

Cannabis policy reform in Europe Bottom up rather than top down

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With the regulation of recreational cannabis markets in Uruguay and the US states of Colorado and Washington in 2013, and – in November 2014 – the approval of cannabis regulation ballots in the states of Oregon and Alaska, a breakthrough in conventional cannabis policy is emerging. The current policy trend towards legal regulation of the cannabis market is increasingly seen as a more promising model for protecting people's health and safety and has changed the drug policy landscape and the terms of the debate. The prohibitive model has failed to show any sustained impact in reducing the market, while imposing heavy burdens upon criminal justice systems; producing profoundly negative social and public health impacts; and creating criminal markets supporting organised crime, violence and corruption.

While in the Americas cannabis policy reform is taking off, Europe seems to be lagging behind. That is to say, in European nations at the level of national governments – where denial of the changing policy landscape and inertia to act upon calls for change reigns. At the local level, however, disenchantment with the current cannabis regime gives rise to new ideas. In several countries in Europe, local and regional authorities are looking at regulation, either pressured by grassroots movements – in particular the *Cannabis Social Clubs* (CSCs) – or due to the involvement of criminal groups and public disorder. This briefing will give an overview of recent developments in Europe. In the Netherlands, municipalities want to regulate the supply of coffeeshops currently not allowed. In Copenhagen (Denmark), and Berlin, Frankfurt-am-Main, Hamburg and Cologne (Germany), local authorities promote coffeeshop-like dispensaries with a regulated supply. In Spain and Switzerland

Keypoints

- While in the Americas cannabis policy reform is taking off, national governments in Europe are in a state of denial about the changing policy landscape and suffer from inertia in acting upon calls for change from local authorities.
- Local authorities are confronted with a range of problems that, in the end, cannot be solved without some kind of a regulated and transparent supply chain of recreational cannabis.
- Increasingly, local and regional authorities, and grassroots movements – centred around the *Cannabis Social Club* movement in Europe – are advocating change, and various initiatives are under way.
- European cities and regions that want reform should follow the example set by their predecessors when they constituted *European Cities on Drug Policy* (ECDP), advocating a more pragmatic, less prohibitionist drug policy and initiating a set of innovative harm reduction measures
- Such a network provides opportunities to exchange experiences and best practices as well as fundraising and sharing human and financial resources needed for policy change.
- While the ECDP is now defunct after achieving its goals, it is time for an ECDP 2.0 to do the same for the regulation of the recreational cannabis market in Europe.
- As happened with harm-reduction, sooner or later the cannabis reform pressure building up from local levels will have to lead to legislative reforms at national levels, and the EU policy framework – and ultimately also the UN conventions – have to accommodate the policy trend towards legal regulation.

regional and local authorities want to allow Cannabis Social Clubs, while in Belgium, Portugal, France and the UK campaigns for CSCs are gaining momentum.

The European Union (EU) lacks competence to embark upon cannabis policy reform, which falls under the remit of member states.² Nevertheless, European law builds on the three UN drug control conventions that restricts cannabis exclusively to medical and scientific purposes and obliges member states to adopt measures to establish recreational cannabis as punishable offences – either penal or administrative. Although outright criminalization of the recreational use is exempted and the obligations are subject to constitutional limitations of a country, when it comes to cultivation, production, distribution, import and export, possession or any other action for recreational purposes, options – other than non-enforcement of infractions – are very limited. Moreover, EU member states have agreed to cooperate and to take the most appropriate measures against cannabis cultivation for recreational use – including obligations to prohibit such acts.³

The current legal and political straitjacket in Europe is extremely difficult to reconcile with the request of local authorities to effectively regulate the supply of cannabis for recreational use as an alternative to the negative consequences of the current restrictive arrangements. It would mean that European states would have to violate the UN conventions, just as Uruguay and the federal US government have done. This is not impossible, but would require political will to do so. As in the US, different policies regarding personal use and possession for personal use already exist in Europe, from *de jure* decriminalisation in Portugal and the Czech Republic to full prohibition in Sweden, as well as intermediate *de facto* decriminalisation in countries such as the Netherlands, Belgium, Luxembourg, Switzerland, Germany and Spain. The question is why this could not be extended to regulating cultivation practices. If this is possible in a federal state like the US, why should that not be possible in the European Union?

EU member states are also committed to the EU Drugs Strategy 2013-2020 and the

related EU Action Plan Concerning Drugs 2013-2016, which do not foresee any kind of change regarding cannabis.⁴ However, the door to reform is not completely closed, since there is some room for manoeuvre for “encouraging an active political discourse and analysis of developments and challenges of drugs at EU and international levels.”⁵ One of the initiatives in the previous EU Drugs Strategy (2005-2012) was the commission of a report to look at the drug market “as if it were a licit market”, which resulted in *A report on global illicit drugs market*, published in 2009 as a contribution to the 10-year UNGASS review at the Commission on Narcotic Drugs.⁶

The report noted that “[e]nforcement of drug prohibitions has caused substantial unintended harms; many were predictable”, concluding that “[t]he challenge for the next ten years will be to find a constructive way of building on these lessons so that the positive benefits of policy interventions are increased and the negatives ones averted.” That could include looking at regulation of cannabis markets as local administrations and well-organized grassroots movements have put forward various regulation proposals, as well as guidelines for good practices for collective cannabis growing.

Whereas cannabis policies are considered to be relatively liberal in Europe in comparison to other parts of the world, cannabis-related offences are increasing. According to the 2014 European Drug Report:

Since about 2000, many countries have reduced the severity of penalties applied for simple use or possession offences. More generally, European discussions on cannabis control have tended to focus on targeting drug supply and trafficking rather than use. In contradiction to this, however, the overall number of possession and use offences related to cannabis has been steadily increasing for nearly a decade.⁷

According to the report, more than one million drug use or possession offences were reported in Europe in 2012, a 17 per cent increase compared to 2006. More than three-quarters of the reported drug offences involve cannabis. Even in the Netherlands, often seen as the most liberal country when

cannabis is concerned, the amount of offences related to cannabis possession is significant. In 2012, there were 4,594 recorded offences; 71 per cent of which concerned possession of five grams cannabis or less – the threshold quantity for cannabis to be purchased in coffeeshops.⁸ That amounts to nine offences per day. Nevertheless, the risk of being caught in the Netherlands is relatively low, since detection of possession is generally the result of non-targeted detection rather than targeted control.

Going backwards ... to go forward?

The leniency towards cannabis in traditionally tolerant European countries such as the Netherlands and Denmark has been declining in the past decade with the rise of liberal-conservative governments. The original public health focus of those tolerant policies, separating the cannabis market from the hard-drugs market – heroin in particular – that had been progressively implemented in the 1970s, has been replaced by a security-oriented focus, in an effort to fight the growing involvement of crime groups in the unregulated supply-side of the market and the public disorder of cannabis tourism.

