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Drugs and driving

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1. Introduction

With abuse of controlled drugs increasing, there is concern over the effects that this may have on the population. One of these effects is the possible reduction in ability to drive a motor vehicle safely on the public road, particularly when driving under the influence of narcotic or hallucinogenic substances. Although driving under the influence of alcohol is already established as an offence in all countries, drug abuse has not always been addressed before now. However, throughout the 90s there has been increasing research on this topic, by national and international bodies, to assess the prevalence rates, the effects, and various legal methods of controlⁱ. The public are equally concerned – the Eurobarometer survey of young people across Europe in Spring 2002 found that 79.4% of respondents agreed that police should test for drugs at the same time as alcohol.

As an example of prevalence, one literature review published in 1999, examining some thirty studies, estimated that *in the general driving population* the prevalence of illicit drug use would probably fall in the range of 1% - 5% (mainly cannabis and opiates), whereas licit drug use would fall in the range of 5% - 15% (mainly benzodiazepines); for drivers *actually suspected* of driving under the influence of drugs, the prevalence of illicit drug use was also lower than for licit drugsⁱⁱ. However, it should be noted that, as a literature review, the figures were taken from data that was not designed to be comparable.

Not wanting to repeat the excellent research already completed, this paper aims only to give a descriptive overview of the various legal mechanisms used to sanction this phenomenon in the EU and Norway – whether provisions exist in drug control laws or road traffic laws, the substances addressed, the status and levels of penalties, any levels of tolerance¹, and whether drivers can be stopped for tests at any time or if the police require some form of suspicion beforehand. The study excludes provisions for driving or operating other forms of vehicles, such as rail, sea or air traffic.

2. European law

The European Union has legislated on the use or abuse of psychotropic substances which may affect physical and mental fitness to drive. Annex III of Council Directive 91/439/EEC of 29 July 1991 on driving licences states that “Driving licences shall not be issued to or renewed for applicants or drivers who are dependent on psychotropic substances or who are not dependent on such substances but regularly abuse them”. Recognising that such substances may be medicines issued on a valid prescription, it also laid down that “Driving licences shall not be issued to, or renewed for, applicants or drivers who regularly use psychotropic substances, in whatever form, which can hamper the ability to drive safely where the quantities absorbed are such as to have an adverse effect on driving. This shall apply to all other medicinal products or combinations of medicinal products which affect the ability to drive.”

Although the words “psychotropic substances” were used, which might suggest limiting the Directive to those substances listed in the Schedules to the UN Convention on Psychotropic Substances of 1971, it would seem that the Directive intends to refer to all psychoactive substances.

Under the EU Action Plan 2000-2004 3.1.2.5, the Commission and Member States are to undertake research into the effects of driving under the influence of illicit drugs and pharmaceuticals. By the Mid-

¹ In general, countries may either operate policies of “zero tolerance”, in which any trace of drug found is penalised no matter what the effect on the driver; or “impairment”, when drivers will be punished only if their driving skills were obviously affected. This is due to lack of scientific agreement up to now about what levels of concentration of the drug in the body may show impairment, and lack of suitable equipment for roadside testing.

Term Review of the Action Plan, conducted in late 2001, actions listed under this heading were already taken or planned in 12 of the 15 EU Member States.

Another legal basis for possible action is Article 71(c) of the Treaty of Amsterdam, which allows the Council to lay down measures to improve transport safety. However, this should be interpreted according to the principle of subsidiarity, which may limit its potential.

3. National law

Austria

In Austria, the law controlling drugs and driving is the Austrian Road Traffic Act (art.5 para. 9 and 10, art. 99 para. 1b). The Road Traffic Act refers to "Suchtgift". By the meaning of the Austrian Suchtmittelgesetz (Narcotic Substances Law) "Suchtgift" are all substances and preparations listed in the Schedules of the Austrian Suchtgiftverordnung (Narcotic Drugs Act), which is generally those covered by the 1961 UN Convention and Schedules I and II of the 1971 UN Convention on Psychotropic Substances. This therefore includes most controlled drugs with the exception of most barbiturates and benzodiazepenes.

