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Evaluation of the Road Traffic Act Article 8
Drugs in traffic

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Manja Abraham

mabraham@dsp-groep.nl

Daniel Hofstra

dhofstra@dsp-groep.nl

Daan Bos

dbos@dsp-groep.nl

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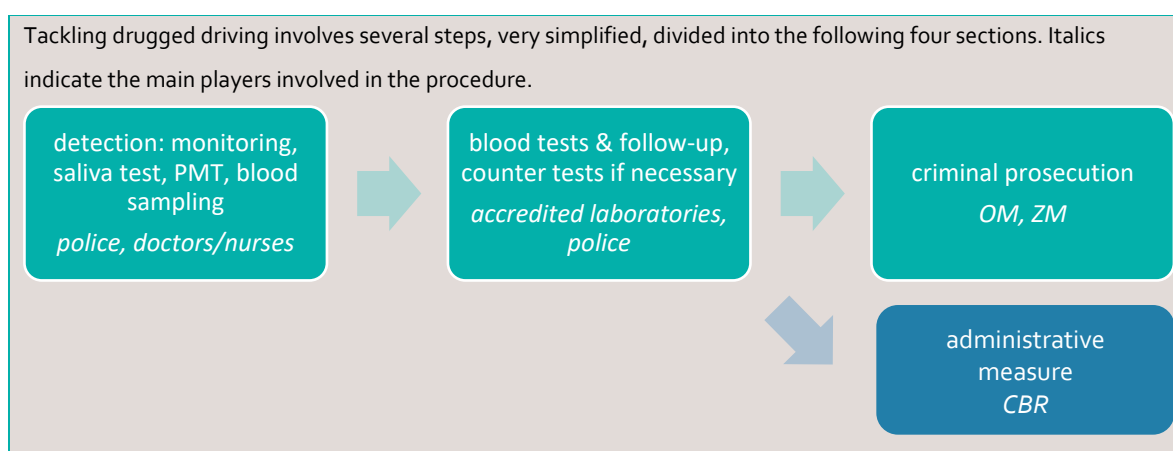
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Summary

Evaluation of the law on drug use in traffic

Article 8 of the 1994 Road Traffic Act (hereafter: WVV1994) states that "anyone is prohibited from driving a vehicle, or having a vehicle driven as a driver, while under the influence of a substance, of which he knows or should reasonably know that its use - whether or not in combination with the use of another substance - may impair the driving ability, such that he should not be considered capable of driving properly".

From 1 July 2017, the WVV1994 was extended to include the possibility of performing a saliva test and a Psychomotor test (PMT) on drivers of vehicles for drugs (Stb. 2014, 353; MoT 32 859, 3). The legislative amendment, also referred to as the Drugs in Traffic Act, empowers investigating officers to order drivers suspected of driving under the influence of drugs to cooperate with a saliva test or an examination of psychomotor functions and eye and speech functions (PMT¹). In addition, this law regulates a separate offence for driving under the influence of drugs. A blood test follows in case of a positive result on the PMT or saliva tester. A criminal offence is committed if the blood test result is above the legally permitted limit or if one or more drugs were used in conjunction with alcohol, exceeding the combined use limit.²



As part of the law amendment, the minister promised the House of Representatives on 17 June 2014 to carry out an evaluation five years after the law came into force. DSP-groep was commissioned by the Scientific Research and Documentation Centre (WODC) at the request of the Directorate for the Judiciary and Law Enforcement to carry out this evaluation. The present summary reports on the main findings.

¹ The law refers to the examination of psychomotor functions and eye and speech functions. In the report, we keep the name for the now standardised test used for this purpose: the psychomotor test, or PMT.

² For single drug use, these are behavioural limits and for a combination of drugs or of one or more drugs and alcohol, analytical limits (or null limits). For further explanation, please refer to Chapter 2.

For the evaluation, we used several methods of research, such as document study, semi-structured interviews with representatives of the police, Netherlands Forensic Institute (NFI), Public Prosecution Service (OM) and the Central Office for the issue of Driving Proficiency Certificates (CBR) (seven staff members, several interviews), semi-structured interviews with police employees (11 staff members) and an on-site observation for interpretation, during which we spoke to several persons involved, a survey among police employees (137 respondents), the analysis of registration data from the police, NFI, OM and CBR, an analysis on case information using a search in BVH, and finally an expert session with stakeholders from the police, NFI and OM.

In this summary, we address the following questions:

- ① How does the investigation and prosecution of drugged driving take place following the introduction of the Drugs in Traffic Act? How does this compare to before the law was amended?
- ② How are criminal and administrative measures imposed on drugged drivers? How does this compare to before the law was amended?
- ③ What bottlenecks are observed in practice in the implementation of the law, and what could be possible solutions?
- ④ Based on the processes studied and the developments visible on the indicators, what can be said about the law's contribution to road safety?

Investigation and prosecution of drug use in traffic

Overall, the process from arrest to conviction is going reasonably well. The work procedure is further established following a time with startup issues. Police employees rate the process with an 8.0 compared to a 7.7 in 2018 and a 3.3 in 2016 (before the effectuation of Article 8(5)). This is mainly due to saliva testers' availability as a pre-selection tool.

