



EUROPE

Multinational overview of cannabis production regimes

Key findings

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Key Findings

Motivation for a multinational overview of cannabis production regimes

The vast majority of countries are signatories to international treaties that prohibit the production, distribution and possession of cannabis for non-medical and non-scientific purposes. The treaties have not changed in nearly 25 years, but laws and policies pertaining to cannabis have changed in some countries. Several jurisdictions have reduced the penalties for possessing cannabis for personal use (and in some places even for home cultivation), making the maximum penalty a fine and/or participating in some type of diversion programme or community sentence. Some jurisdictions have taken more dramatic steps and changed their laws and practices with respect to producing and distributing cannabis.

In July 2013, the Research and Documentation Centre (WODC) of the Netherlands Ministry of Security and Justice asked RAND Europe to provide a multinational overview of cannabis production regimes, with a special focus on identifying and describing official statements and/or legal decisions made about production regimes for non-medical and non-scientific purposes (i.e., recreational use for adults).¹ This research report describes the ways in which these policies developed in selected countries, and the legal, legislative and voters' decisions that shaped them. It pays attention to whether there have been formal statements from these countries about whether and how the new policies fit within the existing international legal framework; however, it does not make an assessment about whether these countries are compliant with the treaties. The report also does not take a position about whether changes in cannabis production policies would be good or bad for society.

Main case studies

Our approach was to conduct detailed case studies for a small number of countries deemed to be most relevant, based on the formal statements available, and provide shorter summaries for other jurisdictions. The four case studies are Spain, Belgium, the United States of America and Uruguay.

¹ This report does not address the production of cannabis for industrial purposes. Thus, references to production for non-medical and non-scientific purposes are for 'recreational consumption', not industrial hemp. Some dislike the term 'recreational' on the grounds that motivations for non-medical/scientific use can go beyond recreation, but the alternatives are cumbersome or associated with one side or the other in advocacy debates.

1. **Spain.** Following several Supreme Court rulings, the possession and consumption of cannabis is no longer considered a criminal offence,² and the jurisprudence in the field has tended to interpret the existing legislation in a way that permits ‘shared consumption’ and cultivation for personal use when grown in a private place. While there is no additional legislation or regulation defining the scale or particulars under which cultivation could be permitted, the Cannabis Social Club (CSC) movement has sought to explore this legal space, reasoning that if one is allowed to cultivate cannabis for personal use and if ‘shared consumption’ is allowed, then one should also be able to do this in a collective manner. In this context, hundreds of CSCs have been established over the past 15 years, but legal uncertainty around the issue of production continues and has led to the seizure of cannabis crops and to the arrest of some CSC members.
2. **Belgium.** The Belgian CSC ‘Trekt Uw Plant’ (‘Pull Your Plant’) is a non-profit organisation initiated in 2006, following the 2005 joint guideline (as issued by the Minister of Justice and the College of Public Prosecutors) which assigned the lowest possible priority to prosecution for possession of up to three grams of cannabis or one cultivated cannabis plant. The organisation provides its members³ the opportunity to produce cannabis collectively, one plant per person, in closed, not publicly accessible spaces in Antwerp, Luik, Brussels and Hasselt. To date, Trekt Uw Plant has been involved in two court cases. In 2006, members of the club were charged with possession of cannabis with the aggravating circumstance of participation in a criminal organisation. Although the defendants were initially condemned for the former and acquitted for the latter by a Local Court, the Court of Appeal could not pronounce itself in 2008 as the criminal prosecution had become time-barred. The second court case focused on two public protest demonstrations of Trekt Uw Plant in 2008 for which the organisation was accused of encouraging drug use. In 2010, the Court of Appeal acquitted the defendants, as, although their acts were provocative, they did not encourage drug use. In August 2013, Trekt Uw Plant consisted of 304 members. Recently, three more CSCs were established in Belgium: in Hasselt, Luik and Andenne. We did not find evidence of any legal actions against any of these four CSCs since 2010.⁴
3. **United States.** Cannabis legalisation in Colorado and Washington state in November 2012 was the result of direct vote by the citizens of those states via a mechanism called a voter initiative, which is a type of ballot measure or, less formally, a proposition. Once passed, initiatives become state law.⁵ The United States has a federal system of government, and state laws do not negate or supersede federal laws; so all cannabis-related activity in these two states and throughout the United States remains prohibited by the federal (meaning national) government’s Controlled

² Especially when involving small quantities and used in a private place. Consumption in public places corresponds to administrative sanctions (Ley Organica 1/1992, 1992).

³ Although it can differ slightly per CSC, in general, membership of a Belgian CSC involves signing a form stating that you are an adult (21 years or over or 18 years with a medical certificate) living in Belgium, that you are a cannabis user and aware of the Belgian Drug Law regarding cannabis (Mambo Social Club, 2013; Trekt Uw Plant, n.d.(Weed' Out, n.d.)). Membership of a CSC also includes an annual membership fee.

⁴ This is also confirmed by a respondent in interviews conducted for this study, as noted in Chapter 2.

⁵ The cannabis initiative that passed in Colorado became an amendment to the state constitution.

