Cannabis regulation

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Overview

- Coffeeshops in the Netherlands
- Cannabis Social Clubs
- Uruguay
- United States
- Cannabis policy reform in Europe
- Elements for regulation

Coffeeshops in the Netherlands

The backdoor problem

Coffee shops are allowed to sell up to 5 grams of cannabis to consumers (the front door), but have to buy their stock on the illegal market (the back door).

To get coffee shops out of the criminal sphere entirely, the cultivation of cannabis needs to be regulated.

Coffeeshops in the Netherlands

Dutch Opium Act: sale and possession of cannabis remains a statutory offence.

The ‘expediency principle’: a discretionary option that allows the Public Prosecution to refrain from prosecution if it is in the public interest to do so. The investigation and prosecution has been assigned the ‘lowest judicial priority’.

Coffeeshops are tolerated when they follow a guideline – known as the AHOJGI criteria – issued by the Ministry of Justice through the Public Prosecution Office.

Coffeeshops in the Netherlands

AHOJGI criteria

- no advertising (A)
- not selling hard drugs (H)
- not causing public disorder (O)
- no sales to minors (J)
- sales limited to a small quantity per transaction (5 grams) / limits on inventory (500 grams) (G)
- in 2013, an additional criterion was added that limits sales to residents in the municipality (I)

A survey in February 2014 found that 85% of the municipalities did not actively enforce the residence criterion

Coffeeshops in the Netherlands

- Cultivation of cannabis is prohibited, although 5 plants are tolerated in general. The police has to confiscate the plants but there will be no criminal prosecution.
- In 2014 the Dutch police dismantled 6,000 cannabis cultivation sites of the estimated 30, 000 plantations annually.
- Around 1500 coffeeshops existed in the mid-1990s, of which 591 were left in 103 of the 415 municipalities in 2014; 75% of municipalities have no coffeeshops, but the most populous do.

Coffeeshops in the Netherlands

Discontent with current policies

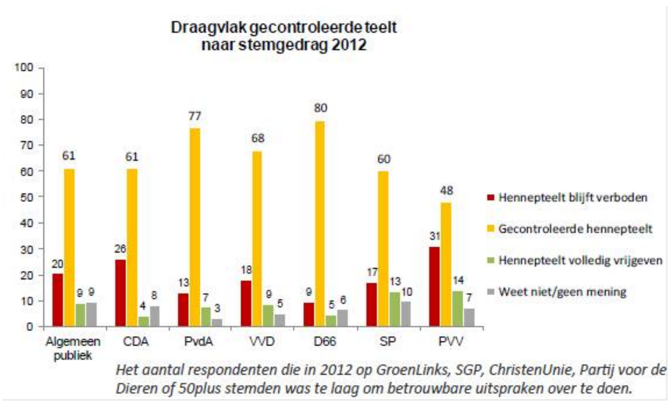
Joint Regulation: manifesto signed by 58 municipalities asking for cannabis cultivation pilot projects (representing 79% of the coffeeshops in almost all major cities).

"The nationwide introduction of certified and regulated production is the solution that addresses the health of users and community safety and tackles organized crime." Current regime "undermines the fabric of Dutch society."

Parliament: draft law proposal to regulate licensed cannabis cultivation for coffeeshops in February 2014. Law will allow growers to apply for an exemption to the law under strict conditions.

Coffeeshops in the Netherlands

Discontent with current policies



Opinion poll: 70% of the Dutch population is in favour of regulating cannabis (61% regulation and 9% complete liberalization)

Coffeeshops in the Netherlands

Discontent with current policies

Courts / 1

Problem: the permitted on-site stock of 500 grams being far exceeded by daily sales.

Judges are increasingly showing their unease in their sentencing, either ruling inadmissibility or issuing non-punitive sentences.

In July 2014, case dismissed by an Appeal Court: the coffeeshops 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. 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.

Coffeeshops in the Netherlands

Discontent with current policies

Courts / 2

Verdict in October 2014: court against growers cultivating overtly for specific coffeeshops, reporting income to tax authorities and paying electricity bills.

Court found the growers guilty but 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 law does not state how this supply should be done."