The increasing focus on tackling drugs in traffic since the amendment of the law is evidenced, for example, by the steadily growing number of official reports (PVs) sent to the public prosecutor's office, in which the police have charged Section 8(5) of the Road Traffic Act 1994.³

Number of PVs where Article 8(5) was charged, sent to the prosecution, 2018-2023

	2018	2019	2020	2021	2022
Number of PV's	2.534	5.086	6.785	7.969	10.862

Source: police data BOSZ.

³ This concerns several social classes.

However, the units have significant differences regarding the deployment and handling of drugged driving and the number of PVs submitted to the prosecution. The same applies to teams and employees. Where one employee works with the saliva tester every week, another colleague does so only once a year.

Saliva tester and PMT

Since it became available as a pre-selection tool in mid-2017, the saliva tester has been heavily used. The number of saliva testers actually deployed is not recorded as such and is unknown. Based on a search of PVs, it appears that 14,471 tests were deployed in 2022, which resulted in a positive result. This number is an increase from 2018 when the number was 2,973. The unknown number of saliva testers actually deployed is expected to be many times higher. Police interviews show that not all tests yield a positive result. The number of drivers refusing a saliva tester is around 3% to 4% and has been stable over the years.

The PMT, however, is not often used as a test despite being designed as a pre-selection tool. The PMT is utilised as an "in the head" checklist to identify traits suggestive of drug use. A PMT is used when a saliva test is ineffective or when there are other indicators of drugged driving. Additionally, a saliva tester is used in combination with the PMT.

Blood tests

The number of requests for blood tests has increased significantly over the years, from 1,153 in 2017 to 16,467 in 2022, NFI figures show. In 2022 the number has risen further, based on police reports and interviews. In 2021, blood test results yielded positive results in 6,581 or 62% of the cases, meaning that (combinations of) drugs were found in the blood. This percentage was in the same range (between 62% and 67%) in previous years.

The substances discovered primarily point to the use of cannabis (4,677 cases, accounting for 71% of the positive results in 2021), amphetamine-like substances (1,966 cases, 31% in 2021) and cocaine (988 cases, 15% in 2021). GHB use has been less frequently reported (458 times or 7% of the positive results in 2021). A single drug is used in about three-quarters of the positive results, while two or more drugs are used in the remaining cases.

Imposition of criminal and administrative measures

More lawmaking has taken place over the years in the area of prosecution. There has been more unity in the way prosecutors and ZM handle cases. A sentencing guideline is followed, and there is case law from which guidelines for judges can be derived. Additionally, the strict safeguards outlined in the July 2022 amended decree have received more clarification.

The two main requirements for the public prosecutor to move forward with a case are a blood test with a norm violation and confirming that the legal process steps have been followed. The case is dismissed if

these conditions are not met. This resulted in 3,695 dismissals in 2022, mostly due to negative results of blood tests. Almost every case with a positive blood test results in a penalty imposed by a punitive order from the Public Prosecution Office or going to court.

The public prosecutor imposed sanctions in 3635 cases in 2022. The majority of these were fines (with some also including community service or other penalties). After a gradual increase (0 criminal decrees in 2017, 5 in 2018), the number of punitive orders increased to 2340 in 2020 before declining in 2021 to reach 3,635 in 2022. From 165 cases in 2017 to 2,600 cases in 2018, the number of summonses increased to 5,535 cases in 2022. Once more, with a brief dip in 2021. In 2022, the court decided to acquit 65 out of 3,160 cases (2%).

The study shows the sentences given for drugged driving. However, it is impossible to tell from this what other issues weighed in the sentencing (e.g., whether the offender was a repeat offender or another offence was also involved). For instance:

- ① 1,365 cases in 2022 resulted in community service sentences, most ranging from 21 to 60 hours.
- ① In 2022, 795 cases resulted in fines, ranging from €300 to €1000 or more.
- ① 60 cases in 2022 resulted in custodial sentences, frequently less than a month and occasionally as long as a year.

Once more, the number of penalties imposed increased over the years before peaking in 2020. After a decline in 2021, the number climbed again.

Administrative measures

Since Article 8(5) was implemented in July 2017, administrative measures have stayed the same. However, it has been noted that there are fewer notifications than there are positive blood test results and other indications. An estimated one in three to four cases do not receive a notification. Although there may have been grounds for doing so in these cases, no administrative action was taken.

The CBR mandated 5,139 drug investigations in 2022. The counter read 559 in 2017, so this number has only increased since then. The outcomes of these investigations and the implications for drivers, as well as the number of objections and appeals filed by drivers as a result of these investigations, remain a mystery.

