



Sum- mary

Introduction

The European cannabis prohibition system has been a failure for more than a century, in part because the issue at hand is far from being simple.

From its progressive domestication throughout the world leading to various proven uses – going as far back as 6,000 to 12,000BC, the plant has accompanied the development of many cultures and societies. In fact, despite a century of prohibition it is worth remembering that **cannabis has not always been illegal.**

As one of the first substances – along with coca and opium – to be placed under a restrictive international prohibitive system, **cannabis was nevertheless never subjected to scientific scrutiny by international organisations until 2018.** The main treaty on cannabis – **the 1961 Single Convention** – was drafted even before the “War on Drugs” began, rendering anachronistic the description of this Convention that initiated the said “war”. Above all, its provisions established **a comprehensive and harmonised regulation of the medical and pharmaceutical uses of the plant.** The words “recreational use” are absent, and the term “prohibition” is very rarely mentioned in the text. Together with the 1971 and 1988 Conventions, these three international treaties are now the global foundation of our drug regulation system.

The global rise of cannabis consumption, as well as the decade-long start of regulatory reversals within a growing number of States are **not only** questioning the obligation to penalise simple cannabis consumption, **but also the feasibility to legally regulate non-medical domestic cannabis markets.**

The prohibitive interpretation and the regimes that have subsequently been implemented have failed for several decades to fulfil their objectives, namely limiting the use of drugs. Today, **the emergence of national regulatory frameworks for non-medical uses,** operating within a restrictive international trading system, **is less of a legal-conceptual obstacle than often thought.** Indeed, the historical reality of the legal construction of these laws is primarily to be sought internally, within the culture, prejudices and socio-economical forces of one’s country. **As Malta currently shows, it is possible to move forward at the national level with the legalisation of non-medical cannabis use in a way that is in full and faithful compliance with international cannabis obligations.** The Single Conventions’ signatories can now therefore begin to discuss options for substantive changes at the domestic level.

Cannabis is not without potential harmful effects. And that is why it is **necessary to treat the subject seriously in order to regain control over a situation that has been harmful to individuals and European societies for decades**. The Cannabis plant contains hundreds of active ingredients – including cannabinoids, terpenes and flavonoids. This full spectrum potentially creates an “entourage effect”, where the use of the whole plant would exert greater effects than the sum of its separate components. This is why Cannabis should be assessed on its full genetic profile.

There is no simple answer to the risks linked to cannabis consumption. A 2017 meta-analysis of more than 10,000 articles concluded that there was both a severe lack of relationship between science and policies and **no proven serious adverse health effects of moderate cannabis consumption in adults**. For instance, it remains almost impossible to overdose on it. Nonetheless, different forms of consumption involve different types of risks.

While “smoking joints” – a mixture of tobacco and cannabis, often in the form of resin – is the most widespread mode of consumption in Europe, **it is far from being the only way to consume cannabis**. In a regulated ecosystem, each form of consumption (smoking, vaping, sublingual, ingestion, topical, rectal, etc.) could be made available and would represent different properties in terms of speed of action and potency of effects, which are also influenced by **the unique endocannabinoid fingerprint of each individual**.

It remains therefore complex to set a threshold defining when adult cannabis consumption becomes problematic. The term “problematic consumption” is coined from the moment when it causes problems for the consumer in his/her social or professional life. It remains up to the consumer to weigh up the benefits and risks of his or her consumption. The reasons why younger people consume or do not consume cannabis are multifaceted and therefore equally complex. However, it remains important to highlight the very **strong link between the precocity of first-time consumers and problematic use**. This can particularly impact brain development up to the age of 21 to 25, especially with younger consumers.

Cannabis prohibition is often hard to understand, especially as substances that are scientifically proven to be more dangerous for human beings and society, such as tobacco and especially alcohol, are legally regulated. **The hard/soft drug distinction**, which is still very popular – despite research progress and a scientific refutation dating back to the 1970s –, **is not based on any scientific study**. In similar fashion, **the “stepping stone” theory that presents cannabis consumption as a bridge – or gateway – to the consumption of drugs perceived as “more dangerous” is erroneous**. Over the years, **various scientific publications have disproved this theory**.

Alternative policies for cannabis have existed for some time now (Spain, Netherlands, Portugal), and are increasingly being implemented (Luxemburg, Switzerland, Germany, Denmark, Canada, Morocco). While it is often too early to draw a definitive conclusion, they provide some answers to legitimate concerns about their impacts on crime or public health, all of which can be useful to European countries heading towards future legal regulations. **If different objectives can be achieved, it is necessary to define the priority assigned to each of them in order to determine the concrete modalities of any kind of legal reform.**

Chapter 1. France

The failure of European prohibition is eloquently illustrated by the French case. As early as 1916, the Hexagone banned all cannabis activity in mainland France. The country introduced its current drug prohibition legislation in 1970. Today, there remains an urgent need to regain control over a situation that has been in decline for several decades. **Despite massive public investment,** the vast majority of which is aimed at repression, **the control of cannabis in France is a clear failure.**

Thanks to a policy based on “numbers” – i.e. artificially boosting results by increasing the level of enforcement through specific metrics – the total number of people arrested for simple consumption has increased 50-fold since 1970. **France’s legal arsenal is known to be one of the “toughest” in Europe, yet it failed to reduce the highest rate of cannabis consumption on the continent.** Resin, which was massively available in the 1980s, has now been largely replaced by “flower”, while self-cultivation has also developed widely in recent years. The policy of total repression has not succeeded in keeping the most vulnerable populations away from the most problematic forms of consumption, **prevention remaining one of the major weaknesses of the French prohibitive model.**

