

THE ONLINE DRUG MARKET AS A CURRENT LAW ENFORCEMENT CHALLENGE

Vince Vári, PhD¹

Faculty of Law Enforcement, University of Public Service, Budapest, Hungary

INTRODUCTION

The COVID-19 pandemic has not only targeted our biological immune systems; it has also penetrated our social fabric, transforming traditional methods and affecting how we work, travel, and even spend our leisure time. As a result, it has also significantly impacted our everyday lives in terms of social relationships, contact, and communication. Because traditional social spaces for face-to-face interaction and connection, such as the workplace, education, and offline platforms for leisure activities, have been restricted by public policies, social life and activity have shifted to digital online spaces (URL1). What was previously a complementary and occasional substitute or auxiliary tool for the lack of opportunities for face-to-face interaction has now taken on a prominent and exclusive position. And public policies have made their use routine and everyday, making them part of everyday life and opening up a way of improving the quality of activities in online spaces. This has led to a massive demand for online communication software, educational and work platforms, and improving the quality of development activities to meet the growing number of needs. As life has increasingly conditioned our daily activities in the online space, criminal activities that typically involve face-to-face contact, such as traditional drug trafficking (URL2), have been eroded. Of course, no epidemic can or has ever been able to eliminate and eradicate the demand for drugs, and this pandemic situation is no different. However, there is one significant difference: when a social crisis has arisen for whatever reason – economic, political, or health-related – criminal activities related to drugs have been at most temporarily reduced and sometimes even temporarily suspended. They would

¹ vari.vince@uni-nke.hu

then continue in the traditional drug market system and distribution pattern once the crisis had disappeared and social peace had been consolidated.

In contrast, during this period, an alternative way of life became a reality, which, with its many positive and beneficial features, brought about a significant transformation in social life. On the other hand, these changes have brought about additional social, economic, and political scenarios (URL3). These changes have significantly impacted the areas that frame their daily lives and have had a decisive influence, no longer allowing the return to the same conditions that were previously so characteristic. Consider, for example, that multinational companies employing large numbers of people have realized how much more economical it is to work from home (URL4). There is also a trend for younger generations to prefer more convenient ways of accessing services online, alongside older generations (URL5). The COVID-19 epidemic has therefore set in motion a process that has significantly reshaped our habits. This has affected the global drug trade, a highly profitable business that has started to use the online world as an alternative to, and perhaps instead of, the traditional distribution network to avoid a significant reduction in revenues compared to the previous period. The issue of the “delocalization” of drug trafficking has also been reflected in the “reach” of law enforcement. The main reason is that law enforcement organizations are geared toward crime in the physical space. In other words, the legal framework, the tools, the organizational structure, and the possibilities of action are primarily designed to prosecute drug-related crimes in a conventional setting (Tihanyi et al., 2020/a). While criminality is more flexible in its transformation, bound by informal constructs at most, law enforcement cannot show the same flexibility within highly rigid and entrenched legal and organizational structures. Of course, over time, the legal system and organizations can keep pace with changes in crime, as they always have, but we are now faced with a more complex problem than before (Tihanyi et al., 2020/b). A new type of behavior has emerged, such as bank card fraud or even illegal acts in information systems, but drug trafficking crime has moved into a decisively different space. This, by its very nature, requires a very different response and attitude from law enforcement authorities.

IMPACT OF THE COVID-19 PANDEMIC ON THE DRUG MARKET

2020 will see the introduction of varying degrees of restrictive measures across Europe, unprecedented in peacetime, including the shutdown of all non-essential services, border closures, restrictions on the right of assembly, and freedom of movement. This situation has directly impacted a wide range of behaviors related to drug use and supply and has disrupted health care and some law enforcement activities.