Ruling is potentially ground breaking; might open up the back door of the coffeeshops.

Cannabis Social Clubs

Legal basis for the Spanish model of Cannabis Social Clubs is the decriminalisation of cultivation for personal use; 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: possession of cannabis, even substantial quantities, is not a crime if there is no clear intention of trafficking.

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.

Cannabis Social Clubs

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.

No additional legislation or regulation defining the scale or particulars under which cultivation could be permitted.

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.

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.

Cannabis Social Clubs

ENCOD code of conduct

1. Supply follows demand, not vice versa
Production based on the expected level of the consumption of its members. Supply to meet the demand of members, not vice versa.

2. Non-profitability
Non-profit associations. Financial benefits to promote the goals of the association, not distributed among members. Aim to generate legal employment and produce goods and services in a taxable way.

3. Transparency
Legally registered associations. Internal organisation is democratic and participative. Decision-making body is Annual General Assembly, to which all members are invited to attend. Each member has one vote.

Record activities, consultable by members, other CSC's or authorities. Financial accountability, (anonymized) registration of members and their consumption, and (anonymized) registration of production.

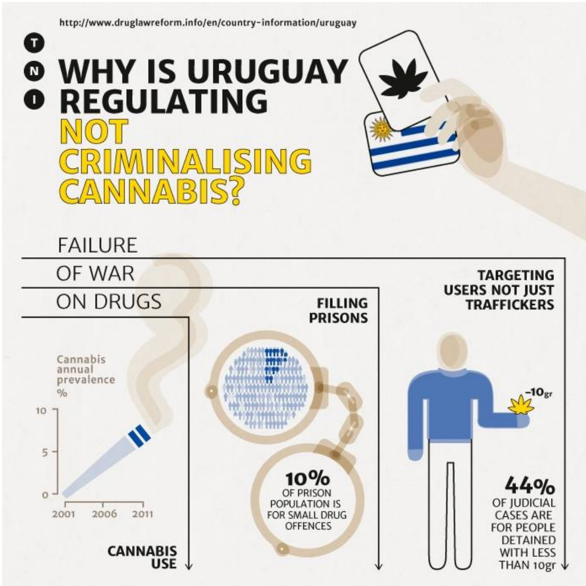
4. Public health oriented
Cultivation meet the standards of organic agriculture. Prevention of problematic use and promote safe and responsible use.

5. Open to dialogue with authorities
Dialogue with authorities, and active policy to invite authorities to this dialogue.

ENCOD: What is a Cannabis Social Club? http://www.cannabis-social-clubs.org/what_is_a_Cannabis-Social-Club

CSC in Spain

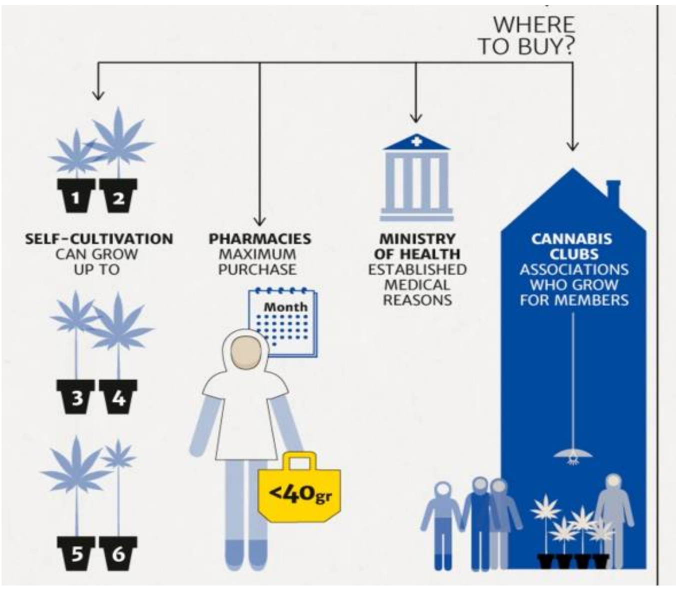
- Spain now has between 700 and 800 CSCs
- **Catalonia**: about 350
- **Barcelona** the number of CSCs has ballooned from 14 in 2009 to 250 by the end of 2013; 20 have more than 1,000 members and a few over 10,000 members
- **Basque Country**: about 75 CSCs / Madrid: 40
- **Two types of clubs**: cooperative/activist vs commercial/entrepreneurial