The fine is (according to art. 99 para. 1b of the Road Traffic Act) from €581 up to €3 633. In addition to this, a withdrawal of the driving licence for four weeks follows in these cases according to the regulations of the driving licence law. The offences are only of administrative status; there is no criminal record. As it is illegal to drive under the influence of drugs, the tolerance is one of impairment.

However, under ss. 81, 88 and 89 of the Austrian Penal Code (StGB), endangerment of persons, while under the influence of any substance, is a criminal offence punishable by up to 3 months in prison or 180 day-fines. Negligence resulting in death, if under the influence of any substance, is a criminal offence punishable by up to 3 years in prison, and if resulting in injury is punishable by up to six months in prison or 360 day-fines. These might be applied to driving under the influence of drugs.

Drivers can be tested following assumption of driving under the influence of drugs, i.e. when the police have some reason to believe that the driver may be under the influence; random testing is not permitted. The police have the right to take a person to the doctor for medical examination when there is an assumption of driving under the influence of drugs. Since January 1st, 2003, everybody who is taken to the doctor for that reason is obliged to provide a blood sample, if the doctor detects a possible intake of drugs affecting the person's ability to drive.

Belgium

The laws in force are:

- Loi du 16 mars 1999 (Moniteur belge du 30 mars 1999) modifiant la loi relative à la police de la circulation routière.
- Arrêté royal du 4 juin 1999 (Moniteur belge du 8 juin 1999) relatif au prélèvement sanguin en vue du dosage d'autres substances que l'alcool susceptibles d'avoir une influence sur les capacités de conduite d'un véhicule.

The substances targeted are the most common illicit drugs, namely traces of:

THC
Amphetamine

MDMA
MDEA
MBDB
Morphine
Cocaine or benzoylecgonine

If these substances are detected at all, then the driver is guilty of an offence. The first penalty is prohibition of driving for 12 hours, renewable every 6 hours until signs of influence disappear – this is a safety measure. Following this, there can be suspension of driving licence by order of the judicial criminal authorities. If there is a criminal prosecution, the offender may be sentenced to imprisonment for 15 days to 6 months and/or a fine of €1 000 to €10 000, or imprisonment for 1 month to 2 years and/or a fine of €2000 to €25 000 in case of recidivism within three years.

Both the driver of a vehicle, and the supervisor of a learner driver, may be checked and penalised if drugs are found. Those who may be subject to the test include any person who is driving or about to drive in a public place, or who is accompanying a driving student. It is also possible to test the person presumed responsible for a car accident, or anyone who could have contributed to its cause, even if it is the victim.

Denmark

According to the Road Traffic Act (lovbekendtgørelse nr. 712 of August 2. 2001) section 54(1), driving is prohibited if the driver is incapable of driving in a fully reassuring way. The Road Traffic Act section 54(1) says as follows:

"A motor-driven vehicle may not be driven or attempted to be driven by somebody, who because of illness, weakness, over-exertion, lack of sleep, influence of exhilarating or anaesthetic drugs or because of similar causes is found to be in such a condition, that he is incapable of driving the vehicle in a fully reassuring way." It can be seen that there is no distinction between specific drugs, and by specifying "incapable of driving... because of [drugs]", it takes an impairment approach.

Violation of this provision is a criminal offence. According to the Road Traffic Act section 117(5), offenders are punished with a fine or, under aggravating circumstances, imprisonment up to 1 year. The nature of sanctions (level of fine, period of licence suspension and imprisonment) depend on the specific particulars of the offence, i.e. how intoxicated the person is, whether an accident occurred, first time offence or not, income of the person in question etc.

According to the Road Traffic Act section 55(1), the police may order a person driving a vehicle to take a breath test at any time. Under section 55(2) the police may hold a person in order to have laboratory specimens of such person's blood and urine taken, if there is cause to suspect such person of having committed an offence under section 54(1) and (2), or if such person refuses or is unable to take a breath test. Further, if other causes than inebriation are suspected, the police may hold the person in question for a medical examination.