In 2018, nearly 269 million people used drugs, a 30 percent increase from 2009. The majority of drug users are adolescents and young adults. While the increase reflects population growth and other factors, the data also show that illicit drugs are now more diverse, potent, and available (URL6). The relaxation or elimination of some public health measures has reestablished the conditions for the drug market to return to and even exceed pre-COVID-19 levels. The coronavirus pandemic also caused enormous damage to the economy, fundamentally affecting our daily lives, all of which, as touched on in the introduction, had less impact on the profitability of the drug market. There were even countries where the market recovered due to closures, although this required dealers (URL7) to be flexible in responding to the changed circumstances. The EU law enforcement agency Europol has published a report summarizing its key findings, comparing data and processes in the first months of 2020. The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) contributed to its preparation (URL8). It is shown that the epidemic has significantly overridden the previous rules for a drug crime. For example, the raw chemicals that form the basis of synthetic opiates such as methamphetamine and fentanyl come primarily from China, including the epidemic's source in the Hubei province (URL9). Difficulties resulting from disrupting supply chains have severely hampered the supply chain, causing a short-term price hike. It is particularly true for drugs such as heroin or crystal, which are physically addictive (URL10). Theoretically, the price increase anticipates a contraction of the drug market in most segments, but this is not what the Europol report suggests. Europeans spend at least €30 billion a year on drugs at the retail level, making the drug market the primary source of income for organized crime groups in the European Union. Around two-fifths (39%) of this amount is spent on cannabis, 31% on cocaine, 25% on heroin, and 5% on amphetamines and MDMA. The most recent data show that overall drug availability in Europe remains "very high" and that consumers have access to a wide range of high purity and high potency products at varied but decreasing prices. An essential overarching theme of the report is the environmental impact of drug production, including deforestation and the dumping of chemical waste, which leads to ecological damage, safety risks, and high clean-up costs. Organized crime groups are rapidly seizing new opportunities for financial gain and exploiting technological and logistical innovations to expand their activities beyond international borders. Nevertheless, drugs are now more accessible to European consumers, often through social media and the Internet. The 2019 report only hints at the potential impact, which was translated into a comprehensive analysis in 2021. According to the UN Office on Drugs and Crime's World Drug Report 2020, only one in eight people will receive the drug dependence treatment they need. There are nearly 35.6 million drug addicts in the world (URL11). As a result, the drug market has been able to withstand the disruptive effects of the pandemic extraordinarily. Drug traffickers have adapted to travel restrictions and border closures.



As a result, the drug market has been remarkably resilient to the disruptive effects of the pandemic. Drug traffickers have adapted to travel restrictions and border closures. At the wholesale level, this is reflected in some changes in routes and methods, with greater reliance on container smuggling and commercial supply chains and less reliance on human couriers. Although early government restrictions disrupted street-based retail drug markets and localized supply shortages, dealers and buyers appear to have adapted by using encrypted messaging services, social media apps, online resources, and postal and door-to-door delivery services. It raises concerns that one of the possible long-term consequences of the pandemic could be that drug markets become even more digitalized. Several new distribution strategies for the drug market have emerged. The demand for so-called party drugs has fallen due to the lack of festivals, and the retail price of cocaine and opiates has increased somewhat in most European Member States, as has the prevalence of new psychoactive substances. Violence between groups involved in the retail and wholesale trade has grown in some European countries.

As demand declined, severe struggles for customers, territory, and distribution channels began (Ritter, 2020). Following difficulties in the initial supply chain due to the disruption of the Crown's supply chain, organized criminal groups involved in drug crime recognized the advantages of the digital space for drug distribution. In most countries affected by the lockdown, there has been a significant decline in street drug distribution-related crime, but it has increasingly shifted to the online space, where there is also the dark web (Dornfeld, 2020: 200). Traditional criminal groups have thus opened up to cyberspace, becoming more closely intertwined with cybercriminals engaged in other illegal activities there (URL12). The system and functioning of cybercriminal groups have been examined by Michael McGuire, who points out that traditional criminal organizations are increasingly expanding their activities on the Internet, while newer and less closely linked criminal groups are forming. Criminal groups show different levels of organization depending on whether they operate online only, use online tools to enable them to commit crimes in the "real" world, or use a combination of both online and offline (McGuire, 2012).

