal certainty for economic operators, while reducing the availability of substances that pose risks through swifter, more effective and more proportionate EU action.'

In order to facilitate the functioning of the internal market while protecting consumers from harmful new psychoactive substances, EU-level action shall ensure the free movement of new psychoactive substances for commercial and industrial use, and for scientific research and development and provide a graduated set of restriction measures for substances posing risks, proportionate to their level of risk.

It may arise as a question whether establishing the wished balance could be realised or not, and whether they can hinder or decrease the appearance of dangerous substances on the market with adequate regulations.

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