

Global Cannabis Regulation Model *2004*



Verein für Drogenpolitik e.V.



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1. Introduction

Enlightenment is man's emergence from his self-incurred immaturity. Immaturity is the inability to use one's own understanding without the guidance of another. This immaturity is self-incurred if its cause is not lack of understanding, but lack of resolution and courage to use it without the guidance of another. The motto of enlightenment is therefore: Sapere aude! Have courage to use your own understanding! Laziness and cowardice are the reasons why such a large proportion of men, even when nature has long emancipated them from alien guidance, nevertheless gladly remain immature for life. For the same reasons, it is all too easy for others to set themselves up as their guardians. It is so convenient to be immature!
Immanuel Kant'

Since as long as anyone can remember hemp has been consumed as a useful plant, medicine and drug.

Cannabis is being used by 144 million people worldwide both as a drug and a recreational substance. According to the United Nations there exists an illegal cannabis market in 96 % of states on this planet.² For approximately 30 years the use of cannabis has been increasing in many states, especially during the last 10 to 15 years. Still the utilization of cannabis is not a new phenomenon, since as long as anyone can remember hemp has been consumed as a useful plant, medicine and drug. The earliest archaeological proof of cannabis dates from the year 10.000 BC, discovered in the remains of a stone-age settlement on Taiwan.³ But after 12.000 years of cannabis consumption had passed,⁴ on the 19. February 1925 the League of Nations in Geneva decided, to control cannabis by the "International Opium Convention".⁵ Today, almost 80 years later, the international community must realize that one of the greatest experiments in control in the history of mankind has misfired: The experiment of global cannabis prohibition has definitively failed in 2004. Presumably, cannabis is used by more people today than at any given time during the history of mankind, although cannabis is more strongly prohibited and more seriously sanctioned at present than ever before. Until present day science has discovered no proof that cannabis is as harmful as alcohol or tobacco.⁶ On the contrary, according to scientific results of the last 200 years cannabis is not harmless, but still one of the least harmful drugs.⁷ In spite of great political, financial and military efforts and law enforcement not one state of the

earth has yet achieved to eliminate the existing illegal cannabis market. The debate on what is a „correct“ policy for cannabis focuses on the merits and demerits of a "legalization of cannabis".⁸ We propose that the more appropriate formulation of this question should be: Shall cannabis be traded in a legal or illegal market? As long as through supply and demand a cannabis market is created and governments are not able to stop this, there is but one question for any state and society: Is a domestically regulated and severely controlled cannabis market or a "wild" and unimpeded market better for a country and its citizens?

In this brochure we are offering a global model, applicable in every country on principle, how an illegal cannabis market can be turned into a legal one. In five chapters we explain the necessary background information and the details of a real "global cannabis regulation model". After this introduction, in chapter two, we briefly highlight the history of cannabis prohibition, particularly the coincidental integration of cannabis into the "International Opium Convention", without which it would not have been possible to establish a global cannabis prohibition regime. In the third chapter we concern ourselves with some selected arguments of the political cannabis debate, and discuss whether they contain any obstacle for a change from an illegal to a legal cannabis market. The fourth chapter is the main part and contains the "global cannabis regulation model", divided into separate modules it descri-

The experiment of global cannabis prohibition has definitively failed in 2004.

bes the regulation of an efficient and legal cannabis market. Each module serves as a unit, which deals with a particular aspect of cannabis production and cannabis trade. Governments can amend each module according to their requirements. However, it is not possible to reject one module, because a regulated cannabis market which shall work requires all six modules:

- 1. Production of cannabis**
- 2. Import and export**
- 3. Wholesale and retail trade**
- 4. Cannabis price and taxation**
- 5. Consumption control**
- 6. Remaining law enforcement tasks**

The fifth chapter is a legal report by a lawyer from Hamburg in which he examines the possi-

ble implementation of the “global cannabis regulation model” under international law within and without the drug treaties. In conclusion, chapter six depicts a strategic element for interested governments, in order to help them in turning their national illegal cannabis market into a regulated legal one. It is not our goal to create a “perfect model”, but to draft a rational, pragmatic and working model of a regulated legal cannabis market. We explicitly aim to present a contestable model. Many detailed regulations can only provoke improvements. Thus, for the time being, by refuting and rejecting our model better models shall be created, which is a necessity, since drug policy and cannabis markets are constantly changing.⁹

***Members and board of the
“Verein für Drogenpolitik e.V.”***

It's our goal to draft a rational, pragmatic and working model of a legal cannabis market.

1. The history of global cannabis prohibition a historical coincidence?

But why is cannabis prohibited?

For the average fellow citizen the case is clear: cannabis is a dangerous drug causes the decline both of body and mind of the “addicted”, and therefore, it is prohibited. In the meantime, a majority of medical, pharmacological and sociological literature has almost totally disproved this „scientific“ argument backing cannabis prohibition.¹⁰ But why then, if not because of medical reasons, cannabis is prohibited?



One look into the history of cannabis prohibition is enlightening. To put it in a nutshell, it was a „stupid coincidence“. But before turning to history, two remarks must be inserted. First remark, just this once, it was not the US-American government who was responsible for global cannabis prohibition. The thesis made popular by Jack Herer, that hemp was prohibited because of a conspiracy of the chemical industry which for economic reasons wanted to push its synthetic fibre, certainly applies for the USA and is indeed the cause for the “Marijuana Tax Act” of 1937. It is also correct, that then, the head of the US-American drug authority, Harry Anslinger was indeed the main responsible person for a campaign demonizing cannabis.¹¹ But unfortuna-

tely these insights are not very helpful for the explanation of cannabis prohibition, because cannabis got prohibited in 1925 already, at the “International Opium Conference” in Geneva, twelve years before the events described by Herer. Second remark, even before global cannabis prohibition some states or its parts had limited prohibitions of cannabis, e.g. in California since 1913 or in Egypt.¹² “In the year 1378 the Emir Sudun Scheichuni ordered, that in his sovereign territory all hemp plants should be destroyed; who was encountered eating hemp, his teeth should be pulled out and then he be put into jail.” From a global perspective though, both cases are isolated ones which can be neglected.¹³ In most states hemp was used as a useful plant, medication and sometimes as a drug. Provided there were any legal regulations of hemp at all, they referred to the integration of cannabis into medical laws, for example the German „order concerning circulation of pharmacist products of 25th March 1872“. ¹⁴ This order ruled, that particular „drugs and chemical medications“ should only be sold in pharmacies, amongst which was „Indian hemp – herba cannabis Indicae“. This order did not contain further regulations, neither age limits nor limits of amounts. The only obstacle for purchasing one kilo of Indian hemp in any pharmacy for example was money. In India the trade of cannabis in the 19th century was controlled till 1928 by a monopoly of the British colonial power.¹⁵ In fact, the true history of cannabis prohibition starts with the opium commission in Shanghai in 1909 and basically had nothing to do with cannabis. The subject was international control of opium, in particular to protect the US-American colony Philippines

from the smuggling of opium.¹⁶ The opium commission in Shanghai is of significance because it marks the start of a continuing marathon of conferences, all striving to create a „drug free world“ while initially an „opium free world“ was the goal. Cannabis did not get mentioned yet in Shanghai,¹⁷ but instead at the “First International Opium Conference” in The Hague 1911/12, the following conference. There, opium and its derivatives, morphine, codeine and heroin were at the centre of attention again, but cocaine and cannabis were discussed as well. On the 15. December 1911, at this conference, the French delegate, Brenier proposed, for the first time in history, to severely regulate and sanction cannabis like opium, morphine and cocaine.¹⁸ On the 20. December 1911, this proposal which came from the Italian government was discussed. However, the Italian delegate Santoliquido could only participate in the conference for one day, because he was chairing the “International Sanitary Conference” in Paris which was meeting at the same time.¹⁹ One day later a letter of the Italian government arrived at the conference, withdrawing the proposal for cannabis prohibition. Moreover the delegates noticed that they had not been provided with enough information on cannabis, above all no statistics, and therefore they could not deal with the proposal. Finally, the Belgian delegate Cremer suggested, with respect to cannabis: “It seemed to be sufficient to refer the matter to internal legislation of the nations more specifically concerned”.²⁰ This proposal was accepted and thus unanimously agreed to withdraw cannabis from the prohibition list again. When all is said and done, it was the chance absence of the Italian delegate which prevented that cannabis got internationally prohibited as early as 1911. Remarkable in this context and probably typical for political attitudes in these times are classified instructions of the German delegation to the opium conference: „It may be

proposed by the Italians, to extend limitations on hashish or similar hemp medication. Your Excellence wishes to declare, that the Imperial Government does not deem this question definite and thus international agreements about it at this time not appropriate.”²¹ In another passage the classified instruction reasons: „Considering the pharmaceutical importance of these drugs it seems to us that even for you it is not desirable, to be restricted in your purchase and your pharmaceutical utilization by international agreements”²² and „Indian hemp is not being used improperly in Germany, smoking hashish is not customary here.”²³ The British delegation though did not even have the opportunity to receive instructions on the question of cannabis, because as the British delegation reports, “the suggestion for the inclusion of hemp drugs in the conference programme was not brought to the notice of HM Government till about a fortnight before the conference met”.²⁴ The next initiative for global cannabis prohibition, which was successful from the point of view of the applicants took place again at a opium conference, this time in Geneva, in 1924/25. To be sure: cannabis was not on the agenda of the conference, still the delegates decided on global cannabis prohibition, the foundation of all national cannabis prohibitions in force nowadays. Not surprisingly, opium, opiates (and cocaine) were on the agenda of the „Geneva Opium Conference“. The world owes global cannabis prohibition to the persistent leader of the Egyptian delegation, El Guindy (apart from Egypt, South Africa and Turkey had made similar proposals, though both states did not pursue them any further at this conference). On the 13th December 1924, when the conference had been in meeting for almost one month, he proposed that cannabis should be included in the list of controlled substances.²⁵ At this point, Egypt had issued severe sanctions against cannabis as one of the first countries²⁶, on the one