For fifty years, every seven months on average, the French legislator has modified the law on drugs to reinforce repression, without success. Repression of drug consumption in its various forms has become the **third cause of conviction, all offences combined.** However, penalisation remains a sham: a time-consuming policy that generates inequalities between people and territories, degrading the very fragile relationship between the police and the population. The 2021 French fixed fine further takes on the attributes of the law of 31 December 1970: **inefficient, unfair and arbitrary.**

The effects of this strategy to “combat” demand can also be seen in the French courts. As a result, 14.7% of the incarcerated population was convicted on the basis of a drug offence. At the end of 2021, more than **3,000 magistrates (out of 8,355 in the country) published an open letter expressing their alarm at the loss of meaning in the profession and of a justice system that is out of breath.** At the same time, the indignity of the conditions of detention in many French prisons has been denounced for many years. Five prisons in the country have been considered by the French justice system as exposing detainees to inhuman or degrading treatment. **France has also been condemned on 19 occasions by the European Court of Human Rights (ECHR), for gross misconduct and systemic discrimination,** which are illegal under both French and international human rights law.

The more intense the repression, and the more successful it is in limiting supply and creating scarcity, the higher the price for the consumer, which ultimately leads to greater profitability for (illicit) cannabis producers and distributors. More than a hundred years of illicit drug prohibitionist policy dominated by law enforcement activities have revealed few sustainable and geographically widespread successes. Far from being scaled down and eliminated, **markets have survived by adapting to law enforcement surveillance.** The achieved outcome is not satisfactory in terms of the aims stated and sought by the public authorities. Relationships between the population and the police are constantly deteriorating. Beyond this, **the figure of public power and the rule of law are being undermined,** further deteriorating relations between members of the police and communities living in the most impoverished areas of the country where cannabis distribution has been outsourced.

While public security should not have to be a financially profitable operation, it does need to be effective and evaluated. Prohibition weighs heavily on the French budget: an estimated one billion euros per year. Today, 75% of the state budget dedicated to the policy of “combating” drug consumption and addictive behaviours is devoted to the “fight” against these offences. **In the 50 years of its existence, this repressive policy has never been evaluated by the French Parliament.**

Today, there is a need to go beyond the “for or against” cannabis legalisation debate. **The question today should no longer be whether or not to legalise, but how to do so.** Because such reform often amounts to starting from scratch, it remains fundamental not only to learn from past and current global policy successes and failures, but also to consider that **a responsible approach has to phase in change over a period of months or even years, allowing for the carefully monitoring and evaluating outcomes on key indicators.** Hence, one dimension of this question must be focused on the **primo-implementation of a decriminalisation policy.**

The rationale for decriminalisation is to treat cannabis consumption, and in particular problematic consumption, as a health and social issue; not as a moral or criminal justice one. Relatively simple to implement, the policy most often replaces criminal sanctions with administrative sanctions, and helps reduce the stigma around consumption while mitigating negative social consequences. A fine system will be avoided, making the situation *de facto* legal only for those who can afford it. **Beyond the sole question of cannabis, the decriminalisation of the consumption of all illicit drugs should be concerned**, potentially bringing major safety and public health benefits.

The question of decriminalisation remains highly pertinent for Germany, whose plans to legalise cannabis for adult-use will (hopefully) take time to implement. Hopes for a complete regulatory draft law published in Autumn 2022 are not only improbable but also undesirable. **By strong-arming Ministers to push through legislation rapidly, the German Government could risk enacting frameworks which have not been fully thought through, causing problems for the market, society and consumers in years to come.** These timeframes for formulation, implementation and sustainability mean that it is necessary to think about what needs to happen in the intermittent time frame. Decriminalisation is not an end goal. Or a one-size-fits-all solution to the harms of drug prohibition. Rather, it is **a means to ensure more justice and better protection of human rights, allowing for immediate positive impact on the lives of many people and sufficient time to set up a proper legal regulation of the market.**



Chapter 2. Malta

On the other end of the European policy spectrum, **Malta announced in 2021 its intention to regulate cannabis for non-medical consumption**, allowing individuals and non-profit organisations to grow cannabis. The stated objectives of the reform are based on **the triptych of stopping the criminalisation of consumers, strengthening prevention, and tackling the black market head-on.**

While the new regulation thankfully reaffirms that a cannabis consumer does not forfeit its human rights, the maltese approach is to be highlighted for its effort to avoid “corporate capture” i.e. the means by which corporate entities pursue profit and power by exerting undue influence over domestic and international decision-makers and public institutions. By safeguarding public health, human rights, personal freedoms and autonomy, and by moving away from the criminal approach, Malta is finally giving cannabis consumers the necessary tools to take informed decisions and know how to mitigate risks. This reform is therefore **not a choice between a Malta “with” or “without cannabis” but one between a cannabis market controlled by criminal profiteers or one regulated by a responsible government agency.**

On the legal side, **Malta is setting an example for its European colleagues by making sure that the policies and procedures they will be putting in place respect international law and give results.** Indeed, the Maltese approach is alleviating rule tensions and the risks of norm decay or non-compliance cascade. The articulation of domestic reforms regulating non-medical cannabis use with the interpretation followed by Malta also provides an interesting approach that could be, if not reproduced, at least **be inspirational to, for a similar applicatory contestation of EU drug-related rules.** This could provide a way for European countries to undertake sovereign reforms without forcing others to do so.