THE DIFFICULTIES OF THE ONLINE DRUG MARKET FOR LAW ENFORCEMENT

Hungary remains both a transit and a destination country for drug trafficking. Most types of drugs enter the country from abroad, with domestic production playing an increasingly important role only in the case of marijuana (Mátyás, 2020). Drug prices have remained unchanged compared to 2009, with heroin



prices decreasing slightly as its active ingredient content has decreased. The most significant development in the drug market in the last two years has been the transformation of the synthetic drug market, with the disappearance of ecstasy tablets and the emergence and unusually rapid spread of new powders and tablets, many of which contain legal psychoactive substances. In police seizures, the Institute of Criminal Experts and Research identified five new compounds in 2009, sixteen in 2010, and thirty-three in 2011 (URL13). As a result of the coronavirus, drugs are sold online, in chat rooms, on the darknet, or on other online platforms (URL14). It is combined with encrypted telecommunication tools that give consumers access to order drugs and medicines to meet their needs directly and without the risk of being caught, bypassing the traditional “dealer” distribution chain, both physical and in person. In darknet markets, there is no physical encounter. In addition, the drug trade in the digital space provides criminal organizations with a significantly higher profit margin than the traditional distribution system, which is recycled back into the “legal” economy through various assets through money laundering activities (URL15). The trade conducted on online platforms and the formally legal entities and companies linked to “legalizing” money laundering make asset tracing extremely difficult (Kármán et al., 2016). A similar feature of the online drug market is that drugs are mostly posted abroad, delivered by parcel services, mostly foreign-registered, and have a massive turnover at doorstep or parcel delivery points (Mezei, 2019). The organizational and IT capacities of the police alone are not sufficient to conduct a meaningful investigation of every online drug order and delivery once the goods arrive at the airport and are realized by the National Tax and Customs Administration (NAV), following the reports made. With the proliferation of the Internet and the potential of net marketing, a significant part of the downstream distribution market activity in the drug market takes place through this sales channel. In many cases, the buyer and seller are only virtual actors (Ritter, 2020).

THE EX OFFICIO APPROACH AS THE “ACHILLES’ HEEL” OF EFFICIENCY

The countries and societies determine the functioning and values of organized crime groups and the cultures in which they operate and are thus influenced by the geography, politics, criminal tradition – such as illegal demands – and structure and effectiveness of law enforcement (Tóth, Köhalmi, 2016, 608). In law enforcement, when criminal groups are strengthening and increasing their presence and realizing increasing profits from their illegal activities, it becomes a critical issue that a restrictive legal environment is in place that does not weaken the performance of the authorities. An examination of Hungary’s criminal procedural



system reveals that the main obstacle is the principle of *ex officio* prosecution, based on the strict principle of legality that is characteristic of continental legal systems. In those legal systems where the principle of legality applies, the police cannot exercise the power of diversion. Diversion is most effective at the beginning of the procedure, which is why it is essential that each legal system allows prosecutors and investigating authorities to use it. Diversion is derived from the Latin word *divertere*, which means to deviate (URL16). The term entered the public domain in 1967, when the President of the United States put it into practice by referencing the final report of the Committee on Law Enforcement and the Judiciary (Nejelski, 1982: 434). Diversion is a summary term for deviating from the usual “stages” of criminal proceedings (Barabás, 2004:60). If they become aware of a crime from any source, they must initiate proceedings *ex officio*. However, the police can use a solution when they talk down the complainant in cases of trivial actions, do not take up the complaint, and do not act on reports. It is called “hidden diversion”. It also results in minor offenses not being prosecuted (Blau, 1987, 29). So we are faced with the problem that, although the system tacitly accepts hidden divergence, and because of capacity limits, it actually “does not take up” cases, especially for those offenses where latency is high and considerable investigative work is required to detect them. The main problem is that in the case of online drug trafficking, there is no way for the investigating authority to operate covert diversion because the knowledge of the crime is documented by the fact that the drug appears in physical space during the delivery of the parcel services. The authorities detect these; they are obliged to initiate procedures that result in a massive increase in cases, thus increasing the case processing workload. Much of the traditional drug trafficking has been “invisibly” conducted based on a secret. With open-source information from various sources, the authorities have operated with the “hidden” diversion tool. They have been able to decide which cases and offenders to target with what amount of time and investigative capacity. The physical availability of the police is not relevant for online drug trafficking. Responsiveness is the more relevant factor (Mátyás, et al., 2019).