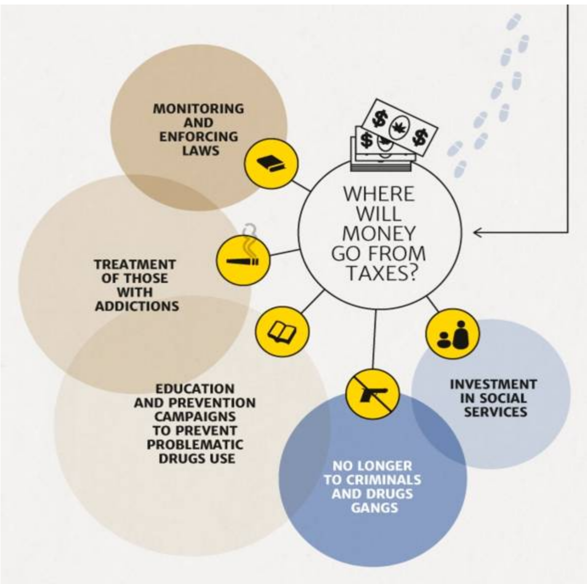


http://www.druglawreform.info/en/country-information/uruguay
T N I
WHY IS URUGUAY REGULATING NOT CRIMINALISING CANNABIS?
FAILURE OF WAR ON DRUGS
Cannabis annual prevalence %
10
5
0
2001
2006
2011
CANNABIS USE
FILLING PRISONS
10%
OF PRISON POPULATION IS FOR SMALL DRUG OFFENCES
TARGETING USERS NOT JUST TRAFFICKERS
~10gr
44%
OF JUDICIAL CASES ARE FOR PEOPLE DETAINED WITH LESS THAN 10gr

UNDERMINE THE ILLEGAL MARKET
URUGUAY'S POLICY OF ALLOWING PERSONAL CONSUMPTION BUT PROHIBITING TRADE AND PRODUCTION PUSHED DRUGS ECONOMY INTO CRIMINAL HANDS
CRIMINAL INVOLVEMENT IN PRODUCTION INCREASED LIKELIHOOD OF CANNABIS USERS ALSO COMING INTO CONTACT WITH HARD DRUGS SUCH AS COCAINE PASTE (PACO)
INVEST MONEY IN HEALTH, EDUCATION, TREATMENT AND PREVENTION
$
NATIONAL DRUG COUNCIL BELIEVES:
$30-40 million dollars can be diverted from criminal networks
“The traditional approach hasn't worked. Someone has to be the first [to try this]”
President José Mujica of Uruguay


http://www.druglawreform.info/en/country-information/uruguay
T N I
HOW WILL URUGUAY'S REGULATION OF CANNABIS WORK?
REGULATIONS
NO SALE TO MINORS
-18
NO
ADVERTISING
INSTITUTE FOR REGULATION AND CONTROL OF CANNABIS (IRCCA) TO REGULATE PLANTING, PRODUCTION, PROCESSING, DISTRIBUTION, SALES AND MONITORING
PENALTIES FOR DRIVING UNDER INFLUENCE
NO CONSUMPTION IN PUBLIC PLACES


WHERE TO BUY?
1 2
SELF-CULTIVATION CAN GROW UP TO
3 4
5 6
PHARMACIES MAXIMUM PURCHASE
Month
<40gr
MINISTRY OF HEALTH ESTABLISHED MEDICAL REASONS
CANNABIS CLUBS ASSOCIATIONS WHO GROW FOR MEMBERS



Unites States

- Ballot initiatives successful in four states: Colorado, Washington, Oregon & Alaska, plus Washington DC
- Colorado's and Washington's laws are based on a similar model, allowing a three-tiered system of production, processing and retail by licensed individuals or organisations. They both tax and tightly regulate legal marijuana markets; require rigid security and third-party laboratory testing; limit sale to individuals over 21 and the amount one can carry; prohibit out-of-state investment; and track marijuana closely from "seed-to-sale".