The Netherlands

The problems with the Dutch coffeeshop model are rooted in the paradox that at the *front-door*, the sale and possession of small quantities are not prosecuted, while at the *back-door* supply (cultivation and trade) is still fully criminalised. The contradiction was clear from the outset, with the 1976 amendment to the Opium Act establishing the policy of distinguishing between drugs involving unacceptable risks (hard drugs, such as heroin) and cannabis products (soft drugs). Amidst the legislative revision, the government was even prepared to legalise cannabis, according to a government document:

The use of cannabis products and the possession of them for personal use should be removed as soon as possible from the domain of criminal justice. However, this cannot be realized as yet, as it would

bring us into conflict with our treaty obligations. The Government shall explore in international consultations whether it is feasible that agreements as the Single Convention be amended in a way that nations will be free to institute, at their discretion, a separate regime for cannabis products.⁹

Both the Minister of Justice, Dries van Agt, and the Health Minister, Irene Vorrink, wanted to go beyond decriminalising cannabis: “We wanted to fully legalize cannabis and regulate all other drugs,” Van Agt said years later. International pressure made the government decide differently.¹⁰

Around 1995 a new Dutch government again considered regulating the back-door supply of cannabis.¹¹ The stated policy would have allowed municipalities to experiment with the supply of locally cultivated cannabis to *bona fide* coffeeshops if the mayor, the local chief public prosecutor and the head of police all agreed and received the backing of the national prosecutors general office.¹² This would have extended the expediency principle in Dutch criminal law used to allow regulated sales in coffeeshops to the cultivation and supply for the coffeeshops.¹³ These proposed reforms were nipped in the bud by the French President Jacques Chirac, who also questioned EU drug policy ‘harmonization’ in an effort to rein in the lenient policies of the Netherlands.¹⁴ As a result, future national drug policies became subject to the rule of adhering to the lowest common denominator within the European Union. This means that reform-adverse countries are able to obstruct progress towards more liberal cannabis policies in the consensus-oriented policy process, based on the restrictive UN drug control conventions that have been incorporated in European legislation.

As the most liberal country in the diverse EU cannabis policy landscape, the drive towards ‘harmonization’ has had serious implications for the Netherlands. Policy makers developed a ‘wait-and-see’ attitude: any progress would depend on willingness for change abroad. In the meantime, the Netherlands saw no other option than to ‘muddle on’ with its imperfect coffeeshop system, maintaining the status quo as a transitional situation on the road to

regulation, and continuing a give-and-take policy in the international arena.¹⁵ To mollify the French, penalties for large-scale organized illicit cultivation were increased, and the limit for sales in coffeeshops was lowered from 30 to five grams.

The reluctance of the Dutch government to engage in cannabis policy reform was again apparent in 2000, when a slim majority in the Dutch parliament adopted a motion to regulate the backdoor, which the government refused to implement. On the other hand, successive Dutch governments succeeded in ensuring that the EU's 2004 Council Framework Decision on drug trafficking – resulting from the European harmonization process – would not commit to changing Dutch policy on coffeeshops and the possession of small amounts of drugs for personal use. The Framework Decision only requires legislative action and does not intervene in enforcement and prosecution policies. The established principles of subsidiarity in the Treaties (to not regulate at EU level what is nationally possible) and proportionality (against any excessive response to a particular problem) were respected.¹⁶

The Framework Decision is mainly focused on the harmonisation of legislative instruments against drug trafficking to strengthen cooperation between the judicial authorities and law enforcement agencies. Over the years, however, it has led to stricter legislative action in the Netherlands through an array of new instruments in the Opium Act, such as increases in penalties for cannabis offences at the supply side – commercial growing or selling of cannabis – and for participation in a criminal organisation. The overall effect was a tightening of policies, in particular regarding the supply of cannabis, and probably was the basis for stronger law enforcement action by a special unit (the Taskforce Tackling Organized Hempgrowing) against illicit cultivation. The European Commission specifically expressed its concerns regarding the problem of the supply of coffeeshops by criminal networks.¹⁷

In contrast, growing support for a system of legal cannabis regulation has emerged among the population. One poll showed

that 54 per cent are in favour of regulating cannabis supply.¹⁸ A December 2013 poll showed that 65 per cent of the Dutch are in favour of regulating cannabis production like Uruguay.¹⁹ Even among the voters of the conservative-liberal party VVD – the party of the current minister of Security and Justice Ivo Opstelten – a significant majority (65 per cent) supports regulation. If political parties took seriously the views of those who voted for them at the September 2012 general elections, there would be an overwhelming majority in favour of regulating cannabis supply: 129 out of 150 seats in the House of Representatives.

Nevertheless, current government policies focus on further restriction. While the nationwide introduction of the cannabis pass has failed, the residence criterion (tourist ban) remains. Increased street dealing was reported in southern municipalities adopting such restrictions. The Justice minister still insists on maintaining the residence criterion, although a provisional opt-out was included in the measure for municipalities to decide whether they would enforce the rule. Most municipalities are not enforcing this rule, except for some in the south.²⁰ A recent survey found that 85 per cent did not enforce the residence criterion.²¹

A report evaluating the residence and private club criterion concluded that “in the municipalities where coffeeshops remain off-limits to non-residents, eventually the drugs tourists also largely disappear from the illegal cannabis market.”²² Hailed as a success by the government, it chose to ignore disquieting impacts of the illegal cannabis market, such as the effect on the separation of the markets between cannabis and more hazardous drugs, since street dealers tend to offer more than just cannabis. Moreover, there are serious indications that a new group of socially vulnerable street dealers are initiated in to more serious crime:

The shift in supply has had consequences for adolescents and young adults in certain lower class neighbourhoods who were attracted by the lucrative and flourishing sale of cannabis outside the coffeeshops. Previous research [...] into the drugs runners in Maastricht showed that, in the underprivileged neighbourhoods

where many drugs runners grow up, these runners very much look up to the older and already criminal youngsters as role models, because they have money and status.

Around 1500 coffeeshops existed in the mid-1990s, of which 617 were left in 103 of the 415 municipalities in 2012.²³ Since demand for cannabis did not change, the remaining coffeeshops have become bigger, causing problems with the permitted on-site stock of 500 grams being far exceeded by daily sales. Judges are increasingly showing their unease with such policies in their sentencing, either ruling inadmissibility or issuing non-punitive sentences. In July 2014, a case was dismissed by an Appeal Court because the coffee-shops had co-operated with the police, the local council and the tax office, which knew and accepted that the coffeeshops had far more than the permitted amount in stock.²⁴ Another Appeal Court ruled accordingly and found the prosecution case inadmissible. The number of cases in which transgressors were found guilty without imposing penalties increased from 15 in 2011 to 25 in 2012, and 45 in 2013.²⁵

A subsequent blow against current policies was the verdict in October 2014 of a Groningen court in a case against two cannabis growers who were cultivating overtly, reported their income to the tax authorities and paid their electricity bills. The court criticised the government policy that criminalises cannabis production while allowing its sale in coffeeshops. In its ruling the court found the growers guilty but, again, no punishment was applied. "Given that the sale of soft drugs in coffee shops is tolerated, this means that these coffee shops must supply themselves and so cultivation must be done to satisfy these demands," the court found. "The law does not state how this supply should be done."²⁶ The ruling is potentially ground breaking; it might open up the back door of the coffeeshops, but an appeal is expected.

In 2013 and 2014, the distance between restrictive government policies and the desire of local municipalities to regulate the backdoor of the coffeeshops increased. Municipalities are worried about the health effects of unregulated cannabis, the massive

diversion of police resources to dismantle illicit cultivation sites and increasing criminal activities. They called upon Justice minister Opstelten to allow for pilot projects with regulated supply to coffeeshops. Despite the fact that two-thirds of the major municipal councils back regulated cannabis cultivation,²⁷ minister Opstelten rejected all of the 25 submissions to experiment with regulated cultivation in December 2013.