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hand because cannabis consumption in Egypt was widespread, as in many other African and Arabic countries, on the other hand because the Egyptian King Fuad I. made an effort for cannabis prohibition. So, despite the fact that Egypt already had explicit cannabis laws to El Guindy international prohibition was very important. Unfortunately there were no convincing arguments for global prohibition of cannabis in contrast to opium. Cannabis could and can be cultivated almost on the whole world, control within any given state would have been perfectly sufficient. Even the medical literature which El Guindy quoted was pretty weak, all in all five articles, three of which stemming from the 19th century, at 25 years old, but some from 1845, a mere 80 years ago.²⁷ The Chinese delegate Mr. Sze said: „I know next to nothing about the subject“, but would support Egypt with pleasure just the same.²⁸ Likewise the US-American delegate Hon. Stephen G. Porter: “My knowledge of hashish and its use is quite limited. [...] I believe that this is a good time to practise a little reciprocity. They have their troubles and we have ours [...].”²⁹ Whereas in comparison the British and above all the Indian delegate, Mr. Clayton, were opposing even treating the subject of cannabis prohibition at the conference.³⁰ At the end of the day, after one and half hours of debate it was decided, to refer the question of cannabis prohibition to „committee F“. ³¹ In turn, on the 15th December 1924, committee F delegated it to a sub-committee which had eight members (Great Britain, Chile, Egypt, France, Greece, Japan, Turkey, USA). These states finally voted in favour of cannabis prohibition.³² During the following two days, the 16th and 17th December 1924 this cannabis sub-committee discussed whether cannabis should be prohibited. Prof. Perrot, member of the French delegation, drafted a definition of cannabis, prerequisite for including cannabis into the International Opium Convention. On the

17th December, they had a vote on cannabis prohibition, except for Great Britain, the Netherlands and India, which abstained, the others voted in favour. It is because of the votes of these states, and especially Egypt, that we have global cannabis prohibition.³³ The time-span allotted to this historical decision were two short afternoons, starting at half past three each day. External experts were not heard, because several members were scientists themselves, no experts for cannabis however. Almost exclusively debated was the exact definition of cannabis, possible dangers only got mentioned in passing, also because cannabis consumption in Europe then did not amount to much. In the first place, prohibition was a gesture to the Egyptian delegation. The proposal of the cannabis sub-committee³⁴ was passed by the plenum on the 14th February. In the meantime Great Britain, India and the Netherlands had withdrawn their reservations and approved prohibition. Only the delegate of Siam (Thailand), Prince Damras, refused consent of his country.³⁵ The Indian Government documented its practical reservations against cannabis prohibition in one note to the conference, dated from January, 23rd, 1925. It stated: “The Government of India, however, at the present stage of their examination of the subject, point out various serious difficulties of an administrative order in confining the use of hemp drugs to medical and scientific purposes; for example, there are social and religious customs which naturally have to be considered, and there is the doubt whether the total prohibition of drugs easily prepared from a wild-growing plant could in practice be made effective. For these reasons, the Indian delegation is glad to be able to promise the co-operation of its Government in limiting the export of Indian hemp to the needs of the importing countries as certified by their Governments by means of the import certificate system [...].”³⁶ Thus the cannabis issue

had been treated by the conference. Since this day, the listing of cannabis next to opium, morphine, heroin and cocaine in international and national drug laws is taken for granted. It all began with the „International Opium convention“ of 1925, chapter 1, article 1 under „Indian hemp“. ³⁷ Logically, a Canadian study has termed cannabis prohibition as „a solution without a problem“. ³⁸ So it is wrong, if claimed again today, that cannabis was prohibited because of dangers it might pose to health. In fact cannabis was prohibited, because it was included into the Geneva Opium Convention more or less by „pure chance“. Still, the result was not yet total prohibition,

as we know it today. In most states, it was still possible to get cannabis as medication, with medical prescription in pharmacies. After WWII the use of cannabis as medication gradually disappeared. It was not until the international student movement that cannabis got popular again in the late 1960s. Yet, the national legislative bodies reacted quickly then, as a rule this meant tightening existing cannabis laws towards complete prohibition of cannabis as a useful plant, medication and a drug. Today we have to confront the rubble of these laws.

Tilman Holzer, Mannheim

*A Canadian study has termed
cannabis prohibition as
'a solution without a problem'*

3. Arguments in the cannabis debate

In the 20th century from the 20s till the 60s, there was consensus to a large extent on the prohibition of the drugs, included in international drug conventions. Since then however, millions of people from all strata of society have had personal experience with illegal drugs, primarily with cannabis. This experience or the absence of experience have left and are leaving a mark on personal attitudes towards cannabis.³⁹ As a result of this societal development prohibition policy has been increasingly questioned during last decades, as various surveys are show.⁴⁰ In drug policy mostly controversial opinions are clashing without there being any serious dialogue. Frequently the willingness to concern oneself with the arguments of the opposing side in detail is missing, because not facts but value judgments and prejudices are emphasized. But a serious, objective dialogue is necessary, in order to create a new societal consensus. Without this consensual support penal law in a liberal state under the rule of law becomes a blunt instrument.

In the following pages we will concern ourselves with some of the most important arguments of this debate.

„Prohibition has a preventive effect“

This argument convinces many people because of its plainness. It is one of the ideological premises of prohibition: How harmful cannabis really is for the individual, for prohibitionists this question is only relevant insofar, as prohibition is suited to reduce such harm. Still, or rather therefore, the actual effect of prohibition on the spreading of use is scarcely discussed on the basis of scientific data from the practice. Instead, even if a two-digit percentage of the population

uses cannabis, it is still argued, that once prohibition would cease, there would be even more users and harmful consequences would increase. While in EMNID-survey from August 2001 64 % of people without experience in use of cannabis agree totally with the statement “Use of hemp or hashish leads to addiction“, among former users of hemp it is only 22 %. 59 % of the latter group repudiate this statement predominantly or completely. A survey in the USA in October 2002 claimed that 34% of the examined were in favour of legalization of cannabis, in comparison to 24% in 1983. This is the same trend (increase of 50%) as with personal experience with cannabis, which was admitted by 31% in 1983 and 47% in 2002. As long as prohibition is not repealed, it is not easy to refute this assertion. Nonetheless, experts are pointing to an abundance of circumstantial evidence that challenges this fundamental argument for prohibition.

As the Netherlands have shown in the 1970s, the renunciation of penal prosecution of cannabis users and retail traders does not at all result in a drastic increase of numbers of users. Actually, the Netherlands has proportionally fewer users of cannabis as France or Great Britain and about as many as Germany or Norway - even though all these countries pursue a substantially more repressive drug policy than the Netherlands. The USA, one of the principle forces promoting international drug prohibition have the highest prevalence rate of cannabis use - with more than 80 millions people with cannabis experience.