United States

- Adults 21 years or older may possess up to "one ounce (28.35 grams) of useable marijuana"
- Colorado initially requires “vertical integration”: every business must be involved in all stages of the enterprise (growing, processing, and selling) to get a license; the rationale being that initially limiting the number of businesses makes it easier to control the new market.
- In the summer of 2014, Colorado will open the market to those interested in specific sections of the industry.
- Washington prohibits “vertical integration”, permitting businesses a license in only one stage, to prevent monopolists from setting artificially high prices

Colorado vs Washington

November 2012 ballot initiatives [60]		
	Colorado A-64	**Washington I-502**
Taxes applicable	Excise tax at 15% plus 15% sales tax on top of normal state and local taxes	Excise taxes at 25% at production, processing and retail levels. Plus general state and local sales taxes
Proposed cultivation laws	Personal cultivation of up to 6 plants allowed. Commercial cultivation allowed with licence only.	Commercial cultivation allowed with licence only.
Proposed commercial zoning	N/A	Not within a 1000 feet of a school, playground, recreation centre or facility, child care centre, public park, public transit centre, library or any game arcade, admission to which is not restricted to persons aged twenty-one years or older
Advertising/Signage restrictions	Restrictions on advertising and display of products.	State Liquor Control Board to develop restrictions on advertising including minimising the exposure to under-21s, no advertising near schools, public buildings and public transport.

COMPARING LEGAL MARIJUANA SYSTEMS IN COLORADO AND WASHINGTON

	COLORADO	WASHINGTON
Legalization Vehicle	Amendment 64	Initiative 502
Passed	55.3 - 44.7, November 6, 2012	55.7 - 44.3, November 6, 2012
Timing	Rules required by July 2013, delivered on time (Emergency rules promulgated on June 28, 2013; Permanent rules promulgated Sept. 9, 2014), first stores opened January 2014.	Rules due December 2013, promulgated October 2013, but licensing process slower than anticipated; first grower licenses issued in March 2014, first stores licensed and opening in July 2014.
Means of Legal Change	Only by another constitutional amendment	Can be amended by normal legislative action
Administering Agency	Department of Revenue, Marijuana Enforcement Division (MED)	Liquor Control Board
Age requirement for legal possession	21 and over	21 and over
Home grows permitted?	Up to 6 plants, with 3 flowering at any time	Prohibited
DUI	5 nanogram per milliliter limit for driving	5 nanogram per milliliter limit for driving
Tax Structure	15% excise tax on cultivator; 10% special sales tax; 2.9% standard sales tax; additional local taxes can be levied.	25 percent excise tax on sales from grower to processor, processor to retailer, and retailer to customer; plus normal local taxes apply.
After-tax price of legal marijuana?	Average Market Rate for Flower: $1,876/ pound. After tax cost depends on the locality.	Yet to be seen, expected to be much higher than still-unregulated medical marijuana prices in the state.
Where does tax revenue go?	Marijuana Tax Cash Fund; Marijuana Cash Fund. Monies used to fund MED, school construction, expanded education and prevention efforts, law enforcement. Revenue sharing with local governments that allow marijuana sales.	Complicated allocation: first money goes to fund administrative costs, various research projects and prevention or substance abuse programs; later money split between more marijuana-specific programs, general healthcare spending, and the state's general fund.
Licensing Regime	Vertical Integration for first 9 mos.-2 yrs (depending on locality). Grower/processor/ retailer licensed by MED. Medical users must register through Department of Public Health and Environment.	Growers, processors, and retailers must be licensed. No vertical integration allowed: growers and processors cannot be retailers, though joint grower-processor licensed issued.
Treatment of Pre-existing Medical MJ System	Builds on top of existing system, which began to be regulated beginning in 2009 and which remains in place; privileges incumbents of the old system, who get first access to new recreational market.	Unregulated, largely untaxed medical dispensaries remain in unresolved legal limbo, for now enjoy non-enforcement; legislature expected to provide some resolution or merger with I-502 system in coming months.
Diversion Prevention	Seed to Sale Tracking System; Limits on quantities purchased/possessed; Education campaigns; video surveillance requirements.	Has same measures as CO, and high hopes that tight control over licensing and rather deliberate (i.e., slow) roll-out will allow more effective prevention of cross-state diversion.

