Legislation relating to cannabis use and possession: definitions and overview of the situation in Europe

Ivana Obradovic

Memo 2016-01
Saint-Denis, 15 March 2016

OBSERVATOIRE FRANÇAIS DES DROGUES ET DES TOXICOMANIES
www.ofdt.fr

INTRODUCTION

The laws governing cannabis use, tolerated in some countries yet totally banned in others, vary significantly from one European Union country to another. However, the terms used in the debate are often not fully understood. Despite being regularly employed in public forums, the concepts of liberalisation, legalisation, depenalisation, decriminalisation and classification as a petty offence do not always have a commonly accepted definition. Some of these concepts have neither a dedicated general dictionary definition nor any legal value, since they describe political decision-making processes. Their use is therefore variable and, very often, ambiguous.

In spite of international agreements making the supply of narcotics a criminal offence (production, trafficking, sale and possession), since 2012, four US states (Colorado, Washington State, Alaska, Oregon) and the District of Columbia (DC), and one Latin American country - Uruguay - have legalised the production, trade, possession and recreational use of cannabis for adults and implemented a mechanism for regulation of the cannabis market. These innovative initiatives have refuelled the debate with respect to the legal status of the substance in Europe

Developed drawing on the references cited in the bibliography and with the help of legal experts and researchers specialising in penal matters, this note firstly presents a lexicon assembling a few proposals for the definition of the main terms used in the recurrent debates relative to the legal status of cannabis. This is followed by an overview of current legislation concerning cannabis use and possession in France and Europe, along with a comparison of the most significant legislative changes outside Europe.

DEFINITIONS: LIBERALISATION, LEGALISATION, DEPENALISATION, DECRIMINALISATION, CLASSIFICATION AS A PETTY OFFENCE

"Liberalisation" consists, in legal terms, in opening up a market to (legal) competition. Liberalisation deregulates a commodity or product market, such that the State does not intervene (or no longer intervenes). It is therefore a choice on the part of the government: it is not a judicial matter.

In economics, the term liberalisation suggests the State's withdrawal from a market, which then becomes subject to competition assumed to be pure and perfect. It may potentially imply the bringing to an end of a monopoly, held by either an administrative authority or a (public or private) company relating to an activity defined by the public authorities. An example of this is the "liberalisation" of the French online gambling market, following the law of 12 May 2010 opening up the online betting market to legal competition: the law simultaneously brought to an end the rise of the illegal online betting market and the State monopoly held by *Française des Jeux* and *Pari Mutuel Urbain* (PMU) on the online gambling market.

Applied to cannabis, liberalisation would mean eliminating any legal ban on the use, possession and trade (purchase, sale, distribution) of this substance. However, in the case of cannabis, liberalisation often actually implies State regulation efforts.

Legalisation (or regulations[1]) is the legal recognition of a behaviour, which implies recognition of a freedom (like liberalisation). However, it may be supported by a State intervention, consisting in providing access to the resources that enable this freedom to be exercised.

"Legalising cannabis" means that the possession of this substance is authorised. Its production and distribution can be controlled and supervised by the State. Legalisation leaves the State free to define the level and methods of control, in terms of both use and distribution: it may have an impact on demand by intervening on the legal sale price via taxation; it may limit the conditions in which use is authorised, by restricting authorised use to certain categories of the population (such as the authorisation to sell alcohol and tobacco restricted to adults and not allowed to minors) or to certain places (such as the ban on smoking in public places).

The choice to legalise cannabis contravenes the commitments made by countries having signed international conventions agreeing to make illegal and penalise the cultivation, distribution and production of all types of narcotics. However, in 2012, for the first time, two US states (Colorado and Washington State), followed by another two in 2014 (Alaska and Oregon) and the District of Columbia (official name of Washington DC), adopted the principle of legalising the recreational use of cannabis by referendum, despite the fact that federal law remains unchanged. In these States, using cannabis "for personal and recreational purposes" and possessing up to one ounce of cannabis (equivalent to 28 grams) is authorised, whereas it still remains illegal in the eyes of federal law, creating an unprecedented legal situation. In one other country in the world – Uruguay (population 3.5 million) – Parliament has also voted to legalise cannabis, against the advice of the International Narcotics Control Board (INCB)[2].