A representative survey of the Swiss office for alcohol and other drug problems [Schweizerische Fachstelle für Alkohol- und andere Drogenprobleme, SFA] from 2000 shows, that in the rather repressive West of Switzerland cannabis use is more widespread (39 % of men bet-



The widespread presumption of a counting general preventive effect of sanctioned use could not be established and seems less plausible as well.

ween 15 and 74 have consumed at least once) than in the more tolerant German part (32 %) and the South of Switzerland (28 %).⁴¹ The health committee of the Swiss parliament concluded correspondingly: "The widespread presumption of a counting general preventive effect of sanctioned use could not be established and seems less plausible as well. [...] All those empirical examinations and statistical data [...] correspondingly suggest with constant regularity that between spreading/frequency of drug use and the practice of penal prosecution and sanctioning is no significant relationship."⁴² In their study „Evaluating alternative cannabis regimes“, in which they are evaluating numerous studies from Europe and the USA concerning prevalence of cannabis use, Robert MacCoun and Peter Reuter arrive at the conclusion: "The available supporting evidence shows, that [...] the abolishing of sanctioned prohibition (decriminalisation) of cannabis will not increase the spreading of cannabis and other illegal drugs."⁴³

The argument also ignores, that to stop threatening with penal law does not mean, that a state trivializes or ignores use and associated problems. Repression is the most costly, but not necessarily the most effective strategy. By withdrawing repression the legislative body releases tight government means for the benefit of other strategies of practical health policy. With the same means it could improve tobacco prevention among young people for example, and thus save more people's lives than every initiative with regard to illegal drugs in the long run.

„Cannabis is not harmless“

nobody disputes, that the use of cannabis can lead to problems. But this does not automatically mean that for attempting to reduce use every means is proper, because penal prosecution itself

is anything but harmless. One does not have to look as far as Singapore, Malaysia or Saudi-Arabia, where people are executed because of cannabis prohibition, even if, on the other hand, there is no single documented case of a lethal overdose through cannabis. Excess is harmful not only with regard to cannabis use, but also when attempting to reduce use. Quite often penal prosecution has considerably more negative direct and indirect consequences for the concerned than use itself. These negative consequences for the affected are even intended, because the legislative body hopes to be able to deter them from consumption. A lot of people are affected by such problems caused by prohibition.⁴⁴ This means even if problems with cannabis users would increase after legalization, the sum of problems could be reduced, if the present problems through the police, legal authorities and the black market and its attendant circumstances (e.g. lack of consumer protection) would cease.⁴⁵

„We do have enough problems with alcohol and nicotine already“

This argument is ignoring that in the mean time the use of cannabis in our society has been established for decades and that worldwide many millions of people have used and still use cannabis. So, it is not at all the question of introducing a new substance but the question, how the legislative body should react to prevailing use, so that less and not more problems arise. According to statements of numerous experts cannabis is rather less harmful than alcohol and nicotine, two drugs which are still legal. The percentage of users developing a psychological addiction is much lower for cannabis than for tobacco.⁴⁶ Addiction (physical addiction) as with alcohol is not known for cannabis. For practical purposes a lethal overdose with cannabis cannot be achieved, in contrast to spirits.



Repression is the most costly, but not necessarily the most effective strategy



A state has two options to remain credible: It can either try to prohibit all these drugs equally, or it can legalize them equally. Prohibition of alcohol has been attempted in the USA in the 1920s and failed pathetically. With regard to tobacco, a black market which cannot be neglected any longer is already developing due to drastic increases in taxes. On the other hand, obviously a prohibition of cannabis is not comprehended by millions of people and thus cannot be carried out.

Not the least, problems with alcohol and nicotine are connected with the prohibition policy for other drugs as well: The attempt, to express the harmfulness of particular substances primarily by way of a state prohibition, induces us to invert the argument: then alcohol and nicotine can be no drugs at all or rather are relatively harmless. Prohibition policy does not take into account the fact that the risks of drugs do not arise from the choice of substance, but also from use patterns and users (age, psychological problems, user attitude etc.). One can hardly infer associated health risks from the legal classification of a substance. A minimization of damage requires a critical and more discriminate handling of food, stimulants and medicine than could be achieved through plain prohibition or non-prohibition of substances.

*„Legalization
would send the wrong signals“*

It is not the point of penal laws, to send „signals“. Penal law serves a liberal state under the rule of law to protect legal assets against violation through third parties. But it is cannabis prohibition itself which violates legal assets inevitably, by sanctioning people who have not harmed third parties.

If the state wanted to send „signals“, he could that more effectively by carrying out educational

work, for example through informative material or mass media. People do not need vague „signals“, but objective and credible information. Based on this information they could make reasonable and responsible decisions. The rapid increase of use in most of the western countries since the beginning of the 1990s which occurred despite of respective policy concerning cannabis proves, that presumed-to-be 'signals' have not reached the intended recipients for a long time, because state policy lacks credibility. If government wants to re-gain this credibility, then it can not avoid a consistent legal classification of cannabis, alcohol and nicotine based on scientific criteria. If government wants to express value judgements on risks of use, it can achieve this goal by taxation, whereby it simultaneously gains urgently needed financial means for measures of health policy.

*„Cannabis is but a stepping stone
(to other drugs)“*

Numerous studies have refuted this thesis within the last three decades.⁴⁷ To be true, most users of „hard“ illegal drugs as heroin or cocaine have used cannabis beforehand, just as they have used alcohol or tobacco. On the other hand, only a very small number of cannabis users „hard drugs“ later. The large majority of cannabis users has been and is rejecting hard drugs.

As been shown by international comparison, there exists no consistent relationship between the spreading of cannabis and other illegal substances. The use of cocaine increased in the USA in the 1980s, while concurrently cannabis use went down. Countries like Sweden or Japan where cannabis is relatively little known still have serious problems with amphetamine use and abuse of solvents. Use of „hard drugs“ is related with other factors of risk, which are amongst



The large majority of
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others revealed in early use of legal drugs as alcohol and nicotine. In so far as one can speak of „stepping stone drugs“ at all this term would have to be applied primarily to the two substances, which are used as psychoactive substances before cannabis as a rule. According to the available supporting evidence, repressive cannabis policy is no suitable means to minimise problems with other drugs. Such a policy even aggravates health problems, for example when young people due to complicated access to cannabis fall back on other, more harmful substances (e.g. solvents, gas, lighter gas, solanum).

„ International drug treaties
forbid legalization“

The stipulations compel signatory states to prohibit illegal trade, import, cultivation and posses-

sion for the purpose of trafficking by criminal law. With regard to illegal possession or cultivation for personal consumption the request for prohibition depends on constitutional and fundamental legal conditions. Definite implementation is left to signatories. Thus penal liability could be made dependent on exceeding restrictions of quantity or a socially harmful effect. The treaty of 1961 explicitly excludes the cultivation of cannabis as a useful or ornamental plant, without giving any instructions with regard to the content of active substance of these plants. It does not stipulate when plants must be included into the treaty. There is leeway to be exploited for legislative implementation. The treaties also allow signatories, while observing certain statutory periods, to resign and to join again with reservations if necessary.

Joe Wein, Yokohama

*repressive cannabis policy
is no suitable means to
minimise problems with
other drugs*

4. A Global Cannabis Regulation Model

Meanwhile, the consumption of cannabis has spread globally. Supply and demand have established a cannabis market in almost every country. Worldwide trade flourishes, state borders are no obstacles. Once supply encounters

demand a cannabis market develops. The sum of all local and regional markets is the "global cannabis market". The fundamental characteristic of this market is its illegal status, from which derive fundamental economical and political consequences.⁴⁸ It is a market

devoid of any law or control there are neither standard regulations of trade nor of use. Instead of legal security, you have the right of the toughest. Instead of protection of the youth, there is profit above average for wholesale. The illegal status of the cannabis market makes for higher profit margins than a legal market, especially for wholesalers. But politics ignores the global cannabis market. Its existence, in spite of 80 years of cannabis prohibition, above all shows the failure of the prohibitive drug policy. Not a single state on this planet has ever achieved the elimination of an existing cannabis market. So, governments can choose between two options after the failure of cannabis prohibition. Firstly, they can continue denying their responsibility for the regulation⁴⁹ of their national cannabis markets and continue ignoring it with all described side effects. Or secondly, they can live up to their responsibility and provide for a legal regulation of it. The core of this task is to transfer an illegal into a legal market. Only such a fundamental

change of the global cannabis market can abolish many unintentional, negative side effects of prohibition and the resulting black market.

At first glance, middle of the road solutions as for example decriminalisation or depenalisation are but compromises between the legal and illegal status.⁵⁰ But such compromises raise new problems because it would mean trying to reform prohibition, with all consequences.⁵¹ It is often overlooked, that the illegal status prevents effective prevention and harm-reduction both from the private and government side.⁵² Health control is only possible through a legal cannabis market. Legalizing only one part of the production chain means having problems at the interface between the legal and illegal part of the production chain, as e.g. in the Dutch "back door-problem".⁵³ Therefore, a legal cannabis market needs both a legal production and a legal trade chain. A legal trade chain starts with production of cannabis and through wholesale finally arrives at retail trade and the consumer. The British government was able to gain positive experience with a regulated legal cannabis market in its former colony India in the 19th and the beginning of the 20th century.⁵⁴ In the following chapters we will describe six steps, termed modules, and analyze government regulation prerequisites:



1. **Production of cannabis**
2. **Import and export**
3. **Wholesale and retail trade**
4. **Cannabis price and taxation**
5. **Consumption control**
6. **Remaining law enforcement tasks**

The core of this task is to transfer an illegal into a legal market

Global cannabis trade needs each of these modules. While there is a great range of respective national solutions, governments must carry out particular legal regulations in each module.