In practice, the police will stop a vehicle either as part of a general traffic inspection or because of strange driving. When stopping the vehicle the police will look at the driver, and if he has a strange appearance the police will ask him to blow in an alcoholmeter. If the alcoholmeter shows signs of alcohol the driver will be taken to the police station and examined by a doctor. If the alcoholmeter does not show any signs of alcohol but the driver has a strange appearance, the driver also will be taken to the police station and

examined by a doctor. The doctor will make a clinical study of the driver and take a blood sample for examination for traces of alcohol, medicine and drugs.

No concrete changes are foreseen in the near future. The Ministry of Justice is however very aware of the increasing problems with people driving while under the influence of medicine and drugs.

Finland

Under the Penal Code, Chapter 23, section 3, an offence of "driving while intoxicated" is committed by a person who, after having used other narcotic substances than alcohol, so that there is a narcotic drug or its metabolite in his or her blood during or after driving. The punishment for driving while intoxicated is a fine or to imprisonment for at most six months. According to s.12, for the purposes of this chapter, *narcotic substance* means also performance-reducing pharmaceuticals. However, medical products, which the driver has had the right to use, are excluded from the zero-tolerance approach of section 3.

Under section 4, an offence of "driving while seriously intoxicated" is committed due to impairment: if his/her ability to perform as required in the operation is significantly reduced, and the conditions are such that the offence is conducive to causing a hazard to others. The punishment for this is at least 60 day-fines or imprisonment for at most two years. This does not have the same exclusion for medical products, suggesting that trace amounts are acceptable but impairing driving ability is not.

Section 8 defines a separate offence of relinquishing a vehicle to a person "who is apparently in such a state that he/she is guilty of an offence mentioned in sections 3 – 7", which is punishable by a fine or imprisonment for at most one year.

A driver found guilty of driving while intoxicated, having been under the influence of a drug specified in the Narcotics Act (1289/93) may also be found guilty of a drug-user offence (Criminal Code 50:2a).

The offences are the type "zero-tolerance", with any detection of drug or metabolite. They have been changed from "impairment", where no precise figures for blood/drug levels were given, only the verbal descriptions (reduced and seriously reduced ability, respectively). In the preparatory materials of the previous legislation it was explained that the levels of reduction should be comparable to those caused by the given levels of alcohol, in order to be punishable. According to the Ministry of Interior directions to the police (3/011/1999) the intoxication shall be detected by an analysis of a blood sample and a clinical medical examination, which includes filling an observation form on the suspect's performance.

Under Chapter 6 of the Coercive Measures Act (450/1987), drivers can be tested any time in traffic in order to detect use of alcohol or other intoxicants. Practices also include stop checks where everyone is tested (quick tests for drugs are performed, but a positive result must be confirmed by a laboratory test), and tests after stopping an individual driver on grounds of suspicion. An alcohol test is taken as a rule after an accident, and the practice of drug testing in similar conditions is spreading, limited presently by availability of suitable test kits.

The driving licence must be suspended if a person has been found guilty of driving while intoxicated or seriously intoxicated. Suspension of driving licence is for maximum five years. Besides this, there are administrative sanctions on not issuing or returning the driving licence to persons with intoxicant addiction. The Road Traffic Act (267/1981) lays down provisions on licence suspension in section 75,76 (546/1999),

77,78 and 79 (676/1990). The practices are guided by directions laid down by the Ministry of Social Affairs and Health for physicians (1998:6), and by the Ministry of Interior for the police (Dno 3/011/99).

France

The law 2003-87 of 3 February 2003 on driving under the influence of substances or plants classed as narcotics has created a new crime of driving after using such substances. Although the title is “under the influence”, the text makes it clear that it will have a zero-tolerance approach. Testing may take place if the police have reasons to suspect that the driver has taken drugs, as well as standard testing in cases of death.