In response, the 25 mayors signed the manifesto *Joint Regulation* again requesting permits to experiment with regulated cannabis production.²⁸ "The nationwide introduction of certified and regulated production is the solution that addresses the health of users and community safety and tackles organised crime," the manifesto reads. It goes on to say that the current regime "undermines the fabric of Dutch society." The manifesto is now signed by 56 municipalities. One of the initiators, Heerlen mayor Paul Depla, argues that: "Our soft drug policy leaves the coffee shops dependent on criminal organisations for supply. So, ordinary people become an instrument of criminal gangs."²⁹ A survey showed 58 per cent of local officials favouring regulation of licit cannabis cultivation.³⁰ Remarkably, 53 per cent of local VVD officials agreed, thus opposing their own minister. In June 2014, Depla announced that he would initiate an experiment with regulated cannabis cultivation and issue a license.

Even in the governing coalition disagreements are rising. Some senators of the Labour party, VVD's coalition partner, said the entire strategy needs to be overhauled and urged to regulate and certify the cultivation for coffeeshops. They proposed to set up a commission to look into a pilot for regulated cannabis cultivation,³¹ but the motion was defeated with support of the opposition. In November 2014, the Amsterdam City Council also called for licensed cannabis production.³² One-third of the coffeeshops in the Netherlands are located in Amsterdam, so political support from the capital for regulated cannabis is fundamental, in particular because the local VVD is part of the city administration.

According to Opstelten the current UN drug conventions do not allow for cultivation of

cannabis for recreational use. But even if they did, his position is clear: “It is not allowed, and even if it is allowed I don’t want it”. He commissioned a study to determine whether under the UN drug control conventions it was possible to legally regulate cannabis cultivation or tolerate it by giving it the lowest possible enforcement priority – the enforcement regime under which coffeeshops currently operate. Although the study concluded those options were not possible, it also found that policies tolerating the coffeeshops were in contravention of the UN treaties as well, leaving Opstelten in a difficult position in which he has to both agree and disagree with the report.³³

While there is more room for manoeuvre in the international arena due to the legalization of cannabis in Uruguay and certain states of the US, The Netherlands is not taking the opportunity to move forward on regulating the supply side of the cannabis trade. Since the US has officially announced it will not harass governments that regulate cannabis anymore,³⁴ one would think that the Dutch would jump at the prospect to finally take the step that would achieve the original goal of the 1976 policy shift to allow cannabis, especially now that the bottom-up pressure from local authorities to do so is increasing.

Denmark

From 1969 to 2004, possession of up to ten grams of cannabis for personal use was not prosecuted in Denmark, with law enforcement turning a blind eye towards small-scale cannabis sales. Since the liberal-conservative government came into power in 2001, cannabis policy has been tightened. In its 2003 action plan, *The Fight against Drugs*, the distinction between seller and buyer was explicitly removed.³⁵ In 2004 possession of cannabis for personal use was ‘re-criminalised’, with an obligatory fine of €70, which was quadrupled in 2007. The new ‘zero tolerance’ policy replaced passive policing of street-level retail sales and the reluctant acceptance of cannabis markets that had been part of an overall harm reduction strategy. The new law, intended to counter the ‘normalisation’ of cannabis with a stronger enforcement deterrent, was followed by a police crackdown on Christiania’s open can-

nabis retail-market, known as ‘pusher street’,³⁶ and the approximately 100 ‘hash-clubs’ – clubs selling cannabis or Dutch-style coffee-shops providing a social space as well – in the rest of Copenhagen.³⁷

The results are striking: with the disruption of the large and stable cannabis market in Copenhagen, new actors on the black market used violence and gained a foothold geographically as well as financially, according to one study.³⁸ Street dealing emerged all over Copenhagen and the market-related violence of criminal gangs disputing control over selling points increased; including fatal shootings. The police crackdown disrupted established hierarchies among criminal groups and spurred renewed competition. In the five-year period after the crackdown in 2004 there were more homicides and attempted homicides in Denmark than in any five-year period in the previous 20 years. In the Copenhagen area 19 shootings were linked to the cannabis market, while such episodes were unknown prior to the crackdown.³⁹ The Copenhagen cannabis market is estimated to be worth around €200 million (1.5 billion Danish kroner) per year, and is now largely controlled by criminal gangs.⁴⁰

In reaction to the failure of repressive control of the cannabis market, the Copenhagen City Council approved in September 2009 a three-year trial with cannabis dispensaries staffed by health-care professionals selling cannabis in small quantities at the prevailing street price. Only residents would be allowed to buy the cannabis to prevent ‘cannabis tourism’ – mostly coming from Sweden.⁴¹ The original proposal was to sell cannabis in 20–25 municipal outlets. The City Council envisaged a system similar to the state-owned alcohol monopoly that operates in neighbouring Sweden in which the government would either grow cannabis itself or license growers.⁴² One of the primary goals of the pilot project was to take the cannabis trade out of the hands of criminals.⁴³ In a more recent proposal, the municipality of Copenhagen would supervise cannabis growing and sell it at a market-busting price from five or six outlets modelled on pharmacies and selling up to five grams at a time, but only to people over 18 with Danish health insurance cards.⁴⁴

In order to do so, the Minister of Justice needed to grant a legislative exemption. Instead, he turned the City Council's request down, alleging regulating cannabis would likely increase both availability and use, which was unwise given the range of side effects.⁴⁵ According to a May 2013 poll, a slim majority of Danes approved the idea of a pilot project for legal cannabis in the capital: 52 per cent of respondents said it was a good idea, while 42 per cent rejected the plan. Support was less outside Copenhagen.⁴⁶ The deadlock between the national and local government continues, and despite growing unease and open discontent from the Copenhagen mayor, the police target sales and harass people that try to buy cannabis.⁴⁷ 'Task Force Pusher Street', the Christiania police unit active since September 2012 claims to have cut the cannabis trade by 30 per cent.⁴⁸

In response to the increased police presence in and around Christiania, people are fighting back, using a Facebook page, *Politi razzia på Christiania?* (Police raid on Christiania?)⁴⁹, to inform each other of police presence. A recent editorial in *The Copenhagen Post* lamented the inertia and denial of Denmark's political parties on the issue. While the Danes are just months from the next general election, "no political party has a policy on the subject of how to move forward" the newspaper said:⁵⁰

The Conservatives, Liberals, Social Democrats are in limbo. [...] Police engagement is a farce and they know it. Everybody can see the problem, nobody seems to have a solution, but it is inevitable that all politicians will soon have to address a problem that will not go away by itself.

