

Cannabis in the City: Bottom-up policy reform for cannabis regulation¹

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Key Points

- As governments worldwide explore new cannabis policies, the discussion of recreational cannabis regulation at the national level within Europe is in a deadlock in most countries.
- National governments in Europe are bound by international obligations – the United Nations (UN) drug-control conventions and European Union (EU) legislation – which limit their room for manoeuvre, particularly regarding the supply of (non-medicinal) cannabis.
- A study of six European countries (Belgium, Denmark, Germany, the Netherlands, Spain and Switzerland) revealed a great diversity of initiatives at the municipal and regional level, responding to the ‘deadlock’ in recreational cannabis regulation.
- Cities bear substantial costs of prohibitionist drug policy, and have the capacity to act as ‘laboratories’ for innovative policies (as they did, for instance, in the development of harm-reduction policies in the 1990s), but this will require new legislation that national governments are reluctant or unable to enact.
- Since the late 1960s, and in the face of the impossibility of eradicating cannabis use, a certain leniency towards the drug and a tendency to distinguish between ‘soft’ and ‘hard’ drugs have developed in Europe. The six countries studied have engaged in so-called ‘soft defections’ from the prohibitionist regime, but the supply of cannabis has remained strictly prohibited.
- In practice, it is often left to local authorities to manage ‘grey zones’ resulting from soft defections and gaps in government policy.
- Several cities and regional authorities are looking for opportunities to regulate cannabis. Sub-national authorities in northern European countries are moving towards experiments or pilot projects with regulated recreational cannabis markets, with different levels of success.
- The point of departure for regulating the recreational cannabis markets is different in the six countries examined. The Netherlands and Spain have dispensary systems on which regulation might be built. In other countries, local authorities have to start from scratch.
- Local customisation and Multi-Level Governance (MLG) may provide policy frameworks for national EU-level policy makers to better incorporate the demands of local authorities, and support the development of more locally adapted drug policies, while preserving the benefits of European-level cooperation on key issues.

Introduction

Lately, there have been clear signs of a shift in governments' approaches to recreational cannabis. Uruguay in 2013 and Canada in 2018 – as well as a number of US states since 2012 – have moved to control cannabis through regulated markets from seed to sale rather than prohibition. More recently, the newly elected president of Mexico³ and the new coalition governments of Luxembourg⁴ and Malta⁵ also announced their intentions to regulate the recreational cannabis market. This is increasingly seen as a more promising way to protect 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 on 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.⁶ At the same time, however, calls for change from local authorities, which have to deal with the negative consequences of local illicit cannabis markets, are increasing.⁷

Local authorities in several countries are seeking ways to regulate their recreational cannabis markets. However, at the EU level, discussions of cannabis policy have long been fraught with difficulty,⁸ and national governments remain reluctant to discuss the possibility of national-level regulation.⁹ Confronted with this reality, municipalities in the Netherlands and elsewhere in Europe, notably in Denmark, Germany and Switzerland are increasingly advocating for regulation of recreational cannabis markets. Meanwhile Belgium and Spain have seen the emergence of Cannabis Social Clubs (CSCs), civil society-led attempts to develop 'closed circuits' supplying cannabis exclusively to adult members through collective cultivation.¹⁰ These developments have put pressure on authorities at every level, requiring them to take a clear stance on cannabis regulation.¹¹

To explore these developments, a recent study examined changes in cannabis policy in six countries (Belgium, Denmark, Germany, the Netherlands, Spain and Switzerland) where local initiatives were engaging with policy in different ways. The study involved local researchers in each country who explored its diverse initiatives and proposals, as well as the responses from policy-makers and possible directions for future development. This research was shared among the researchers, and with policy-makers and civil society, at an interactive seminar held in Brussels in November 2018, which allowed participants from all six countries to learn about initiatives and opportunities in the other countries. The study revealed that, in each country, there are local authorities eager to move forward with innovative solutions to the problems associated with unregulated illicit cannabis markets in their jurisdictions.

As noted by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), city-level drug policies are often overshadowed by developments at the national and international level, which obscures the origins of new problems and innovative responses at the local level.¹² Discussions at the Cannabis in the City Seminar revealed that this is also mirrored in a lack of widely available information about local initiatives: many innovators find themselves starting from scratch in developing proposals, unable to obtain ready access to information about parallel attempts in other areas. In this Policy Brief, as well as in the associated Country Reports, Conference Report, and Combined Report associated with this study, we hope to take an initial step towards redressing this knowledge gap, while also proposing broader policy solutions that could support the policy innovations documented by country researchers.

We will attempt to place these local innovations in a broader framework, identifying the concepts of 'Multi-Level Governance' (MLG) and 'local customisation' as two possible policy options for responding to the current impasse in cannabis regulation. Together these present a possible vision of how the many distinct and locally adapted solutions being developed and piloted at the local level might fit together as part of a wider policy landscape, and how national and supra-national policy-makers could take decisive steps to support rather than impede that diversity.

Drug Policy in Europe

Cannabis policy in Europe has historically suffered from a high level of what could be described as 'policy resistance': actors are pulling in different directions and everyone has to make great efforts to maintain a status quo that satisfies no-one.¹³ National governments are bound by international obligations – the UN drug-control conventions and EU agreements – which limit their room for manoeuvre on cannabis policy.¹⁴ Within Europe, the approaches and perspectives of different countries differ markedly, with major disagreements not only about the best way to regulate cannabis but also about the desired outcomes of drug policy, and the extent to which current policies are fit for purpose.¹⁵ Finally, the needs, concerns, and perspective of local authorities, as mentioned above, may differ significantly from those of their national governments.