The penalties are comparable to those for driving under the influence of alcohol – two years in prison and €4 500 fine. If the offender drives after using narcotics and is under the influence of alcohol at the same time, the penalty rises to three years in prison and €9 000 fine. It is also possible to suspend or revoke the driving licence for up to 3 years, and sentence to community service or day fines. The decrees necessary to implement the new law are currently being drawn up.

Before February 2003, driving under the influence of drugs was not subject to a specific sanction, as such a driver could always be charged for illicit use of drugs.

The law n°99-505 of 18 June 1999 on road safety, known as the Gayssot Law, added an article L. 3-1 to the first title of the road code, allowing systematic drug testing for all drivers involved in a fatal accident. The decree 2001-751 of 27 August 2001, effective from 1 October 2001, defined a fatal accident (accident having immediate fatal consequences), established that the drug tests should be carried out by a doctor, that the analyses and medical exams should include a clinical examination, a biological sample, and a search and dosage assessment of narcotics. When urine tests prove positive, a blood sample should allow testing for medicines as well. This decree also had epidemiological aims, to establish levels above which it was possible to state that the substance influenced the driver.

Art.21 of the Law no. 2001-1062 of 15 November 2001 relating to daily security had foreseen the possibility for officers of the judicial police to test for drugs all drivers implicated in an accident where injury was sustained, with a view to establishing if they were driving under the influence of drugs.

Germany

Three provisions in the German Criminal Code (*Strafgesetzbuch*, StGB) address drugs and driving:

- 1) § 315 c StGB, "Endangering road traffic", which prohibits driving while not in a condition to do so safely due to consumption of intoxicants, thereby endangering life, limb or property of significant value.
- 2) § 316 StGB, "Drunkenness in traffic", which prohibits driving while not in a condition to do so safely due to consumption of intoxicants, but without the risk of endangerment in s.315c
- 3) § 323 a StGB, "Total intoxication" may also be used on certain occasions; it provides for an offence when a person knowingly or negligently gets intoxicated and commits an offence in such condition, and lacks mental capacity to be judged guilty for that offence.

The provisions in the Criminal Code refer to “alcoholic drinks or any other intoxicating substances”, which includes all controlled drugs. Police are allowed to check for drug use in any situation, even random testing. These offences give rise to a fine or up to five years imprisonment, and for breach of s.316 a fine

or up to one year in prison. Under s. 44 of the criminal code, they may also receive a driving ban from 1-3 months. They operate on an impairment level – there is no specified limits as there is no scientific proof of them yet, but this area is currently under research.

There is a separate provision in the Road Traffic Code, § 24 a StVG, "Ordnungswidrigkeiten wegen Genusses von Alkohol oder berauschenden Mitteln". This provision covers alcohol and the substances specified in the annex, namely cannabis (THC), heroin, morphine, cocaine (benzoyllecgonin), amphetamine, and two designer amphetamines (MDE and MDMA). For detection, originally only a trace was needed to start the administrative procedure (a zero tolerance approach). However, there are specified limits for the named substances, over which the driver will clearly be impaired. On the basis of scientific advice, the government has proposed to set 50% of these limits as a new level, below which no procedure would be started, in order to reduce the number of cases. This must still be approved by the 16 Länder.

Breach of this provision is an administrative offence, enforced by municipal authorities. From 1 April 2001, this could be punished with an administrative fine of €250 and a 1 month driving ban, and a repeat offence by a €750 fine and a 3 month ban. A doctor's advice may also be submitted regarding possible dependence or drug abuse.

Finally, there is a provision § 14 VeF, "Klärung von Eignungszweifeln im Hinblick auf Betäubungsmittel und Arzneimittel", contained in Verordnung über die Zulassung von Personen zum Straßenverkehr (VeF) vom 18. August 1998 (BGBl. I S. 2214), in Kraft ab 01.01.1999. The VeF lists three categories; "illicit" drugs, psychoactive medicines, and other psychoactive substances.