Germany

After years of silence, the debate about regulating the cannabis market in Germany ignited again when Monika Herrmann – Green Party mayor of the Berlin district of Friedrichshain-Kreuzberg – announced she wanted a pilot project of city-run shops selling cannabis as a means of tackling the growing drug-dealing in the district's Görlitzer Park.⁵¹ "Getting cannabis is easier now than ever. I want to control its sale," she

said. Although the proposed dispensaries were dubbed coffeeshops by the media, Herrmann thinks the term to be misleading. She prefers "selling points," with medically trained workers, a minimum age for buyers and, if necessary, security guards. The best solution would be to have several selling points in Berlin as a whole. State-grown cannabis would have a better quality than its illegal alternative, is one of her other motives.⁵² The initiative was shot down by Berlin's Senate, above all by health senator Mario Czaja of the Christian Democrats (CDU). Nevertheless, a large majority in the district council backed the proposal.⁵³ Although much remains to be decided, one of the ideas is to have ten shops in Berlin that can sell three to five grams per client per day.⁵⁴

The proposal was followed by others. A district assembly (the *Bahnhofsviertel*) in Frankfurt-am-Main recommended "one or more legal outlets for cannabis products".⁵⁵ These are not intended to make cannabis readily available, but – as in Berlin – to control "the rampant black market".⁵⁶ In Hamburg, the district assembly of Altona also voted in favour of a pilot project to counter dealing in the Florapark area.⁵⁷ The district council of the city centre of Cologne also approved an initiative for a pilot project.⁵⁸ The city council of Frankfurt did accept the proposal, and the Health Department and Drug Unit organised an international expert meeting in November 2014 to discuss proposals, where many called for the liberalisation of cannabis.⁵⁹

Politicians in those towns rely on an exemption under paragraph 3 of the German drug law: pilot experiments can be approved if they serve "scientific and other purposes of public interest".⁶⁰ The drug law exemption was used in Frankfurt some 10-years ago to initiate a successful heroin prescription programme for problematic users. Since then, the city has been considered a model for progressive and effective drug policies, and its wayward policies are known as the *Frankfurter Weg*.⁶¹ However, the CDU and the Greens currently form the governing parties in Frankfurt and an agreement needs to be reached how to continue, since the CDU is less convinced to go forward with a regulation.

Although the different proposals are still being elaborated, this bottom-up pressure has sparked the long-moribund debate in Germany. In 1994 the Federal Constitutional Court cleared the way to decriminalise the use of cannabis. The 'hashish decision' questioned excessive criminal prosecution and suggested not going after minor infringements.⁶² Nevertheless, people can get a criminal record for possession, and the cultivation and trade of cannabis are still forbidden. A driving license can also be revoked if a driver is caught with trace amounts of cannabis in the blood. Possession of cannabis is decriminalised with different thresholds in various states, ranging from 15 grams in Berlin to six grams in most states.⁶³

Parliamentary initiatives in 2012 by the Green and Left parties on Cannabis Social Clubs failed,⁶⁴ but led to some discussion and media attention. The main parties, the christian-democrat CDU and the social-democrat SPD, have blocked any attempts at reform.⁶⁵ A January 2014 opinion poll showed that 65 per cent of Germans reject relaxing laws restricting the production, sale and consumption of cannabis. Just under a third of those asked (29 per cent) would like to see it legalised.⁶⁶ Meanwhile, over 120 German professors of criminal law – united in the *Schildower Kreis* – support decriminalising the sale and possession of cannabis, arguing that the criminal prosecution of cannabis users does not function as deterrence anymore and have called on the *Bundestag* to discuss the issue.⁶⁷

The German police union, *Bund Deutscher Kriminalbeamter* (BDK), supports the *Schildower Kreis*. At the expert meeting in Frankfurt, a representative of the BDK explained that the police had “no discretion” in drug cases in Hessen, one of the more liberal states of Germany. Any violation of the law had to be reported, even though the prosecutor's office in Frankfurt would waive cases involving up to six grams of cannabis. “We are tired of writing police reports that cost us time and lead to nothing,” he said, adding that each report takes about two hours.⁶⁸

In order to go forward with pilot projects, an application to the Federal Institute for Medicine and Medicinal Products

(*Bundesinstitut für Arzneimittel und Medizinprodukte* - BfArM) should be prepared, preferably with the support of research centres, counselling centres, police representatives, professional politicians and residents. The BfArM must allow the controlled supply of cannabis and legal questions, such as for potential operators and supply, must also be clarified. Any application for pilot projects will probably be rejected by the CDU-run Federal Ministry of Health. In Berlin, the CDU is now advocating lowering the decriminalisation threshold to six grams in order to stop street dealing and to counter the initiative in Kreuzberg.⁶⁹ Marlene Mortler, Germany's commissioner on drug-related issues (*Drogenbeauftragte*), rejects the regulation of cannabis, pointing to health risks.⁷⁰ However, the rejection of pilot projects opens the possibility of bringing the issue before the Federal Constitutional Court, which – as in 1994 – has to determine whether or not the projects would be against the public interest.⁷¹

The grassroots model: Cannabis Social Clubs

In the mid-1990s, cannabis activists in Spain developed a way to circumvent restrictions on cultivation and started to engage in collective cultivation for personal use.⁷² This model, known as Cannabis Social Clubs (CSCs), has been copied by activists in other EU countries, particularly in Belgium,⁷³ Slovenia, the United Kingdom,⁷⁴ and France.⁷⁵ Persuaded that the model is in conformity with the UN drug control conventions, it has gained popularity in several other European countries, such as Portugal⁷⁶ and Germany. In Uruguay, According to the 2013 cannabis law permits clubs with up to 45 members. Having gained legitimacy in several countries, the model is now frequently mentioned in the international debate about drug policy reform.

The *European Coalition for Just and Effective Drug Policies* (Encod) has issued guidelines for operating CSCs so as to avoid accusations of drug trafficking, supplying or encouraging use. Clubs should operate under a collective agreement, with registered members; calculate costs reflecting expected individual use, limiting the amount produced per person intended for immediate consumption. CSCs

are closed to the public and new members accepted by invitation only.⁷⁷ However, the model risks being eclipsed by commercially-orientated entrepreneurs that have remodelled the clubs into coffeeshop-type entities. Foreign financiers and Dutch coffeeshop owners have invested in Spanish clubs anticipating regulation.

The CSC movement in the UK is growing, but groups are not officially involved in cultivation.⁷⁸ In December 2014, there were 70 CSCs united in the UK Cannabis Social Clubs (UKCSC), an organisation founded in 2011 to represent cannabis users.⁷⁹ The fact that growing and possessing cannabis is illegal in the UK does not deter many cannabis clubs from using social media to publicise meetings and the openness is part of the campaign for normalisation. The clubs bring cannabis users together from all over the UK to discuss topics ranging from fertiliser to self-medication and campaigning for the decriminalisation of the drug. However, nationally opportunities are slim, although an Ipsos MORI poll for the *Transform Drugs Policy Foundation* in February 2013, found that 53 per cent of respondents supported cannabis legalisation (legal regulation of production and supply) or decriminalisation of cannabis possession.⁸⁰

A variation that has emerged is CSCs initiated by local authorities instead of grassroots movements, such as in the case of the Dutch city of Utrecht,⁸¹ subsequently blocked by the government. The ministry of Public Health refused to issue an exemption authorizing cultivation for the Utrecht clubs. The result is a rather contradictory situation: cities allowing coffeeshops with illicit supply, while blocking options for licit supply. In Amsterdam the first Dutch Cannabis Social Club is now operating through a grassroots initiative, and the prosecutor's office is looking into it. In Switzerland, a broad coalition of political parties in the canton of Geneva has adopted the model in a proposal for regulation, although they prefer to call them "cannabis users associations", because "social club" is considered too promotional.