At the national level, policy has been heavily informed not only by domestic considerations but also by governments' interpretations of their international obligations. Until recently, all European countries have interpreted the UN drug-control conventions and current EU legislation and agreements to mean that full legalisation and regulation of a cannabis market for recreational use is impossible. For example, the European Union Drugs Strategy (2013–20)¹⁶, reiterates the fact that EU drug policy is based on the UN drug-control conventions and relevant EU law. In November 2018, however, the new coalition government of Luxembourg announced its intention to legalise and regulate recreational cannabis.¹⁷ What impact this will have on drug policy within the EU, and the reception Luxembourg will face if and when it moves ahead with regulation, remain to be seen. Although most EU countries have made changes to policy and practice intended to reduce the harms associated with criminalisation, prohibition and repression,¹⁸ Luxembourg is the first EU country to publicly proclaim its willingness to move the issue to the next level and this may signal the beginning of a new stage of discussions on drug policy at the EU level.

The role of local authorities in drug policy

Municipalities often function as 'laboratories' for policy experimentation, developing tools and mechanisms that may be adopted at a higher level or disseminated across other jurisdictions. The power of this flexibility and creativity can be seen in the response to the heroin crisis in the 1980s, and the role that cities played in pioneering new solutions in drug policy. In 1990, Amsterdam, Frankfurt, Hamburg, and Zürich – all struggling with public health crises linked to intravenous heroin use and HIV – initiated the 'European Cities on Drug Policy (ECDP) network by signing the *Frankfurt Resolution* (which ultimately became its charter).¹⁹ Other cities later joined, including Basel, Charleroi, Dortmund, Hamburg, Hannover, Rotterdam, Ljubljana and Zagreb. The cities joined forces to advocate for more pragmatic,

less prohibitionist drug policies, better able to address the urgent challenges they were facing. Critically, however, their role went beyond advocacy: several cities adopted innovative harm-reduction measures, such as heroin-substitution programmes, social inclusion through housing-and-work programmes, drug-consumption rooms and heroin-assisted treatment.²⁰ In many cases, implementing these changes required them to adapt, subvert or confront existing national law – Switzerland, for instance, made use of an exception in its national drug law in order to introduce controversial but effective medicinal heroin prescriptions for users.²¹ Over the years, these ground-breaking harm-reduction measures were increasingly adopted at the national level, and eventually helped to shape international standards for addiction treatment. The role played by ECDP is a powerful illustration of the possibilities for municipalities to initiate drug policy reform from the bottom up.²²

While harm-reduction measures were defended on the basis of the urgent need to tackle a public health crisis, including the emerging HIV and AIDS crisis, and the public disorder of open drug scenes, the regulation of recreational cannabis is a different matter. In general, the public health concerns arising from unregulated cannabis are viewed as less urgent. Nevertheless, many European countries have engaged in what are described as ‘soft defections’ from the prohibitive regime enshrined in the UN drug-control conventions.²³ Starting with the Netherlands in the mid-1970s, most countries in Europe gradually decriminalised possession of cannabis for personal use, either statutorily or *de facto* through prosecutorial guidelines, giving cannabis a low law-enforcement priority and establishing thresholds that indicated ‘tolerated’ amounts of cannabis that could avoid criminal prosecution.²⁴ These policies were primarily aimed at addressing potential negative social effects, including those resulting from the stigmatisation and criminalisation of cannabis users.

Cannabis policy at the local level: the Dutch experience

The Netherlands has historically gone further than any other European country in terms of enshrining its ‘tolerant’ attitude towards cannabis in policy. In the Netherlands, a certain acceptance of cannabis use emerged in the 1970s, and was ultimately formalised in the 1976 Opium Act, which distinguished between cannabis (soft drugs) and ‘drugs with unacceptable risks’ (hard drugs), and statutorily decriminalised cannabis. This revision was itself a response to developments at the local level, in particular in the larger towns and cities, although it was also based on expert advice by national commissions that investigated the situation with respect to cannabis at the time.²⁵ In Amsterdam, as in other large Dutch cities, coffeeshops existed before the 1976 legislation, but their status was unclear and there were frequent frictions between the operators of the coffeeshops and local authorities. A policy of toleration developed gradually over the following years, characterised by fairly strict conditions imposed on the operations of coffeeshops.²⁶

In 1979, official national Guidelines for Investigation and Prosecution were introduced which laid the groundwork for the coffeeshop system. These Guidelines established a clear set of conditions under which cannabis sales, while still illegal, would not be prosecuted. Known as AHOJ-G for their Dutch acronym – no overt advertising (**A**ffichering), no ‘Hard drugs’, no public nuisance (**O**verlast), no under-age clientele (**J**ongeren) and no large quantities (**G**rote hoeveelheden), the guidelines were loosely based upon on the ‘house rules’ that had already been introduced by some semi-legal coffee-shop entrepreneurs in Amsterdam. Their Guidelines were intended to minimise social harm and public

nuisance associated with cannabis dealing, while ‘containing’ the cannabis market and isolating it from the markets for other ‘hard’ drugs.

The current coffeeshop system was not envisaged by legislators. Rather, it emerged through a dynamic interaction between national and local executive authorities; prosecutorial guidelines; policing; court decisions; and social change. The system illustrates both the possibilities of solutions which emerge organically from below, and the ways in which constraints on higher-level policy-making and legislative change can lead to sometimes illogical compromises and workarounds.

The coffeeshop system originated with police turning a blind eye to house dealers in youth centres, which eventually evolved into a comprehensive system of licensing. This process was facilitated by several key factors. In the first place, the expediency principle in Dutch law, which allows discretion by prosecutor’s offices to refrain from prosecuting offences if they believe it is not in the public interest to do so, allowed for a level of flexibility not present in all jurisdictions. Dutch prosecutors believed that it was not in the public interest to criminalise cannabis use. This perspective was eventually formalised through the national guidelines mentioned above, which helped to provide clarity about acceptable practices, even though they stopped short of legalising cannabis possession and use, or de-criminalising outright even small-scale retail sales. These remain illegal in the Netherlands despite formal commitments not to bring charges in the absence of aggravating circumstances.