Malta's geographical position between North Africa and Europe – the islands being just short of 500 km from Tunisia – has long made it a transit point for illegal drugs, including cannabis. The latter (resin and “flowers”) remain today the most seized illicit substance in the country. Supply offences are often dealt with in the lower courts, which can serve between 6 months to 10 years prison sentences. **For more than forty years, thousands of people on these islands have faced the risk of incarceration and of trouble with the police.** However, while contrevenants do not necessarily end up in front of a judge in case of minor DLOs anymore, the police still heavily criminalises cannabis consumers. **The issue of “trafficking by sharing” has also been central in regard to the penalisation of consumers on the islands,** demonstrating sheer disproportionality of sentences compared to offences. Especially when considering that the act of consuming in a group and of sharing a set of norms, serve as protective factors against the development of problematic use or other unwanted behaviour.

If Malta has been fairly conservative in the past in regard to drug policy, the new reform is a **complete paradigm change that will be needing continuous political and administrative support in order to replace old habits**. Having adopted a “self-restrained legalisation”, focussing its efforts on “harm reduction” rather than drug control, the bottom-up approach chosen by Malta has been **led by a strong civil society debate giving due space to the role of harm reduction as an important tool to promote public health**, and a more dignified approach to people who consume or cultivate cannabis.

Set up by the new law, the Authority for the Responsible Use of Cannabis (ARUC) has been given a sound mandate, an inclusive management, and a sufficient budget in order to achieve its goals and missions: to advance the goals of public health and safety. **These will need to be sustained and reinforced as the “real work” is only beginning**. The authority has also been given a mandate to allow for the assessment of the associated public health risks through data gathering and scientific research, making sure that the professional knowledge for the cultivation, storing, and distribution of cannabis is integrated by staff, as well as basic skills in dealing with members and their needs, including harm reduction training. **The larger public health actors as well as law enforcement professionals should also be concerned primarily with such training**.

Alongside legalising homegrowing, the establishment of Non-Profit Organisations (NPOs) rests on the core principles of adopting a social equity approach towards people who use and cultivate cannabis. By ensuring a safe, affordable, and welcoming social space, associations would be in practice **transposing the unregulated social aspect of shared cannabis consumption, already spread across the islands, within the perimeters of a members-only-club**. In that regard, heavy emphasis will be placed on clubs to follow the law, abide by their ethics and not try to cheat the system. **Any funds made by the non-profit associations are to be used to pursue the organisation’s objectives and keep it running**. No profits can be distributed to the group’s members, directors, employees or officers. Employees will be entitled to wages that do not fall under profit for accounting purposes. **All NPO applications will need to provide a clear plan of action** in order to be considered as part of a larger community of other organisations who strive to work together, with **the aim of creating a safer environment for people consuming cannabis**.

Although the law has been heralded as historic by many involved in the process from civil society, the process will need to ensure continuously that it integrates feedback from NPO members and the rest of the Maltese society. People operating the Non-Profit Organisations will need to cooperate closely with the ARUC. **When the NPOs will be finally set up, the goal is for a consumer to be able to obtain cannabis from a legal outlet, knowing that the quality of the cannabis has been tested and is safe.**

The reform still needs to further address the issue of social justice, that is to say: the injustice present and past caused by the prohibition of cannabis. **For any reform project, there is indeed an absolute need to fix what is broken before a new system can work or be implemented properly.** Although a lot has been said, one thing is certain: social dialogue about cannabis will not be over anytime soon. This is indeed potentially the first time Maltese society is in a position to have an open and frank dialogue with its cannabis community.

If the first objective of any cannabis reform should be to push back against the black market, a successful alternative must therefore be more attractive than what is already offered. Communication in regard to drug policy should be concerned with honest assessments, while economic interests shall not be reason enough not to act on a health and security situation that has been left to rot for decades. Similarly, **the implementation of quasi-pharmaceutical quality control could only reinforce the black market as the offer will unequivocally bring higher pricing and lower “cannabis quality”.**

While passing a reform can often take decades of activism and advocacy, **it remains important to consider the vote of a new legal framework only as a first step. The “real work” starts now for Malta and in order to see an optimum model be activated, all parties involved must remain focused on the task ahead.** The aim here is in part **for NPOs to become “safe spaces”** where members can share a mutual bond and interest about cannabis in order to exchange best practices and seek advice related to cultivation and consumption. The Maltese supply chain for legal cannabis would need to be “competitive” in order to progressively gain ground from the black market. **In order to keep alive the political momentum, and achieve the intended paradigm shift in cannabis legal treatment, its consumers, and regulation itself, flexibility will prove decisive in efforts.**

Chapter 3. European model

In Europe, the domestication and consumption of Cannabis sativa is thought to have begun in the Copper or Bronze Age. Current uses by the continent's inhabitants are now considerably widespread while

regulation is starting to increasingly appear to be one of the keys to a post-COVID-19 economic recovery, just as the end of alcohol prohibition helped the US emerge from the Great Depression.

The initial feedback from territories that have legally regulated their adult market shows **the possibility of finally reducing crime and risky consumption in a potentially effective way, while protecting the most vulnerable and repairing damages caused by a century of European prohibition.**

Germany, the continent's largest economy, is set to join the club of reforming countries. In 2021, the legalisation of the adult market for cannabis was federally enshrined into the governance pact of the new party coalition. While drafting the new law will not be easy, pledges of expediency have been given: draft law by Autumn 2022, and operational by the end of the legislature (2024-2025). **This operational implementation will arise from the strategic choices related to the desired objectives of this public policy reform. In the operationalization of the reform, these objectives may conflict, hence the importance of prioritising them.**

The objectives of a legalisation project are not to reduce general consumption. In agreement with research and regional context, the focus of a cannabis legalisation in Europe could integrate several specific objectives: **1) Drying up the black market; 2) Genuinely protecting European youth and shifting public health focus on problematic consumption; 3) Giving back meaning to the professions of justice and police; 4) Developing a sustainable European industry.**

1 → Drying up the black market

A truly proactive approach to the gradual elimination of the illegal cannabis market is **key to a comprehensive regulatory model**. Without a competitive market, without predatory pricing, without mechanisms to prevent the emergence of private oligopolies, without appropriate taxation and without befitted access: no objectives of the legalisation can be achieved. Furthermore, this priority goal **must be built around a social justice vertebral column**, to help repair and proactively integrate legacy.

