Europe Pushes to Keep Lethal Injection Drugs From U.S. Prisons

The EU and manufacturers try to stop their entry into U.S. prisons

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Photograph by David J Sams/Getty Images

Pharmaceutical makers have long promoted their products as a means to enhance or prolong life. Now some have been enmeshed in a transatlantic battle over whether their drugs can also be used to end it. Europe is escalating its war on the U.S. practice of executing inmates with prescription drugs, and they're making it harder for prisons in the 33 states where lethal injection is legal to acquire their weapons of choice.

The U.S. is one of only two developed democracies to use capital punishment. The other, Japan, executes by hanging. "Not only is capital punishment outlawed across Europe, but European policy is also to work actively for abolition of the death penalty worldwide," says Sarah Ludford, a member of the European Parliament. "By persuading responsible pharmaceutical companies to supervise their distribution chain and by getting controls on exports from Europe tightened, U.S. prisons' ability to procure their death machine supplies has been thwarted."

Lethal injection usually involves three drugs: one to put an inmate to sleep, one to paralyze the muscles, and one to stop the heart. First adopted by Oklahoma more than 35 years ago, that protocol had been little changed until Europe two

years ago began limiting drug supplies. “Until recently there was a great deal of mystification and ignorance surrounding the mechanics of drug distribution,” says Maya Foa, head of the Stop the Lethal Injection Project at Reprieve, a U.K. human rights group.

The battle has been focused on a key component of the drug cocktail: the sedative. (There were no major U.S. suppliers at the time.) Supplies of the preferred option were disrupted when the Italian government two years ago asked U.S. drugmaker Hospira to guarantee that the sodium thiopental it was manufacturing in Italy wouldn’t be used in executions. The company said in January 2011 that it couldn’t comply with the request and ceased making the surgical sedative.

Hospira’s decision led some prisons to replace sodium thiopental with another drug, pentobarbital. Danish drugmaker H. Lundbeck <https://www.bloomberg.com/quote/LUN:DC> sold pentobarbital as Nembutal, a treatment for seizures. But investigations by Reprieve found that Lundbeck’s product was being used in executions in states including Ohio, South Carolina, and Texas. In July 2011, Lundbeck said it would require customers to buy Nembutal through a single wholesaler and to sign a form confirming they won’t resell it, aren’t a prison, and know Lundbeck opposes executions. “We were in a situation where our drug was used in a way in which it was not intended to be used,” says Lundbeck Chief Executive Officer Ulf Wiinberg. “We took that seriously, and we took actions to try to prevent misuse.”

Still, several prisons managed to buy the drug before the controls, with nine states carrying out 43 executions last year using pentobarbital, according to the Washington (D.C.)-based Death Penalty Information Center. All but one used Nembutal, according to Reprieve. Lundbeck sold its Nembutal business to Lake Forest (Ill.)-based Akorn in December 2011. Akorn Chief Financial Officer Tim Dick didn’t respond to voice mail and e-mail messages.

In tandem with Lundbeck’s efforts, the European Commission amended its so-called Torture Goods Regulation—which governs the trade of products that can be used for capital punishment, torture, or other cruel treatment—to impose export controls on pentobarbital as well as sodium thiopental.

U.S. prisons next turned to propofol, a drug that contributed to Michael Jackson's death. Missouri adopted a plan last year to use it in executions. In August, Fresenius Kabi, a U.S. unit of German health-care company Fresenius, said it won't accept propofol orders from any U.S. departments of correction and that it has instituted tighter controls through a select list of wholesalers and distributors. "We understand that one or more departments of correction in the U.S. are considering amendment of their lethal injection protocols to include propofol," the Fresenius Kabi unit said in a statement. "Clearly such use is contrary to the FDA-approved indications for propofol and inconsistent with Fresenius Kabi's mission of 'Caring for life.' " The EC now is considering adding propofol to its torture goods restricted list.

Drugmakers' actions may not be enough to stop the flow to prisons through back channels, Reprieve's Foa says. Nebraska's Department of Correctional Services said in November 2011 it had received a supply of sodium thiopental from Swiss drugmaker Naari. The company later said samples of the drug were sent to Chris Harris, a middleman in India, who misled Naari by saying he was procuring them for product registration purposes in Zambia, not for executions in Nebraska. "I am shocked and appalled by this news," Naari CEO Prithi Kochhar said in a letter to Nebraska Chief Justice Michael Heavican dated Nov. 18, 2011. "Naari did not supply these medicines directly to the Nebraska Department of Correctional Services." Harris didn't respond to an e-mailed request for comment, and phone numbers on his website no longer function.

Several states in 2011 surrendered supplies of lethal injection drugs to federal agents. They had been obtained from distributor Dream Pharma in London, which Reprieve says operated in a rented space in the back of a driving instructor's office. A man who answered the phone at Dream Pharma's office said the company had no comment and declined to give his name.

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