Greece

Since 23 May 1999, section 42 of the law (L. 2696 / 99) specifically refers to "Driving under the influence of alcohol, toxic substances or medicines that according to their instructions for use influence driving ability". This law was modified by the law 2963/2001 and Ministerial Accord 67754/8530/2002. The existence of toxic agents or medicines in the individuals is verified by blood and urine tests. If the driver is shown to be under the influence of the above substances, the punishment will be 2 months' imprisonment, or a fine of €147 and suspension of the driving licence from 3-6 months.

Ireland

The main law in this area is the Road Traffic Acts 1961 – 2002, and specifically section 10 Road Traffic Act (RTA) 1994, which forbids driving in a public place while a person "is under the influence of an intoxicant to such an extent as to be incapable of having proper control of the vehicle". Intoxicant is defined to include alcohol, drugs, or any such combination. There is thus a limit of impairment, and the law does not distinguish between specific drugs. Tests can only take place following suspicion.

All offences are heard in the criminal court. They would result in licence suspension and the driver is liable to a fine not exceeding €1270 or up to six months' imprisonment or both. Licence suspension would be not less than 2 years in the case of a first offence and not less than 4 years in the case of a second or any subsequent offence under the same section.

Italy

Art. 187 of Law 285/1992, the New Highway Code, makes it a criminal offence to be in an altered physical or mental condition related to the use of narcotic or psychotropic substances. Roadblocks may be established for alcohol testing, but specific tests for drugs are made on the basis of suspicion. Sanctions available to the authorities are up to one month imprisonment or a fine of €260 to €1 030, with suspension of the driving licence for a period of 15 days to 3 months.

Luxembourg

The issue is covered by the road traffic law 'Loi modifiant la loi du 14 février 1955 concernant la réglementation de la circulation sur toutes les voies publiques' article 12 - sections 1,4(1-3), 5, 6 and 7. The law refers to hallucinogenic substances, drugs and toxic, soporific and psychotropic medicines; it does not distinguish between specific drugs. Under this law, a person driving a vehicle, showing disability or troubles which may affect their driving performance, or does not possess the required physical abilities, or shows a characteristic behaviour due to symptoms of drug consumption, may be sentenced to prison for 8 days to 3 years and/or a fine from €250 to €5 000. The public Prosecutor can order suspension of the driving licence by means of a judicial hearing.

The Prosecutor takes account of the level of intoxication or disability due to drug use in his judgement. There is no blood/ substance level limit foreseen by law. Police officers can order blood or urine analysis to detect drugs during random stopping as well as suspicious driving behaviour, if they suspect the driver being under the influence of drugs. A blood or urine analysis can be ordered following any traffic accident, and is mandatory in case an accident resulted in injury. Currently there are no other specific instruments to measure the drug consumption other than these laboratory-based analyses.

Since 1 November 2002 the "Point driving licence" has been introduced, but driving under the influence of drugs other than alcohol has not been considered (i.e. no loss of points when driving under the influence of drugs other than alcohol unless dangerous driving behaviour is observed). However, during an official release, the current Minister of Transport addressed the problem of drugs and driving and was pleading for a global program favouring the settling of more strict surveillance measurements, more effective control equipment and better adapted penalties for driving under the influence of drugs and medicines.

Netherlands

According to the Road traffic law 1994 in article 8, section 1, there are three offences of criminal status:

- Causing a fatal traffic accident under influence of drugs may be punished with a maximum imprisonment of nine years or a maximum fine of € 45 000.
- Causing an accident under influence of drugs, which inflicted bodily harm, may be punished with a maximum imprisonment of three years or a maximum fine of € 11 250.
- If a person has driven a motor vehicle under influence of drugs which affect one's ability to drive or has his motor vehicle driven by someone who is under influence of such drugs, his driving licence may be suspended for a maximum period of five years.

There is no distinction between drugs, and the tolerance is to a level of impairment. Testing can take place if there is a presumption of driving under influence of drugs, for instance after causing a traffic accident or after bad driving behaviour.