A century of cannabis prohibition in Europe has made it the biggest illegal cannabis market in the world. Not only in terms of the number of consumers, but also in regard to the financial weight of its illicit actors. **This situation strengthens organised crime day by day and yields disasters**, not only regarding health and security but also ecological and social. If illicit cannabis-related expenditures in the EU are estimated to amount to €9 billion / year, the main cost of the repressive approach to illicit drugs is the empowerment of transnational organised crime taking charge of cannabis trafficking. **Let's keep in mind that a century of prohibition has given ample financial means for criminal organisations to diversify. Legalising cannabis will not make criminal organisations disappear.** However, it is paramount to properly regulate the legal market as it strongly influences the ability of consumers to turn away (or not) from the illicit space.

Prohibition advocates regularly point out that traffickers are likely to turn to other illicit activities to compensate for their losses on cannabis. While the impact of cannabis legalisation on criminal networks cannot be known in advance, studies have shown that less than 7-11% of them switch to the distribution of other substances as a result of regulatory change. Hence the **need for a legal transfer to take place gradually**, integrating today's situation where cannabis is almost exclusively in the hands of criminal organisations which had more than a century of drug prohibition to build-up wealth and power. **Only a vast reform of the global financial system would enable the fight against money laundering, the real "sinews of war".**

The continent's backwardness allows us to take in lessons from experiences abroad, notably about regulation pertaining to cost, offer, and accessibility. Quebec and Uruguay for example, having made the choice of quasi monopolistic endeavours ended up creating too many constraints for legal market players, too little access for consumers and too high a price for products. Public monopoly of production also presents major structural problems, notably stock-outs. These two experiences, observed in the short term and in different contexts, allow us to analyse the **harmful consequences of a regulation that has not been able to get rid of reflexes stemming from more than a century of prohibition.**

Other dimensions decisive to tackle the black market concern the authorisation for self-cultivation as well as for the creation of non-profit Cannabis Social Clubs (CSCs). The former being integrated in most regulatory models in place around the world, is **a fundamental right** which must be supervised but is before all based on individual liberties. The Social Club model should also be authorised, in order **to create ethical complementary non-commercial short circuit ecosystems as to balance an environment solely based on profit. Subjecting cannabis to a dual logic, that of the regulated market and that of the non-profit model, combining a free choice of products and prices, makes it possible to obtain a sufficiently competitive level of accessibility and a satisfactory quality of service to hope to significantly reduce the black market.** This associative model, as a complement to a regulated market system, and to self-production, would be able to generate potentially three times more job creation than forecasts based solely on commercial market sales.

Studies found that **price outweighed ease of access as the most important reason people continue to opt for black market products.** **The pre-tax sales price must therefore be high enough to ensure the profitability of the entire production and distribution chain, while guaranteeing sufficient legal supply.** Secondly, the **price inclusive of tax must be low enough to be more advantageous than the illicit market, a *sine qua non* condition for the eradication of trafficking.** Allowing for a market sufficiently clear, transparent, traceable, diversified, accessible financially and favouring quality is **a real balancing act**, requiring flexible, smart and evolving regulation.

Foreign experiences call for caution with regard to taxes intended to compensate for the social cost of cannabis (also known as "pigouvian taxes"), which remain counterproductive in the presence of a strong competitive illicit market. Legal cannabis in California is for example heavily taxed, making it uncompetitive with the illicit market. **European regulators ought to keep in mind the excluding duality regularly observed between the objectives of significant tax revenue or the fight against the black market.**

The health of the legal cannabis industry in Europe will notably depend on finding a consensus on the fiscal front. A form of mixed taxation according to price and weight, could therefore potentially limit the problems linked to too great a drop in prices. **This proactive supply policy must be accompanied by wide access to a whole range of derivative products**, which currently exist on the black market.

The creation of an independent regulatory body is a crucial point in order to avoid the windfall effect of tax revenues from legalisation. This agency will be responsible for managing business licences, supervising technical, advertising and health standards, and regularly evaluating the budgetary allocation of tax revenues. The regulator's control over production should not mean rationing production. Rather, it is a matter of controlling that the volumes released are those actually grown by strengthening statistical monitoring of the market. Although it is preferable not to put a numerus clausus on these licences, more specific support in the regulatory and financial procedures for the small hands of the illicit traffic and the inhabitants of the neighbourhoods where open dealing is rife today, will be crucial in order for them to be able to take an active part in the legal market. **Administrative procedures must be financially accessible and be able to be carried out within a reasonable timeframe.**

By controlling the majority of the tax revenues from regulation, the independent authority could be allowed to promote prevention and education policies, as well as to support the transformation of the illicit economy into a legal zone. These revenues could, in the mid-term, be used to implement ambitious and efficient public health and social justice policies.



In a public health context, it can be seductive for the regulator to put a regulatory limit on issues that today often allow for a moral panic to rise. However, these reflexes remain linked to prohibition, scientifically unfounded and which at best can only benefit the illicit market. For example, **a THC limit has no scientific ground and should be considered as a gift to the illicit market.** Consumption habits will, by definition, remain in place among consumers who seek to obtain such products. Hence why the products must be visible and should be allowed to be handled, legally accessible to adults, whether or not they are residents of the country, so as not to create a privileged niche for the black market aimed at tourists.