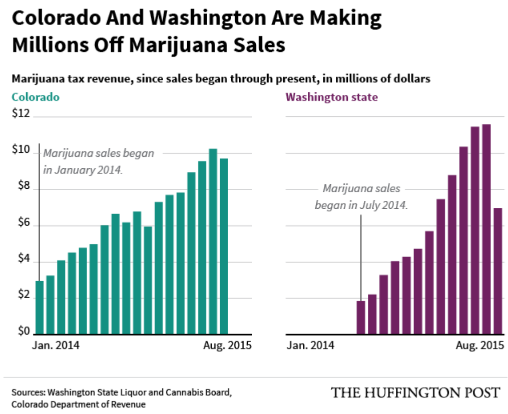
Local control	Counties, municipalities can opt out. Local governments can regulate the number of grow operations and dispensaries. Local governments can assess additional taxes. Local governments can issue zoning and other ordinances regulating production and consumption.	Controversial: preemption of local drug laws, but some localities seeking to use zoning laws to effectively exclude stores were encouraged by non-binding State Attorney-General opinion. Legal battle to follow. As of now, there is no revenue-sharing with local governments, so many cities may feel incentives are to opt out.
Regulatory Features	Extensive criminal background checks for all licensees; Seed to Sale tracking system; Vertical integration (initially); increasing product & potency testing	Extensive criminal background checks of all licensees; extensive product safety testing
Total size of legal market	As of 1/1/2014, there were licenses distributed for 178 marijuana cultivation facilities and 136 retail dispensaries.	Yet to be seen, but only projected to be about a quarter of the total market for marijuana in Washington after a year of full-scale operation
Official Analysis	State commissioned a survey of market demand. Separate revenue analyses/ projections conducted by the Department of Revenue, Governor's Office of State Planning and Budgeting, and the Colorado Legislative Council	502 mandates cost-benefit analysis conducted by Washington State Institute for Public Policy (WSIPP), with preliminary report in 2015 and subsequent reports in 2017, 2022, and 2032
Common Complaints	Public use rules vague; homegrows creating additional local problems; paperwork delays at MED.	Slow implementation; low projected legal supply when stores do open; frustration that medical dispensaries get no ability to make transition to legal recreational system; continued legal ambiguity for medical marijuana

MAY 2013 BROOKINGS/WOLA COMPARISON:

http://www.brookings.edu/research/papers/2013/05/21-legal-marijuana-colorado-washington

http://www.brookings.edu/~/media/research/files/papers/2013/05/21%20legal%20marijuana%20colorado%20washington%20walsh/qa%20legal%20marijuana%20in%20colorado%20and%20washington%20web.pdf

BROOKINGS

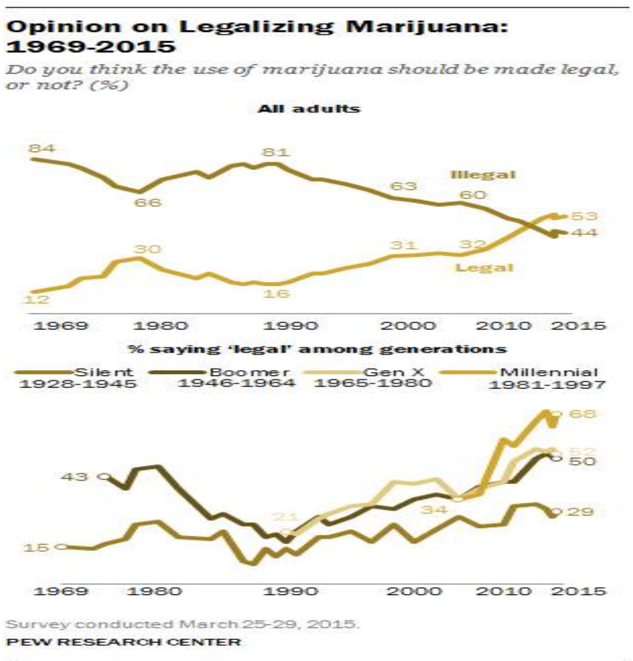


Colorado & Washington State

More than $200 million in marijuana taxes

Colorado, 1½ year of legal recreational marijuana sales, more than $117 million in excise taxes from recreational and medical market

Washington State from July 2014, about $83 million in excise taxes



Europe

- 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 cannot be solved without some kind of a regulated and transparent supply chain of recreational cannabis.