In the future there is a proposal to penalise driving a motor vehicle under influence of one or more drugs or medicines specified in a list, when the driver has a higher concentration in his blood than the maximum limit indicated on the list. The list contains drugs such as cannabis, heroin and cocaine.

Norway

In Norway, the subject of drugs and driving is addressed in the Road Traffic Act of 18 June 1965 No 4, Sections 21, 22, 22a. The law does not distinguish between specific drugs; section 22 prohibits driving under the influence of alcohol or “other intoxicating or anaesthetic substances”, thus operating the impairment principle. Tests on any drivers are permitted.

The offence has the criminal status of misdemeanour. Pursuant to Section 31, paragraph 1, of this Act, a penalty of fines or prison sentence of up to one year is generally prescribed for violations of the Act. If substantial injury or death is caused, the offence is penalised through the General Penal Code. Pursuant to Section 33 of the Road Traffic Act, the licence shall be suspended for at least one year if the holder is punished or convicted for violation of Section 22.

Developments and any need for changes are followed closely.

Portugal

In an amendment to the Portuguese Penal Code, dated 28 June 2001, Art. 292 provides punishment of up to one year in prison or 120 day fines for anyone who drives a vehicle while not in a condition to drive safely because they are under the influence of narcotic or psychotropic substances or products with analogous effects.

Under Art. 81 of the Road Law 113/1994 (as amended by Decreto-Lei 265-A/2001), it is prohibited to drive under the influence of substances legally considered as narcotic or psychotropic substances. “Under the influence” is defined as any driver who, following the appropriate examination, has been so certified by a medical report. This will be punished by a fine of €360 to €1800, and (under Art. 139), suspension of the driving licence from 2 months to 2 years. Any driver or person about to drive may be tested, as may any pedestrians involved in an accident. Under art. 163, it is compulsory to test drivers or those about to drive if there is indication that they are under the influence, and also compulsory to test drivers and pedestrians after an accident that resulted in death or serious injury. Unless laboratory tests prove negative, they should also be prevented from driving for 48 hours.

Under Art. 134(5)(c) of the Road Law, a person who facilitates another person to drive, knowing that the other person is under the influence of drugs, is also guilty of an offence.

Spain

The Organic Law 10/1995, of 23 November, modified Article 379 of the Penal Code: “A driver under the influence of poisonous, narcotic or psychotropic substances or alcohol, will be punished by the penalty of 8-12 weekend arrests for 3-8 months, and in any case, suspension of the driving licence for one to four years.”

The law on traffic and road safety (Real Decreto Legislativo 339/1990, of 2 March, amended by the Law 19/2001 of 19 December), lays down in article 65.5 the serious offence, when it can not already be

considered a crime, of driving under the effects of any narcotic or psychotropic substances or any substance with analogous effects. Article 67.1 of the traffic law foresees a fine (€302 to €602) and the suspension of the driving licence (up to three months).

The offences can therefore be either a criminal offence or an administrative infraction. Drivers may be tested at any time, for instance during traffic checks.

Both levels of tolerance are addressed. Although both phrases refer to driving under the influence or under the effects, it is reported that when it is proven that the driver has taken drugs because the analysis is positive, it will be an administrative infraction. If the drugs taken have some effect on the road traffic, and other drivers are put at risk, it will be a criminal offence.

Sweden

The Act on Punishment for some Traffic Crimes (1951:649) section 4 and 4 (a) contains rules on punishment for driving under the influence. The Act on Driving Licences (1998:488) chapter 5 contains rules on cancellation of driving licences; and chapter 10 section 2 stipulates that a doctor shall report to the county administrative board if he finds a patient obviously unsuitable to hold a driving licence for medical reasons (a drug abuser may be medically unsuitable to hold a driving licence), if he believes that the patient will not follow instructions to restrain from driving.