One of the fears that is often attached to the legalisation of cannabis in European countries is that of **the impact that this reform could have on peripheral and impoverished urban geographical areas where open trafficking has been able to develop**, too often because of the withdrawal of the state and the lack of alternative economic opportunities. However, research carried out on these subjects most often undermines those arguments, showing in particular that these geographical areas suffer more than they benefit from traffic and other illicit drugs representing smaller markets, could hardly replace the cannabis trade. That said, it is essential to consider these areas and the people who live there specifically, particularly from a social justice perspective. **With legalisation, comes the need to devise an appropriate legal and economic framework to reintegrate as many of these people as possible into the rule of law.** This issue of social justice is perhaps structurally **the most important challenge of any cannabis legalisation project in Europe.**

All existing cannabis regulatory policies – including the legal regulations implemented in Canada or Uruguay – have been developed within a continuing prohibitionist paradigm. Legalisation reforms can often perpetuate the exclusion, stigmatisation, criminalisation and harm of affected populations, or policies that continue to hinder the prospects of a dignified exit from illegality. In particular, by placing excessive barriers to accessing means of carrying out legal cannabis activities. **Lowering barriers to entry into the legal market, whether for licensing, bank loans or regulatory approval is effective for drying up the black market, but also for tapping into the pool of knowledge, interest and skills of its former players.** “Suburban/rural” skills exchanges could be set up, as could training programmes aimed at developing and maximising the skills of these (former illicit) cannabis professionals. Alongside free trade zones, vocational and university training in the legal industry, and easy access to banking services, a proactive communication and support policy towards these groups must be put in place to encourage their reintegration.

2 → Genuinely protecting European youth and shifting public health focus on problematic consumption

By integrating prevention campaigns worthy of the name, appropriate education on consumption, and a range of harm reduction health services, a legal market will work more effectively in prohibiting sale to minors and help further out primo-consumption age.

Legal regulation reforms have not led to a significant increase in general consumption in jurisdictions that have chosen to recognise and acknowledge the failure of cannabis prohibition. Consumption patterns across all age groups have changed little since the reforms were introduced, notably in the USA and Canada. Perhaps more importantly, **studies do not find a significant increase in cannabis consumption among adolescents, highlighting even significant decline in certain U.S states and canadian provinces,** mainly due to the weakening of the black market which makes it more difficult for younger consumers to obtain supplies.

However, even if legalisation were to lead to an increase in overall adult cannabis consumption (which has yet to be demonstrated), the effect on public health would not necessarily be negative: **the important dimension being to consider first the share of problematic consumption, as well as of prevalence of first time use.** By developing culturally specific social control mechanisms, European nations can allow their citizens to develop relatively healthy and non-issue relationships with cannabis.

Legal regulation of cannabis could put in place efficient public health measures targeting the most vulnerable groups and the most dangerous form of consumption. For this reason, **minors and adults with problematic consumption should be the priority targets of the new reform's prevention measures.** It is by talking objectively about the risks and benefits of consumption that prevention will regain credibility among young people whose perception of risk is often in European countries, at its lowest level recorded regarding cannabis consumption.

Cannabis is indeed not a harmless substance and can have a stronger impact on developing brains. **Ensuring that minors do not have access to the product is therefore paramount and any failure to comply should strongly be sanctioned.** Regulating the communication and advertising of the legal cannabis industry is also fundamental to ensure that it does not target youth under 18's. However, **regulation must avoid a complete ban on advertising, which would favour the biggest players.** Interdiction should however apply to creation of attractive packaging or marketing/promotion to young people, or the sale of cannabis in a “self-service” format (where people help themselves) or in vending machines.

In Colorado and Washington, **cannabis legalisation has not had a significant effect on the number of accidents or road deaths.** Similarly, the share of people reporting driving under the influence of cannabis did not change significantly in Canada one year after legalisation. Current cannabis consumers in jurisdictions where cannabis is used for “recreational” and medical purposes are also significantly less likely to report driving within three hours of use in the past 30 days, compared with consumers living in states without legal cannabis.

3 → Giving back meaning to the professions of justice and police

Legally regulating the cannabis market can, and should, be accompanied by a repressive policy against the illegal sector. **Shifting budget and policies from law enforcement to public health will allow penal law actors to focus on organised crime and money laundering,** while allowing for the rebuilding of the broken links between the police forces and specific populations currently living in (visible) trafficking zones and often discriminatory targeted by prohibition policies.

Studies now show a decline in violent crime following the implementation of decriminalisation and legalisation policies, allowing for the **redeployment of the funding and members of these administrations towards useful public service missions,** positively influencing their performance. Police could also **better pursue non-compliance with the ban on the sale of legal psychotropic drugs** (alcohol, tobacco, cannabis) to minors, which could in turn highlight the reduction in the number of young people being arrested for cannabis related offences as well as the increasing market share of the legal cannabis market.

4 → Developing a sustainable European industry

The issue of regulation is not to be for or against cannabis, but rather to adopt a model that allows everyone to make their own choices in conscience, to protect the most vulnerable, and to pacify society. **While a purely commercial model is to be avoided, the regulatory set up can foster good practices and sustainable standards from a private sector based on Social and Solidarity Economy (SSE) as well as non profit practices such as Cannabis Social Clubs (CSC) and homegrowing.** In the face of the certain future decrease in global production costs through the development of international commerce, **Europe will only stand out from the crowd by favouring healthy and high quality products.**

A single European policy of legalisation seems neither desirable nor possible, both for geographical reasons and because of the diversity of uses and products of the plant. This makes it difficult for consensus models of cannabis policy to emerge (that can be exported and generalised) – and makes **any attempt at a universal model a chimera**. In that regard, States need to exercise regulatory and discretionary power to set the rules of the game, to attract responsible investors, and to find appropriate buyers and outlets.

