



PERSPECTIVES ON DRUGS

Models for the legal supply of cannabis: recent developments

The international legal framework on drug control is provided by three United Nations Conventions, which instruct countries to limit drug supply and use to medical and scientific purposes. Nevertheless, there continues to be increasing debate over decriminalisation, or even legalisation, of drugs, and of cannabis in particular. Such proposals raise concerns over increases in use and harms and questions about the ways in which the distribution of cannabis for non-medical purposes could be carefully regulated to mitigate these. In the EU, a system of limited distribution has evolved in the Netherlands since the 1970s, with further developments in 2012.

At the end of 2012, detailed proposals for cannabis regulation were put forward in two US states and Uruguay. If these are implemented, they will contribute three more models that may be closely observed in the future to understand the advantages and disadvantages of a particular regulated system. In addition to these systems, the model of 'cannabis social clubs' has been increasingly mentioned in drug policy debates. Its advocates argue that policies of non-prosecution of individuals in some countries can be equally applied to registered groups of individuals, to effectively permit a closed production and distribution system. At present, the model is rejected by national authorities in Europe.

Coffee shops in the Netherlands: retail sale without production

In the Netherlands, cultivation, supply and possession of cannabis are criminal offences, punishable with prison sentences. However, a practice of tolerance, first set out in local guidelines in 1979, has evolved into the present-day concept of 'coffee shops', cannabis sales outlets licensed by the municipality. About three-quarters of municipalities do not allow coffee shops, and the number of coffee shops across the country is steadily decreasing, from 846 in 1999 to 651 in 2011. The sale of small quantities of cannabis to over-18s in coffee shops is tolerated in an attempt to keep young adults who experiment with cannabis away from other, more dangerous, drugs. The coffee shop may be closed down and the operator or owner may be prosecuted if he or she does not meet the Prosecutor General's criteria, which prohibit

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advertising, nuisance, sale to minors, and sale of hard drugs or alcohol. From May 2012, a scheme to convert coffee shops into closed clubs with registered members was implemented in the three southern provinces. This was dropped by the new government 6 months later, but it maintained that, from January 2013, the coffee shops should be for residents of the Netherlands only. Implementation of this rule varies, however, by municipality. No more than 5 g per person may be sold in any one transaction and the coffee shop is not allowed to keep more than 500 g of cannabis in stock. Nevertheless, wholesale cultivation and distribution of cannabis is not tolerated in the Netherlands, resulting in what is known as 'the back-door problem', i.e. drugs may be sold at the front but not supplied at the back. Although there have been many discussions on this inconsistency, to date no solution has been agreed. Alongside the coffee shop system, cultivation and possession of small amounts of cannabis for personal use will not be prosecuted.

Legalisation in the Americas: production and retail sale

Possession and supply of cannabis are criminal offences under US federal law. However, at the time of the US presidential election in 2012, voters could also participate in state referenda on various issues, and Colorado, Oregon and Washington State permitted ballots on establishing state-wide systems for regulated distribution of cannabis for non-medical purposes (as distinct from the 'medical marijuana' systems that already exist in 18 US states). The systems' stated aims

are to free up resources to fight violent and property crimes, regulate the visible trade and gain tax revenue from that trade. Voters in Oregon rejected the proposals (47 %), but they were accepted in Colorado (55 %) and Washington State (56 %). As in the Netherlands, they will license outlets, establish age limits (21 years, as for alcohol), restrict advertising, limit personal possession (to 1 oz/28 g) and prohibit use in public. Unlike the Netherlands, they establish a state licensing system for production and processing to supply the outlets. These systems are expected to be operational at some point in late 2013. They would be in direct contravention with federal law, but the US President stated that federal law enforcement officials would not prioritise enforcement against users (ABC News, 2012); it remains to be seen how federal law will react to those involved in the supply system. Meanwhile, similar proposals are being drafted in a few more US states; if accepted, they may be put to public ballot in November 2014.