Substances Act. However, customarily most cannabis enforcement has been the province of state, not federal, government. Both states now allow adults aged 21 and older to possess up to one ounce (28.35 grams) of cannabis and larger weights of cannabis-infused beverages and edibles, and Colorado allows home growing (up to 6 plants), but the significant change is the licensing of large-scale commercial cannabis businesses. The initiatives tasked state agencies with developing regimes to license and regulate for-profit cannabis firms.

In August 2013 the U.S. Department of Justice issued a guidance memorandum to federal prosecutors about marijuana enforcement. The memo listed eight enforcement priorities (e.g., not providing cannabis to youths) and indicated that “In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities [...]”.⁶ Both states are accepting applications for cannabis business licences and retail stores are scheduled to open in Colorado in January 2014 and a few months later in Washington.

4. **Uruguay.** In July 2013, the Uruguayan House of Representatives passed draft legislation to remove the prohibition on cannabis production, distribution and possession. The Uruguayan Senate is expected to vote on this bill in November 2013. If passed, the law would create a new public agency, the Instituto de Regulacion y Control del Cannabis, to issue permits for production by for-profit companies, and maintain registries for users and those who want to (1) grow at home (up to six plants), (2) participate in collectives (between 15 and 45 members who maintain up to 99 plants at any given point) and (3) purchase at pharmacies (up to 40 grams per month produced by licensed companies).

In reviewing these case studies, four distinctions seem worth making. The first is whether the activity pertains only to distribution within cannabis clubs, as in Belgium and Spain, or whether larger scale and overtly for-profit activity is or would be permitted, as in Colorado, Washington and Uruguay. The second distinction pertains to whether government action is undertaken by the national government or by a subnational jurisdiction that has some degree of sovereignty under that country’s constitution. Uruguay’s situation is the only one that involves a national government passing a law with respect to activity that is

⁶ The complete passage from the memorandum: “In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.” www.justice.gov/iso/opa/resources/3052013829132756857467.pdf.

clearly meant to be suppressed by the international treaties. The third issue is the role government employees do or do not play in production and distribution. In Belgium and Spain, there is no role. In Colorado and Washington the role is indirect, in the form of licensing and regulating but not participating in the trade. A final distinction pertains to how overt the officially banned but nonetheless tolerated activity can be. In Belgium, if the cannabis clubs are visible in the manner of *Trekt Uw Plant*, law enforcement may act, albeit perhaps half-heartedly. By contrast, cannabis production and distribution in Uruguay and the United States will involve fully open activities; cannabis business will be registered with, and will pay taxes to, the government.

Official statements on cannabis production initiatives and the international legal framework

With respect to official discussions about how these initiatives fit or do not fit within the international legal frameworks, key findings include:

- The International Narcotics Control Board (INCB), the UN body in charge of administering controls on drug production and trade, responded to the developments in the United States and Uruguay by asserting that allowing such initiatives would be a violation of international law. Thus, the INCB urged the countries' authorities to take action to bring its (proposed) policies in line with the international drug control treaties.
- In the U.S. there has been very little official discussion about how legalising the recreational cannabis industry in two states and the subsequent federal response fit or fail to fit within the UN drug conventions. After the voters passed the propositions, U.S. Attorney General (AG) Holder initially stated that he would consider the "international obligations" when crafting a response. However, neither the subsequent memo from U.S. Deputy AG Cole, which described the federal position, nor Cole's official testimony at a Senate Judiciary Committee hearing about cannabis policy in September 2013 mentioned the international conventions. The leading opposition party member on the Committee, Senator Grassley, did note in his opening remarks at the hearing that "These policies do not seem to be compatible with the responsibility of our Justice Department to faithfully discharge their duties and they may be a violation of our treaty obligations". However, this topic was not broached in the Senator's questions to the Deputy AG and has not been the subject of official discussion.
- In Uruguay, some government officials have been outspoken about their reservations concerning the international drug conventions. A government statement accompanying a draft legalisation bill in 2012 noted that "the Single Convention and the policies deriving from it, were, like any other product of human culture, the result of their time, with associated potentials and weaknesses and must – today – be critically revised, modified and improved". In September 2013, a Uruguayan diplomat at a public meeting in Washington D.C. indicated that his "country 'is opting for an alternative path in the framework of a comprehensive and balanced strategy aimed at regulating the cannabis market with a proposal in accordance with national conditions to address the drug problem.' In this regard, he [Uruguayan diplomat] noted that it seeks the same objectives as those established in ratified international treaties but offers an opportunity to

update them, ‘based on the faithful compliance with human rights’” (Organization of American States, 2013b).

- We have not identified any official government statements about how the CSCs in Spain and Belgium fit within the existing international drug conventions. Furthermore, the INCB did not express itself regarding the CSCs in either country.

Other production regimes

The report also highlights ten other jurisdictions where production for medical or scientific purposes is allowed or where there have been recent discussions about changing the laws concerning production of cannabis for recreational use. With respect to the latter, these proposals ranged from plans to allow home growing of cannabis for personal use (discussed in Chile, Portugal and Switzerland), to a proposal to create Cannabis Social Clubs (in Portugal) and the suggested model of state-regulated production and distribution being discussed by the Copenhagen City Council. While a few of these proposals are still currently being discussed, others have already been rejected by the competent authorities in these countries.