No distinction is made between substances, but driving when using a narcotic or psychotropic substance in accordance with a doctor's prescription does not constitute liability for driving under influence. However, some other crime may have been committed, for example reckless driving. There is zero-tolerance for using narcotic or psychotropic substances; if the substance used is traceable in the driver's blood during or after the drive, they are have committed a criminal offence. A person reasonably suspected of an offence for which imprisonment may be imposed may be subjected to leave a blood sample for examination (the Code of Judicial Procedure (1942:740), chapter 28, section 12).

Penalties for driving under the influence vary between day-fines and maximum two years imprisonment. Besides a penalty there may be an endorsement or cancellation of the driving licence. Cancellations of driving licences vary between one month and three years.

United Kingdom

In the UK, road traffic law governs this issue – section 4 of the Road Traffic Act 1988 says “A person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence”. Road traffic law does not distinguish between specific drugs. It simply deals with the impairment of driving.

Penalties are the same as for alcohol and driving, and are criminal. They are obligatory disqualification from driving for a minimum of 12 months (or 3-11 points licence endorsement if exceptionally not disqualified); a fine of up to £5 000 (approximately €7 000); and a prison sentence of up to 6 months at the discretion of the court.

Drivers can be tested on police suspicion after poor driving or after an accident – random stopping specifically for drug testing purposes is not permitted. However, at present, the police do not have the power to require suspects to be tested at the roadside. If they have sufficient grounds, however, they do

have powers of arrest and to require the provision of samples at a police station for formal analysis. A legislative opportunity is still being sought to provide roadside testing powers.

4. Summary

European law on withdrawal of driving licences refers to psychotropic substances, but is aimed at all psychoactive substances. Its drafting in 1991 could not take into account the rise in substitution treatment across countries in the EU in the second half of that decade, and the provision to limit driving licences to persons dependent on certain substances may now be interpreted to prohibit issuing or renewal of licences to patients undergoing substitution treatment. With the car often seen as an essential form of transport, particularly in rural areas, this might hinder their reintegration into society.

Although the EU Action Plan on Drugs 2000-2004 calls for research of driving under the effects of illicit drugs and pharmaceuticals, it is interesting that some countries now seem to focus their legal provisions on road safety on illicit narcotics more than on psychotropic medicines. Last year, a report for the Pompidou Group noted that “one possible barrier that has been identified for developing legislation is the lack of consensus amongst policymakers that some medicinal drugs are as impairing as illicit drugs and that both classes need appropriate attention in the process of changing legislation”ⁱⁱⁱ. This was in line with a literature review commissioned by the EMCDDA that found “Field studies reveal that benzodiazepines are the most frequently detected licit drug in all driver populations” and “Some authors have concluded that using benzodiazepines approximately doubled the risk of motor vehicle accidents. In addition, the risk was higher for drivers older than sixty-five.”^{iv}

Driving under the influence of drugs is a “hot topic”; five² of the 16 countries studied have made major changes to their legislation in the past five years. Considering the wide variety of legal responses to this issue, it is clear that there are many factors to be taken into account when establishing such laws, including the availability of practical and reliable drug testing, the impact of drugs and driving on public safety, and countries’ attitudes towards consuming illegal drugs. In some countries, such as Finland, a person found with traces of illicit drugs in their body during a test for drug driving may be prosecuted for illicit drug consumption; in other countries, such as Belgium and the UK, there are specific clauses in the road traffic law which prohibit the results of the tests to be used for any other criminal charge^v. The law may separate or combine the objectives of road safety or control of illicit drugs.

The law should be enforceable and credible. It remains difficult to prove scientifically that a person was actually under the influence at the time of driving, ie their skills were affected^{vi}, but the alternative approach, to penalise levels of detection (the “zero tolerance” approach) means the driving may not have been affected at all, as some metabolites may be detected for days or even weeks after taking the drug^{vii}. In addition, some laws provide for a driver to be adversely affected, whereas others may simply mention being under the influence – this latter clause may lead to punishment of a person who has taken a controlled substance in order to be well enough to drive a vehicle.

All countries except Finland and France address the matter in their laws regulating road traffic; and these two, as well as Germany, Portugal and Spain, cover the matter in their Penal Codes.