Module 1: *cannabis production*



It all begins with the production of drugs.⁵⁵ There are three possibilities to meet the demands for cannabis, which can be introduced at the same time:

- Import from other countries
- Domestic plantations
- Cultivation for personal consumption

The easiest solution is “cultivation for personal consumption” in combination with either “domestic plantations” or “import from other countries”. Both combinations enable coping with the demand for cannabis, whereas “cultivation for personal consumption” only appeals to a small number of consumers. Through plantations or importing sufficient cannabis can be provided for a large demand. The most important goal of legal cannabis production is preventing a black market directly at the source. One could do without legal regulation of cannabis production, but there is always the danger of a black market. In addition, any legal or tolerated retail trade, as e.g. in the Netherlands would have to be supplied through illegal sources. The so called “back door-problem” can only be solved through legal cannabis cultivation.

Basically, the cannabis market should be controlled as little as possible and as much as necessary legally. Because cannabis is a drug, particular necessary safety precautions are described in each module. In the module ‘production’ the

most important safety precaution is preventing a parallel black market. The best way to do this is by way of an open market for all legal large scale producers and through a restriction of the non-commercial self cultivation of, for example, a hundred plants per person. Whoever exceeds this limit has to register the cultivation and pay taxes. An open cannabis market can do without protective duty and similar trade impediments between states, developmental aid and other subsidies for planters in the domestic and foreign market. It can also do without preference of domestic cultivation over import and unnecessary administrative obstacles as well as any form of price regulation. Apart from the same restrictions with regard to age, when one could cannabis consumption, a legal regulation of self cultivation should be limited to a specifically allowed number of plants and trade prohibition. Possibly “cultivation for personal consumption” can be adapted to existing regulations for the manufacture of beer, wine or tobacco for personal consumption (e.g. the “home brew laws” in the USA), but of course one would need a significantly higher density of regulation. The cultivation of hemp is possible under most climatic conditions. Where the climate is particularly inclement at least cultivation of plants supported by lightning engineering is possible. Conflicts with international law and international organizations should be smaller here than with import. Cannabis cultivation on plantations for wholesale and retail trade needs a certain minimum of government supervision, to ensure as much consumer protection as possible. Firstly, we recommend an amendment and extension of the task



‘Cultivation for personal consumption’ only appeals to a small number of consumers. Through plantations or importing sufficient cannabis can be provided for a large demand

of those authorities which have been responsible for the control of drug markets so far anyhow and exist in every country, reporting to the UN-



The cultivation of hemp is possible under most climatic conditions

drug authorities, as e.g. the "Commission on Narcotic Drugs". The advantage of national authorities being, that they have been experts in dealing with drugs for centuries and that there is

no need in setting up a new authority, a solution almost cost neutral. But one has to expand the very strict task of these authorities. In the future, they should be in charge of registration, permission and supervision of cannabis plantations in the domestic market and import as well as export. Prerequisite for a cannabis plantation in the domestic market is the permission of this authority. Prerequisite for the permission is regular control of the cultivation by independent inspectors, in order to keep quality standards of cannabis, as well as ecological minimum standards (disposal of waste water...). A drug law authorization by state authorities for cannabis as a stimulant would be inappropriate and excessive. However, it is sensible and important to keep respective national standards in accordance with existing law affecting food processing and distribution.

For importing from a third state the same prerequisites apply and additionally the explained procedure concerning import/export of cannabis in the following module.

Module 2: import and export of cannabis



Beforehand one has to regard, that the strategy which countries will choose will have significant economical effects, assuming they want to regulate in the first place. A number of economical reasons are in favour of production in the domestic market: From production to wholesale trade a significant increase in value will be created, which can be achieved within the country. Thus many jobs with corresponding tax incomes could be created. Conversely, one has to consider, that the

previous production in traditional cultivation countries would be reduced too. This could lead to considerable problems in these mostly poor countries. If by and by a worldwide cannabis market was established which is extensively legal, these problems would become less acute. Then, the free market will decide on production locations.

There are a multitude of countries, where cannabis is cultivated traditionally and which at present supply a large part of the cannabis consumed in other countries.⁵⁶ It would be natural, to import cannabis from there for a

future legal market. In most cases, the production of cannabis, provided it was legal there, would contribute to the economic stabilization of developing countries.

Although this solution has some disadvantages for the first countries which will export and import, in the beginning, they would have to convince a cultivating country to regulate their production and deliver legally. In what respect this trade is congruent with existing international treaties, a legal report will determine in the last chapter. Also, on the international political level extensive resistance has to be expected. At least organizations and authorities dealing with international drug conventions and controlling the currently legal trafficking of drugs should be integrated. In order to guarantee international control, national control authorities shall continue reporting on the domestic cannabis production as well as on importing and exporting to the UN in Vienna. In order to prevent unnecessary bureaucratic impediment of global cannabis trade, but at the same time guaranteeing adequate control, we favour a control regime adhering to the "International Opium Convention" of 1925. This Convention, a forerunner of present day international drug control treaties, at least contains more elegant ideas than treaties of today. We take some central principles out of this Convention and adjust them to present day requirements, i.e. not all details of a convention almost 80 years old are applicable today.

According to this Convention importing and exporting of cannabis are legal, provided that there is an official certificate (Article 11, Indian hemp).⁵⁷ In essence, the procedure consists of a permit for exported cannabis by the national authority in the producing country, the export certificate - responsible is the same authority as

in the module 'production of cannabis'. The same applies for importing cannabis. In this case, the importing party needs a permit to import cannabis, the import certificate from the national authority. Once both permits have been received, cannabis can be delivered from the producing country into the country of the importing party equipped with copies of the permits.⁵⁸ Permits for exporting will only be granted to registered producers and traders of cannabis. The advantage of this procedure by the League of Nations being, that basically each legal importing and exporting of can be monitored in the whole world. Back then you had additional similar procedures on the bilateral level. One example is the exchange of notes between China and Germany on the 31 December 1924. In this note, it was agreed, that German exporters of narcotic drugs were only allowed transport if they were in possession of one German export certificate and one Chinese import certificate.⁵⁹ Another example is the bilateral convention from 21. December 1936 between India and France with regard to the sale of opium in the Indian province Chandernagore.⁶⁰

In contrast to League of Nations times, today there are fast and powerful computer programmes and the internet for exchanging certificates, delays can thus be avoided. Illegal trade could not compete with such a supervised legal trade because of its significantly higher costs of transaction and its regulatory framework, dictated by illegal status. Countries where cannabis remains illegal for the time being, cannot participate in this system. Through annual national reports to the UN there would be global supervision of legal importing and exporting of cannabis.

There are a multitude of countries, where cannabis is cultivated traditionally e.g. Morocco



Illegal trade could not compete with such a supervised legal trade

Module 3: *wholesale and retail trade of cannabis*



There are also different possibilities to get cannabis to the end-user legally.⁶¹ Conceivable would be sale through government outlets,

pharmacies, specialist shops or even a more or less free sale in supermarkets and kiosks, as is the case today with tobacco and alcohol. But before the question of the best retail trade system can be cleared, some remarks about wholesale trade of cannabis must be added.

For cannabis wholesale, a government permit is necessary too. In this way wholesalers are legitimated to purchase cannabis from producers and, if they possess an import certificate, to import cannabis from other countries. On the other hand, the permit gives them the right, to trade cannabis to retailers. It would be possible theoretically to transact the wholesale trade through a state agency, but in practice the mostly poor efficiency of state administrations makes this a dubious affair and additionally there is no clearly discernible advantage as far as safety is concerned, so that we recommend a private wholesale trade. Control of wholesale trade should be secured through different measures, which in similar form had been developed by the League of Nations back in 1925. At the core of these measures was double accounting, this has become an obligation and has been anchored into trade laws of many countries already. It should be an obligation for cannabis wholesalers irrelevant of the legal form of their enterprise. Control authorities must be legitimated to access the books of wholesalers at any time. Supported by regulations concerning consumer protection described below and the above listed regulations for government control of importing and exporting, a free market is the best guaran-

tee for fairly priced cannabis. Especially in producing countries there could be dispute, how and in what way an integration of the global cannabis trade into the trade regime of the "World Trade Organization" is feasible.