Spain

The legal basis for the Spanish model

of Cannabis Social Clubs is the decriminalisation of cultivation for personal use, by taking advantage of a grey zone in the national law and court jurisprudence. Spanish law does not penalize consumption and in 1974 the Supreme Court ruled that drug consumption and possession for consumption are not criminal offences, although the Public Safety Act includes administrative sanctions for use in public places. Supreme Court rulings in 2001 and 2003, established that possession of cannabis, even substantial quantities, is not a crime if there is no clear intention of trafficking. The first club was legally constituted in 2001, followed by hundreds across Spain, in particular in the Basque Country and Catalonia over the last three years.⁸²

Jurisprudence tends to interpret existing legislation as permitting 'shared consumption' and cultivation for personal use when grown in a private place and on a non-profit basis. While there is no additional legislation or regulation defining the scale or particulars under which cultivation could be permitted, the CSC movement is exploring this legal space, reasoning that if one is allowed to cultivate cannabis for personal use and if 'shared consumption' is allowed, it can be done in a collective manner. Nevertheless, despite several favourable court decisions absolving clubs from prosecution, they are still operating in a legal grey zone. Raids on clubs and their plantations are common, and clubs' representatives have repeatedly asked for a legal regulation to end the uncertainty.

Spain now has between 500 and 600 CSCs; about 350 of them are in Catalonia. In Barcelona the number of CSCs has ballooned in a few years from 14 in 2009 to 250 by the end of 2013; twenty of these CSCs have more than 1,000 members and two or three of them have over 10,000 members. In the Basque Country, there are about 75 CSCs. In Catalonia, there are two types of clubs; one model is more cooperative/activist and the other more commercial/entrepreneurial. The two federations of clubs each have 20 CSCs. Cooperative CSCs – in the CatFac federation – have a limit of 650 members and 60 grams/month/member, while commercial CSCs – in the FedCat federation – have no membership limit and a higher cannabis limit (100grams/month/member).⁸³

In Spain, a study by one law firm calculated that €1,163 million is spent on cannabis yearly and that if all cannabis sales were liable to VAT, it would generate €200 million in tax revenue. Furthermore, it could create an estimated 40,000 jobs, leading to revenue of around €400 million in social security and income tax contributions.⁸⁴ Catalonia clubs have an estimated monthly turnover of €5 million, not including the costs of rental, payroll and lawyers.⁸⁵ Some argue it may be advisable for CSCs to pay taxes, adding to their legitimacy, even though they only dispense cannabis to members.

In the Basque Country, Catalonia and Andalucía local governments are attempting to regulate the clubs within the limits of the national law. In the Basque Country in April 2012, a parliamentary commission was created to study a possible regulation of CSCs activities.⁸⁶ The autonomous regional government of Catalonia (*Generalitat*) remained silent on the issue until the Rasquera case in early 2012, when one of the larger clubs in Barcelona proposed procuring their supply from large-scale plantations in the inland Catalan municipality of Rasquera.⁸⁷ An agreement with the local administration was signed, but was blocked by the prosecutor's office. Nevertheless, other rural municipalities in Catalonia have expressed interest in similar cultivation agreements with clubs in Barcelona. Regional governments control police with drug enforcement authority, giving them leverage with the central government to create some kind of regulation and to develop specific aspects of regional law.

The conservative central government in Madrid, however, takes a dim view of these developments. The Public Prosecutor's Office issued an instruction in August 2013 to investigate all CSCs on issues such as the limits of the right of association, and reiterated that growing cannabis and shared consumption could constitute unlawful conduct in the sense that the associations promote the commission of a crime. The prosecutor also warned that organizations engaged in drug distribution could hide behind the legal appearance of associations with membership fees.⁸⁸ Organizations of progressive jurists objected, arguing that the instruction was disproportionate by putting

the clubs at the same level as criminal distributors, while, in fact, they try to avoid the illegal business.⁸⁹ Perhaps the most concise summary of the judicial authorities' position is that the shared use of cannabis in small quantities by adults is not a crime, but that "there is no obligation to regulate" because it is not an individual right, since cannabis is subject to international regulations as it is scheduled by the 1961 UN Single Convention. A registered cannabis club managing small amounts, is one thing, yet collective cultivation of the plant is something entirely different for which local and regional authorities have no competence to act.⁹⁰ Although most Spaniards favour a tough stand against drugs, 52 per cent supports the sale of cannabis to adults.⁹¹

Notwithstanding widespread popular protest – against what has been labelled the 'gag law' since it limits all kinds of civil rights – a new Public Safety Act with heavy fines for drug possession was approved in December 2014. A small amount of cannabis⁹² will be punishable by fines between €1,001-30,000. Cultivating cannabis for personal consumption may be punished with fines of up to €30,000.⁹³ Opposition parties have pledged to scrap the law if elected to office. Despite the *de jure* decriminalisation, fines for possession under the previous Public Safety Act – that already limited the room for manoeuvre of the clubs – are not a minor issue in Spain. In 2012, for instance, there were 356,052 police reports of drugs possession, of which about 86 per cent were for cannabis, some 842 per day.⁹⁴

A survey in June 2014 showed that 77 per cent of Catalans believe it is better to regulate the associations than prohibit them.⁹⁵ In June 2014, Barcelona had set a one-year moratorium on the creation of new clubs. Police have shut down several Barcelona clubs for alleged violations that include sales to minors, drug trafficking, and hawking of memberships to tourists.⁹⁶ The moratorium was welcomed by the club federations that offered their expertise in developing guidelines and best practices, but the closure of clubs is considered a pre-emptive move. "We are aware that the administration does its job well and ensures the common good but this situation would be easier if, before it acts, it set clear rules for all cannabis associations,"

the CatFac federation said after the closure of 49 clubs in Barcelona.

In November 2014, the Public Health Commission of the Catalan parliament approved a proposal of the Public Health Agency of Catalonia (*Agencia de Salut Pública de Catalunya* – ASPCAT) to regulate certain aspects of the CSCs in the form of “guidelines for good practices”. The rules are the result of negotiations between officials of the Catalan government and the clubs since May 2012. The new set of rules are not a legal regulation, but “some indicative criteria”, according to the Catalan health secretary. The rules also do not address the key issue of cultivation and supply to the clubs. The agreed rules set an age limit of 18 years; limit opening hours to eight hours a day with a specific closing time; and ban selling alcohol in the clubs.⁹⁷ The associations may only dispense cannabis to members and in an attempt to counter “cannabis tourism”, new members need to be introduced by a member and will have a grace period of 15 days during which they cannot receive any cannabis. The clubs are required to inform members about the “harms and risks” of cannabis and train their employees in public health issues.