² Belgium (1999), Greece (2001), Portugal (2001), Finland (2002), France (2003)

Eleven countries³ do not specify what substance may be the cause of an offence. Portugal's road traffic law specifies "those substances legally defined as narcotic and psychotropic", Austria's classification includes all except most benzodiazepenes and barbiturates, Sweden and Finland exempt medical substances which the person has a right to use, France prohibits only narcotic substances, and Belgium specifies seven substances. It is not clear how those countries who have chosen to specify their substances can legally react to a person driving under the influence of a newly created synthetic drug, or a powerful medicinal sedative or antidepressant.

15 countries⁴ treat the combination of drugs and driving as a criminal offence. Germany and Spain have both criminal and administrative offences, and Austria has established this as an administrative offence, with a general criminal offence covering endangerment of persons due to the influence of drugs. Germany and Spain appear to link the status of the offence to the tolerance level, with zero tolerance for administrative offences but requiring impairment for a criminal charge.

Apart from Germany and Spain who operate both systems of tolerance, five countries⁵ operate zero tolerance, whereas eight⁶ use impairment as the level of offence.

Nine countries⁷ allow stopping for testing in any situation, such as random traffic checks, whereas six⁸ require some form of suspicion in order to carry out the test.

Prison sentences may be from nothing for administrative offences, up to five years in Germany.

Licence suspension can be for a few weeks or months as in Germany and Austria, to a maximum of five years in Netherlands and Finland, or a minimum of two years in Ireland. Fines also vary widely, from a few hundred euros to a maximum of €7 000 in the UK and €10 000 in Belgium.

ⁱ See for example: de Gier (2002) "Problems raised by the use/abuse of psychoactive drugs by drivers", at http://www.coe.int/T/E/Social_Cohesion/pompidou_group/5.Publications/; ICADTS/Walsh et al (2000) "Illegal Drugs and Driving", at <http://www.icadts.org/reports.html>; EMCDDA (1999) "Literature Review on the Relation between Drug Use, Impaired Driving and Traffic Accidents", at http://www.emcdda.eu.int/multimedia/project_reports/situation/drugsanddriving_report.pdf; the EU's ROSITA project (Roadside Testing Assessment) reports at <http://www.rosita.org>

ⁱⁱ de Gier "Review of investigations of prevalence of illicit drugs in road traffic in different European countries", pp.55-56, in Pompidou Group (2000) "Road Traffic and Drugs", Council of Europe Publishing.

ⁱⁱⁱ de Gier (2002) "Problems raised by the use/abuse of psychoactive drugs by drivers", at http://www.coe.int/T/E/Social_Cohesion/pompidou_group/5.Publications/ p.3

^{iv} EMCDDA (1999) "Literature Review on the Relation between Drug Use, Impaired Driving and Traffic Accidents", at http://www.emcdda.eu.int/multimedia/project_reports/situation/drugsanddriving_report.pdf: p.ix

^v Pompidou Group, Seminar on Road Traffic and Psychoactive Substances, Strasbourg 18-20 June 2003

^{vi} ICADTS (1999) "Illegal Drugs and Driving", Executive Summary

^{vii} "Cannabis may be found in blood as long as 28 days after last use or even longer": British Medical Association (2003) "Driving under the influence of drugs", p.4 at <http://www.bma.org.uk/ap.nsf/Content/DrugsDriving>

³ Denmark, Germany, Greece, Spain, Ireland, Italy, Luxembourg, Netherlands, Portugal, UK and Norway

⁴ Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, Netherlands, Portugal, Sweden, Finland, UK and Norway

⁵ Belgium, France, Luxembourg, Sweden, Finland

⁶ Denmark, Ireland, Italy, Netherlands, Austria, Portugal, UK, Norway

⁷ Belgium, Denmark, Germany, Spain, Italy, Luxembourg, Portugal, Finland, Norway

⁸ France, Ireland, Netherlands, Austria, Sweden