Hence several legalisation models are applied around the world today. In the USA, in the space of a few months, Colorado and Washington State (in January and July 2014, respectively), opened up a relatively liberal commercial market for recreational cannabis, subject to competition. Another two US states - Alaska (since February 2015) and Oregon (since July 2015)-, along with the District of Columbia (since February 2015) did the same thing the following year. In contrast, Uruguay is the first country to have adopted a law in Parliament instigating a pluriform legal market for cannabis, closely controlled and administered by the State via various procedures (authorisation to home-grow cannabis, with a maximum limit of 6 plants, for personal use, registration of all market players, including users, sales in pharmacies limited to a maximum monthly amount, etc.). The implementation of production and sale to private individuals in pharmacies was postponed, within the context of the presidential and legislative elections of October 2014 (which led to the Left being returned to power).

1. In some countries (such as Switzerland, for example), the term regulation is often used instead of legalisation, making no distinction between the two terms.
2. The INCB is an independent expert organisation established by the Single Convention of Narcotic Drugs in 1961 following the merger of the Permanent Central Narcotics Board (created by the International Opium Convention in 1925) and the Narcotics Supervisory Board (created by the 1931 Convention to limit the production and regulate the distribution of narcotics). It has thirteen members, including ten elected from a list of persons nominated by governments and three from a list of persons nominated by the World Health Organisation (WHO) on the basis of their medical, pharmacological or pharmaceutical experience.

These various existing models share some common characteristics. First of all, they limit the authorisation of cannabis use to adults. Secondly, they define the precise amounts of cannabis that may be sold or grown (but not always the active substance content of the substances sold). They restrict advertising and marketing, notably with the aim of protecting minors. Finally, they are justified by the significant tax revenues expected, revenues that can then be allocated to drug education and prevention programmes.

The concepts of **"partial" or "total" legalisation of cannabis** (regulation), widely used in public debates, have no legal value established in texts. In the current acceptance of the term, "partial legalisation" may refer to legalisation limited to certain populations or certain use circumstances (like tobacco and alcohol, for example, of which sale to minors is prohibited in France), as opposed to "total legalisation", which would consist in authorising the purchase and sale of cannabis without any restrictions (just like an ordinary consumer good).

In the same way as everyday language often confuses liberalisation and legalisation, the terms depenalisation and decriminalisation are often used as synonyms.

Depenalisation can be defined as the process "tending to reduce the application of penal sanctions for a determined behaviour, with this reduction potentially leading to them being purely and simply scrapped". Other possible definitions for "depenalisation" exist, aligned with the concept of "decriminalisation" to variable degrees, with penal experts and criminologists not all giving the same meaning to the notions of "depenalisation" and "decriminalisation". In some countries - especially France and Latin countries (Italy, Spain, Portugal), the term "depenalisation" is generally used to indicate the removal of a criminal ban[3].

In the common usage of the concepts of **"partial" or "total" depenalisation of cannabis** use, "total depenalisation" means the removal of any sentence (the drug-related behaviour is taken out of the criminal scope), whereas "partial depenalisation" is more limited, indicating a reduction in or relaxation of the sentences provided for by law: this may involve reducing prison sentences or replacing the possibility of prison sentences with a fine, community service or medical treatment. In both cases, however, the ban remains. It should be highlighted once again that this distinction between total and partial depenalisation has no legal value.

Everyday language also sometimes differentiates between **depenalisation *de jure* or *de facto* (in law or in fact)**. "Depenalisation *de jure*" consists in reducing or removing criminal penalties (fine, prison sentence) associated with the drug-related behaviour by positive law (legislative change in the offence and penalty for use and/or possession). The term "depenalisation *de facto*" is used when, thanks to various legal mechanisms (such as the principle of discretionary prosecution[4]), an offence defined by criminal law is not, in fact, penalised to the degree stipulated by the law. "Depenalisation *de facto*" is therefore often used in countries where penal policy is guided by the principle of discretionary prosecution and steered by Ministry of Justice directives.

Decriminalisation refers to "the process tending not only to abolish the application of all penal sanctions for a determined behaviour, but to abolish its very status as a 'crime' (in the broad sense), i.e. a criminal offence" (Van De Kerchove, 1987), as is the case in Portugal, for example (EMCDDA, 2013 ; EMCDDA, 2015b). Decriminalisation therefore consists in removing the criminal offence character of an act, meaning that the determined behaviour no longer falls within the criminal scope.

This Anglicism, often used as a synonym for depenalisation, has no exact equivalent in French. The term crime in English is sometimes used as a synonym for an offence, whereas in French, it applies to the most serious category of offences. Applied to the French system, the concept of decriminalisation therefore usually refers to a process of declassification of the offence, from the most serious category of offence (crime) to a less serious offence category (indictable offence, for example), leading to a reduction in the associated sentence.