Bottlenecks in practice

The process from arrest to deciding on criminal and administrative measures is going reasonably well. Progress has been made compared to before, and the process has been further consolidated. Police employees rate the process with an 8.0 compared to 7.7 in 2018 and 3.3 in 2016 (before the law change). On the whole, national stakeholders are positive. However, there are several bottlenecks and concerns that require attention, including:

- ③ Awareness and level of knowledge among police about dealing with drugged driving. A saliva tester is not something that easily becomes ingrained in the work process because the typical police officer conducting traffic checks only uses it once or twice a year.
- ③ There are questions and uncertainties among police officers about when to deploy the saliva tester. The instruction has been changed several times since the start, so some police officers no longer know which instruction applies.
- ③ In traffic accidents, taking a saliva test is not yet standard practice. It happens often but not always. In serious accidents, testing does happen more often than in minor accidents.
- ③ The number of positive saliva testers, PMTs, and blood test requests varies greatly between police units. This variation shows how deployment varies significantly per unit, even when taking into account that units vary in size, and some have more traffic than others. The approach to and level of activity in addressing drugged driving also vary significantly between teams and within teams.
- ③ Knowledge on dealing with drugged driving is currently insufficiently secured in the police organisation. Drugs in traffic receive "minimal attention" within police training.
- ③ No substance above the limit is found in about a third of the blood tests. There are several reasons for this, including that the saliva tester used as a pre-selection tool measures something different than blood tests. For instance, the saliva tester measures the presence of drugs in saliva and blood tests the extent to which concentrations of drugs (or, for certain drugs, breakdown products) are present in blood. Additionally, different times are chosen for the sampling, allowing for drug decay in the body during the time between.
- ③ Notification to CBR is not always made when a police report is made for drugged driving; it is typical for this to be missed in one in three to four cases. As a result, the administrative law strategy for dealing with drugs in traffic hasn't been fully deployed.
- ③ A bottleneck affecting all parties is the chain partners' limited resources. This results in backlogs and long processing times, as is currently the case at CVOM. The limited available police staff resources also plays a role in the choices regarding the deployment of police in tackling drugs in traffic.

The aforementioned points regarding the police can be addressed by providing (more) knowledge and instruction. However, there is no obvious alternative to the saliva tester or blood test in the short term. It may be worth keeping an eye on developments in this field abroad, especially regarding *oral fluid analysis* developments. No simple solution can be given for the resources issue either. Perhaps the various units could learn more from each other's working methods to achieve smart or targeted deployment.

The final area for improvement is the provision of public education or a campaign for specific target groups on drugged driving. This education might cover the function of CBR and the potential legal and administrative consequences of drugged driving. Besides the risk that drugged driving poses to the driver

and fellow road users, of course. It is impossible to predict with certainty whether such education or a campaign will be successful in advance.

Contribution to road safety

Compared to before the effectuation of section 8(5) of the WVV, there has been a continuous and hefty increase in various parts of the process: the number of positive saliva testers and PMTs, the number of blood tests, the number of cases in which drug use was confirmed, the number of PVs in which the police have charged section 8(5), the number of penalty orders and sanctions and, finally, the number of civil measures imposed (driving fitness examinations). Therefore, in theory, tackling drugged driving can be expected to contribute to improved road safety.

However, we are cautious when making claims about how addressing drugged driving will impact traffic safety. The use of drugs in traffic is not monitored. It is unknown if there is a decrease in the number of drugged drivers compared to the past. And, in case it is, what are the reasons for this? Are drivers less likely to get behind the wheel with drugs, are drivers inclined to do so taken off the road, or are there other reasons?

The same applies to the number of drug-related traffic accidents; it is unknown if accidents are occurring less frequently than they did in the past and, if so, why. In this regard, we point out that it is unknown how many PMTs and saliva tests were administered. Therefore, no conclusion can be made at this time regarding the chain partners' dedication and, consequently, the actual contribution of Article 8(5) to road safety. In doing so, drugged driving is linked to a wide range of additional factors.

Conclusion

After five years and not without some initial difficulties, the process of tackling drugs in traffic is going reasonably well. The process has been established in all parties, but care should be taken to prevent awareness from waning once more, to keep police motivated, to resume police training, and to clear backlogs. At the time of the current evaluation, saliva testers are being used, freezers and transport have been arranged, arrangements have been made with doctors and nurses, accredited laboratories have been designated, the decision has been made more precise, and legalisation has also taken place.

All national stakeholders welcome the possibilities section 8(5) offers and see progress in tackling drugged driving. There has been a steady increase in, among other things, the number of positive saliva testers taken, the number of police reports submitted in which the police have charged Section 8(5) of the Road Traffic Act 1994, the number of imposed sanctions and penalties, and the number of administrative measures.

Nonetheless, the process can be improved by addressing bottlenecks, and continued consideration should be given to the efficient use of Article 8(5) in relation to revenue. The latter is because one in three saliva testers do not result in a positive blood test result, even though various parties have made efforts and drivers have been questioned about this.

It would seem logical to consider drugged driving from the perspective of broader road safety, which might also include targeted control, information, and educational measures. On the latter, the recently introduced Educational Measure on Drugs (EMD) already holds the lead. Additional types of research are required to assess road safety and the impact of drug use on it.

DSP-groep BV
Van Diemenstraat 410
1013 CR Amsterdam
+31 (0)20 625 75 37

dsp@dsp-groep.nl
KvK 33176766
www.dsp-groep.nl

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