

Cannabis: moving away from the *status quo* towards controlled legalisation

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Cannabis: moving away from the *status quo* towards controlled legalisation

Opinion and report of the Economic,
Social and Environmental Council
on the proposal of the Temporary
Committee on Cannabis

Rapporteurs:
Florent Compain
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Question referred to the Economic, Social and Environmental Council by decision of its office of 20 December 2022 pursuant to Article 10 of Order No. 58-1360 of 29 December 1958, as amended, on the Organic Law on the Economic, Social and Environmental Council. The Bureau entrusted the Temporary Committee on Cannabis with the preparation of an opinion on *Cannabis: moving away from the status quo towards controlled legalisation* and a report on *Cannabis: assessment and development of public policies*. The Temporary Committee on Cannabis, chaired by Mr Jean-François Naton, appointed Mr Florent Compain and Mr Helno Eyriey as rapporteurs.

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executive summary

In the last decade, several countries have legalised cannabis for "recreational" use, including a number of states in the USA, Canada and Uruguay. Within the European Union, Malta is the first state to have taken the step, soon to be followed by Germany, which, by 2024, is due to embark on a process of legalisation, the main objectives of which are to protect minors and young adults and to increase public resources to better combat organised crime.

In its assessment, the ESEC shows that French public policies prohibiting cannabis for "recreational" use have failed. From a public health point of view, the preventive actions carried out are generally ineffective, particularly among young consumers who are increasingly exposed to uncontrolled products, with serious health consequences. Similarly, criminalising use mobilises the police and judicial services to a significant degree, without any real effect on the scale of trafficking and the level of consumption, which remains the highest in Europe.

In view of the inconsistencies and injustices caused by the criminalisation of individual cannabis use, the ESEC has chosen to recommend urgent measures in order to limit the impact on individuals and to respond to public health issues by protecting users, especially young users. In parallel with the deployment of these emergency measures, the ESEC recommends that participatory and consultative mechanisms be set up at national and regional level to allow for a wide-ranging, dispassionate debate that goes

beyond clichés and builds a new model for regulating cannabis that takes account of France’s specific characteristics. A complete overhaul of the legislation is also proposed. Finally, our assembly has chosen to propose a desirable model for the controlled legalisation of cannabis production, distribution and use in order to provide input for future discussions.

To this end, it has drawn up several recommendations organised along three lines:

PILLAR 1: ORGANISING THE PUBLIC AND PARTICIPATORY DEBATE FOR A NEW APPROACH TO CANNABIS REGULATION

RECOMMENDATION

The ESEC recommends:

- considering a new approach that places the participatory approach at the centre of the democratic system and upstream of the legislative process in all territories, including overseas territories;
- enriching this opinion by mobilising the participatory tools opened up by the Organic Law of 15 January 2021 reforming the ESEC upon referral by the public authorities in order to enable broad participation and ownership of the health, social, economic and environmental issues involved in a new legislative framework for cannabis;

- making the principle of accountability effective by asking the public authorities to take into account the results of the public and participatory debate, the proposals of which could, if necessary, be transposed into a draft law.

PILLAR 2: DEPLOYING EMERGENCY MEASURES FOR BETTER REGULATION OF CANNABIS IN FRANCE

RECOMMENDATION

In order to limit the injustices of the current system and to give a more important place to prevention in order to limit the risks, in particular for minors and young adults in our public policies concerning cannabis, the ESEC recommends:

Emergency measures for the prevention and protection of minors

- deploying a genuine prevention and harm reduction policy specific to cannabis and integrated with all addictive behaviours;
- protecting minors by strengthening the repression of trafficking aimed directly at them, by mobilising judicial educational assistance if necessary, and by creating specific reception and care structures;

→supporting parents faced with problematic cannabis use by their teenagers through the intermediary of associative structures or networks that develop information and discussion groups.

Emergency legal measures to limit injustices

- no longer penalising the use and cultivation of cannabis for personal use and including the possibility of individual cultivation in "collectives" (taking the example of the Cannabis Social Clubs (CSC) model¹, whose peer education dimension is welcomed in Spain, Germany, etc.);
- removing from criminal records and police files the offences of use and possession for both male and female users;
- reviewing the testing of cannabis use while driving: punishing only intoxication by developing the scientific study and practical implementation of behavioural tests.

RECOMMENDATION

To develop knowledge about "recreational" cannabis and to secure the hemp sector, the ESEC recommends

- creating a national cannabis institute under the aegis of the OFDT [French Monitoring Centre for Drugs and Drug Addiction] to develop basic research on cannabis and its various aspects.