Cannabis entrepreneurs are often faced with a real obstacle course: stigmatisation of cannabis, lack of knowledge of recent legal and economic developments, improper access to corporate tools and services, lack of experts to properly assess the risks of the market and thus reduce them, and finally an intrinsic difficulty in setting rates and establishing support policies. **Regulatory projects will be advised to set up a specific framework and an administrative culture in line with the specificities of this plant and the market that will be attached to it.**

There is an opening for the creation of an economic and industrial sector whose direct and indirect spin-offs could be highly beneficial to European countries and their populations. **For a time, national markets will remain protected from international competition and will be able to give local entrepreneurs the opportunity to develop.** This could allow for the **creation of a vibrant ecosystem** around this market **before the rules of free competition are ultimately imposed regionally and globally.**

→ A regulatory authority to regain control

Cannabis regulation can also learn from the mistakes of the alcohol and tobacco regulatory frameworks. Because it represents such a significant financial windfall while being backed by a potentially addictive product, **the European Social and Solidarity Economy (SSE) sector seems today to be the best placed to both respond competitively to the enormous need of the millions of consumers estimated in Europe while avoiding the pitfalls of mercantilism** which are detrimental to public health.

An excessive model of free trade is undesirable because the main motivation for most profit-making enterprises – similar to the illegal market – is to increase consumption in order to maximise profits. In an over-connected global village where the behaviour of our societies – from pandemics to climate change – is disrupting nature to the highest degree, the decade 2020–2030 calls for a renewed vision of nature and a renewal of our connection with it. **Cannabis as a plant in its entirety, and policies related to its multiple uses, can be a lever for these goals. A market for cannabis centred on empowerment, local knowledge, protection of natural heritage and fair trade principles would have much to offer for the sustainable development of a global cannabis industry.**

The alignment of the axes of new legalisations with the UN 2030's Sustainable Development Goals agenda (SDGs) is however a *sine qua non* condition for their effectiveness. Studies have shown that the plant *Cannabis sativa* L. and the public policies regulating consumption are directly linked to at least 64 of the 169 targets in 15 of the 17 SDGs of the 2030 Agenda. Beyond “industrial” uses, it remains essential to reform the current policies of repression, prohibition and marginalisation of other uses of the plant (wellness, therapeutic and non-medical) in order to be able to achieve objectives 3, 4, 5, 8, 10, 13, 16 and 17.

Legal cannabis markets have experienced substantial growth rates and unprecedented investment over the past decade. With little or no regard for the long-term viability of the companies, economic irrationality has inevitably led to unethical and socially damaging practices. Fifteen years ago, **Environmental, Social, and Governance (ESG) factors** emerged as guidelines for assessing the sustainability of an investment. They are now at the heart of long-term investment trends and represent the new standard for prudent asset management. **The cannabis industry has deep permeability with innovation and is thus naturally positioned for ESG adherence** because of its lack of adherence to dogmatic and exclusionary models of corporate and social governance. **ESG adherence not only increases shareholder value, but will also brand and enhance a company's position with potential investors interested in long-term value creation.**

The EU has committed itself to becoming the world's first climate-neutral continental entity by 2050. The newly implemented obligations for ESG disclosures, and the likely requirement for human rights, environmental and governance due diligence has created a jigsaw of interrelated regulations. The trend in Europe is clearly towards a relatively rigid due diligence law, in contrast to previous human rights laws in the supply chain. **The best way for cannabis companies to address these concerns – as well as to guard against forthcoming due diligence legislation – is to take steps to address ESG concerns.**

It is not news that the cannabis trade is not always environmentally friendly: energy consumption, use of pesticide, land and water for example represent environmental variables that can help reduce the overall footprint of the industry. **As consumers increasingly seek out environmentally friendly companies, implementing sustainable practices in order to become fully regenerative will become a strong competitive advantage.** Lastly, the need for transparent, independent, diverse and consensus-based governance should be **of paramount importance given the level of public and regulatory oversight of the industry.** Regenerative farming systems will allow for the reuse or recycling of resources in as many stages of the cannabis plant's life cycle as possible and ultimately trying to lower carbon footprint in any way possible. Notably, by using living soil, implement crop rotation for outdoor growth, capturing wastewater, integrating pest-management systems and eliminating synthetic fertilisers and plastic use. A social licence to operate is also absolutely necessary to gain the support of society and prohibition's impacted neighbourhood communities.

Entry into the legal cannabis market could potentially add value for small-scale agricultural actors, if the framework is set up to allow them to become involved in processing, including the production of whole plant extracts, rather than being restricted to selling raw material. If European farmers are to be free to experiment with different production methods, **adherence to the rules of organic or living soil production should be fiscally encouraged.**



To avoid a profound misunderstanding of the adult-use market and what its consumers are looking for (and will be willing to pay for), it is paramount (as currently shown by the German debate) that in terms of adult-use consumption, **medical cannabis companies are not (and should not be) considered as the most legitimate actors to influence future market regulations.** Indeed, the difference between these two markets lies not only in their distinct production and distribution processes, but in their very raison d'être: the former exists to meet the therapeutic needs of patients; the latter to overcome the illicit market. **By definition, pharmaceutical quality production will tend towards stabilisation and reproducibility, as-well-as a limited pool of seed varieties. This is the exact opposite of what an adult-use market needs. Under the guise of quality and safety concerns, the influence of pharmaceutical stakeholders is often used as a front to hide the defence of financial and commercial interests.** Above all, it is a hindrance to the right to cultivate – thus preventing the success of a legal regulatory reform from the outset.

It is a basic principle of drug policy: if you don't regulate properly to meet demand, the illicit markets will do it for you.