Classification as a petty offence consists in declassifying an offence from a category of offence to that of a petty offence (defined in French law as the least serious criminal offence) or, in the event of a behaviour that was

3. In the definitions used in France, the notion of depenalisation is usually associated with the idea of maintaining the ban (Bisiou, 1994).
4. Traditionally, a contrast is made between a "discretionary prosecution" system and a "legal basis for prosecution" system. Discretionary prosecution is a criminal procedure principle according to which the public prosecutor's office may decide to prosecute an individual suspected of having committed an offence or otherwise (if it decides on a case dismissal). This system allows the Public Prosecutor to assess whether or not it is appropriate to bring criminal proceedings: within the European Union, this system is practised in France, Belgium, Luxembourg, the Netherlands and Denmark, for example. This principle contrasts with the legal basis for prosecution principle, according to which the Public Prosecutor is bound by law, if the preliminary investigation establishes certain suspicions, to prosecute the suspect: if an offence appears to have been legally committed, he is obliged to bring proceedings and to follow the procedure through to trial and judgement, even if new information provides grounds for abandoning proceedings. This is the principle adopted in Germany, Italy, most Scandinavian countries, Central European countries and, since 1987, Portugal.

previously legal, penalising it as a petty offence. Unlike crimes and offences, petty offences are not punished by prison terms (at least not in France[5]): applicable sentences are fines and restrictions of rights[6]. The distinction between a petty offence, offence and crime is not the same in every European Union (EU) country and does not lead to the same consequences, which raises problems in terms of interpreting and comparing different national legislations.

If use were to be classified as a petty offence in France, the possibility of a prison sentence would be abolished and replaced by the option to discourage the use of narcotics via a fine (potentially a fixed penalty). Classified as a petty offence, a drug use offence would therefore no longer go before a criminal court, but rather a police court or a community court (competent to judge petty offences), while still remaining a criminal offence.

The decision to classify an offence as petty can be a solution when the number of prosecutions exceeds the handling capacity of criminal courts.

OVERVIEW OF LEGISLATION IN FRANCE IN MARCH 2016

According to the terms of the 1970 French law on narcotics, the use of narcotics (with no distinction between substances) is an offence subject to a maximum sentence of up to one year of **imprisonment** and a **fine** of up to 3,750 euros (article L 3421-1 of the French Public Health Code). This sentence may be increased to up to 5 years' imprisonment and/or a fine of up to 75,000 euros when the drug use offence was committed while on duty by an individual in a position of public authority or carrying out a public service activity or by employees (including temporary staff) of a land, maritime or air cargo or passenger transport company carrying out duties that could jeopardise transport safety. Since the law of 5 March 2007, users may also be obliged to undergo an **awareness course on the dangers of drug and alcohol use** as an additional sentence (article 131-35-1 of the French Penal Code).

However, since the introduction in 2015 of the penal transaction for individuals committing minor offences, such as simple cannabis users, the possibility of avoiding court exists, via the immediate payment of a fine to the police (decree No. 2015-1272 of 13 October 2015).

Since a drug use offence is subject to a custodial sentence, in place of a prison sentence, magistrates may hand down various custodial or freedom-restricting sentences: alternative sentences to prison sentences, fines, driving licence suspension, confiscation of the vehicle belonging to the convicted person, ban on carrying out a professional or social activity if the opportunities offered by said activity have been deliberately used to commit the offence, in particular (article 131-6 of the French Penal Code).

If the user is an adult, he/she may also be offered various **alternative measures to prosecution** which, if implemented, lead to the prosecution process being stopped: voluntary payment of a fine of a maximum of 1,900 euros, unpaid work for a maximum of 60 hours for the benefit of the community, handing in of driving licence to the court for a maximum period of 4 months, attendance of an awareness course on the dangers of drug and alcohol use, at own cost (which can be handed down at various stages in the legal proceedings: as an alternative to prosecution or as an additional sentence).

During the prosecution phase, the Public Prosecutor may ask a user - even a minor - to seek treatment, in the context of a **drug treatment order**. In this case, the prosecution is suspended but if the user does not comply with this order, or is again arrested for use, the Public Prosecutor may decide to bring him/her before the criminal court. Since the law of 5 March 2007, a drug treatment order may also be included along with a sentence, with, for example, a supervised suspended sentence.