This institute must mobilise researchers from a variety of backgrounds (biologists, doctors, economists, statisticians, sociologists, etc.) in order to cover all the fields associated with cannabis;

- strengthening the training of all health personnel on the endocannabinoid system (ECS) and both medical and "recreational" cannabis;
- amending Article L.3421-4 of the Public Health Code in order to remove the offence of "presenting narcotics in a favourable light" in order to allow the dissemination of clear, objective and accessible information on cannabis (and other narcotics), and to promote the development of effective prevention and risk reduction policies;
- undertaking public conservation and research on cannabis seeds and genetics in accordance with the Nagoya Protocol and ensuring their protection and management so as to regain control over the varieties of the cannabis plant, their properties and their genetic heritage;
- securing the cannabinoid hemp sector by raising the THC level to 1% for varieties authorised for cultivation and by protocols allowing the extraction and isolation of the various cannabinoids excluding THC without legal risks.

¹ The Cannabis Social Club (CSC) is a model of cannabis regulation, similar to the concept of an [association for the maintenance of peasant agriculture](#). It is a sharing group organised as a non-profit association, composed only of adults, who manage the production and distribution of cannabis in a closed circle for the personal needs of their members. (Source: Wikipedia).

RECOMMENDATION

In order to prepare a new framework for cannabis, the ESEC recommends:

- creating and defining the composition of a section of the ANSM: the French Cannabis Agency (a body integrating all stakeholders);
- carrying out an initial assessment and impact study in the context of drafting a bill and identifying what works in international experiments, as well as the obstacles encountered;
- defining indicators in order to evaluate and develop public cannabis policies (harmonised statistics, short - medium - long term, etc.);
- setting up a French network for medical cannabis (quality control and management of distribution management in prerogatives).

PILLAR 3: BUILDING A MODEL FOR THE CONTROLLED LEGALISATION OF CANNABIS

RECOMMENDATION

The ESEC recommends that cannabis legislation be developed through a legislative process that ensures that a quality impact assessment is carried out to inform the public authorities about the long-term consequences of the law. In its study “Étude d’impact : mieux évaluer pour mieux légiférer”², the Council makes various proposals to ensure that this prior assessment exercise is not simply a pro domo plea for the bill it accompanies.

RECOMMENDATION

The ESEC recommends:

- developing a comprehensive prevention strategy, particularly for young people, with significant resources, specific to cannabis, and integrated into prevention policies for all addictive behaviours with the support of partners already involved in this field;
- protecting minors as a matter of priority by developing a policy of support and care for minors, particularly when they have problems, and by prohibiting the sale of cannabis to minors or incitement to use it;
- introducing a risk reduction policy aimed at users that encourages less risky use and provides real education on use.

RECOMMENDATION

The ESEC recommends:

- allowing the coexistence of different production models by separating the medical, useful and "recreational" sectors;
- making organic farming the norm for the production of "recreational" cannabis, while at the same time regulating the volume or area devoted to such cultivation;
- ensuring complete and transparent traceability from seed to consumption thanks to a public blockchain, and under the control of the State services (regulatory authority, services of the Ministries of Agriculture, Health, Economy and Finance such as the DGCCRF and customs, etc.) ;
- allowing self-cultivation and Cannabis Social Clubs within a framework.

RECOMMENDATION

The ESEC recommends:

- allowing distribution to adults only in dedicated licensed outlets;
- subjecting distributors to mandatory training in risk prevention and reduction, which is updated regularly;
- prohibiting all direct or indirect propaganda and advertising for cannabis (except on shop signs, under conditions) as well as all free or promotional distribution along the lines of the Evin law³;
- ensuring the mandatory display of levels of the main cannabinoids and aromatic profiles alongside public health messages;
- considering the actors of the "historical" market.

RECOMMENDATION

The ESEC recommends:

- allowing use by people of legal age, while paying particular attention to those aged 18-25;
- not penalising use by minors, but directing them to an educational and therapeutic support committee made up of specialists;
- regulating use in public places, taking into account existing models;
- guiding and supporting consumers towards safer use;
- redressing the social injustices caused by cannabis trafficking.

RECOMMENDATION

The ESEC recommends:

- creating a specific earmarked tax and directing a defined part of the overall tax towards prevention and care;
- funding cannabis research;
- financing the rehabilitation of neighbourhoods and the support of people who have suffered the consequences of trafficking with a view to the development of the local economy (in particular through the professional and educational follow-up of young people who have emerged from drug trafficking).

