



Justitie
Spravedlnost
Правосъдие
Justicia Δικαιοσύνη Giustizia
Ceartas Justice **Gustizzja**
Pravosodje Öigusküsimused
Justiz Oikeusasiat Tieslietas Igazság
Rättsliga frågor Teisingumas **Justiça**
Spravodlivost' Sprawiedliwość
Retlige anliggender Justiție

ISSDP Conference 2011

Unintended Consequences

Post conference workshop



European Commission
Justice

Unintended consequences – Global Drug Policy

UNODC Director Costa – Fit for Purpose (2008)

1. Huge **criminal black market** and linked (organised) crime
2. **Policy displacement** → public safety before public health
3. **Geographical displacement** → balloon effect; drug production shift
4. **Substance displacement** → control/ interdiction of one substance shifts trade and consumption to another
5. **Marginalization** of drug **users**, lack of access to drug-related health services

Unintended consequences - Global Drug Policy

World Drug Report 2009, p. 182

- Drugs must remain prohibited because illegality alone reduces the number of potential addicts, particularly in developing countries
- Drug control must be conducted in ways designed to limit **associated violence and corruption**
- Drug enforcement should focus less on **high volumes of arrests** and more on reducing the size of drug markets through targeted enforcement and situational crime prevention
- The **incarceration of drug users** should be exceptional; rather, users should be tracked and addicts brought into treatment
- The **addict population** should be a **priority**, as they provide the bulk of the demand
- **Open drug markets** must be closed, using the techniques of situational crime prevention and problem oriented policing

Unintended consequences – Global Market Study

A Report on Global Illicit Drug Markets 1998-2007 – Peter Reuter

- **Geographic displacement** → shift of production, resulting in increased corruption new producer country, possible environmental damage
- **Lack of quality control** → Morbidity and mortality due to use of drugs of unknown composition
- **Needle sharing** → Morbidity and mortality due to sharing of needles because law enforcement makes harm reduction impossible
- **Inaccurate spraying** → economic loss due to spraying of herbicides on legitimate crop
- **Expanding production areas through eradication** → expansion of cultivation areas, resulting in environmental damage
- **Intensified interdiction** → higher seizures, which may lead to increased risk taking including corruption, etc.
- **Supply reduction effect of treatment** → many users in treatment are also sellers, resulting in less dealing and less consumption (*benefit*)

Evaluation of unintended consequences in practice

1. Member States may be aware of unintended consequences of their drug policies, but may choose to ignore them (e.g. effective interdiction at borders leading to shifts in trafficking routes to neighbors)
2. Ex-ante evaluation of drug policy is not common practice in many countries
3. Impacts of drug policy in third countries are often not evaluated and/or unknown
4. Political decision-making in drug field *often* begins with principal decision on policy or operational activities; details and specifications follow later; principal choice not part of pre-assessment if any

Evaluation of unintended consequences in practice

BUT Measures to avoid or counteract unintended consequences also part of official policy:

- Promotion of harm reduction policies
- Harm reduction in supply reduction, e.g.:
 - EU alternative development strategy (no unconditional eradication)
 - Arrest referral and alternative sentencing

Upcoming case “Legal Highs” legislation

- **Revision legislation on new psychoactive substances**
 - **Potential unintended consequences (current policy):**
 - Shift to the next batch of new substances, potentially more dangerous
 - Lack of regulatory options may jeopardize fast track public health warnings
 - Shift in distribution from social networks, head shops to illicit networks
 - Political urgency, but lack of scientific data may cause prohibition of useful substances
 - Citizens may not be aware of legal status of new substances (in jurisdiction with ban them all legislation)

Avoiding unintended consequences - Examples

- **Checklist for funding programmes/ initiatives in third countries, including:**
 - Respect for human rights/ fundamental freedoms by beneficiary
 - Measures to avoid and prevent corruption
 - Measures to avoid unintended effects of funding (e.g. farmers in areas neighboring to alternative development initiatives initiating drug crop cultivation to receive funding)

European Commission Impact Assessment

- Key tool to ensure that Commission initiatives and EU legislation are prepared on the basis of transparent, comprehensive and balanced evidence
- Impact assessment is aid to political decision making, not a substitute for it
- Obligatory for new legislative instruments and major policy initiatives
 - Legislative (directives, regulations) & non-legislative (council recommendation, communication, White Paper)
 - Expenditure programmes
 - Comitology decisions
- Lead DG drafts impact assessment in parallel with policy proposal