Another important factor in the development of this compromise was the relatively decentralised governance structure in the Netherlands regarding public order. At the municipal level this is administered mainly through a ‘triangular consultation’ between the Public Prosecutor, the Mayor, and the Chief of Police, under secondary control by the city council. Municipalities, through this structure, have some significant autonomy over issues of public order in their jurisdiction. Dutch cannabis policy from the 1970s to the 1990s was characterised by ‘muddling through,’ a process of trial and error, in which cities played a major role as ‘policy laboratories’ and catalysts for reform.²⁷ In many Dutch cities regular consultations between coffeeshop owners and local authorities, developed during this period, continue to be an important practice for minimising conflicts associated with coffeeshops. In 1996, the role of municipalities was formalised, and Dutch cities were given greater official control of their local cannabis policies, at least with respect to retail and consumption. The question of the supply of cannabis to coffeeshops, however, proved to be significantly more fraught.

In 1995, the Dutch government raised both cannabis tourism and the increasing involvement of organised crime in cannabis supply chains as major issues. To tackle these issues, linked more to cannabis production than consumption, it proposed a system which would allow municipalities to develop fully regulated systems of cultivation and supply for coffeeshops, in order to reduce criminal opportunities provided by the thriving black market. Those intended reforms, however, stirred strong opposition in Europe, in particular with the then French President Jacques Chirac.²⁸ The Dutch government, worried about the damage that unilateral steps could do to international relations, abandoned the idea of regulating cannabis supplies for coffeeshops, reduced the amount a person could purchase at one time from 30 g to 5 g, and opted for stricter control of coffeeshops.²⁹ The final result, set out in the white paper *Continuity and Change*,³⁰ was an accommodation – of sorts – on the cannabis issue, with coffeeshops formally recognised as the sole legitimate points of sale for cannabis, but facing stricter municipal licensing requirements. Legal changes after 1995 also allowed municipalities

to ban coffeeshops in their jurisdiction (a choice made by some 70% of municipalities in the country)³¹ and to impose a variety of licensing conditions on those that remained.

This process of 'local customisation', where cities gained more control over coffeeshops in their jurisdictions, led to policies that fit local circumstances, while complying with more general legislation and prosecutorial guidelines. For instance, the introduction of a residence criterion (the I-criterion) in 2012 to hamper cannabis tourism, which created public nuisance particularly in southern border towns, was successfully countered by major cities in the western and northern parts of the country, which argued that such a policy was unnecessary and even counterproductive in their local situation. The criterion became optional, and was largely ignored.³² However, while municipalities got a better grip over the 'front door' – the retail sale of cannabis – they were increasingly confronted with the negative consequences of increasing repression at the 'back door' where cannabis is supplied.

This circumstance, where municipalities provide licenses to cannabis-selling dispensaries that are in fact prohibited to sell cannabis according to the letter of the law, provides one of the clearest illustrations of the kind of 'half-baked' compromises common across the EU. While this arrangement resolves most problems of the retail distribution of cannabis, the supply at the 'back door' remains illegal and everyone involved must pretend not to know where the cannabis is coming from. The toleration of retail sales and this 'immaculate conception' of cannabis at the back door has gone on for a remarkably long time, but has reached its expiry date.

In 2015, a working group of mayors and aldermen of Dutch municipalities through the Association of Dutch Municipalities (*Vereniging Nederlandse Gemeenten* – VNG) published a report, *Het failliet van het gedogen* (Toleration: a bankrupt policy), which concluded that the policy of toleration was no longer adequate to effectively tackle the problems they faced, in particular the growing role of organised crime in the supply of cannabis.³³ The 'verdict' of the report reflects the situation of local authorities in Europe more broadly:

The discussion on cannabis policy has reached an impasse, between proponents and opponents of regulation. We cannot allow the various levels of administration to become bogged down in discussions, while organised crime profits and public health remains insufficiently protected. We call upon all parties to above all employ a pragmatic approach in searching for solutions. We have reached the conclusion that a system of rules for the entire cannabis supply chain offers the best possibilities. We call upon all parties to work in favour of this approach, and subsequently join forces in its further elaboration. This means making choices, further elaborating those choices in a system based on experimentation, and subsequently consistently implementing those choices. Only together can we arrive at a truly effective approach to the problems.³⁴

At the annual congress of the VNG in June 2016, 89% of municipalities supported legal regulation of a transparent supply chain to coffeeshops. Persistent advocacy by Dutch municipalities, calling for regulation of cannabis cultivation and supply, was an important factor in the current coalition government's decision to conduct an experiment regulating a transparent supply chain for coffeeshops. While there is optimism about the possibilities of such a proposal, at the time of writing many details are still being negotiated.

Denmark: Repression and regulation

In Denmark, cannabis policy in recent decades has shifted from relatively tolerant to increasingly repressive, fuelled by concerns about organised crime, and an increasing trend towards a neoconservative 'culture of control'.³⁵ From 1969 to 2004, possession of up to 10 g for personal use was not prosecuted, with law enforcement turning a blind eye to small-scale cannabis sales, especially in and around the Freetown Christiania, an abandoned military area in Copenhagen, squatted in 1971. 'Pusher street' in Christiania became one of the largest street-level cannabis markets in northern Europe.³⁶ Clients could openly buy drugs to take away, or could smoke in the street or in Christiania's bars and cafés,³⁷ in what has been described as, to some extent, a 'self-governing' cannabis market.³⁸

The cannabis market in Christiania was tolerated until the early 2000s, partially because hard drugs were largely excluded. In 2001, however, a liberal-conservative government came to power and began tightening control on cannabis, undermining this accommodation. In the 2003 action plan, *The Fight against Drugs*, the distinction between seller and buyer was explicitly abolished. One year later, possession of cannabis for personal use was 're-criminalised' and a mandatory fine of €70 imposed – and quadrupled in 2007.³⁹ The new law was followed by a police crackdown on Christiania's open cannabis retail market and the approximately 100 'hash clubs' operating in the rest of Copenhagen. Unusually, police and policy targeted buyers and users of cannabis in addition to distributors and dealers.⁴⁰