Meanwhile, in Navarra a different situation developed. A local referendum that collected more than 10,000 signatories (double the 5,000 signatures needed), obliged the local parliament to allow the submissal of a proposal for regulation of the clubs. The proposal was approved in November 2014, making Navarra the first autonomous region to endorse the regulation of CSCs.⁹⁸ However, the regional government is not in favour and counts on the courts to defeat the new law as it is in conflict with national law. The initiators of the proposal, *Representación Cannábica de Navarra* (RCN), contend that the law fits perfectly with the penal code and jurisprudence.⁹⁹

In addition to regional regulation attempts in the Basque Country and Catalonia, cities are starting to regulate the clubs with limited administrative rules through a municipal bylaw. The first one was San Sebastian in the Basque Country – which has 23 registered clubs with some 10,000 cannabis users.¹⁰⁰ The local bylaw was approved in December 2014, and entails a formal recognition of clubs as

well as the fulfilment of certain obligations by them. “We had two options,” said a local councillor. “Ignore the existence of these clubs, or attempt to regulate to ensure the reduction of risks from consumption.” He did not hesitate to criticize the current, restrictive national legislation on cannabis.¹⁰¹

Belgium

In 2003 and 2004, new drug laws were introduced in Belgium. In 2005, a guideline by the Justice minister and the public prosecutor’s office assigned the lowest possible priority to prosecution for possession of up to three grams of cannabis or one cannabis plant.¹⁰² However, this tolerance model is now being replaced by a more repressive model. In Antwerp, the Flemish nationalist party NVA introduced administrative sanctions with fines of €75 for cannabis possession when they took office in January 2013.¹⁰³ After the formation of a new government in October 2014 with the NVA, this policy has been introduced nationwide.¹⁰⁴ In November 2013, academics published a cannabis manifesto critically evaluating the policy, the risks of cannabis use and seriously looking at options for regulation. They argue that the present clampdown costing €400 million a year does not work.¹⁰⁵

Currently, there are five CSCs in Antwerp, Hasselt, Liege, Namur and Andenne, modelled on the Spanish CSCs.¹⁰⁶ These CSCs are activist-based and operate as social movements. The best known is ‘Trekt uw plant’ in Antwerp,¹⁰⁷ which has 400-500 members. There have been two serious attempts to prosecute CSCs. In 2006, members of the club were charged with possession of cannabis with the aggravating circumstance of participation in a criminal organisation, and in 2008 for encouraging drug use. Both cases failed; the first one past the statute of limitations and the second one by acquittal, leaving the CSCs in a state of legal insecurity. In December 2013 the police raided the Mambo Social Club in Hasselt and seized 1,100 grams of the member’s cannabis. In December 2014, the criminal court in Hasselt convicted the two leading club members, with a suspension of sentences for traffic and incitement to use cannabis, on

condition the club would end their activities and public appearances to defend the model. The Mambo Social Club will appeal the ruling.¹⁰⁸

According to one study,¹⁰⁹ Belgian CSCs “seem not profit-driven, and operate as a system in which cannabis is not too easily available”. In fact, the study goes on to say, “[t]he model offers important potential opportunities, in terms of economic advantages and monitoring consumption patterns.” The main threats to Belgian CSCs, according to this study,

consist of attempts to criminalize the model, the emergence of profit-driven clubs and systemic violence from criminal entrepreneurs. Weaknesses of the model relate to the unstable or transient nature of the clubs, the transparency of their operational procedures, the superficiality of their quality control strategies, and the risk of morphing into marketing enterprises.

The study concluded that

the CSC model could be a safe and feasible option for policymakers to move a meaningful distance along the spectrum towards legally regulated cannabis markets without crossing over to full commercial availability. Governmental Belgium regulation could convert weaknesses and threats to the model into strengths and opportunities to ensure best practice. If authorities refrain from action, the model might dilute and evolve in a similar way as the Spanish CSCs did recently, with the establishment of large, commercial clubs.

France

France has both one of the most draconian drug laws and among the highest prevalence of cannabis use in Europe. Use or possession of illicit drugs is a criminal offence and the law does not distinguish between possession for personal use or for trafficking. However, many prosecutors opt for a charge relating to use or trafficking that is based on the quantity of the drug found and the context of the case. Based on the principle of the appropriateness of proceedings, the prose-

cutor may decide to take legal action against the offender, to simply close the case, or to propose other measures as an alternative to prosecution. In 2010 a total of 157,341 drug-law contraventions were reported, of which 87.5 per cent were cannabis-related.¹¹⁰

Since the late 1990s cannabis use has doubled; there are currently about 550,000 daily users and 1.2 million regular smokers.¹¹¹ Supply patterns have changed as well: since 2004, there has been a drop in seized amounts of cannabis resin (mostly from Morocco), and there is an upward trend in domestic herbal cannabis cultivation; cannabis resin remains the main cannabis of choice, with an estimated 200–300 tonnes used every year and seizures representing about 20 per cent of domestic consumption. A record number of 131,000 cannabis plants were seized in 2012¹¹² and large-scale cannabis cultivation is emerging, with plantations of hundreds of plants controlled by organised crime networks.¹¹³ There are about 400 ‘grow shops’ in France.¹¹⁴

There have been several initiatives to regulate the cannabis market in France. In June 2011, a parliamentary report – compiled by a Socialist Party (PS) working group headed by the former Interior minister Daniel Vaillant – recommended “controlled legalisation” of the cultivation and consumption of cannabis. The cultivation and sale of cannabis should become a state-controlled activity, like the sale of alcohol and tobacco.¹¹⁵ The proposal did not gain significant support in the PS. During the 2012 presidential election campaign French president François Hollande opposed the proposal to convert the criminal offence of cannabis use into a misdemeanour, put forward by his security adviser, Dijon mayor François Rebsamen. “There are 142,000 cannabis procedures per year, corresponding to hundreds of thousands of hours of work for the police producing only 24,000 prosecutions”, Rebsamen pointed out, defending his proposal. His choice as Interior minister, Manuel Valls – appointed prime minister in April 2014 – is a firm opponent of any reform on cannabis.¹¹⁶ Attempts by the Green Party to open the debate also failed.¹¹⁷

There are an estimated 200,000 cannabis growers in France, and since 2009 some of

them have organized Cannabis Social Clubs, although the number of clubs is unclear. *Le Monde* estimated some 150 clubs with 2,500 members,¹¹⁸ while *Libération* estimated 425 clubs with approximately 5,000-7,500 members, based on information from the clubs.¹¹⁹ There has been an attempt to have CSCs recognized as non-profit organisations that attracted considerable media attention. One of its spokespersons, Dominique Broc, announced that he would officially register his club in March 2013, urging others to do the same. The police responded by detaining him and seizing his equipment and records. He was sentenced to a suspended eight-month prison term and fined €2,500.¹²⁰ Only six clubs tried to register, and in June 2013 a Tours court decided on the dissolution of the clubs' federative structure and banned its members from meeting.¹²¹

In November 2013, a survey by the *Observatoire Français des Drogues et Toxicomanies* (OFDT), "Perception and opinion of the French on drugs", showed that for the first time a majority of the French supported allowing cannabis under certain conditions (maintaining the bans on minors and driving under the influence). This proportion has doubled over the period 2008-2012 from 31 per cent to 60 per cent even though there is an increasing awareness of the risks of regular daily consumption. Nevertheless, 78 per cent are against the unrestricted sale of cannabis.¹²² Despite the refusal of the present government to reform, the debate in France continues.

In February 2014, Green party senator Esther Benbassa proposed a law that would decriminalise use, tax cannabis, and allow government-run stores to sell cannabis to adults for recreational use.¹²³ She was supported by the Grenoble prosecutor, Jean-Yves Coquillat, who called for broader debate on the repression of the consumption and sale of cannabis, stressing the "failure" of the current legislation.¹²⁴ In November 2014, the Socialist deputy Anne-Yvonne Le Dain called for legalization of cannabis in the private sphere with "a regulated supply of the product under the control of the state,"¹²⁵ a position close to the one taken in 2011 by former Interior minister Vaillant.