A key-role with any regulation of cannabis plays retail trade. Here different requirements have to be considered, especially consumer and youth protection, some government control and the acceptance of sales points by the consumers. Because we are talking about the purchase of a stimulant with manageable risk and because consumers should accept distribution shops as appropriate, the sale should neither take place in government distribution points nor in pharmacies.⁶² After all, the predominant part of cannabis consumers are neither in danger of becoming addicted nor ill, moreover many pharmacists refuse to sell cannabis. On the other hand, purchase of cannabis should not take place just everywhere, e.g. in filling stations or supermarkets. Incidentally this also applies to alcohol and tobacco. Also, purchase through vending machines is to be repudiated. Thus dispensing of cannabis in special sales points (e.g. cannabis special stores), which are tailored to the needs of cannabis consumers, are the practical way.⁶³ In each country it will have to be decided by the political body individually, whether cannabis can also be consumed within the distribution points or whether they should remain pure sales points. We suggest allowing both. There is no argument, why cannabis consumers should be not permitted a common place of consumption in contrast to alcohol users and in addition not permitting use within these places would make a socially integrated cannabis culture impossible. More difficult will be the decision in regulating countries, whether the simultaneous serving of alcohol shall be allowed.



Dispensing of cannabis in special sales points are the practical way

There is no argument, why cannabis consumers should be not permitted a common place of consumption and in addition not permitting use within these places would make a socially integrated cannabis culture impossible

Here, the respective culture and religion, and the attitude towards the other drug alcohol will be decisive. Irrelevant of these questions, some regulatory framework should guarantee an optimum of customer security and contribute to cannabis consumption in society where the risk is as small as possible:

Youth protection:

It is desirable, to set an age limit when young people might legally start consuming drugs as high as possible. Use of cannabis affects children and young people in a much more problematical way than adults because of psychological reasons as far their personal development is concerned. As cannabis, under momentary conditions of the black market, and alcohol, under legal conditions with age limits on purchase are showing: this goal is hard to come by. Probably entirely different (cultural, social) influencing factors are decisive rather than a legal regulatory framework.⁶⁴ Nevertheless the introduction of age limits for purchasing cannabis is important and makes sense. Limits have to be socially integrated and come into force through social acceptance. Insofar each society must make the decision, where it wants to set its age limits, for example at 16, 18 or 21 years. Depending on user structure and cultural ideas 18 probably is the desirable age, while 16 is the more realistic one, if one really aims to prevent young adults, of all people, to fall back on a possibly re-forming black market. For psychological reasons as far their personal development is concerned, an age limit of less than 16 years is not advisable. Each society must determine the best national regulation by its own, while at the same time it has to have courage to reverse sub-optimal decisions.

Training of sales personnel:

Sales personnel of cannabis special stores should receive a brief specific training, in order to be able

to advise customers at any time sufficiently. One component of this training should be: the history of cannabis, medical-pharmacological knowledge about the use of cannabis and other drugs, knowledge about safer use, measures of treatment and the drug help system etc. Even if, at present such background knowledge is not expected of landlords or shop assistants who are selling or serving alcohol, this would be a significant qualitative reevaluation. Qualification could be gained during a course lasting several weeks for example. Equally, seminars could be given by independent associations in co-ordination with state authorities, for example. Beyond mere permission by the supervisory authority, even a quality seal for „qualified cannabis-traders“ would seem likely.

Product declaration:

Product declaration is appropriate. It would consist of information about the year of manufacture, kind, price, weight, approximate THC-, CBD- and CBN-content, cultivation manner and origin of the product. Additional seals could be awarded by independent institutes, for example for “ecologically cultivated cannabis” or “fair-trade cannabis” on a volunteer basis. Here, state regulations are not necessarily required.

Use directions:

With each purchase should come short directions for use (similar to those for medicine), listing information on pharmacology, content of active substance, effect, dosage, side effects and risks of cannabis use.

Information on cannabis:

Further extensive information about cannabis should be on display in every sales point (free brochures, books for sale...). It should contain prevention messages, which draw attention to problematic use patterns of cannabis and offer help (counselling, telephone numbers, doctors...).

Age limits have to be socially integrated and come into force through social acceptance.



Additional seals could be awarded by independent institutes. State regulations are not necessarily required.

Module 4: *price of cannabis and taxation*



A legal cannabis market can only last, if it is more attractive than an illegal market. The most important prerequisite for the competitiveness of a legal cannabis market is the price of cannabis. It should be as low as possible. Cannabis producers or traders are responsible for price formation with regard to demand. Three factors determine the price of cannabis: Firstly, the cost of production (primarily cultivation, transport, portioning for retail trade, quality control), secondly, the profit of producers/traders and thirdly, taxes on trade. In addition to this net price, in retail trade users would pay the respective value added tax (renouncing value added tax would be tantamount to state subsidies). In sum, this gross price must be lower than the price in the black market. The black market price differs particularly in two factors from the legal price: it contains neither taxes on trade nor value added tax but its costs of transaction are significantly higher, in particular as far as transport (smuggling) is concerned. Plus, an illegal market is clearly less transparent (sales points, opening times, accessibility) than a legal market. Moreover, the incentive for customers to buy on the illegal market will be lowered through lack of quality control and the risk to come into contact with the police. Altogether these factors make it more difficult for illegal traders of cannabis to find and bind new customers permanently. In a free cannabis market an illegal supplier stands no chance, except if the state would introduce distorting measures. Price regulations by the state would have negative effects on the cannabis market, after a while. This is true for an affected high-price policy in order to prevent a resale on the

black market, as well as for a cheap cannabis price, in case it was subsidized by the state.

Both measures would affect the stability and the competitiveness of a legal market negatively as opposed to the illegal cannabis market and therefore are to be repudiated. Legally purchased cannabis will create as much demand in a nonexistent illegal cannabis market as legally bought beer will in a nonexistent illegal beer market. In the same manner, an affected cheap cannabis price would possibly lead to an unnaturally strong demand, but mainly it would be a waste of tax money. Applying the considerations so far to the question of a special cannabis tax – there are a couple of special taxes existing in many countries for tobacco, alcohol or gas - one arrives at the following result: An additional “cannabis tax” would increase the legal price of cannabis even further. This would mean, that the difference between the legal and illegal price of cannabis would be reduced even more.

But as soon as the legal price would exceed the illegal price a parallel black market would emerge again. With regard to cigarettes, this development can be observed in many countries nowadays. Because tobacco taxes are too high parallel black markets for smuggled cigarettes are created, with all negative side effects of illegal markets. The legitimacy of special taxes is on stake in principle. In the case of cannabis we repudiate taxes for a specific purpose, e.g. even if all tax income would go to the treatment of those who have become ill through use of cannabis. In addition to the price argument it would be impossible to cover the actual costs of treatment facilities through such a cannabis tax completely. Either the income through the cannabis tax is too low to cover the costs or it is too high. In

In a free cannabis market an illegal supplier stands no chance, except if the state would introduce distorting measures

the first case, additional money would have to be provided, in the second case, one risks wasting money in contrast. It would be both more simple and more fair to cover the costs of such clinics out of the general tax income (including taxes on trade by cannabis traders and value added tax by cannabis users), thereby exactly meeting the need, and – much more important – to grant to each ill person fast and simple help through a fair health system. Particular costs are not to be expected. At least neither the Netherlands nor other countries with a policy of tolerance have such costs of treatment. As with other goods preventing an affected high

price of cannabis by an oligopoly or even a monopoly is the task of antitrust laws and authorities in each state. They should carefully adhere to this task, especially at the beginning after introducing regulation into the once illegal market. Altogether government will distinctively profit from a legal cannabis market by renouncing special taxes and price regulation by the state. GNP will grow through lower costs for law enforcement bodies (police, customs, jails, courts), through more legal jobs (income tax and wage costs), higher legal use and a reduction of corruption deriving from reduction of the black economy.