5. This is not the case in Belgium, for example, where prison terms exist for petty offences.
6. For example, suspension or removal of driving licence, immobilisation or confiscation of vehicle, etc. (see articles 131-12 and 131-14 of the French Penal Code).

Furthermore, at any stage in the criminal proceedings, judges may decide to implement **compulsory drug treatment**, which differs from a drug treatment order in three ways: it is applicable to all individuals being brought to justice (not only narcotic users, as is the case with a drug treatment order); it is reserved for people presenting an addiction problem (on illegal drugs or alcohol), irrespective of the offence concerned; finally, it may be ordered by a judge or by a court.

The mechanism to penalise drug use has been supplemented by penal policy directives sent to public prosecutors' officers recommending that alternative measures to prosecution be favoured wherever possible and that prosecution be reserved for previous offenders or users refusing to comply with alternative measures. In practice, 70 % of drug use cases handled by public prosecutors are the subject of an alternative measure to prosecution (Obradovic, 2010).

With respect to the specific context of road safety, the law of 3 February 2003 introduced a new offence punishing any driver whose blood test reveals the presence of narcotics. The maximum penalty is 2 years of prison and a fine of 4,500 euros. The French LOPPSI II law of 14 March 2011 ("Loi d'orientation et de programmation pour la performance de la sécurité intérieure" - homeland security performance planning act), extended these provisions, authorising routine roadside saliva screening tests at the request of the Public Prosecutor. In addition, in the event of a fatal accident (manslaughter) or bodily harm (unintentional injury), this screening is compulsory and the vehicle of the driver involved will be confiscated if it is a subsequent offence.

OVERVIEW OF LEGISLATION CONCERNING CANNABIS USE AND POSSESSION IN EUROPE IN MARCH 2016

Despite the calling into question of the international ban as a result of the US and Uruguay initiatives, two international conventions continue to exert restrictions on the evolution of European national legislation relative to cannabis: the 1961 Single Convention on Narcotic Drugs and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Ratified by all the EU member states, these conventions make the production, trafficking, sale and possession (which may also be understood as possession for trafficking purposes) of narcotics a criminal offence. However, the obligation to directly criminalise use is not provided for in any international laws[7] (Cesoni, 2000), leaving member states some room for manoeuvre in terms of national regulations relative to use.

The options adopted in terms of making cannabis use and "preparatory actions for its use"[8] a criminal offence vary depending on the country. Contrary to popular belief, the use of narcotics is not authorised in the Netherlands, where a model of tolerance is applied founded on the regulation of sales of small amounts of cannabis. This differs from a legalisation mechanism as seen in the United States or Uruguay (see box below). Use as such is not prohibited by law in all EU countries. Some current legislation provides for direct criminalisation of drug use while others provide for indirect criminalisation (via possession for personal use). In addition, some countries, such as the UK, differentiate between cannabis and other narcotics in their criminal offence system[9], whereas others, such as France, make no distinction between the various narcotics. However, no EU country has legalised cannabis as a substance (by legalising its production and distribution).

7. Article 3 ch.2 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (1988) stipulates that "subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption" (*https://www.unodc.org/pdf/convention_1988_en.pdf*).
8. According to the French Penal code, an offence consists of three elements enabling the offender to be held responsible: intention, existence of a material element ("start of implementation") and a moral element (absence of voluntary renunciation). Preparatory actions for use cover the start of implementation, characterised by "the action that leads directly to the offence with the intention of committing it", defined by two elements, one subjective (the intention to commit the offence) and the other objective (the proximity of the material action implementing the committing of the offence). Hence the start of implementation must always be an unambiguous material action that leaves no doubt as to the intention of the person incriminated.
9. In the UK, narcotics are broken down into three categories (A, B and C) determining the level of penalties possible. In 2004, cannabis was downgraded to a class C substance (the least dangerous, with anyone found in possession of the substance liable to a maximum prison sentence of 2 years), before being reclassified as class B in 2009.

Legal status of cannabis in the Netherlands: a "tolerance" model which is not the same thing as legalisation

The Dutch example illustrates the difficulty of categorising criminal policies developed with respect to the use of narcotics. Dutch legislation firstly presents the specific characteristic of making a distinction between "hard drugs" (for which the distribution, sale, production or possession is prohibited) and "soft drugs" (including cannabis). Contrary to popular belief, the possession and sale of cannabis are not legal in the Netherlands but are tolerated under certain conditions (law of 1976). Possession and sale are authorised in "coffee shops" that hold a licence, with certain restrictions: ban on the advertising of illegal drugs, ban on the sale of "hard" drugs, ban on public nuisance, ban on sales and access to minors, maximum sales of 5 grams per person and per transaction. In addition, in practice, the sale or possession of cannabis for personal use in the street are rarely booked by the police for amounts below 5 grams and, if they are, they rarely lead to prosecution (principle of discretionary prosecution).