These crackdowns had a dramatic effect on the cannabis scene in Christiania, and Copenhagen more broadly, but not necessarily in the direction anticipated. Crackdowns contributed to the opening of the cannabis market to a new set of criminal groups and led to its restructuring, allowing immigrant youth gangs to enter the market which had previously been dominated by outlaw motorcycle gangs such as the Hells Angels.⁴¹ Market-related violence, including fatal shootings, increased. At the same time, it seems that neither street dealing nor the cannabis market disappeared. Rather, these policy shifts seem to have led to the rise of mobile cannabis dealing,⁴² and eroded the 'organic separation' between cannabis and other drugs.⁴³

In light of these negative outcomes, in September 2009 the Copenhagen City Council approved a memorandum proposing a three-year trial with cannabis stores staffed by health professionals that would sell cannabis in small quantities at prices similar to the current street price. The shops would be supplied by licensed growers, and only city residents would be able to buy the cannabis, thus preventing 'cannabis tourism'.⁴⁴ The proposal for the pilot project, however, was rejected by the national government. The City Council of Copenhagen again submitted cannabis regulation pilot project proposals to the government in 2012, 2014, and 2016, but these were all rejected, even by a centre-left national government. A proposal for a trial by a party in the national government in 2016, the *Radikale Venstre*, met with a similar fate. The situation in Copenhagen remains relatively unchanged, with significant street dealing continuing, in Christiania and elsewhere, in the face of a strong and repressive government and police response. Although Denmark has recently legalised medicinal cannabis,⁴⁵ the prospects for a regulated recreational market today seem limited in the absence of a significant change in national-level policy commitments.

Spain: ‘Better to Ask Forgiveness than Permission’

In Spain, the emergence of the Cannabis Social Club (CSC) model – primarily non-profit groups growing herbal cannabis for the personal consumption of adult members – has given the debate on cannabis and cannabis regulation a unique character. A policy tendency that has been described as ‘better to ask forgiveness than permission’ has also led to an unusually high level of local and regional policy innovation in Spain, although this is not always well received by the national government.⁴⁶ Since 2014, various regional laws and municipal by-laws have been passed regarding the CSCs at both the autonomous community and the municipal government level.

Three autonomous communities, Catalonia, the Basque Country and Navarre have opted to regulate cannabis associations because of their powers in the areas of health and social services, as well as in order to take into consideration the rights of drug users, the protection of public health, the existence of legally registered, non-profit associations whose members are adult cannabis users, and the need for cannabis users to participate in measures to prevent and reduce risk and harm.⁴⁷

The national government has generally opposed these measures. A ruling of the Constitutional Court in December 2017 declared the regional legislation in Navarre null and void for encroaching upon the exclusive power of Spain’s national government to legislate on criminal matters, because of its impact on criminal offences defined in national-level legislation.⁴⁸ The same court ruled in March 2018 that the Basque Autonomous Community does have the authority to regulate cannabis associations by issuing regulations, as long as these are confined to assisting the government with prevention and harm-reduction work, and meet certain other criteria. This response, together with other changes to legislation in Spain, has led some clubs to change the way they operate in order to be less vulnerable, for example, by reducing the number of members, or by growing cannabis indoors (in commercial greenhouses, etc.) rather than outdoors.

At the same time, some local authorities have used municipal administrative by-laws to regulate certain aspects of CSCs in their jurisdictions.⁴⁹ The first municipal proposal was made in San Sebastian in the Basque Country in December 2014, which had 23 registered CSCs at the time, with some 10,000 cannabis users.⁵⁰ The local by-law aimed to regulate the setting up of associations by stipulating the distances between associations and between them and schools and health centres. Girona in Catalonia, another pioneering municipality in local regulation, adopted a by-law in February 2017, which also regulated certain aspects regarding the internal operation of CSCs, for instance imposing a daily restriction of cannabis use per member to 3 g per day or 25 g per week, up to a maximum of 90 g per month, and banning clubs from cultivating plants indoors.⁵¹

With the push-back against regional regulation, the role of municipalities seems ever more important. In 2018 there were about 25 municipalities with regulations addressing CSCs⁵² and the municipality of Barcelona, the city with most CSCs (about 250), is considering a more in-depth regulation. The city previously adopted a restrictive by-law that provided for the closure of most of the then 150 clubs and declared a moratorium on new clubs. However, a new city council headed by the activist party *Barcelona en Comú* revised and substantially relaxed the by-law in 2016.⁵³ The municipality is now drafting a replacement law which will regulate some aspects of the internal operation of clubs.⁵⁴

Municipal by-laws have also faced resistance from the national government. In March 2019 the Supreme Court definitively ruled the municipal ordinance of San Sebastian null and void, on the basis that it could lead citizens to think that there is no illegality associated with the activities thus regulated.⁵⁵ As a consequence, the room for manoeuvre of municipalities, like regions, has become more limited.