Le Dain did so after the multi-party

parliamentarian Committee for the Evaluation and Control of Public Policies (*Comité d'évaluation et de contrôle des politiques publiques* - CEC) issued a report evaluating the failed drug control measures in France. The committee did not fully agree on the way forward, but did favour a change to the 1970 law criminalizing cannabis use and punish use as a simple misdemeanour with a fine of €450, instead of the current €3,750.¹²⁶ A month later, the think tank *Terra Nova*, close to the PS, published the report "*Cannabis: réguler le marché pour sortir de l'impasse*" (Cannabis: regulate the market to break the deadlock), which shattered the current policy – "one of the worst imaginable" – and builds scenarios for change, including regulation with a state monopoly – like Uruguay – that could have a positive fiscal impact of €1.8 billion.¹²⁷

Switzerland

In 2001 the Swiss government wanted to allow cannabis possession and use, and aimed at a regulated market. The legislative proposal came from the Health ministry and got stuck in Parliament for various reasons. Meanwhile a police-tolerated market had developed (with over 200 shops) anticipating the passage of the law. However, the proposal failed narrowly in 2004.¹²⁸ The upper chamber of the Parliament, the Council of States, twice voted in favour of decriminalising the personal use of cannabis, but the National Council (lower chamber) did not agree. As a result, activists, cannabis farmers and some political parties began collecting the 100,000 signatures required by law for a referendum. Under the plan, personal consumption and production of cannabis would be decriminalised, and trade and cultivation would have been subject to state control in an effort to limit access by minors.¹²⁹ However, the referendum – which took place in November 2008 – was only supported by 36.8 per cent.¹³⁰

With this precedent, attempts to regulate abated; until in October 2013 cannabis was decriminalised, allowing a maximum amount of ten grams, small fines and no criminal record.¹³¹ The change aimed to reduce the 30,000 or so cannabis-related cases that clogged Swiss courts annually.

Pro-legalization groups still consider the law too harsh. The Zürich-based group *Legalize it!* published a brochure, “Shit happens”, in which a person checked by police and found in possession of less than ten grams of cannabis is advised to either “not answer questions or lie” about earlier consumption. Someone who denies having smoked cannot be fined and the cannabis they may be carrying cannot be confiscated, according to the brochure.¹³²

While opportunities for reform have stalled at the federal level, there are openings at the city level. In the past, city councils of the larger towns such as Zürich and Basel have advocated controlled cannabis sales, but did not advance concrete proposals. The debate gained impetus when in December 2013 an interparty working group of the Geneva canton advised starting a pilot project allowing cannabis clubs to buy state-certified cannabis for personal use. The clubs would be restricted to adults and called “cannabis users associations”, because “social club” is considered too promotional. The proposal was supported by a majority of parties across the political spectrum.¹³³

The interparty working group noted that: the open drug market in Geneva is a cause of insecurity to many and had led to a loss of control over a part of the public space; internationally, cannabis laws have been liberalised in many countries; there is widespread consumption in Switzerland, largely punished by through a simple fine. Therefore, the group proposed a three-year pilot in Geneva to allow for the cultivation, distribution and consumption of cannabis – and derivatives such as hashish and oil – in regulated associations, following the Spanish model.¹³⁴ Zürich, Basel, Lausanne and Bern are looking at participating in such an experiment.

Meanwhile, in the wake of developments in the US, Uruguay and New Zealand, a Swiss parliamentary committee looking into drug issues (*Commission fédérale pour les questions liées aux drogues* - CFLD) argued to reopen the debate on the regulation of psychoactive substances, including cannabis, at the federal level. “Many models that exist around the world should be studied and analysed,” according to committee president

Toni Berthel.¹³⁵ Health and drugs experts assembled in the *Nationalen Arbeitsgemeinschaft Suchtpolitik/Coordination politique des addictions* (NAS/CPA) also recommended a regulation model for drug markets based on risk assessments of the substances involved.¹³⁶

In June 2014, the Geneva working group – chaired by sociologist Sandro Cattacin – published a second report on its considerations of the regulation model. An important issue is that “rather than throwing taxpayers' money in a costly and ineffective war against the drug” it would be more effective to allow adult users to smoke in a secure and controlled environment. Although the report did not elaborate the details, which should be done by a group of experts, it did set some general parameters: a minimum age of 18 years (which is also the minimum age in the law that decriminalises possession of ten grams of cannabis for personal consumption and shared simultaneous consumption with others over 18 years). The cannabis should be consumed at home and not in the association.¹³⁷

The report also endorsed the Portuguese-style dissuasion commissions¹³⁸ for minors with problematic use who cannot be members, as well as the obligation to refer members that develop problematic use to those commissions. The group also considered a limit on THC-content. The associations should be non-profit and members are required to register, with due consideration for privacy. The cannabis should be for free and the pilot project should be budget neutral – it should not cost the state anything, but it should also not generate revenue for the state – with costs covered by tax or membership fees. The benefits are in improved conditions for users and the ability to identify problematic users, as well as the reduction of the black market and improvement of public security. Law enforcement will be released from petty judicial cases to tackle more serious crime.

The proposal is now under consideration by the political decision makers.¹³⁹ Although, the Federal Department of Public Health said that a cannabis club is not compatible with the current drug law, a commission was appointed in Geneva to study the feasi-

bility of cannabis associations headed by former Federal Councillor Ruth Dreifuss.¹⁴⁰ Although a definitive legal assessment is still pending, the Swiss federal government (Federal Council - *Bundesrat*) holds that the pilot attempts that are being considered in different cities, would be incompatible with the Narcotics Act.¹⁴¹ The Dreifuss commission's final report urges Geneva to seek approval for the reforms from federal health authorities as a scientific project – allowed under the law – which should take off at the end of 2015.¹⁴²

Conclusions and recommendations

National governments in Europe are in a state of denial about the impact of cannabis policy reform that is beginning to take shape worldwide, in particular in the US, and ignore calls for change from local authorities that have to deal with the negative consequences of a persisting illicit cannabis market. While historically liberal countries like the Netherlands and Denmark used to defend their policies with a public health argument of a separation of the markets of less and more hazardous drugs, the emphasis has shifted to a public security approach, to counter the public disorder of street dealing, and the involvement of organized crime groups in illicit cultivation and supply. As shown above, initially this has led to more restrictive policies at the national level, but the failure of that approach is becoming more and more obvious and is leading to administrative ‘revolts’ by municipalities that are experiencing the negative consequences of those policies.

The *de facto* or *de jure* decriminalization of cannabis and halfway regulations like the Dutch coffeeshop system, while useful to avoid unnecessary criminalization of users and separating the markets of cannabis and more harmful drugs, do not address the supply of cannabis. Local authorities are confronted with a range of problems that, in the end, are impossible to solve without some kind of a regulated and transparent supply chain. Apart from diminishing the public security problems mentioned above, regulation also provides solutions for consumer-protection issues such as quality control of the cannabis in terms of the use of pesticides,

access barriers such as age limits and maximum amounts to be purchased per user per day, week or month, and controls of the THC and CBD contents of cannabis.