Two-thirds of Dutch towns do not authorise coffee shops and their numbers have actually fallen significantly since the end of the 1990s: hence there were 614 coffee shops in 2013, compared to 846 in 1999 (EMCDDA, 2013). In addition, since January 2013, in order to limit problems related to "narco-tourism", each town has the right to decide whether or not its coffee shops should be reserved exclusively for Dutch nationals or otherwise. While the majority of towns in the Netherlands authorise foreigners to visit coffee shops (such as Amsterdam, The Hague, Utrecht, Eindhoven or Rotterdam), a number of towns in the south of the country, which are some of those most affected by "drug tourism", have banned foreigners from entering the coffee shops (such as Maastricht, for example).

Within the EU-28, a differentiation can be made between three groups of countries, depending on the criminalisation mechanism for the use of cannabis:

- Cannabis use as such is a **criminal offence in 6 countries of the EU**: France, Greece, Sweden, Finland, Cyprus, Hungary, along with Norway. All provide for possible prison sentences.
- Cannabis use as such is an **administrative offence (subject to administrative penalties, outside the criminal framework) in 7 countries of the EU**: Portugal, Spain (use in public places), Luxembourg, Bulgaria, Estonia, Latvia, Lithuania.
- **In 15 EU countries, cannabis use as such is not prohibited by law: only possessing cannabis in small amounts for personal use constitutes a criminal or administrative offence**: Belgium, Denmark, Netherlands, Italy, Germany, Austria, UK, Ireland, Malta, Czech Republic, Poland, Croatia, Slovakia, Slovenia and Romania (specific case where use is prohibited but no penalties are prescribed). To this can be added Spain, for use on private premises.

Within the EU-28, the possession of cannabis is a criminal offence in most countries, except in some countries when "small amounts" intended for personal use are concerned.

- **In 9 EU countries**, the possession of "small amounts" of cannabis for personal use is actually an **administrative offence**: Portugal[10], Italy (penalised from the second time the offence is committed[11]), Spain (if the offence is committed in public), Czech Republic, Slovenia, Estonia (the first two times), Latvia (the first time), Croatia (since 2013), Malta (since 2015). The penalty applicable varies depending on the country: it may be a warning, a fine, a driving licence or passport suspension or withdrawal, confiscation of the substance, or an administrative detention, in the absence of aggravating circumstances.
- **Among the 19 EU countries that consider possession of "small amounts" of cannabis for personal use to be a criminal offence, 7 countries schedule various legal mechanisms[12] making it possible not to penalise it**: Germany, Belgium, Luxembourg, Netherlands, Denmark, Poland (the first time), UK[13]; that is sometimes known as a

10. In Portugal, since 1 July 2001 (date on which the legislative reform of 29 November 2000 came into force), the possession of narcotic substances has no longer been a criminal offence but, instead, an administrative offence, provided that the amount possessed does not exceed what can be considered to be the average amount used by an individual in ten days.
11. In Italy, possession for personal use is subject to administrative penalties from the 2nd time the offence is committed and, theoretically, below a threshold equivalent to 500 mg of THC (the threshold concept was reintroduced in the law in 2006 but the change was declared unconstitutional in 2014). This penalty can take several forms (suspension of driving licence, gun licence, passport, residency permit, etc.). Beyond this threshold, possession is considered as trafficking.
12. The absence of criminal proceedings by the Public Prosecutor is very common in countries exercising a "discretionary prosecution" system (France, Netherlands, Denmark, for example).
13. In Germany, the Constitutional Court has issued a ruling relating to the room for criminal manoeuvre of the Länder, which have the option to abandon prosecution in the event of possession of small amounts for personal use, with each Land having defined a maximum tolerated amount (1994); in Belgium, the law of 16 May 2003 stipulates a settlement measure enabling the offender not to be prosecuted (simplified report), provided that he/she agrees to pay a fine or begin a treatment process; in the Netherlands and Denmark, the discretionary prosecution principle means that the Prosecutor's office can opt not to prosecute all offences related to narcotics; in Poland, use and possession have only been prosecuted in certain conditions since the law of 26 May 2011 inviting prosecutors to suspend criminal proceedings in three cases: for users arrested in possession of a small amount, or for the first time, or in a situation of addiction; in the United Kingdom, police guidelines recommend that people in possession of "small amounts" of cannabis not be arrested, but, instead, be given a warning if this is their first offence.