Belgium: Civil Society taking the lead

The CSC model was also reproduced by activists in Belgium. In 2003, possession of cannabis for personal use was differentiated in law from all other drug offences, giving prosecutors the option of declining to prosecute cannabis possession where there was no evidence of problematic drug use or public nuisance. A ministerial guideline issued in 2005 established possession of under 3 g or one female plant, in the absence of aggravating circumstances, as the lowest possible prosecutorial priority.⁵⁶ This created a perceived opportunity, and activists followed the Spanish example: the first Belgian CSC was established in 2006 in Antwerp, serving recreational and medicinal cannabis users. Members imposed a limit of one plant per member in a collective growing arrangement, arguing that this respected the threshold established by the ministerial guidelines and should thus also be considered a 'low priority' for law enforcement. Other clubs followed, but many CSCs have been subject to police interventions. Plants are frequently confiscated by police, and members of several major clubs have faced – or are facing – criminal proceedings. Belgian CSCs are thus in a vulnerable position, with the police evidently not supporting their interpretation of the ministerial guideline.⁵⁷ The trial of several members of the CSC *Trek Uw Plant* (TUP), taking place in early 2019, is expected to have major implications for the future viability of the CSCs in Belgium.⁵⁸

Drug policy in Belgium is relatively diverse: national drug laws and ministerial guidelines allow judicial districts and local governments to nuance their drug policy. While this allows for the local adaptation of policies, the resulting 'patchwork' can be confusing for citizens, who may face radically different legal challenges in different judicial districts or communities.⁵⁹ Some jurisdictions, notably Antwerp, have used the leeway in drug policies to pursue more repressive policies. In contrast, in Mons (Wallonia) a proposal was put forward by then-mayor and former prime minister, Elio di Rupo, to initiate a social-scientific experiment of legal regulation involving social clubs, although the future of this plan remains unclear.⁶⁰ At the national level, the Socialist Party proposed a bill to regulate cannabis, organising public control of the market at all stages, but this attracted relatively little attention.⁶¹

Switzerland: Toward local experiments

Switzerland has a history of progressive drug policy, especially in relation to harm reduction. In 2001, the Federal Office of Public Health, following recommendations by the national advisory board on drugs, proposed an in-depth revision of drug laws which institutionalised harm reduction but also provided the tools to decriminalise drug use and develop a partially regulated market for cannabis, by embracing prosecutorial discretion, in a similar model to that of the Netherlands.⁶² This approach was seen as being compatible with existing UN conventions although, in contrast with and learning from the Dutch approach, it included cannabis production and distribution.⁶³

This attempt was, however, strongly opposed by the International Narcotics Control Board (INCB), the UN body charged with overseeing the implementation of the UN drug control conventions,⁶⁴ and was ultimately rejected by the lower house of the Swiss federal legislature in 2004. However, in the intervening three years several cantons reduced their law-enforcement efforts against the cannabis market, resulting in about 400 unregulated cannabis shops throughout the country by 2002, and experimentation with local regulation at the community level.⁶⁵ However, those dispensaries were shut down after the 2004 rejection of the reform proposal.

An attempt to legalise cannabis through a referendum in 2008 also failed but eventually a much less ambitious form of decriminalisation was accepted in 2012. The change of law introduced a minimal penalty of a 100 CHF fine (about 85 Euros) for possession of under 10 g of cannabis by adults, not accompanied by criminal proceedings in the absence of aggravating factors. Prosecutors in several cantons seem to have interpreted this measure as amounting effectively to a full decriminalisation of cannabis use and possession, and decisions by the Supreme Court have lent some plausibility to this interpretation, making future challenges more likely.⁶⁶

At the sub-national level, several proposals have been made in the past five years, with a focus on municipal-level experiments potentially allowed under the existing drug laws. While city councils of the larger cities such as Zürich and Basel had previously advocated for controlled cannabis sales, they had not advanced concrete proposals. In December 2013, an inter-party working group in the Geneva canton advised starting a pilot project allowing cannabis clubs, following the Spanish model, to allow adults to buy state-certified cannabis for personal use.⁶⁷ The proposal was supported by a majority of parties across the political spectrum in Geneva.⁶⁸ 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.⁶⁹

In June 2014, the Geneva working group published a second report, saying 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 cannabis in a secure and controlled environment.⁷⁰ The report argued that a group of experts should define the details of the experiment, but it proposed some general conditions: a minimum age of 18 years; home consumption; support for Portuguese-style dissuasion commissions for minors with problematic use;⁷¹ and an obligation to refer members who develop problematic use to those commissions. The group also considered a limit on THC content, and specified that associations should be non-profit with mandatory registration (and due consideration for privacy). They argued that the cannabis should be for free and the pilot project should be budget-neutral – it should not cost the state anything, but nor should it generate revenue for the state – with costs covered by taxes or membership fees. They anticipated benefits in better conditions for users and the ability to identify problematic users, as well as curtailing the black market and improved public security.

Other cities and cantons such as Zürich, Basel, Lausanne, Bern, Luzern and Bielle are also looking at participating in experiments. After mutual consultations they started to work on different proposals for models of cannabis production and distribution.⁷² According to legal guidance, the best way to develop cannabis regulation at the local level was through scientific trials under article 8 of the Narcotics Act, following the example used in the past to introduce medical heroin prescription. Two cities (Bern and Zürich) and two cantons (Basel and Geneva) were to be the first four attempting to implement the

cannabis distribution trials, targeting different types of users. The city of Bern developed a project mainly for existing adult users and the canton of Basel only for self-medicating users, while the city of Zürich and the canton of Geneva initially planned projects for these groups in addition to problem users (both adult and under-age).⁷³ The Federal Office of Public Health, which must approve such projects, rejected the initial Bern proposal because recreational cannabis use, as provided for in the study, is excluded in accordance with the Narcotics Act, even in the context of scientific projects.⁷⁴ However, there appears to be considerable openness to revising the national narcotics law in order to allow experiments of this type.⁷⁵ A new article in the narcotics law is in process, intended to allow pilot tests for scientific purposes, although these would have a maximum duration of five years.⁷⁶

Germany: A fight for Pilot Projects

In Germany, a growing number of cities have expressed interest in developing local regulated markets or experiments: some 20 cities including Berlin, Bremen, Düsseldorf and Hamburg are exploring possibilities for this kind of regulation. The Berlin district of Friedrichshain-Kreuzberg was the first to propose an experiment, in September 2013. The District Mayor announced a plan for a pilot project of city-run shops selling cannabis, in order to combat drug-dealing in the district's Görlitzer Park, which was perceived as a source of public disorder.⁷⁷ The proposal envisioned 'selling points', where locally produced cannabis would be distributed by medically trained workers. They suggested a minimum age for buyers and a possible provision for security guards.⁷⁸