When drinking, people do not look for grapes produced under EU-GACP certification and distilled into wine in EU-GMP facilities. **For cannabis, consumers will pay attention to genetic information and lineage of cultivars, quantified presence of cannabinoids and terpenes, how and where it is grown, but increasingly also whether it is grown locally, sustainably and organically, and thus progressively to terroir.**

The genetic diversity of the cannabis plant is one of its most important assets in order to allow for informed personal experience and research towards specific needs. For these reasons, it is necessary, as soon as legislation is introduced, **to protect the heritage of European countries and the genetic diversity of the plant from continental and overseas territories.** Cannabis-growing areas have long been, and still are for the most part, illegal areas, and as such have not enjoyed the same reputation as other territories. Risks of biopiracy and misappropriation of traditional knowledge exist wherever cannabis has been endemic, especially in the intertropical areas – where a large part of the overseas territories of European countries (France, Netherlands, UK, Spain, Portugal) are located.

It is also advisable to establish regional or geographical indicators for cannabis products that would protect cannabis varieties, as well as traditional knowledge and know-how, notably via ABS (Access and Benefit Sharing): a major vector of development for the local populations that provide genetic material. In addition to the passive protection offered by ABS and the Nagoya Protocol, it is essential to deploy a proactive sustainable development strategy.

Protected designation of origin (AOP), Controlled designation of origin (AOC) and Protected Geographical Indications (PGI) can represent relevant tools to enhance the market value of quality, specificities, organoleptic properties linked to the origin and to traditional cultivation and/or processing practices.

Initiatives that aim to do for Californian cannabis what the AOC designations did for Champagne in France are currently being deployed on the other side of the Atlantic. The general idea here is to protect the intellectual property of farmers that have developed unique growing methods and strains that tend to thrive in different microclimates i.e. a specific terroir. **The intended goal here is to formalise designations of origin to reflect the cultivation communities that have formed over the years around certain strains** through the delineation of environmental and cultural boundaries defining a designation of origin district in continental and overseas Europe.

Additionally, **reform has brought about significant security issues that will need to be taken into account**, including protecting staff and products at every stage of the process, cash-management, training personnel and comprehensive security procedures for all stages of the supply chain. **Clear identification rules for consumers are also important.** In a well-regulated cannabis market, consumers should be able to understand and titrate their dose without difficulty with the help of packaging and labelling standards. Current labelling practices in reformed jurisdictions generally provide little guidance on the “expression of dose”, i.e. how the “dose” of THC translates into the amount to be consumed for a specific product (in particular with edibles).

While **cannabis “lounges” can play the same role as a “safe consumption room” as bars do today for alcohol**, in order to compete effectively with the black market, **online ordering and home delivery should also be allowed.** Today’s consumers now have almost instant access to cannabis, via an increasingly sophisticated illegal supply, accessible continental-wide, with a large number of distribution entry points, online and in physical locations. Consequently, **a successful legal transition must incorporate the same level of accessibility and convenience for distribution. Issues often arise when, for example, pharmacies or tobacco shops, wish to co-opt this dimension of the market.** This question took place in Uruguay and is now being debated in Germany. It is therefore important to remember that a non-medical cannabis distribution in pharmacy for example, besides the incongruity of such concept, will necessarily integrate additional unnecessary costs, as well as a potential problem of insufficient supply, a probable lack of knowledge of cannabis for non-medical use by the pharmacist and of what consumers are looking for, **leading de facto to a strong resilience of the black market.**

If the customer is the main weapon to combat the illicit market, it is important to pay attention to what he/she wants, in this instance quality cannabis. To that effect, the emergence of craft implies favouring the production of raw and manufactured cannabis products with a high attention to quality and attention to detail, usually associated with smaller-scale production, short supply-chain, the use of appropriate and/or labour-intensive cultivation, drying and processing methods, and a strong focus on cultivar selection and the legacy grower experience. These micro-productions generally require less capital and the associated licensing fees should therefore be lower. Micro-licences are generally seen as a tool to encourage diversity in the sector by facilitating the transition of expertise from black/grey markets to legal markets.

The issue of cannabis tourism should also be considered as to identify and minimise the potential cross-border issues associated between European jurisdictions with different regulatory approaches to cannabis. Uruguay, which has restricted cannabis sale to residents has seen an illegal market emerge to meet the demand: 63% of the tourists declared to have consumed cannabis during their stay. If the modalities of access are too restrictive, it will enable the sustainability of a parallel criminal market of opportunity. Border control responses are therefore likely to be costly, ineffective and counterproductive. **Cannabis tourism is a problem that can only really be addressed by the full legal regulation on both sides of a border.** In the absence of this, the challenge has no obvious solution. Bear in mind that repressive measures would probably only make things worse. In reality, **this is an issue that must be tolerated and managed pragmatically.** The focus should be primarily on responding to any real emerging social harm, rather than targeting foreign cannabis consumers with punitive enforcement measures. **For the most part, this problem should remain marginal and localised, and should not be overstated in the policy debate.**

The production of cannabis for the adult market in Europe could be controlled through the establishment of a seed-to-consumer traceability system following the sanitary and phytosanitary standards of other agricultural products. In addition, the industry could rely on new security technologies available, such as the blockchain, some of which operate in a sustainable and environmentally responsible manner, as underlined by the OECD and several UN agencies.

One of the substantial problems of the cannabis industry worldwide is the **lack of standardisation of quality control protocols and concentrations of the plant's active ingredients**. Often, companies in the sectors are concerned exclusively with showcasing the best side of their products, without reflecting the actual content. The lack of standardisation of testing also undermines the industry's ability to make a convincing case on key issues. If being draconian and dictating too strict methodologies to laboratories could limit innovation, being too distant could distort results by allowing certain actors to take advantage of regulatory loopholes to the detriment of consumer safety.