The 1998 Act XIX of 1998 on Criminal Procedure (referred to as the former Be.) – as a form of diversion – recognized the institution of partial disregard of the investigation, which was hardly used in practice. It is because it requires a detected and investigated offense. According to the former Be. § 187 (1), after questioning the suspect, the prosecutor may, by decision, dispense with a further investigation into an offense which is of no relevance for the prosecution, due to the more severe offense committed. However, it was impossible to refrain from investigating if there was no possibility of successful detection or if investigations into minor offenses jeopardized the success of proceedings for more severe offenses. The current Act XC of 2017 on Criminal Procedure (hereinafter referred to as: Be.) only offers the prosecutor the option of discontinuing the investigation as an alterna-



tive to the decision. Under Section 398 (2) of the Be., the prosecutor's office shall terminate the proceedings if e) they are pending for an offense which, apart from the more severe offense committed, is of no relevance for the prosecution of the perpetrator. Even though this no longer requires a case to be detected and investigated, prosecutors still do not use it more often. Thus, the legislator's assumption that the work already invested by law enforcement would not result in a shift away from the traditional method of prosecution has not been proven correct.

CRIMINAL PROCEDURAL AND ORGANIZATIONAL SOLUTIONS TO IMPROVE LAW ENFORCEMENT EFFECTIVENESS AGAINST ONLINE DRUG CRIME

In agreement with the theory of Lévai, who, in terms of criminology, divides drug crime into the supply side associated with organized crime and the demand side associated with traditional crime (Lévai, 1992: 61), increasing the effectiveness of drug law enforcement is essential on the supply side because the results achieved there have a significant impact on the cost of sales and consequently, as a price-increasing factor, reduce availability on the demand side. Reduced access is especially severe for poorer groups who are actively involved in the lower end of the drug supply chain (Reuter, 2006). It is clear that urgent and more effective action against drug trafficking than is currently the case requires more effective law enforcement, better technical equipment, training of the relevant bodies, and practical information exchange and cooperation with the relevant international bodies. To this end, the effectiveness of countermeasures must be increased, the bodies responsible for combating criminal organizations must be strengthened, and the human, material, and technical basis for criminal expertise must be reinforced. In addition to the above, a national-level service for the fight against drug-related crime should be set up (URL17). As stated in the National Security Strategy, closer cooperation between law enforcement agencies (police and national security services) and the judiciary at the national and international level, particularly within the European Union, and the efficient use of existing resources, are essential to fight organized crime (URL18). In drug supply reduction/safety, the new EU Drugs Strategy 2021–25 also recognized the increased threats of the online drug market, thus targeting all aspects of illicit drug markets (URL19).

As discussed in the previous chapter, the main obstacle is the principle of strict legality, which operates without exception and without relaxing it. The police are forced to conduct all drug-related cases, which prevents them from strategically focusing their substantive investigative capacities on more effective action against drug-related criminal organizations. The principle of legality is the consequence of