Module 5: consumption control



Within almost 80 years of global cannabis prohibition not a single state has achieved to educate its citizens to abstain from cannabis. In each country of this planet

there exists an illegal cannabis market and no country could and can regulate the number of cannabis consumers. The same is true for each legal cannabis market, a state regulation of the number of users is impossible. Therefore, the goal of state policy can only be to promote particular modes of consumption, which avoid harmful side effects as far as possible. In the end, this remains a social task, for which every culture will have different solutions. In contrast to illegal markets legal markets enable an honest, open discussion, without fear of criminal law enforcement. Thus the basis for appropriate cultural integration of cannabis use will be created.⁶⁵ One side effect of such debates will be the de-mystification of cannabis with among young people. Cannabis could become much too boring to be

integrated into subcultures. Without the “attraction of prohibition” there is no “subversive” cannabis use, part of its integrative power gets lost. Government can help that development by preventing “affected demand”. A strict prohibition of any advertisement for cannabis is the most efficient method. Advertisement for tobacco and alcohol are negative examples for stimulating demand, especially among the youth. Actually, in many countries the average age when smoking starts is lower than 16. It is a fact that tobacco advertisement is often targeted at young smokers, as for example examinations of the “Joe Camel”-advertisement have proven.⁶⁶ The prohibition of advertisement means effective support of the chosen age limit with regard to cannabis use. In order to keep it simple we recommend, that retail traders control the ages of potential consumers. They control by being shown cards of identity (either identity card or driving licence). If they sell to illegitimate persons, the licence of the retail trader will be revoked. Part of the negative effects of cannabis consumption can be traced to the simultaneous use of tobacco. In

legal markets enable an honest, open discussion, which is the basis for appropriate cultural integration of cannabis

terms of harm-reduction tobacco-free use of cannabis as a secondary preventive measure could be promoted for example. Two possibilities which have been tested in practice and are accepted by consumers are either the usage of vaporizers or the substitution of tobacco by dried herbs (e.g. 'Knaster' ⁶⁷). Separating tobacco and cannabis use at the user level poses one of the most important challenges as far as prevention is concerned. Adapting to national regulations of food control, consumer protection has to be regulated for cannabis as well. Each purchased unit of cannabis must cope with particular binding quality standards, e.g. limiting values for heavy metal, fertilizer and pesticides and other toxic substances. Depending on national food law the limiting values should be checked e.g. by independent, certified food chemists on a regular basis. In order to enable the best possible dosage, labels in retail trade should contain information on the content of the most important active substances of cannabis, at least the THC-, CBN- and CBD-value. With respect to producers und traders of cannabis we recommend to introduce two seals for "ecologically cultivated" and "fair trade" cannabis, in correspondence with regulations for already existing

seals on a volunteer basis. But as far as purchase or possession of cannabis is concerned, there should not be any limitations on quantities, because it would require complicated bureaucratic controls on the one hand, and on the other hand, it could not be justified. Moreover would medical prescriptions for purchase of the stimulant cannabis be but a mistaken interpretation of medical tasks. In many countries this would also be a social hardship, since a large part of the population in developing countries cannot finance consultations of doctors, or there is not even a doctor in the vicinity.

Bringing cannabis privately into or from countries which have a legal cannabis market should be regulated up to a duty-free limit as with tobacco and alcohol. This means, customs will be relieved of its task to control passengers for possession of cannabis. Likewise, foreign consumers can buy in cannabis special stores and import or export cannabis according to customs orders for private use. Bilateral treaties with countries without legal cannabis markets should contain a waiver of extradition for domestic and foreign consumers and traders of cannabis, for violations against foreign drug laws.

*Module 6: remaining law enforcement tasks
after regulating the cannabis market⁶⁸*



Especially during the transition, after legal regulation of the cannabis market, it is the task of the police to protect the legal market. Customs and border guard must seize smuggled and imported cannabis without import certificate. Criminal investigation drug departments still have the task to stop

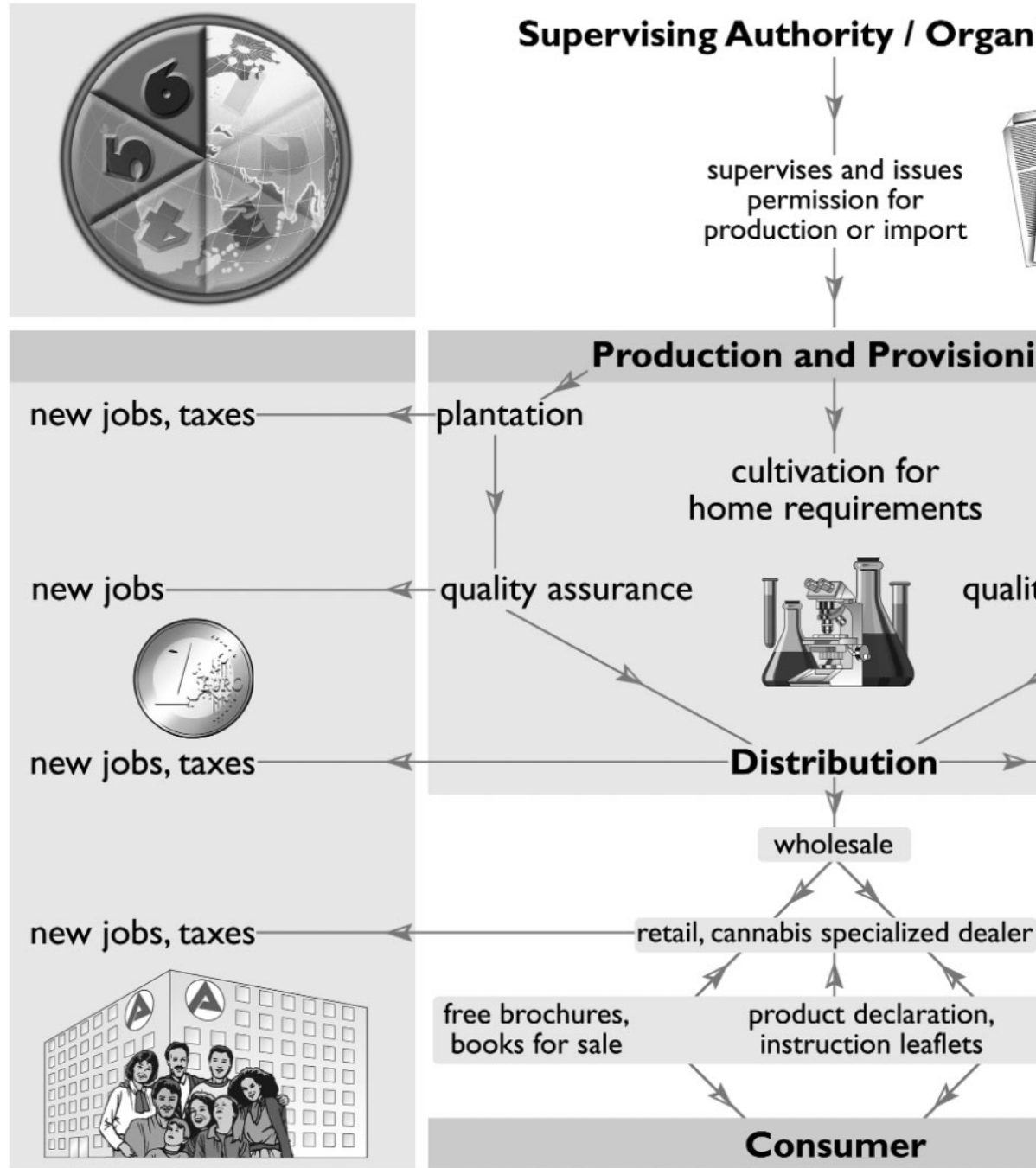
illegal trade. Especially important is the prevention of monopolies and trusts and other forms of commercial offences in a legal cannabis market. Rackets presumably occurring during the transition at legal wholesalers and retailers of cannabis must be stopped by the police. In order to protect children and the young, it is the task of the police to spot check cannabis special stores with regard to sale to minors. If there are violations against the age limit, the licence of the

cannabis special store has to be withdrawn. Task of the respective special police responsible for controlling food purity (in Germany: 'economy control', [Wirtschaftskontrolldienst]) is to spot check the purity of cannabis products (in addition to the legally stipulated regular quality controls). When leaving a country with a regulated cannabis market in the future, there will be no need for control through customs, except for usual controls of goods which have to be declared.⁶⁹ "Drug controls" then are the task of any

neighbouring country, if this country still prefers an illegal cannabis market. In order not to threaten too much the quality of life of inhabitants of places close to the border by alien drug tourists, an integrated and efficient retail trade at the border should be guaranteed. In order to prevent a threat to road traffic by cannabis consumers, realistic limiting values are introduced, which account for pharmacological properties of breakdown products of cannabis (THC-COOH in ng/ml).