"depenalisation *de facto*". However, some countries penalise the use and/or possession of **all narcotics other than cannabis** (Luxembourg, Belgium).

The **thresholds** determining "small amounts" of cannabis, sometimes defined in the legislation (often in the form of a directive[14]), differ from one country to another: for cannabis resin, for example, the thresholds are 3 g in Belgium, 3.5 g in Malta, 5 g in the Czech Republic or Portugal, 6 to 15 g in Germany (depending on the Länder), 25 g in Spain, etc. These thresholds have different implications: some determine the cut-off point between the possibility of prosecution and the absence of prosecution, while others determine the difference between personal use and supply.

Hence, within the EU-28, 8 countries do not legally consider the use or possession of "small" amounts of cannabis to be criminal offences: Portugal, Spain (use in public places), Slovenia, Estonia, Czech Republic, Italy, Latvia (the first time), Croatia. To this list can be added Luxembourg and Belgium, where criminal penalties for this type of behaviour are non-existent in practice.

In addition, around thirty countries around the world (the majority within the EU) and 23 US States (plus Washington DC) have legalised the medical use of cannabis or cannabis products (see box below).

Therapeutic or medical use of cannabis (or cannabis products)

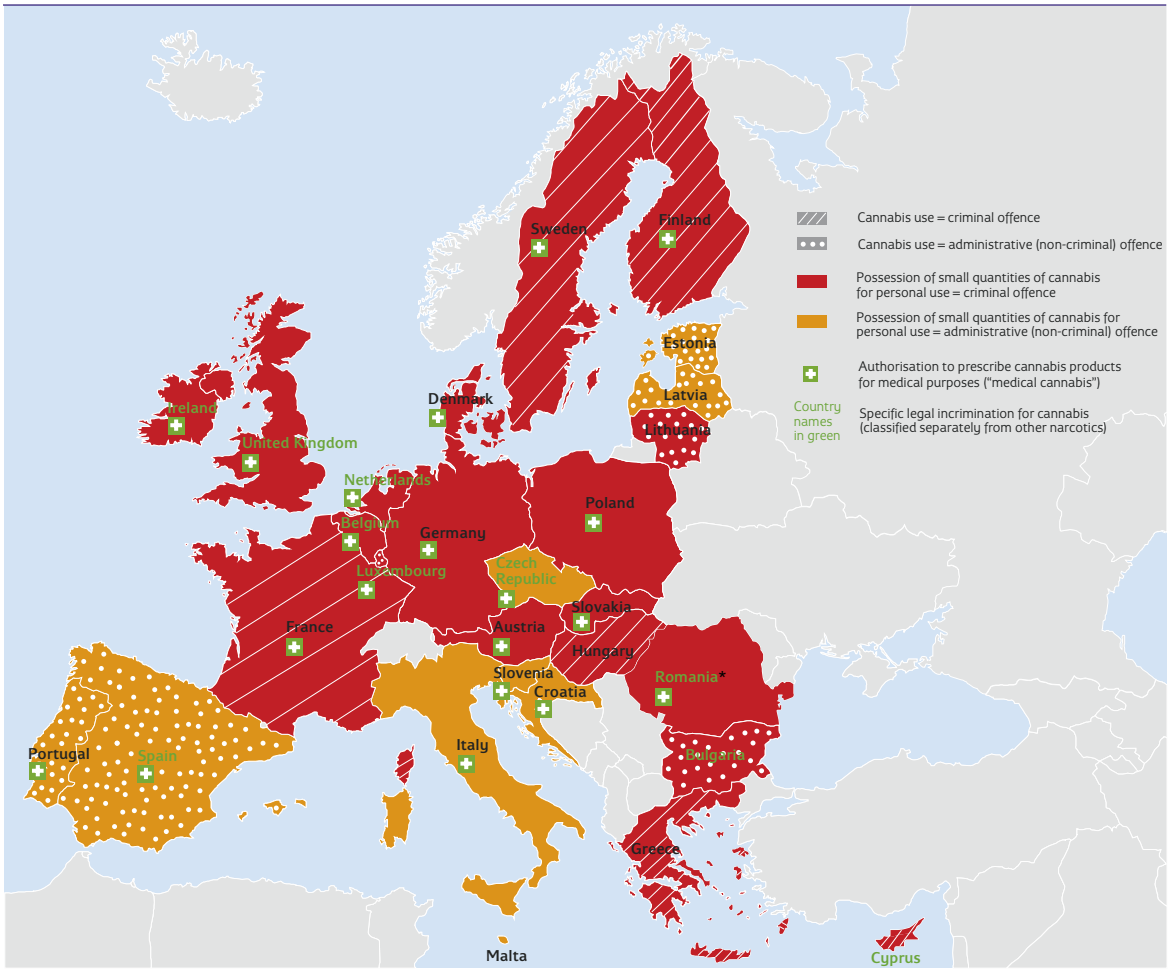
Following the example of Canada, the first country to have legalised the medical use of cannabis in 2001, the therapeutic use of cannabis is now authorised in around thirty countries worldwide, in forms and conditions subject to varying degrees of restrictiveness. This is the case in 20 EU countries (Austria, Germany, Belgium, Croatia, Czech Republic, Denmark, Spain, Finland, France, Ireland, Italy, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden and UK) and 12 countries outside the EU (Australia, Switzerland, Liechtenstein, Norway, Canada, New Zealand, Israel, Chile, Uruguay, Colombia, Mexico, Kuwait, etc.), to which can be added 23 US States (Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hamsphire, New Jersey, New York, New Mexico, Oregon, Rhode Island, Vermont, Virginia, Washington) and the Federal capital, Washington DC. However, the medical authorisation rules vary greatly from one country to another, with respect to the medical indications in which it may be prescribed, the authorised forms in which it can be used (natural or synthetic form) and authorisation to grow cannabis plants for personal medical use.