The Dutch and US state systems remain somewhat in conflict with national law. However, in Uruguay a national law has been drafted for the state to regulate the production and sale of cannabis, reduce the harm caused by the illicit market and provide education and prevention opportunities. This would be administered by the National Cannabis Institute (INCA). Users may grow up to six plants themselves or join a cannabis club of up to 15 members, and possess up to 40 g; all growers must be registered at the INCA. Unauthorised cultivation or supply remains punishable by 20 months to 10 years in prison.

Comparison of laws

	Netherlands	Washington State	Colorado State	Uruguay (proposal)
Level of law	National prosecutor guidelines	State law (conflict with federal law)	State constitution (conflict with federal law)	National law
Retail authorisation	Licensed (municipality)	Licensed (state liquor control board)	Licensed (locality)	Licensed/registered (national institute)
Production authorisation	Production and supply to outlets is illegal	Licensed (State liquor control board)	Licensed (locality)	Licensed/registered (national institute)
Age limit for possession	18	21	21	Not mentioned
Growing at home	Up to five plants if for own use	No	Up to six plants (cannot be sold)	Up to six plants/480 g
Maximum amount permitted for possession	5 g (limit for investigation) 30 g (limit for prosecution)	1 oz (28.5 g)	1 oz (28.5 g)	40 g

Interactive element: video



Video: models for the legal supply of cannabis available on the EMCDDA website: emcdda.europa.eu/topics/pods/legal-supply-of-cannabis

Definitions

Terminology in this area is often confused but in simple terms the following distinctions should be noted:

Decriminalisation refers to the removal of criminal status from a certain behaviour or action. This does not mean that the behaviour is legal, as non-criminal penalties may still be applied. With respect to the drug debate, this concept is usually used to describe laws addressing personal possession or use rather than drug supply.

Legalisation refers to making an act lawful when previously it was prohibited. In the context of drugs, this usually refers to the removal of all criminal and non-criminal sanctions, although other regulations may limit the extent of the permission. This term is generally used in the context of drug supply.

Regulation implies that a set of rules and restrictions is placed around the supply or use of a substance, as is the case for alcohol and tobacco. Regulatory systems usually place limits on access, such as age limits and control of outlets, and may place restrictions on advertising. Penalties for breaching these rules may be criminal or non-criminal.

Cannabis social clubs: production without retail sale

Cannabis social clubs operate on the principle that, if one person will not be prosecuted for cultivating one cannabis plant in private for his or her own use, then 20 people should not be prosecuted for cultivating 20 plants together in private for their own use. Clearly this concept is not without problems. Establishing what constitutes 'shared' production, for example, is problematic and there is the general issue of how activities can be legally distinguished from supply offences. Across the EU, drug supply offences themselves have varying legal definitions but usually require the passing of drugs between persons and some quantity criteria may also apply.

In response, cannabis social clubs have tried to establish operating rules in order to avoid charges of trafficking, drug supply or encouraging drug use. For example, the advocacy group Encod (2011) has proposed that clubs should operate as a collective agreement, with a register of members, costs calculated to reflect expected individual consumption and the amount produced per person limited and intended for immediate consumption. Clubs should be closed to the public and new members should be established cannabis users who are accepted only by

invitation. This model, although promoted by activists in Belgium, France, Spain and Germany, is nevertheless not tolerated by national authorities in any European country. This means that cannabis social clubs are likely to be subject to legal sanctions should they be identified or at best may be operating in a legal grey area.

Currently, it is difficult to know to what extent these social clubs exist in Europe, although they do appear to be rare. The city of Utrecht in the Netherlands announced a project to develop such a club in 2011, but the project has not yet been implemented. Some clubs report that they are operating on a limited basis in some Spanish regions, taking advantage of the fact that, although production, supply and personal possession of cannabis in public are prohibited under Spanish law, possession in private spaces is not penalised. The legal position on shared consumption is more complicated, however, but may provide restricted possibilities that some forms of immediate shared consumption may be legally tolerated for experienced drug users. The extent to which cannabis social clubs meet these criteria remains unclear.

References

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- | Encod (2011) 'European cannabis social clubs, code of conduct, December 2011', online at: <http://www.encod.org/info/CODE-OF-CONDUCT-FOR-EUROPEAN.html>