As in Switzerland, local authorities must 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'. The drug law exemption was used in Frankfurt some 15-years ago to initiate a successful heroin prescription programme for problematic users.⁷⁹ In order to go forward with a pilot project, authorities must apply to the Federal Institute for Medicine and Medicinal Produce (*Bundesinstitut für Arzneimittel und Medizinprodukte* - BfArM) for an exemption. In 2015, Berlin's Kreuzberg-Friedrichshain district applied for such an exemption, submitting plans for four 'specialist cannabis shops' in the district,⁸⁰ but was rejected,⁸¹ as was a subsequent appeal.⁸² BfArM argued that the sale of cannabis for the purpose of consumption is not compatible with the protective purpose of the national narcotics law (the BtMG) and that the application was, therefore, neither admissible nor well founded.⁸³

Nonetheless, several other cities and districts have expressed interest in regulated cannabis markets. A district assembly (of the *Bahnhofsviertel*) in Frankfurt-am-Main recommended 'one or more legal outlets for cannabis products'⁸⁴ to control 'the rampant black market'.⁸⁵ The proposal was accepted by the City Council of Frankfurt 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.⁸⁶ However, local political divides pose an obstacle to further progress at present.⁸⁷ In Hamburg, the district assembly of Altona also voted in favour of a pilot project to counter dealing in the Florapark area⁸⁸ and the district council of the city centre of Cologne approved an initiative for a pilot project in 2014⁸⁹ and again in 2018.⁹⁰ In 2015, Düsseldorf announced a plan for strictly regulated trade that would provide cannabis to adults;⁹¹ Hamburg and the town of Münster followed.⁹² Other cities have attempted to move forward with proposals that stalled at the local level, or were quickly rejected. Currently, Düsseldorf is leading the way, learning from the failure of predecessors like Münster, Bremen and Kreuzberg-

Friedrichshain, and has opted for pharmacies instead of coffeeshops, and a scientific approach that is not purely geared towards recreational consumption.⁹³

Nevertheless, the future of this and other projects is unclear. To enable further experimentation, the federal states of Bremen and Thuringia, with the support of Berlin, submitted a proposal to the *Bundesrat*, the legislative body that represents the 16 *Laender* at the national level, calling for an amendment to the narcotics law similar to that proposed in Switzerland, creating a possible legal basis for scientifically supported model projects. The proposal was rejected. The situation is now stalled, although there is a theoretical majority in parliament for full decriminalisation since the Social Democrat SPD has become more open to the issue, joining the FDP, Grünen and Die Linke. The question of decriminalisation at the national level was introduced in parliament in 2015, via a proposal by The Greens,⁹⁴ but, while other proposals have since been made, none has gained sufficient support to move forward.⁹⁵

At the same time, proponents of pilot projects or experiments, in Germany and elsewhere, are aware of the tensions between the scientific value and the practical impact of the experiments. ‘Scientific’ pilot projects that focus on youth protection and problematic use are likely to have less impact on criminal markets than more wide-ranging reforms. Proponents note that using available legal instruments brings with it a risk of ‘medicalisation’ of experiments.⁹⁶ For this and other reasons many municipalities would prefer a fully regulated market to pilot projects. However, the latter can be viewed as a kind of compromise, intended to keep the issue of cannabis regulation on the political agenda while opinions at the national level remain too divided for decisive progress.

Local Customisation and Multi-level Governance

Local authorities in the six countries examined are variously and to different degrees struggling to develop new, locally adapted policies to deal with cannabis in their jurisdictions. In all six countries these authorities are also, to a greater or lesser extent, stymied in these efforts by existing national legislation. While there is significant variation in the willingness of national governments and courts to engage with adjusting existing laws to allow for greater policy flexibility, the perceived international obligations are also, in all cases, providing an obstacle to outright regulation of recreational cannabis at the national level. Of particular concern, as shown in the case of the history of cannabis policy innovation in the Netherlands, are the political, economic, diplomatic, and cooperative relationships between countries in the EU and the Schengen Area. With decisions by Uruguay and Canada to regulate cannabis, a number of actors and scholars have seriously explored the possible mechanisms for resolving contradictions between countries’ commitments to their citizens and their obligations under the international drug-control conventions⁹⁷ (see Box 1 on Inter Se Modification for one consideration). The question of countries’ obligations and relationships within Europe remains challenging, although some emerging trends in policy-making at the European level offer hope of a new kind of resolution, not envisaged in 1996 when Dutch tolerance was so vehemently opposed by its European neighbours.

In recent decades a growing number of scholars, analysts, and policy-makers have called for political and administrative decentralisation.⁹⁸ They argue that decentralised decision- and policy-making can lead to more effective policies, adapted to local environments, needs, and interests.⁹⁹ Some also consider decentralised policy making to be – at least potentially – more democratic, giving citizens more

opportunities to directly influence policies that affect their daily lives, and enhancing both engagement with and buy-in for policies.¹⁰⁰ Although decentralisation is no panacea¹⁰¹ it has gained significant support and has been taken up as a possible source of improved accountability and legitimacy in governance.