3 Article L.3511-3 of the Public Health Code: "Direct or indirect propaganda or advertising for tobacco or tobacco products and any free distribution are prohibited."

RECOMMENDATION

The ESEC recommends:

- strengthening the repression of trafficking, especially to minors;
- controlling the quality of the products as well as the display of the levels of the different cannabinoids, the origin and the cultivation methods;
- protecting production, processing and distribution sites.

Introduction

Over the last 10 years, a movement to legalise recreational cannabis has been under way in several countries (Colorado and Washington in 2012, Uruguay in 2013, Canada in 2018, etc.). In the European Union, on 26 October, the German government's health minister, Karl Lauterbach, announced a number of measures aimed at legalising the production, distribution and sale of limited quantities of cannabis from 2024. Among the objectives put forward are the protection of minors and young adults, and the increase of public prosecution resources for the fight against organised crime.

In France, the legislation introduced by the law of 31 December 1970 has gradually evolved by concentrating resources on a repressive approach to the detriment of consumer health support, which was one of the legislator's initial intentions. However, repression has not succeeded in reducing either supply or demand, since within the European Union (EU), our country has the highest proportion of users who have experimented with cannabis at least once in their lives, with 45% of 15- to 64-year-olds, compared with 28.2% in Germany and 27.7% in the Netherlands¹. The public policies stemming from the above-mentioned law have thus proven to be a failure. First, in terms of public health, since the population, especially minors and young adults, have not been able to benefit from effective preventive measures and are exposed to uncontrolled products with

¹ European Monitoring Centre for Drugs and Drug Addiction (2022), European Drugs Report 2022, Trends and Developments, Table A5 p. 53.

a constantly increasing THC content. Second, because the criminalisation of consumption has led to a strong mobilisation of the police and justice services, which has not succeeded in counteracting the scale of trafficking or the level of consumption. By way of example, between September 2021 and August 2022, more than 226,000 offences were recorded for simple drug use, 90% of which involved cannabis, a threefold increase in 20 years².

On the basis of these observations, the ESEC has chosen to recommend urgent measures to protect users (primarily minors and young adults), to address public health issues and to limit the inconsistencies and social injustices created by the current system, in particular by decriminalising the use and cultivation of cannabis for individual use. In parallel with the deployment of these emergency measures, and to achieve a broader reform that meets stakeholders' expectations, the ESEC is calling for the establishment of participatory and consultative mechanisms at national and regional level to consider a new model for the regulation of cannabis that takes account of France's specific characteristics. To this end, a complete overhaul of the legislation seems necessary in order to establish a desirable model of controlled legalisation of production, distribution and use, the initial outlines of which are set out in this opinion.

² Source: Ministry of the Interior, Statement 4 001: "figures for crimes recorded by the police and gendarmerie."

PART 01

Public policies not adapted to current cannabis issues

A. Cannabis is a prohibited drug, the use of which has become commonplace

The hemp plant contains more than a hundred cannabinoids, of which the two best known active components are: tetrahydrocannabinol (THC) and cannabidiol (CBD). Although both have psychoactive properties, only the former has euphoric effects. Due to the presence of these inebriating properties, cannabis in France is considered a narcotic drug from a THC concentration of more than 0.3%. Although hemp can be used as a material, textile or food, some of its uses, particularly for recreational purposes, have been prohibited since the Law of 31 December 1970. The cultivation of this type of cannabis, which has a moderate or high THC content, is therefore prohibited, as are its consumption and sale.

1. High national consumption not without risks

Despite a system of prohibition that has been in place for more than 50 years, one of the most repressive in Europe, according to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)³, France has the highest proportion of drug users in the European Union (EU), with 45% of 15- to 64-year-olds having tried cannabis at least once in their lives, compared with 27% in the EU as a whole.

Although cannabis use is much lower among women than men, particularly as regards more regular use, it has increased over the last 30 years, according to the OFDT. Indeed, although consumption has stabilised over the last 10 years, it has been falling slightly since 2021. The OFDT indicates that *"the proportion of users during the year (11%, i.e. 1 in 10 adults) has not changed since 2014 and the proportion of regular users (at least 10 times a month) appears to be falling slightly, from 3.6% in 2017 to 3% in 2021. Since the first editions of the Health Barometers in 1992, the evolution of cannabis use in the adult population reveals a double movement: on the one hand, an increase in the proportion of women who have already used cannabis; on the other hand, an ageing, on average, of users during the year, who are more and more often in their 30s and 40s."*⁴

³ Ibid.
⁴ Source : <http://www.ofdt.fr/BDD/publications/docs/eisx0ln2ba.pdf>.