the criminal code, while officiality is the requirement to initiate and conduct proceedings *ex officio* (Király, 2000: 115). Thus, first of all, the possibilities to amend the Be. should be reviewed and the possibility of not investigating should be introduced in the interest of law enforcement. It would be applied where there is no natural or legal person as a victim of the offense; there is no cumulative offense, or the danger of the offense to society is negligible (in the case of offenses punishable by imprisonment up to 3 years), so that the investigating authority could refrain from opening an investigation if there is a more significant law enforcement interest. Otherwise, there may be many reasons for not prosecuting, such as cooperation with the prosecution or the institution of undercover investigators (Mészáros, 2019). The above arguments are supported by the fact that in 2019, according to Act C of 2012 on the Criminal Code (hereinafter referred to as: Criminal Code), 4972 persons were convicted, of which 1620 persons were convicted for drug trafficking (§ 176–177), which is a supply-side conduct, and 3322 persons were convicted for possession of drugs (§ 178–180), which is typically a demand-side conduct. This illustrates the investigating authority's focus, which it cannot influence in its own power due to the aforementioned principle of officialism. It would be advisable for the Prosecutor General's Office to establish an internal protocol of regulation and cooperation between the prosecution and the investigating authority, which would not allow for divergent practices between the different bodies with different competencies and jurisdictions. It would be necessary for efficiency to standardize procedures so that it would not be necessary to arrest, seize and carry out other covert investigative measures for any minor drug trafficking. It is based on the principle of strict legality for any factual, *ergo* illegal, albeit minor conduct that is of little danger to society if brought to the attention of the authorities (Belovics, 2007). Therefore, the discretion of the police authority should be more comprehensive, based on the strategic decisions generated by the analytical evaluation work. For orders not exceeding "low volume" by consumers, records and OSINT analysis should be conducted (Szabó, 2019) to map and analyze the relationship networks between customers, thus revealing the existing "consumer nodes". In addition, the sale of drugs takes place on social media platforms, mainly on the darknet (Serbakov, 2020). Consumers who place orders and request delivery in "small" quantities for individual use should preferably not be investigated, as they tie up law enforcement capacity (Vári, 2014). Moreover, trends in recent years show that the gap between female and male offenders in drug-related crime is narrowing in favor of female offenders (Tihanyi et al., 2020/c).

On the other hand, clandestine investigative activities should be carried out, and data should be collected to establish the links, connections, and networks between bulk orders (§§ 261–266 of the Criminal Code). For those not fitting into a more extensive system, a more complex criminal structure (distribution network, criminal organization, money laundering) should be subject to preliminary pro-



ceedings without opening investigations. However, where it can be established that drugs are being ordered in large quantities and in an organized manner, the blocking of electronic channels to remove and secure the necessary electronic data should be used as an urgent measure, especially in the case of foreign suppliers (Art. 337 (1) of the Criminal Code). An essential investigative measure is requesting data from companies providing commercial mail-order services for mapping order volumes for persons or addresses who have ordered several times. In particular, it is necessary to establish who has requested the delivery of what weight of the parcel and when, and how and when the parcel's sender paid for the goods to be forwarded. The legislation must be amended to tighten the rules on parcel delivery so that only payment by credit card or bank transfer is possible for orders of this type of material. Furthermore, a clearly defined minimum set of data on the sender should be made available to parcel delivery companies. It can ensure traceability and the identification of persons.

CONCLUSION

The pandemic has had a significant impact on the drug market. In the early stages of the pandemic, disruptions in the drug supply chain were a significant price driver. There appeared to be a decline in sales, which could be permanent. In contrast, and in addition, the epidemic triggered changes that affected people's daily lives and acted as a catalyst for the digital revolution. As a consequence, people's online presence has increased in general. During the pandemic, more and more people spent their working and leisure time online. Organized crime offered a significant proportion of its drugs online, giving drug distributors easier and cheaper access to a now increased customer base. The process was also aided by the fact that it was easier to conceal identities and set up front companies online than offline. The drug market, open to cybercrime, has used its potential to serve its ends by shifting part of its distribution system to delivery by mail-order services, which are less regulated. Another pandemic consequence, which reinforced the untraceability of orders, was the proliferation of online shopping and non-cash means of payment. In the online drug market, bulk drug orders are placed in unencrypted chat rooms on the darknet and other online platforms. Delivery services do not record customer data, and payment methods are not documented by the supplier due to the use of cryptocurrencies or cash payments. They thus cannot be traced (Baráth, 2021: 27). However, the discovery of parcels containing drugs entering the country from abroad, mostly in small quantities, does happen due to air and international transport. It places the NAV under an obligation to report to the police authorities with jurisdiction and competence. It also means a massive increase in the number of cases on the investigation side. In addition, many parcels



are arriving within the EU which do not even come to the attention of any of the authorities. Moreover, the investigations launched into suspicious parcels naturally reduce investigative efficiency, which is particularly damaging on the supply side, because not enough attention is paid to these high-profile crimes. Some legal and organizational solutions could be offered to the investigating authorities to avoid investigating drug offenses that would otherwise be on the demand side, the Achilles' heel of which would be to relax the strict principles of legality and officialism. The legislative change could also improve the effectiveness of detection and evidence if parcel services were to record significantly more data when taking orders. It would also greatly improve the effectiveness of law enforcement if a separate unit were set up to deal with illegal activities in the online drug market and explore the links between the drug dimension of organized crime and cybercrime. The online drug trade is a significant challenge for law enforcement. There is no time for delay in working out legal and professional solutions to curb the online drug supply as quickly as possible.