The EU has historically expressed some ambivalence about decentralisation,¹⁰² but the concept seems to be gaining ground. The EU has endorsed decentralisation as a principle of good governance,¹⁰³ and there has been a growing recognition of the roles that cities in particular can play in certain policy areas.¹⁰⁴ In the context of EU policy-making, the discussion of decentralisation under the MLG rubric is especially relevant to the challenges encountered by local authorities seeking to regulate cannabis markets. In 2007, Caroline Chatwin, a criminologist at the University of Kent, suggested that greater reliance on the principles of MLG could provide a partial way out of the current impasse in European-level drug policy.¹⁰⁵ Scott & Trubek, discussing emerging 'new governance' in the EU argued that this 'unlike much EU legislation and regulation, accepts the possibility of coordinated diversity and the advantages of leaving final policy making to the lowest possible level where this is feasible'.¹⁰⁶ They argued that emerging mechanisms and structures, which moved away from centralised and top-down policy-making and towards bottom-up policy processes, incorporating actors at various levels, with convergence and coordination encouraged through framework agreements and open-ended guidelines, had emerged in response to circumstances where 'no easy or uniform solution exists' and where policy environments display an 'irreducible diversity'.¹⁰⁷

Precisely this kind of complexity and diversity characterises the landscape of cannabis reform in Europe. Therefore, this approach to policy-making may offer the best chance to find a way out of the current impasse in European drug policy, and the best hope of progress towards a cannabis policy that is more effective in relation to human and health-related concerns, as well as instruments to tackle criminal involvement in illicit markets.

In MLG, practical decisions are made at the local level, encouraging greater involvement of citizens. With respect to drug policy, Chatwin argues: 'A system of multi-level governance would allow initiatives to develop at the local level with power following a bottom-up structure', rather than relying on top-down solutions that do not fit local and regional needs.¹⁰⁸ Viewed through this framework, cannabis regulation could cease to be an arena for multilateral, or even national, contention, but could instead be judged on their effectiveness, leaving local authorities the room for manoeuvre they desire. Innovations and locally adapted policy solutions could be shared within networks of cities, encouraging the spread of new knowledge and approaches.

The European Charter of Local Self-Government, introduced by the Council of Europe in 1985, and ultimately ratified by all member states, introduced the principles of decentralisation and affirmed the significance of local authorities. The Maastricht Treaty is widely interpreted to offer support for certain forms of decentralisation,¹⁰⁹ and a 2001 White Paper on European Governance stated that '[t]he quality, relevance and effectiveness of EU policies depend on ensuring wide participation throughout the policy chain – from conception to implementation'.¹¹⁰ Further, in 2009, the Committee of the Regions, an EU body charged with giving non-national authorities a voice in European policy-making, issued a White Paper on the significance of multi-level governance in a wide range of European policy areas,¹¹¹ and the Lisbon Treaty incorporated some key principles of this approach.

In 2014, the Committee of the Regions launched the Charter for Multilevel Governance (MLG) in Europe which, by March 2019, had been endorsed by 220 signatories.¹¹² The Charter argues for the key significance of this governance approach, stating that '[i]n line with the subsidiarity principle which places decisions at the most effective level and as close as possible to the citizens, we attach great importance to co-creating policy solutions that reflect the needs of citizens'.¹¹³ Critically, the principles of multi-level governance suggest that municipalities, regions, and other sub-national levels of government should be able to play a direct role in the development, and not only the implementation, of European-level policies.

This approach has not been uniformly embraced, however, and Chatwin warns against overstating its current importance in the EU.¹¹⁴ MLG requires a certain level of reciprocity between different levels of governance, and may be perceived by national (or supra-national) institutions as a risk. In many cases, EU member states still scrupulously defend their gatekeeping role.¹¹⁵ Further, Scott & Trubek (2002) remarked upon the Commission's reluctance to fully embrace this approach, even while it recognised its necessity in certain policy areas.¹¹⁶ There are also important questions about how best to coordinate action across borders without relying on unnecessarily blunt top-down instruments, and how to guarantee equity without insisting upon uniformity.

Nonetheless, this research on the challenges and opportunities facing local authorities in relation to cannabis regulation has provided further evidence for the possible efficacy of such an approach. Municipalities and regions are no longer content to wait for innovation from the national level, and national governments are facing increasing pressure to take a clear stance on existing 'grey areas' and ambiguities in their policies and legislation. Drug policy that gives priority to opportunities for local adaptation might help to advance European cannabis policy without the need to achieve consensus on certain key points between countries that have sometimes widely differing goals and approaches. While criminal law obviously remains a core competency of sovereign states and subject to multilateral conventions and agreements that cannot be devolved to the sub-national level, some aspects of its implementation could be tailored to fit local circumstances, for which there are already mechanisms and precedents both at the regional and the national level.

Decentralisation in National Drug Policy

In addition to the emerging mechanisms at the European level, there is some evidence that devolving some aspects of drug policy to the local or regional level can assist in developing more effective policies at the national level. The Netherlands, for instance, has embarked on a political project of devolving certain kinds of decision-making to the lowest possible level. In the coalition agreement of the Rutte II government (2012–2016), this decentralisation was justified by the argument that '[t]he transfer of a large number of tasks from the central government to municipalities allows for local tailoring and customisation, and allows for stronger citizen involvement. Municipalities can better coordinate implementation, and thus do more for less. To this end, the central government gives them wide discretion'.¹¹⁷ Although not specifically envisaged to include cannabis policies, this concept of 'local customisation' (*lokaal maatwerk* in Dutch) entered the debate about cannabis policy in the Netherlands, allowing municipalities to diverge from national guidelines about the introduction of controversial residence and registration criteria for coffeeshops, intended to counter cannabis tourism. With the

benefit of hindsight, one could argue that local customisation was already being implemented since at least 1996, when the government decentralised aspects of its coffeeshop policy to municipalities, notably giving them the option to veto cannabis retailing in the municipality, and to set additional policies compliant with national laws and guidelines.¹¹⁸

Inter se treaty modification

Several possible routes are available for states with regulated markets for recreational cannabis use to reconcile domestic legislation with their commitments under the UN drug-control treaties. With treaty tensions mounting, one option stands out as a legally legitimate and politically feasible way forward: the 'inter se' procedure provided for by the Vienna Convention on the Law of Treaties. Under an inter se agreement, a group of like-minded countries could collectively create a new sub-treaty framework just for cannabis and modify their obligations under the drug-control conventions with effect among themselves alone. This approach would allow pioneering countries to build a platform for regulated cannabis that more countries could eventually join. This would enable progressive reforms at the country level, while not undermining international law. Crucially, an inter se agreement could also open the possibility of international trade between regulated licit markets, enabling small-scale farmers in traditional cannabis-producing countries to participate in transnational commerce at both global and regional levels.¹¹⁹