It is acknowledged that cannabis is the most widely sold and consumed 'illicit' drug in France. If the aim of the repressive policy is to reduce or even eliminate all cannabis consumption, the figures produced by the OFDT show that it has failed. Indeed, while consumption of products such as tobacco or alcohol is on a downward trend, whatever the frequency of use and gender, the proportion of cannabis users in the population has risen sharply in 30 years and remains the highest in Europe.

Moreover, this "recreational" use of cannabis carries risks. Smoked cannabis flowers, leaves or resin, like any combustion, are highly toxic to the lungs and the THC molecule, which may be more or less concentrated in this product, can have intoxicating effects depending on the use and the person. Similarly, the use of cannabis in combination with other substances such as alcohol and tobacco creates additional risks. Although most drug use is described as non-problematic⁵, especially when it is exceptional or at significant intervals, there are also risks of ending up in problematic use or dependence, which has negative consequences for daily life in the more or less long term.

Moreover, when addiction is established, a significant part of users' resources may be diverted to the purchase of these substances, thus placing them at additional economic risk.

Another fact established and shared by the expert community is that regular use of "recreational" cannabis carries more risks related to cognition, especially for young people whose brains are maturing up to the age of 25. In this respect, it is during adolescence that the risks are greatest⁶.

Among young French consumers, the prevalence of consumption is twice as high as the European average⁷. Thus, even less regular use can have an impact on young people, and problematic use is consequently even more damaging than for older people. In addition to the dangers linked to neuronal development, there are other risks such as social isolation, which can lead to failure at school or even dropping out, which often has harmful consequences for social and family life, integration into society, but also for professional careers. Similarly, if problems with addictive behaviour are revealed at an early age, there is a risk that they will develop into a lasting difficulty that will be all the more problematic to overcome if not dealt with quickly⁸.

Finally, the increase in THC levels and the recent emergence of synthetic cannabinoids more commonly known as "Spice, K2, Buddha blue, etc.", the effects of which are known to be more dangerous to health than phytocannabinoids and therefore pose significant risks. There are also risks that are not directly related to cannabis use. This includes violence associated with procurement. As the purchase is illegal, the balance of power between the buyer and the seller is in the seller's favour. This risk is higher for women⁹.

It should be noted that, with the exception of Reunion and New Caledonia, levels of cannabis use by 15- to 64-year-olds in the Overseas Territories are lower than in France. On the other hand, as in mainland France, use is more common among males¹⁰.

5 The OFDT uses a list of six questions for users to assess their consumption. "These six questions concern consumption in the morning, before midday; consumption alone, outside a group dynamic, since we know that cannabis is linked to a type of juvenile sociability. The third aspect is memory problems; then there is the fact of having had problems related to cannabis consumption, either of having been stopped, or of having failed a school examination, or of having had arguments because of cannabis; a fifth identification criterion is having had remarks from those around them about their use. The last question is about having tried to stop without succeeding. These six questions make it possible to discriminate, in a statistical sense, between individuals who have a potentially problematic use in the sense that they do not fully control their consumption of the product or its effects." This corresponds to the CAST (Cannabis Abuse Screening Test), which is an internationally shared scale for identifying problematic cannabis use.

6 Hearing of Ms Marie Jauffret-Roustide before the Temporary Committee, 5 May 2022.

7 Hearing of Ms Caroline Janvier, MP, before the Temporary Committee, 31 March 2022.

8 It should be noted that in 2021, the EESC issued an opinion on the poor state of child psychiatry services and the lack of human and financial resources, which were preventing rapid treatment of young patients, whose condition and risk behaviour worsened during the waiting period (see "améliorer le parcours de soins en psychiatrie", ESEC, 2021). While addiction services need to be given more resources, child psychiatry services also have a role to play.

9 Interview of the rapporteurs with Ms Sarah Perrin, 21 July 2022.

10 Sources: Usages de drogues illicites dans les départements d'outre-mer : les données du Baromètre santé DOM 2014 (santepubliquefrance.fr), Drogues et addictions dans les outre-mer : états des lieux et problématiques, June 2020, Ivana Obradovic, French Monitoring Centre for Drugs and Drug Addiction.

In presenting her work, Sarah Perrin explained that women involved in selling cannabis, who are far less numerous than men, present a radically different sociology¹¹. Fully aware of their condition and of gender stereotypes, they play on this and use their image of "softness" to their advantage to build a quality relationship with their "clients", often with a view to subsistence or to improving daily life rather than enriching it. Generally located in the heart of cities, they therefore provide a feeling of security and discretion in a global traffic that is also characterised by its associated delinquency¹².