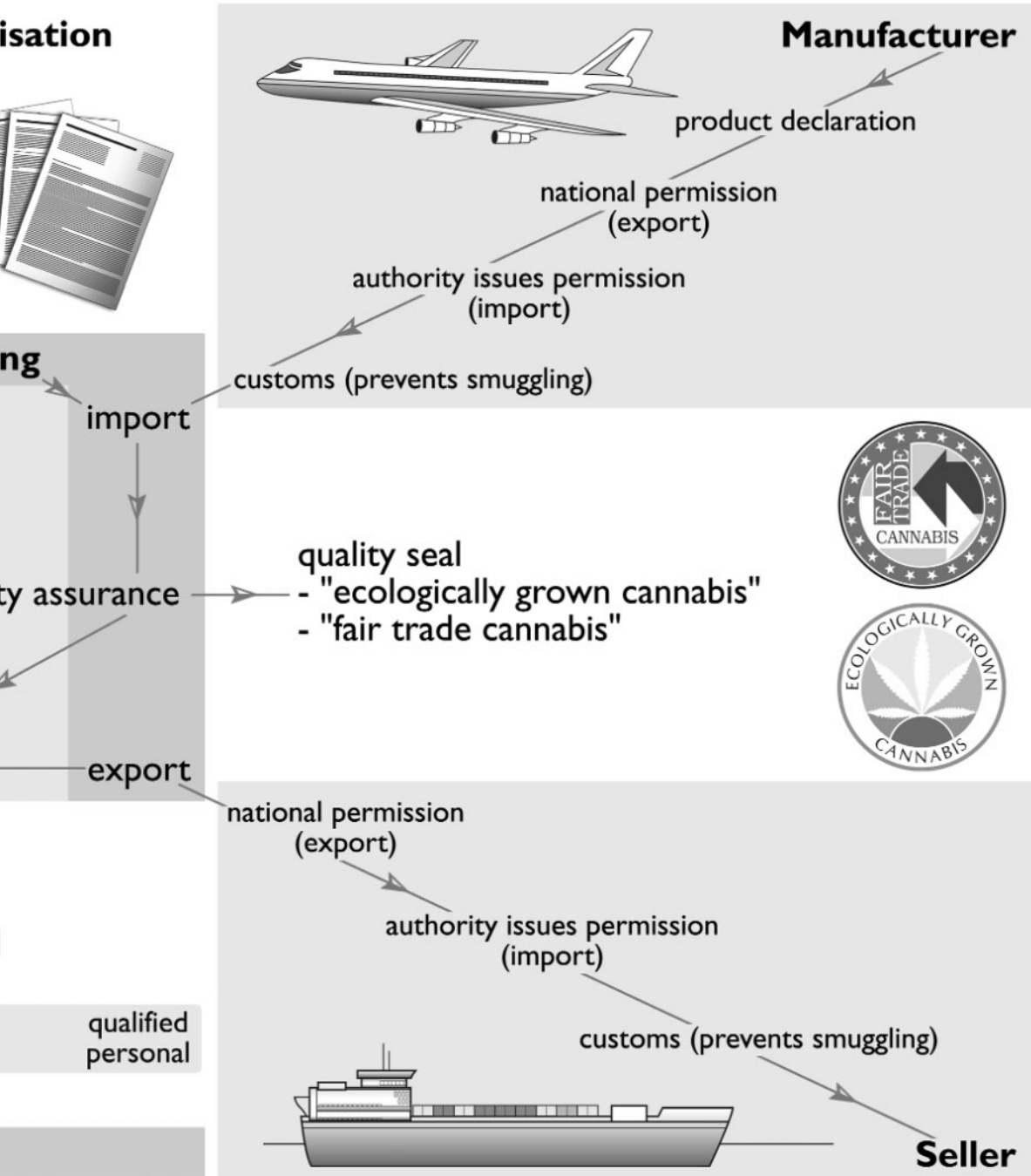


Global Cannabis Regulation Model



Targets:

- discharges the consumer from allegation of criminal actions
- exoneration of justice
- creating new jobs
- additional tax yield
- displacing the black market
- to eradicate corruption and black economy
- to demystify the use of cannabis for children and young persons



The police watches over:

- the adherence of legal protection for children and young persons
- the use of cannabis in traffic

The economic control service watches over:

- the purity of products

5. The international contractual confines for national regulations with regards to cannabis – beyond prohibition

In particular, there are three multilateral stipulations, which make up the framework. The Single Convention of 1961 (together with supplementing protocol of 1972), the Convention on Psychotropic Substances of 1971, and the Convention Against Illicit Traffick in Narcotic Drugs and Psychotropic Substances of 1988. Even if European agreements as e.g. the Schengen-Treaty of 1985 as well as the implementation agreement to the Schengen-Agreement of 1990 (Schengen II) are also dealing with questions of narcotic law and its application in some chapters - the European Union has no legislative authority in this field. Still, the implementation agreements of 1990 contain an obligation to stop illegal export, purchase, procurement and distribution of cannabis products by means of administrative and penal law (Article 71 II). However, measures meant to limit demand remain in the scope of responsibility of the respective signatories (Article 71 V). There is also a common statement on Article 71 II, according to which prosecution under criminal law of purchase and distribution are in force on principle, deviations are to be tolerated nevertheless, as long as it is guaranteed that consequences for other contractual parties are stopped. According to France, these limits were exceeded e.g. in the middle of the 1990s with regard to the Dutch "coffee-shops", because France detected an increasing drug tourism of French citizens. Their reaction was to cancel the European drug summit in February 1996 in The Hague which had been convened on initiative of the Dutch government.⁷⁰ A consequence which given the objective context seems bearable.

So, it is the international treaties mentioned in the beginning, which form the foundation for international control of narcotics. Naturally, the stipulations are only in force in those states, which have ratified these conventions. Yet, an exertion of influence even outside of this area seems intended. For example, according to Article 3 VII of the Single Convention, each "resolution of the commission based on this article" shall be communicated "to all Member States of the United Nations". Furthermore, it has to be considered that international stipulations do not contain international penal law in the sense of material penal law. They are not penal provisions to be applied directly, and thus do not represent international penal law in the true sense, but regulations which oblige the contractual parties to particular measures in the field of penal law, penal prosecution, extradition and legal assistance (e.g. Article 4/ 1961) - in some parts in a very simple form. National legal implementation is within each contractual party's own responsibility. This legal implementation is subject to the respective constitution which can be inferred from all conventions (cf. Article 36 I/ 1961, Article 22 I a/ 1971, Article 3 II/ 1988). However, it has to be considered here that it will regularly transpire from the respective constitutional law itself. In Germany, for instance, ratifications (ratification law) gain the status of common federal law. This law is always judged in relation to higher ranking constitutional law. An obligation to issue a law, that would be unconstitutional, could not be agreed to in the first place. Consequently, conventions have to be interpreted in every regard concurrent with constitutio-

nal law. This also applies in Germany, particularly to the principle of commensurability, in which context e.g. the suitability of measures has to be ascertained.

According to the respective preambles of the conventions, the agreements are founded on the concern about "health and well-being of humanity" (1961, 1971 and 1988) and "the economical, cultural and political foundations of society" (1988). The conventions are referring to the respectively assigned lists and tables into which psychotropic substances and increasingly also elements thereof are being classified depending on evaluations of dangers and - in particular medical - considerations of utility. The evaluation of dangers depends on deliberations of addiction and abuse potential. In list IV (1961) and supplement IV (1971) appear those substances which on the one hand, are said to have a strong potential for addiction, or on the other hand, are suspected to have a considerable risk of abuse, without a therapeutic point of view counteracting these evaluations. Cannabis is also subject to this assessment (list IV/ 1961). The special attentiveness given to it by the legislative body becomes clear in the special provision of Article 28 of the Single Convention (control of cannabis).

Regarding substances included in supplement IV, the Single Convention (1961) stipulates to limit production, manufacture, import, export, trade in, possession and use exclusively to medical and scientific purposes and to prohibit and combat non-medical use thoroughly, insofar as a contractual party thinks that "the prevailing conditions in its country render" this procedure "the most appropriate means of protecting public health and public welfare" (Article 2 Vb). Moreover, according to Article 2 VI, VII special provisions go for opium, coca and Cannabis. According to Article 28, a contractual party can allow the cultivation of cannabis plants to gain cannabis and cannabis oil, if they observe "the control system

for opium poppy seed provided for in Article 23. (Article 28 I). This system provides for a thoroughly controlled cultivation which is subject to approval and tied to the obligation to completely sell the yields to a central state facility. "The agency shall... have the exclusive right of importing, exporting, wholesale trading and maintaining stocks" except for medical purposes (Article 23 II e). According to Article 28 III, "the parties shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant". In order to ascertain what is meant by misuse, Article 4 c has to be consulted. Because here it is again made clear, that "use and possession of drugs" is limited "exclusively to medical and scientific purposes". In sum, there can be no doubt about the context of Article 28. Consequently, the norm cannot be understood by one contractor, without further ado, as a legal loophole for the production of societal demand for use. Much less, as Article 36 I a contains the obligation for the contract partners, subject to the respective constitutional order, to adopt required measures so that intentional violations against the stated context in the convention "shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty". Consequently, it is obvious that not only according to Article 4 c, but also according to the entire system and spirit of the convention (cf. Article 2 VII, 19ff), no use of cannabis apart from medical and scientific purposes is intended. It is not intended to meet the societal demand of use e.g. through import (s. Article 19, 21) at all. However, the obligation to submit import, production and traffick of cannabis to a more or less penalizing prohibition, is itself subject to general suitability and constitutional law (s.a.). So, one contractual party could consider such provisions regarding cannabis