Increasingly, local and regional authorities, non-governmental pressure groups and grassroots movements are advocating change and many initiatives are under way across Europe, mainly around the CSC movement. The original Cannabis Social Club model developed in Spain has spread to Belgium, France, the Netherlands, Italy and the United Kingdom, where about 70 cities have clubs, although they are not actively growing due to the severe penalties. In Spain, the autonomous regional governments of Catalonia and the Basque Country, as well as towns like Barcelona and San Sebastian, have adapted and recognized the phenomenon while trying to regulate the ever-growing number of CSCs.

Local authorities in other countries are advocating various forms of coffeeshop-type dispensaries with a regulated supply. In the Netherlands, about 56 communities have embraced the *Joint Regulation* manifesto to regulate the cultivation and supply of the back door of the coffeeshop. In other countries, similar initiatives for regulation of the cannabis market, from cultivation to marketing, have emerged, for example in Copenhagen in Denmark and districts in Berlin, Frankfurt, Hamburg and Cologne in Germany. Meanwhile, other local governments seek regulation under the CSC model, for example in Utrecht in the Netherlands. In Switzerland in particular, municipalities/cantons like Geneva, Basel, Bern and Zürich are looking into setting up “cannabis users associations” based on the CSCs and Portuguese-style dissuasion commissions to deal with youth and possible problematic users. For countries that have already decriminalised, such as Portugal and the Czech Republic, it would only be a minor step to advance towards regulation models.

EU Member States remain the main actors in the EU drug policy field; at the level of the EU, subsidiarity applies.¹⁴³ While common agreements in Europe have been achieved at the supra-national level, in particular regarding cross-border drug trafficking

and police and judicial cooperation, drug legislation and policies of individual Member States remain within their exclusive national competence. Differences remain between and within EU Member States, reflecting their social and political institutions, different public attitudes, social and cultural values and traditions, and varying financial and human resources. Drug control policies in the EU vary significantly, from a liberal pragmatic harm reduction approach – notably in the Netherlands, Portugal and the Czech Republic¹⁴⁴ – to a restrictive prohibitionist approach in Sweden, which makes a common EU drug policy difficult to imagine.¹⁴⁵

As others have argued, European cannabis policy could best develop along the lines of “multi-level governance”, an emerging style of governance in the EU – in particular regarding social policies – in which multiple actors on multiple levels are engaged, and specific details of governance are decentralised and may diversify under EU guidelines. In this model, practical decisions are made at the local level, encouraging greater involvement from citizens – a guiding principle in the EU. “A system of multi-level governance would allow initiatives to develop at the local level with power following a bottom-up structure,” as opposed to top-down solutions that do not fit local and regional needs.¹⁴⁶ Given the already wide diversity of drug policies in Europe, different cannabis regulation regimes would then no longer be an arena of multi-lateral, or even national, contention, but would be judged on their effectiveness and leave the desired room for manoeuvre for local authorities.¹⁴⁷

Cities and regions that want reform should follow the example set by their predecessors when they constituted European Cities on Drug Policy (ECDP) in 1993.¹⁴⁸ In 1990, Amsterdam, Frankfurt, Hamburg, and Zürich initiated the network by signing the *Frankfurt Resolution*, which became the charter of the ECDP. Other cities joined, including Basel, Charleroi, Dortmund, Hamburg, Hannover, Rotterdam, Ljubljana and Zagreb amongst others. These cities joined forces to advocate a more pragmatic, less prohibitionist drug policy including the decriminalization of cannabis, and initiated a set of innovative

harm-reduction measures – such as: heroin-substitution programmes, social inclusion through housing-and-work programmes, drug-consumption rooms and heroin prescription.¹⁴⁹

It is interesting to read the statement of purposes of the network:

Drug problems are crystallising, above all, in major cities, producing the whole pallet of subsequent problems to a specifically intensive extent. Approaching these problems solely by conventional strategies of repressive, therapeutic, or preventive measures have led us to borders that cannot be crossed without the development and implementation of innovative - and sometimes unconventional policies.

Moreover, it happens rather frequently that national or international drug legislation and guidelines prove to be instruments unsuited for the development of pragmatic approaches at communal level. Therefore, we observe a clear discrepancy between international conventions, their realisation at governmental level, and local solutions. In this respect, we had to recognise that we are unable to delegate the problem to the governments of the states. Instead, we are being called to develop local strategies in collaboration and exchange with other cities and regions.

All of this is still relevant regarding the current state of cannabis policies. It is also interesting to note that at the core of the ECDP network were some of the cities that are now calling for a regulation of the cannabis market. Drug policy reform is often a bottom-up process, as the example of the ECDP has shown after having successfully initiated the adoption of effective harm-reduction strategies at the national and, ever more, the international level.¹⁵⁰ Such a network provides opportunities to exchange experiences and best practices, as well as fundraising and sharing human and financial resources needed for policy change. While the ECDP is now defunct after achieving its goals, it is time for an ECDP 2.0 to do the same for the regulation of the recreational cannabis market in Europe. The question facing Europe today is no longer whether or

not there is a need to reassess and modernize cannabis policies, but rather when and how to do it.

Endnotes

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- 144.** Drug use is not an offence in the Czech Republic, and possession of small quantities for personal use is a non-criminal offence, punishable by a fine of up to CZK 15,000 (about €600). A new Penal Code has been effective since 2010, which, for the first time, set out a distinction between cannabis and other drugs for criminal personal possession offences, whereby possession of a quantity “greater than small” (the details were defined and redefined later) of cannabis would attract a sentence of up to one year. The law defined standards for cultivation of cannabis “for personal use” that allowed small-scale cultivation (up to five plants) to be treated as a misdemeanour, punishable with a fine. No distinction is made between growing indoor and outdoor and between using lamps or not. Possession of small amounts of all drugs remained a

misdeemeanour, with thresholds of 5 gram for cannabis resin and 15 gram for herbal cannabis. In April 2014, the Supreme Court revised the amounts that should be regarded as “more than a small amount”. The new threshold is stricter than the previous one: in the case of cannabis, possession of more than 10 gram (down from 15) is now considered a criminal offence. However, the amounts are for guidance and other factors also apply. See: Drug legislation in the Czech Republic, *Government Council for Drug Policy Coordination*: <http://www.vlada.cz/en/ppov/protidrogova-politika/government-council-for-drug-policy-coordination-72748/>; Csete, J. (2012), A Balancing Act: Policymaking on Illicit Drugs in the Czech Republic, Global Drug Policy Program, *Open Society Foundations*; http://www.opensocietyfoundations.org/sites/default/files/A_Balancing_Act-03-14-2012.pdf; and Supreme court sets acceptable amounts for possession of illicit drugs, *Radio Prague*, April 9, 2014; <http://radio.cz/en/section/news/supreme-court-sets-acceptable-amounts-for-possession-of-illicit-drugs>

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Transnational Institute

TNI's Drugs & Democracy programme has been analysing trends in the illicit drugs market and in drug policies globally. The programme has gained a reputation as one of the leading international drug policy research institutes and as a critical watchdog of UN drug control institutions, in particular the CND, the UNODC and the INCB. TNI promotes evidence-based policies guided by the principles of harm reduction, human rights for users and producers, as well as the cultural and traditional uses of psychoactive substances. The strategic objective is to contribute to a more integrated and coherent policy where drugs are regarded as a cross-cutting issue within the broader development goals of poverty reduction, public health promotion, human rights protection, peace building and good governance.

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This publication has been made possible with the financial support from



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