A distinction needs to be made between **countries authorising the use (or even cultivation) of natural cannabis for patients** with cancer, AIDS or multiple sclerosis (inhaled cannabis, ingested in infusion form or smoked), which remain relatively rare (USA, New Zealand), and **those that authorise the marketing of natural cannabis or medicines containing cannabis** (marketing of synthetic medical cannabinoids: Sativex® (mouth spray), dronabinol (Marinol®) or nabilone (Cesamet®), taken in oral form. The sale of medications containing cannabis (on prescription) in pharmacies is often only authorised in these countries for certain illnesses, for which the efficacy of cannabis has been demonstrated, for example to treat nausea in cancer or AIDS patients receiving chemotherapy and for certain painful neurological conditions (multiple sclerosis, spinal cord damage). Hence, Sativex®, for example, can be prescribed in 17 EU countries.

Since the decree of 5 June 2013, France has been one of the countries in which the marketing of Sativex, a mouth spray derived from cannabis, is authorised to relieve spasticity in multiple sclerosis patients. Marketing Authorisation dated 8 January 2014. However, this marketing is currently suspended by the *Comité économique des produits de santé* (CPES - French economic committee for healthcare products), which deems the price proposed by the Spanish manufacturing company Almirall to be too high.

14. Defined in the form of a directive, these thresholds correspond to general policy directives, which do not have the same restrictive value as a law. The implementation of these directives may therefore vary, depending on the jurisdictions.

Overview of legislation on cannabis use and possession within the EU-28 (March 2016)



* In this country, cannabis use is prohibited but there is no punishment set out for it.
N.B. : This map offers an overview of the penalties set out for cannabis use or possession of small quantities of cannabis for personal use (with various national thresholds), when the offence is committed in public, for the first time (no repeat offending) and without any aggravating circumstances.

Source: OFDT 2016

Credits

Brendan Hughes (Principal scientific analyst, Supply reduction and new drugs unit, European Monitoring Centre for Drugs and Drug Addiction), Frank Zobel (Deputy Director of Addiction Suisse), Virginie Gautron (Senior lecturer in criminal law and criminal sciences at the University of Nantes), Maria Luisa Cesoni (Professor at Louvain Catholic University, Faculty of law and criminology), Dan Kaminski (Professor at Louvain Catholic University, Faculty of law and criminology), Christine Guillain (assistant lecturer at the University Faculties of Saint-Louis, Brussels), Mario Lap (Drugtext Foundation), Katia Dubreuil (magistrate and special adviser at MILDECA), François Beck and Julie-Emilie Adès (OFDT).

Bibliography

Bisiou Y., Le cadre légal français, In: Ogien A. and Mignon P. (Dir.), *La demande sociale de drogues*, Paris, Délégation générale à lutte contre la drogue et la toxicomanie (DGLDT), La Documentation française, 1994, pp. 177-191.