unsuitable to protect public health and public welfare. Such an interpretation would not be far-fetched. Because it can well be asked, whether cannabis-products really are a threat to health for the overwhelming majority of users who in their entirety make up for a fair portion of the population and public health. From a physical perspective, mixing cannabis with tobacco is regarded quite often as the most dangerous aspect. From a psychological perspective, there are certainly problematical use patterns in either isolated cases or in problematical social contexts, in particular socially deprived young people. After all, cannabis misuse here will be but an interchangeable expression but not the cause. In these cases one can still ask generally, whether prohibition, however designed, could be suitable at all to counteract possible aspects contrary to public health. It seems that the apparently ubiquitous dissemination disputes this notion. Especially, since preventive approaches of very differing kinds are not being used which, ultimately, would be more suitable possibly. Also, one has to take into account, at least in the context of constitutions which contain a principle of commensurability as the German constitution, the relation to different individual legal assets (e.g. general freedom of action, freedom of trade etc.). Considering the controversial assessment of the dangerous nature of cannabis (s.a.), prohibition could very well be evaluated as unproportional. Should one contract partner adopt one of these interpretations, he should be at liberty to have other regulations. In this context, e.g. the particular attention of the convention on controlling and limiting international distribution developments could find notice. Therefore, an almost state-run production and distribution system above final sales as opposed to imports and privately run wholesale could be felt as less far-reaching. Associated with this would be a legal (not just tolerated) system of privately run

small sales points. But also within the scope, which ranges from this scenario to complete prohibition with penal law, a multitude of balancing acts can be thought of. The following pages will have a closer look at these acts.

The ‚Convention on Psychotropic Substances‘ of 1971 extends international control on such substances, which did not receive consideration in the Single Convention. With regard to cannabis no consequences are resulting here which go beyond the regulations of the Single Convention. The ‚Convention Against Illicit Traffick in Narcotic Drugs and Psychotropic Substances‘ of 1988 only deals with aspects of criminal law. Although the main emphasis of regulation is on skimming off excess profits (money laundering) and international cooperation, nonetheless it strives for a thorough incrimination and thus also the regulation context of cannabis is affected considerably. According to Article 3 (“criminal offences and sanctions”) paragraph 1, each contractual party adopts “such measures as may be necessary to establish as criminal offences” the following actions “when committed intentionally”. Then a number of actions follow which on the supply side comprise about all forms of actions on different levels and in different degrees of participation, amongst others also “the cultivation of...cannabis plant for the purpose of the production of narcotic drugs” (Article 3 Ia ii). On the demand side, Article 3 II explicitly provides for the obligation, to set matters of facts constituting an offence, which are meant to capture possession, purchase and cultivation for personal use. Here, the notion that demand causes supply and thus is involved in threatening public health finds expression. But it has to be noticed, that the majority of matters of facts constituting an offence extend the obligation for establishing penal law onto such conditions and acts, which from an organizational and economical perspective are succeeding the

immediate forms of actions (e.g. import, manufacture, distribution) and did not receive sufficient attention in former conventions. For each case, where there are already regulations for forms of actions in the conventions of 1961 and 1971, the new demands for establishing penal law are subject to the reservation that the respective action takes place outside of regulations of the earlier conventions (s. Articles 3 Ia i, 3 Ia ii and 3 II). A corresponding legal idea can also be found in Article 14 I, according to which measures to be taken with regard to illegal cultivation and demand should not be "less severe" than those based on the earlier conventions. Moreover, Article 3 II contains a reservation with regard to respective constitutional principles and essential features of the legal system. But this reservation is effective anyhow. After all, the conditions for the above sketched alternative model for dealing with cannabis cannot be judged differently even on the background of the 1988 convention. Especially, because further actions to be incriminated, according to the convention, are put under the explicit or incidental reservation of being "illegal". Meaning they would only be effective in the case of actions outside of the allowed system. Anyhow, claims formulated in the convention are in part not in accordance with traditional principles of a criminal proceeding founded on the rule of law. For example, it is obvious that in systems founded on the rule of law, which are obliged to the principle of equality, a special criminal law for particular offences cannot claim legitimacy. According to Article 3 VII, for example, an obligation could only be implemented, if it had immediate validity in all other fields of criminality simultaneously. Such demands can thus only be understood as a programme, but not as a compelling obligation.

Below the model of domestic production of cannabis by private economic sales points for purposes of use a multitude of further variations are

imaginable. The obligations of criminal law, which found their way into the conventions, are not only subject to constitutional law, but leave room for manoeuvre for the national legislative body. To be addressed is a distinction with which not all systems of law are familiar: namely, between penal law, having a graded system of in particular money sentences and prison sentences, and summary offence law, having fines as sanctions. A corresponding low threshold classification in particular of actions in preparation of use would be in accordance with the obligation of the conventions and is in part already undisputed practice of different contractors. Furthermore there is the option, depending on the respective law system (s. Article 37 IV/ 1961, Article 3 XI/ 1988), to carry out an exclusion of insignificant breaches out of the punishable or rather penal prosecution with respect to procedural or substantive legal matters (principle of *bagatelle*). Contract states, which provide in their penal administration of law for a more or less general principle of opportunity (in Germany realized in the summary offence law), have another option, to defuse prohibitive conditions. Here use of cannabis can remain sanctioned, but on the foundation of prerequisites defined in guidelines the penal provisions are not carried out. The "tolerated" system of the "coffee-shops" in the Netherlands is working on this basis. Additional softenings of prohibitive conditions are imaginable.

As a result, it still has to be noted, that a contract partner can establish a model of domestic production of cannabis with privately owned sales points for purposes of use on the background of existing multilateral stipulations, if he considers in particular a penalized prohibition of cannabis as unsuited to protect public health or as unproportional on the foundation of his constitution. Even though it seems that conflicts among the contract partners are pre-programmed, still the

community ought to accept this, if otherwise the treaties remain intact. The more effective the consequences of such solutions on third countries are limited, the more smoothly this solution will work. The more one deviates from the basic goals of the arrangements within any legalization model, the tenser the contractual obligations will become. Keywords would be domestic and international control.

If for instance, the total societal demand of use were met by imports or if import and export and wholesale fell into private hands, this would probably mean going too far.

The conventions provide for mechanisms solving conflicts in these cases (Articles 48 of 1961 and 32 of 1988). Irrelevant of this, each contract partner has the liberty to make proposals for change (Articles 47 of 1961, 30 of 1971 and 31 of 1988) and to proceed with their implementa-

tion. To punish violations, there are no means of bringing pressures to bear, apart from threatening with economical consequences or imaginable "retorts" in other areas.

Finally, the option of withdrawal from the respective convention has to be addressed. A state can withdraw from every single convention discussed here at any time (e.g. Article 30 I of 1988). Withdrawal becomes effective one year after a denunciation in writing has been received by the Secretary-General (e.g. Article 30 II of 1988). With respect to withdrawal a graded solution is imaginable, for example, that at first only the Convention of 1988 is cancelled, because it embodies the most absolute objectives and contains the most radical obligations. Even a withdrawal followed by a petition for re-entry with reservations is imaginable.

**Heiko Mohrdiek, criminologist and lawyer,
Hamburg**

6. Operational implementation of regulated cannabis market

Politics is strong and slow drilling of hard boards. It takes both passion and perspective. Certainly all historical experience confirms the truth - that man would not have attained the possible unless time and again he had reached out for the impossible.
Max Weber ⁷²¹

The transformation of an illegal into a legal cannabis market requires a different procedure in each state. Apart from general qualities of the respective state (political culture, process of legislation...), variables to be considered are in particular the structures of the national cannabis market⁷². A comprehensive analysis of this market is the first task for a new cannabis policy. In order to be able to work on these and other tasks efficiently and democratically, the establishment of a special "cannabis market-commission" or some such committee is necessary. For this purpose, this "cannabis market-commission" should have members from all concerned state and societal systems, e.g. politics, legal authorities, police, customs, medicine, users, producers, traders etc. It is important to have an independent and politically influential chair for this commission, for example a (former) Minister or correspondingly a Member of Parliament. Less recommendable would be a scientist, because of lacking political influence. The commission requi-

res support by government and parliament, if it shall carry out its job successfully. On the basis of an analysis of the national cannabis market, it could approach elaborating a nationally adequate model with the aid of the "global cannabis regulation model" introduced here.⁷⁰ The main task of the commission would be the elaboration of necessary details for a legally working cannabis market in its state.

Of course, we recommend the consultation of foreign experts from states which have some experience with these questions, for example the Netherlands. As a result the "cannabis market-commission" should present a plan for transformation, which has been coordinated carefully with all relevant interest groups, parties and other organizations.⁷³ While the legislative body and government are accompanying the "cannabis market-commission" it is the commission's task to implement this plan and to endure pressure of foreign policy.

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