European Commission Impact Assessment

- Includes (formal) public consultation (stakeholders)
- Timeline: up to 72 weeks (!!)
- Obligatory use of impact assessment guidelines:
http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm
- Inter Service Steering Group → advisory group bringing together all relevant line DGs
- Report (max 30 pp. + annexes); Summary (max 10 pp).
- Independent Impact Assessment Board (but part of Commission), situated in Secretariat General
 - Examines Impact Assessment Report and gives positive or negative advice
 - If negative, revision of proposal or rejection – end of initiative
 - Reports and opinions published on website Secretariat General

Impact Assessment – preparation

1. Explanation of legal & political context influencing or limiting choice of options
2. Defining the proportionate level of analysis; determining the level of analysis required for the different steps of the IA
3. Gathering information & consultation of stakeholders
 1. Data sources, collection & analysis
 2. Using external expertise (e.g. pre-Impact Assessment Study)
 3. Consulting interested parties (Public Consultation)

Impact Assessment – obligatory steps

- Identifying the problem
- Defining the objectives
- Development of main policy options
- Analyze the impacts of the options
- Compare the options
- Outline policy monitoring and evaluation

IA – Problem Definition

Includes definition of:

- Nature & scale, who is most affected
- Drivers and underlying causes
- Development over time and how problem is affected by existing legislation and policies (competence)
- Baseline scenario – how the problem will develop without EU action
- Assumptions made, risk assessment and uncertainties
- Why problem needs action at EU level:
 - Subsidiarity (necessity, EU added value)
 - Proportionality

IA – Defining the objectives (SMART)

What is the proposal supposed to achieve?

Setting of:

- General objectives – impact indicators
- Specific objectives – result indicators
- Operational objectives – output indicators

IA – Developing the main policy options

Options must be clearly related to the objectives and must be proportionate

Obligatory steps to be followed

- No policy change / baseline scenario
- 'no EU action' (e.g. discontinuing EU action)
- Improvement of current instruments
- Self- and co-regulation
- Alternative options

IA – Analyzing impact of policy options (1)

1. Identify economic, social and environmental impacts of a policy, why they occur and who is affected

Economic impacts	
Functioning of the internal market and competition	Innovation & research
Competitiveness, trade and investment flows`	Consumers and households
Operating costs and conduct of business/ SME	Specific regions or sectors
Administrative burdens	Third countries and international relations
Public authorities	Macroeconomic environment
Property rights	



IA – Analyzing impact of policy options (2)

1. Identify economic, social and environmental impacts of a policy, why they occur and who is affected

Social impacts	
Employment and labour markets	Public health and safety
Standards and rights related to job quality	Crime, terrorism and security
Social inclusion and protection of particular groups (labour)	Access to and effects on social protection, health and educational systems
Gender equality, equality of treatment, etc.	Culture
Individuals, private and family life, personal data	Social impacts in third countries
Governance, participation, good administration, access to justice, media and ethics	

IA – Analyzing impact of policy options (3)

1. Identify economic, social and environmental impacts of a policy, why they occur and who is affected

Environmental impacts	
The climate	Land use
Transport and the use of energy	Renewable or non-renewable resources
Air quality	Environmental consequences of firms and consumers
Biodiversity, flora, fauna and landscapes	Waste production/ generation/ recycling
Water quality and resources	Likelihood of scale of environmental risk
Soil quality or resources	International environmental impacts

IA – Analyzing impact of policy options (3)

1. Identify the more important impacts
2. In-dept analysis of the most significant impacts
3. Assessing specific aspects of economic, social and environmental impacts
 - Impacts on fundamental rights!
 - International impacts
 - Etc..

IA – Comparing the options

Criteria

- **Effectiveness** of option in relation to objectives
- **Efficiency** of the options in achieving the objectives
- **Coherence** with overarching EU objectives

Options (example)	Advantages	Disadvantages	Ranking
Option 0 – baseline	----	+	3
Option 1 – muddling through	--	+++	1
Option 2 – system vindication	-	++	4
Option 3 – paradigm shift	--	+	2

IA – Outline policy monitoring and evaluation

1. Define core progress indicators for the key objectives of the intervention
2. Provide broad outline of monitoring and evaluation arrangements
3. Ensure utilization of results for future impact assessments

Studies and research

New research project: Understanding of unintended consequences of global illicit drug control measures (2011-2014)

- a) assess (1) whether unintended consequences may be the result of the drug control policies implemented by EU Member States and/ or the international community, (2) whether these unintended consequences were the result of trends and developments that caused important changes in the global illicit drugs market (e.g. global political, economic or security changes, etc);
- b) to analyse the impact of these unintended consequences on achieving the objectives of drug control on the one hand, as well as the impact on the social, economic, health and security situation in the affected production and transition countries.
- c) to provide recommendations and methodologies with which potential unintended consequences of drug control policies can be better predicted and assessed prior to their implementation.