Europe

transnational institute

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Cannabis policy reform in Europe
Bottom up rather than top down

Tom Blickman

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.

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Local and regional authorities are looking at regulation, either pressured by grassroots movements – in particular the *Cannabis Social Clubs (CSCs)* – or to counter the involvement of criminal groups and public disorder (street dealing / hazards of illegal cultivation).

Europe

- **Netherlands**: 58 municipalities want to regulate the supply to coffeeshops (government against / law proposal)
- **Denmark**: Copenhagen wants coffeeshop-type dispensaries with regulated supply and medical oversight (government against)
- **Germany**: Bremen (state/city), Düsseldorf, Kreuzberg-Friedrichshain (Berlin), Frankfurt-am-Main (on halt), districts in Hamburg and Cologne, promote coffeeshop-like dispensaries with regulated supply.
  Request for scientific experiment (Kreuzberg) to Federal Institute for Medicine and Medicinal Products (federal government against; 65 per cent of Germans reject relaxing restrictions on production, sale and use of cannabis / law proposal)

Europe

- **Spain**: autonomous regions Basque Country and Catalonia and cities (Barcelona and San Sebastian) preparing administrative regulation: legitimacy but no legal status (national government against / elections November 2015)
- **Belgium**: 5 CSCs in Antwerp, Hasselt, Liege, Namur and Andenne, modeled on the Spanish CSCs (court case against club in Hasselt will give more clarity)
- **Switzerland**: four main cities (Geneva, Zürich, Basel, Bern) want consumer organisations based on CSC. Geneva commission has concrete proposal, Ministry of Health looking into issue.
- **CSC movement** in France, United Kingdom, Czech Republic, Slovenia, Bulgaria

Europe

- The question facing Europe today is no longer whether or not there is a need to modernize cannabis policies, but rather when and how to do it.
- Reform-minded European cities and regions should follow example of *European Cities on Drug Policy* (ECDP) in 1990s initiated by Amsterdam, Frankfurt, Hamburg, and Zürich (*Frankfurt Resolution*)
- *Very successful in advocating* a more pragmatic, less prohibitionist drug policy and initiating a set of innovative harm reduction measures
- Drug policy reform is often a bottom-up process, as the example of the ECDP has shown after successfully initiating the adoption of effective harm reduction strategies at the national and international level.
- ECDP 2.0 to reform cannabis policies.

Elements for regulation

- Harm reduction / risk reduction
- Age limit (>18 / >21) / what about young users?
- Access limit
  - special outlets / dispensaries (not supermarket)
  - closed (membership / registration / fee) / semi-closed (anonymous membership / fee) / open (no member-ship / coffeeshop)
  - opening days / hours
  - zoning: no dispensaries near schools etc.
- Sales limit
  - grams per transaction / day / week / month
  - previous estimate of use (year / semester)

Elements for regulation

- No other drugs / alcohol (market separation)
- Price
  - not below current black market / taxes & excise
  - not too much above black market
- Strength & quality
  - THC < 15% / THC-CBD ratio / minimum CBD
  - special regime for age 18-21?
  - labeling (quality information / organic / use of chemicals: pesticides/fertilizer / in- or outdoor)
  - independent laboratory testing

Elements for regulation

- Information
  - prevention & responsible use / no advertising
  - help in case of problematic use / mentorship / treatment
  - trained personel / medical supervision
  - prevent driving under influence (DUI)
- Transparant supply chain
  - government monopoly (state cannabis)
  - government oversight (licensed cultivation)
  - free market (usual labour and environmental regulation / consumer protection)
  - closed supply chain (vertical intergration: one company for cultivation, production and sale)
  - criminal background check licensees

Obstacles

- UN Single Convention 1961: cannabis only for medical and scientific purposes; not recreational
- EU Framework Decision (2004): agreement to counter cannabis cultivation
- National laws