While the scientific experiments currently proposed in Germany and Switzerland could be characterised as 'policies of last resort' in the face of a deadlock at the level of national regulation, in the event that there is a breakthrough in the coming years a paradigm of 'local customisation' may offer the best option for adapted and coherent policy in diverse countries. In the Netherlands, 'local customisation' is already an established guiding principle, with most municipalities opting out of allowing coffeeshops, while in Germany cannabis decriminalisation policies at the state level differ significantly. In other European countries policies also vary widely at the local or regional level. The future may well be in 'local customisation' of policies that fit particular circumstances, nested within more general national legislation and prosecutorial guidelines. Local pilot projects, while currently limited in their scale and scope, may well develop into locally customised regulatory models, offering opponents of cannabis regulation the chance to opt out or establish different policies. This flexibility may soften opposition to more liberal cannabis policies, allowing for more nuanced accommodation to the different needs of cities, towns, or regions with very different needs, demographics, histories, and political visions. It is worth noting that a variation of this policy has been adopted in the (federal) states of Canada and the United States: while a number of US states have legalised and regulated recreational cannabis without a change in corresponding federal criminal law, Canada's regulatory framework provided the leeway for individual provinces and territories to impose more stringent conditions for cannabis home-growing and consumption, and to decline to develop a provincially regulated cannabis distribution infrastructure.¹²⁰

Fully embracing this approach to cannabis policy would require an international and national political commitment to adjusting national laws and guidelines to give local authorities room for manoeuvre. In order to achieve a workable solution, international, regional, and national governance actors need to

find a structure where the current top-down decision-making process (the dictate of multilateral rule-setting by UN conventions and EU legislation) is counterbalanced by a bottom-up 'reality check' by local authorities and can take into account local experiences of what does and does not work. Whether such a change would be possible at the international level is another question, given current UN dynamics,¹²¹ but this is not stopping some countries from moving ahead with regulation, and the option of 'inter se' modification (see Box 1) may offer a pathway to bring these steps into alignment with the international drug-control regime.

Although decentralisation does not guarantee effective policies, cities' experiences in promoting harm-reduction policies in the 1990s have shown the possibilities of bottom-up policy-making in producing humane and effective drug policy. The organised action of a group of cities led to such policies being accepted at the national, and increasingly, at the international level. The immense diversity of practical and political contexts at the local and regional level within Europe, and the demonstrated commitment of sub-national authorities to developing their own locally adapted solutions, speaks to an untapped resource for policy development. Better harnessing this knowledge, experience, and innovation and facilitating local customisation – while not ignoring political contention between and within the levels of governance – may yet offer a promising path towards elegant compromises and, ultimately, a more effective and humane cannabis policy for Europe.

Endnotes

1. This Policy Brief draws on research conducted as part of the [New Approaches in Harm Reduction Policies and Practices](#) project, and is a shortened and adapted version of the chapter 'City-level policies of regulating recreational cannabis in Europe: From pilot projects to "local customization"?' (Decorte, T., Lenton, S. & Wilkins, C. (2019, forthcoming) *Legalizing cannabis: Experiences, lessons and scenarios*. Abingdon: Routledge).
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Country Reports

Key information in this report is drawn from the following country reports, available at tni.org

Cannabis Regulation in Europe:

Country Report Belgium

Tom Decorte, Ghent University, Department of Criminology, Criminal Law, and Social Law

Cannabis Regulation in Europe:

Country Report Denmark

Maj Nygaard-Christensen and Vibeke Asmussen Frank, Aarhus University

Cannabis Regulation in Europe:

Country Report Germany

Heino Stöver, Ingo Ilja Michels, Bernd Wense, Tim Pfeiffer-Gerschel

Cannabis Regulation in Europe:

Country Report Netherlands

Dirk J. Korf, University of Amsterdam, Bongor Institute of Criminology

Cannabis Regulation in Europe:

Country Report Spain

Xabier Arana, Instituto Vasco de Criminología (IVAC-KREI)

Cannabis Regulation in Europe:

Country Report Switzerland

Frank Zobel, Addiction Suisse

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NEW APPROACHES ON HARM REDUCTION POLICIES AND PRACTICES

The NAHRPP project (New Approaches in Harm Reduction Policies and Practices) is a joint project of the Transnational Institute (TNI), based in the Netherlands, ICEERS (Spain), Forum Droghe (Italy) and Diogenis (Greece), supported by the European Union. The project addresses recent drug policy developments in Europe.

One section of this project, led by TNI, is focused on the role of local authorities in cannabis regulation. Local and regional authorities across Europe are confronted with the negative consequences of a persisting illicit cannabis market. Increasingly, local and regional authorities, non-governmental pressure groups and grassroots movements are advocating for regulation of the recreational cannabis market, rather than prohibition. This project analyses the possibility of cannabis market regulation models, alongside political, policy, and legal steps under exploration by local authorities in Belgium, Spain, Switzerland, Germany, Denmark and the Netherlands. It is hoped that the information collected through this initiative will help to improve the understanding of regulating drug markets as a means to reduce the negative consequences of illicit drug markets on individuals and society.

In order to better understand the situation around, and possibilities for, local and regional cannabis regulation, a series of six country reports were developed. The country reports provide detailed information about the state of cannabis policy, and the possibilities for change, within each country. This briefing identifies some of the key findings and implications for policy makers and advocates from this research.



The Transnational Institute (TNI) is an international research and advocacy institute committed to building a just, democratic and sustainable world. For more than 40 years, TNI has served as a unique nexus between social movements, engaged scholars and policy makers.

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