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INTERNET SOURCES

- (URL1) Digital technology is changing our lives. The EU's Digital Agenda aims to make this transformation work for citizens and businesses while helping to achieve the goal of Europe becoming a climate-neutral continent by 2050.



The Commission is determined to make 2020–2030 Europe’s “Digital Decade”. Europe must strengthen its digital sovereignty and set its own standards rather than follow those of others. It must accomplish this by prioritizing data, technology, and infrastructure. https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age_hu

(URL2) Europol: Catching the virus. Cybercybercrime, disinformation and the COVID-19 pandemic, 3 April 2020, https://www.europol.europa.eu/sites/default/files/documents/catching_the_virus_cybercrime_disinformation_and_the_covid-19_pandemic_0.pdf.

(URL3) Milyen jövő vár Európára a koronavírus járvány után? (What future awaits Europe after the coronavirus epidemic?) <http://library.fes.de/pdf-files/bueros/budapest/16375.pdf>

(URL4) Technology companies have long since made the concept of remote working fashionable. Citing a previous study, the World Economic Forum points out that 98 percent of the workforce wants the opportunity to work remotely. https://www.allianz.hu/hu_HU/lakossagi/sajtoszoba/sajtokozlemenyek/munkavegzes-a-covid-utan.html

(URL5) <https://www.nak.hu/tajekoztatasi-szolgalatas/koronavirus/102582-a-koronavirus-atalakitotta-a-vasarlas-szokasokat-is>

(URL6) https://unis.unvienna.org/pdf/2020/Op-Eds/WDR_ED_Waly_HU.pdf

(URL7) The Hungarian language clearly associates the word “dealer” with drug trafficking. On the one hand, the “dealer” “drugs” his prospective victims, i.e. he acts as an agent for the drugs, and on the other hand, he serves the customer. <https://www.szomagyarito.hu/szocikk.php?id=42>

(URL8) The EU Drugs Market Report (including the executive summary) is available in English and is accompanied by flagship policy and practice publications and 13 background documents that address the gaps identified in 2016. The report is part of a series published every three years (since 2013). <https://www.europol.europa.eu/newsroom/news/2019-eu-drug-markets-report-em-cdda-and-europol>

(URL9) https://www.vice.com/en/article/bvgazz/sinaloa-cartel-drug-traffickers-explain-why-coronavirus-is-very-bad-for-their-business?utm_source=dmfb&fbclid=IwAR3ZWrpRjwB-nwWsnF9oBEWTLnttg7V6oAyyQOxNri6t8G-MKa_HF6jqeKcA

(URL10) https://index.hu/gazdasag/2020/03/24/kabitoszer_drogkereskedelem_sinaloa_metamfetamin_fentanil_heroin_mexiko_kartel_drog_dragul_a_koronavirus_miatt/

(URL11) https://unis.unvienna.org/pdf/2020/Op-Eds/WDR_ED_Waly_HU.pdf



- (URL12) http://drogfokuszpont.hu/wp-content/uploads/EMCDDA_EDR_2021_HU.pdf
- (URL14) H/11798. számú országgyűlési határozati javaslat a Nemzeti Drogellenes Stratégiáról 2013-2020 Tiszta tudat, józanság, küzdelem a kábítószer-bűnözés ellen. (H/11798. proposal for a parliamentary resolution on the National Anti-Drugs Strategy 2013–2020. Clear conscience, sobriety, fight against drug-related crime) <https://www.parlament.hu/irom39/11798/11798.pdf>
- (URL15) <http://www.police.hu/hu/hirek-es-informaciok/legfrissebb-hireink/bunugyek/chatszobaban-adtak-vettek-a-kabitoszert>
- (URL16) <https://idegen-szavak.hu/diverzi%C3%B3>
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