Cambillau N., *L'usage de cannabis : entre répression excessive et dépénalisation problématique*, Médecine et Droit, n° 58, 2003, pp. 3-16.

Cesoni M.L., *L'incrimination de l'usage de stupéfiants dans sept législations européennes*, Documents du Groupement de Recherche Psychotropes, Politique et Société, n°4, 2000, 143 p.

Cesoni M.L. and Devresse M.S., *La détention de stupéfiants entre criminalisation et décriminalisation*, Fribourg, Editions Universitaires de Fribourg, 2010, 280 p.

Crick E., Haase H.J. and Bewley-Taylor D., *Legally regulated cannabis markets in the US: Implications and possibilities*, Swansea, Global Drug Policy Observatory (GDPO), 2013, 36 p.

Da Agra C., *Requiem pour la guerre à la drogue. L'expérimentation portugaise de décriminalisation*, Déviance et Société, Vol. 33, n° 1, 2009, pp. 27-49.

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), *Illicit drug use in the EU: legislative approaches*, Lisbonne, EMCDDA, Thematic papers, 2005, 48 p.

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), *Models for the legal supply of cannabis: recent developments*, Lisbon, EMCDDA, Perspectives on drugs, 2013, 5 p.

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), *European Drug Report 2014: Trends and developments*, Luxembourg, Publications Office of the European Union, 2014, 80 p.

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), 2015a, *Overviews of legal topics*. [accessed 15/03/2016]

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), 2015b, *Video: What is decriminalisation of drugs?* [accessed 15/03/2016]

Greenwald G., *Drug decriminalization in Portugal: lessons for creating fair and successful drug policies*, Washington, DC, Cato Institute, 2009, 38 p.

Guillain C., Criminaliser, décriminaliser l'usage de drogues : une histoire sans fin, In: Tulkens F., Cartuyvels Y., and Guillain C. (Dir.), *La peine dans tous ses états. Hommage à Michel van de Kerchove*, Bruxelles, Larcier, 2011, pp. 317-336.

Inter-American Observatory on Drugs (OID), *Report on Drug Use in the Americas 2015*, Washington, DC, Organization of American States (OAS), Inter-American Drug Abuse Control Commission (CICAD), 2015, 212 p.

Obradovic I., *The criminalization of drug use in France*, *Tendances*, OFDT, n° 72, 2010, 6 p.

Obradovic I., *Trente ans de réponse pénale à l'usage de stupéfiants*, *Tendances*, OFDT, n° 103, 2015, 6 p.

Pudney S., *Drugs policy: what should we do about cannabis?*, Economic Policy, Vol. 25, n° 61, 2010, pp. 165-211.

Room R., Fischer B., Hall W., Lenton S., Reuter P., Schelling T.C. and Feilding A., *Cannabis policy. Moving beyond stalemate*, Oxford - New York, Oxford University Press, 2010, 233 p.

Van De Kerchove M., *Le droit sans peines. Aspects de la dépénalisation en Belgique et aux États-Unis*, Bruxelles, FU Saint-Louis, 1987, 557 p.

Zobel F. et Marthaler M., *Du Río de la Plata au Lac Léman : Nouveaux développements concernant la régulation du marché du cannabis*, Lausanne, Addiction Suisse, 2014, 36 p.

Legislative references (for France):

Law No. 70-1320 of 31 December 1970 relating to health measures to fight against drug addiction and combat the trafficking and use of poisonous substances, Official Journal of the French Republic of 2 January 1971

Law No. 2003-87 of 3 February 2003 relating to driving under the influence of substances or plants classified as narcotics. (NOR: JUSX0205970L).

Law No. 2007-297 of 5 March 2007 relating to criminality prevention. (NOR: INTX0600091L).

Law No. 2010-476 of 12 May 2010 relating to the opening up of the online gambling sector to competition and regulation. (NOR: BCFX0904879L).

Law No. 2011-267 of 14 March 2011 relative to homeland security performance planning. (NOR: IOCX0903274L).

Decree No. 2013-473 of 5 June 2013 amending, as concerns pharmaceutical products, the provisions of article R. 5132-86 of the French Public Health Code relating to the ban on operations concerning cannabis or its derivatives. (NOR: AFSP1308402D).

Decree No. 2015-1272 of 13 October 2015 for the application of articles 41-1-1 of the penal procedure code and L. 132-10-1 of the Public Safety Code. (NOR: JUSD1514499D).

OFDT - 3 avenue du Stade de France - 93218 Saint-Denis La Plaine Cedex / www.ofdt.fr