The inspiring idea here is therefore not to reinvent the wheel, but to use everything that exists and make it specific to cannabis. To address this, several initiatives are being developed to enable the establishment of robust and standardised methods for analytical laboratories. In particular, these new techniques will need to be validated using internationally accredited guidelines. **Providing a consistent, systematic and predictable methodology to improve products and services in a cost-effective, accessible and value-adding process for all sectors.** While value chain actors in the adult market will benefit from independent laboratory testing, it will still represent significant costs for farmers and small entrepreneurs. **The support and financial accessibility of producers, processors and distributors in the cannabis sectors for the implementation of these controls will be the key to developing this market with confidence.**

Routine cannabis testing services include cannabinoid concentration and determination of terpenes, aflatoxins, heavy metals, moulds, bacteria, pesticides, herbicides and residual solvents. Concentration testing should improve as chemical standards for known principles become more readily available. Mass spectrometry is likely to play a more important role in quantification, as detection levels are lower and confirmatory testing is needed. However, the legal cannabis industry as a whole and specialised testing laboratories remains in their infancy. **Concentration analysis, together with appropriate product labelling, is therefore necessary to ensure that consumers know exactly how much cannabinoids they are taking.**

In the era of COVID-19, the legal regulation of cannabis for adults in Europe could have a significant impact on long-term economic recovery efforts. It is therefore **essential not only to regulate the legal cannabis market, but also to do so fairly**. The violence stemming from illicit drug trafficking (and the fight against it), strikes first and foremost at people living and growing up in the economically peripheral territories of our continent. **It has long been asserted that prohibition is in fact a war against certain specific categories of the continent's populations**. A war against people. Analyses and evaluations of public policies on illicit drugs in the U.S. have indeed repeatedly demonstrated their use as a repressive tool targeting ethnic and economic minorities. Although there is a significant lack of scientific studies on the subject in Europe, parallel elements can be observed and further feed this hypothesis: importance of ethnic origin, age, gender and supposed standard of living in regard to arrests and detentions.

A sustainable and fair reform needs to address the injustices caused by decades of uneven enforcement of prohibitive laws, particularly against the continent's most economically disadvantaged ethnic minorities and populations. A few examples can be observed in the U.S. notably. New York State expects to generate more than \$1.25 billion (€1.19 billion) in tax revenue over the next six years. These revenues will be reinvested to promote social equity, with 40% going to support public education, 20% to problematic consumption treatment and prevention programmes, and the remaining 40% to the Community Grants Reinvestment Fund. This fund is part of the operationalisation of one of the founding principles of the State reform: repairing the past and present damage of prohibition. At the federal level, the MORE Act (Marijuana Opportunity reinvestment and Expungement), passed several times by the House of Representatives and rejected by the Senate, explicitly based its approach on addressing the past and present harms associated with cannabis prohibition.

Building a circumstantial coalition of allies and framing the debate is absolutely critical to achieve these reforms. The success and clarity of a reform campaign depends on bringing together the actors involved behind a broad set of key principles. These become the basis for reform and guide the roll-out of regulation and licensing. It is therefore not only a question of reversing a catastrophic situation, but also of **recognising by whom the burden of prohibition has been borne, and how to begin to repair the damage caused**.

All other things being equal, the North American and European contexts remain relevantly comparable. The demand for cannabis is a global demand of a largely guilt-free European society, especially among the urbanised middle classes. Because of prohibition, this demand weighs mainly on the vulnerable points of our social fabric. Thus, for the consumption of cannabis, **there is today a *de facto* decriminalisation for the majority of the population when a repressive regime is applied to others.**

Not to take this issue full on under the guise of wanting to maintain a certain social peace is an unacceptable renunciation. Nevertheless, it touches on an important subject: what will become of the geographical areas that depend in part directly or indirectly on traffic? While only a tiny minority of cannabis traffickers earn high incomes –the remaining 90% of the people involved in trafficking are small-time workers who barely earn the legal minimum and do not pay any social contributions–, it is imperative to put in place an ambitious social policy for the inhabitants of the geographical areas where drug dealing openly takes place (and the “fight” against drug dealing) by channelling a significant part of the tax revenues from this new regulated economy to these areas.



Conclusion

The system of prohibition still promoted in the vast majority of European countries is a failure: not only does it only benefit criminal organisations, but it is incapable of protecting the most vulnerable, especially the youngest within the European population. Moreover, it weighs heavily on public spending as there is no tax revenue to match these costs. **No other public policy has survived such an evaluation for so long without being called into question.** The perception of the dangerousness of the product has decreased for the youngest. It can therefore be argued that regulating and legalising cannabis could better protect our children. The application of a repressive policy towards cannabis is profoundly unequal and affects above all the most vulnerable people: ethnic minorities and the poorer classes. **This is a European emergency.**

A choice must be made: the cannabis trade can either be left to criminal organisations or legally controlled by a public body.

The issue is eminently political. Thankfully, governing authorities are increasingly listening to science, public policy evaluation and feedback from new alternative policies. The current situation isn't satisfactory, which has led an increasing number of observers and researchers, but also of exercising law-enforcement officers, to criticise the current status quo. Those who, guided by ideology, seek to maintain it, are complicit. **A century of inaction, prohibition and moral posturing has been instrumental in empowering traffickers all around the European continent.** Maintaining this situation strengthens them more and more every day.

The time has come today for more accountability on the impact of prohibition. While climate change and human rights issues remain intertwined with the question of Cannabis, this pressing societal and structural topic demands that all relevant stakeholders examine and discuss interdisciplinary data, in order to attempt to find consensus on the most appropriate methods of reform via regulation which will vary from one country to another, depending on local contexts and needs.