The financial insecurity of some women may also attract traffickers. The financial insecurity of some women may also attract traffickers. They may be forced to give in under pressure from the traffickers - but also out of need - seeing themselves as potential "nannies" in charge of keeping cannabis and/or money from trafficking for them.

2. A slowly changing perception of cannabis in society

As a result of the lack of information among the population, many stereotypes and preconceived ideas exist around cannabis. Thus, although it is considered less dangerous than other illicit drugs such as cocaine or heroin, it is still perceived as more dangerous than alcohol or tobacco, although these products are more harmful¹³.

The treatment of the issue of cannabis in France and the debates on the subject are often reductive and caricatured. This is particularly true in the political sphere, where many of those in power continue to defend a totally ineffective prohibition policy. Indeed, for a long time they defended prohibition as an extension of the "war on drugs" initiated by Nixon at the end of the Vietnam War. However, as the results of this policy are still not conclusive today, despite the considerable resources devoted to it, the subject is mostly avoided by many politicians who, moreover, consider that it is not very 'promising' electorally. However, in recent years, politicians of different persuasions have increasingly tried to address the issue in a calm and dispassionate manner.

¹¹ Interview of the rapporteurs with Ms Sarah Perrin, 21 July 2022.

¹² *Ibid.*

¹³ Jean-Baptiste Moreau, MP, general rapporteur, Caroline Janvier, MP, thematic rapporteur and Ludovic Mendes, MP, thematic rapporteur, *Rapport d'information relative à la réglementation et à l'impact des différents usages du cannabis*, submitted by the joint information mission chaired by Robin Reda, MP, No. 4283, 28 June 2021.

B. A legal framework with multiple impacts

1. Multiple social impacts revealing the weak results of prevention policies and the lack of risk reduction

The Law of 31 December 1970 on health measures to combat drug addiction and the repression of trafficking in and illegal use of poisonous substances has been supplemented and/or amended by a myriad of laws and regulations that directly or indirectly concern narcotics (on average one law every 6 months for the past 51 years). This superimposition of normative texts has not led to a coherent public policy to reduce the number of consumers, to fight against addiction, public nuisance, the growth of a parallel economy and their social consequences.

The current legal framework and institutional prevention based on the model of prohibition and abstinence limit the dissemination of fluid and objective information and the deployment of effective measures. Above all, prevention should focus on protecting people from the adverse effects of drugs and addictive behaviours, as well as on reducing overall levels of consumption, especially among young people, by seeking to reduce demand.

Actors in the field and health professionals working on addiction issues are calling for a change in legislation and denouncing the repressive approach towards users. They feel that criminalising users locks them into a deviant trajectory and places them on a drug addiction pathway by distancing them from prevention and care¹⁴.

In addition, a clear distinction has been made between prohibition and prevention, reinforced by the systematisation of the criminal response to use. The ban "*deprives them of freedom of speech and of people with whom they can discuss their practice without having to hide its negative aspects or censor its benefits to avoid being perceived as amblyopic apologists for the use.*"¹⁵ Because of the prohibition and despite the health ambitions of anti-drug legislation, there is currently no real comprehensive policy for reducing the risks associated with drug use, and in particular cannabis.

The negative impacts of repressive public policies on the health of users are also numerous. Users are left to their own devices without reliable and easily accessible information, and find it very difficult to change their behaviour. In addition, many people in situations of addiction or problematic use do not dare to seek help for fear of being condemned. The lack of prevention and care adapted to each person generates risk behaviours, as vulnerable people are more exposed.

The illegal market resulting from prohibition also exposes users to adulterated and/or poor-quality products, which is accentuated by the profit-seeking nature of the traffickers. The health consequences are not well known, and sometimes dramatic, especially as it is often impossible for a user to recognise an adulterated product.

However, this essentially repressive legal framework generates a taboo that stifles speech, particularly within the family circle or the world of work, which can have harmful consequences.

¹⁴ Alexandre Marchant, "La lutte contre la drogue en France ou les contradictions de la prohibition (1970-1996)", *Mouvements*, 2016/2 (No. 86), pp. 34 to 43.

¹⁵ Emmanuelle Hoareau, "Stigmatisation de l'usager de substances illicites et enjeux de l'entretien individuel", *Nouvelle revue de psychosociologie*, 2016/1 (No. 21), pp. 33 to 48.

2. Stigmatised users and ineffective repression of trafficking

In 2000, the number of offences recorded for simple use was under 80,000. In 2005, this figure was close to 110,000, and almost reached 150,000 in 2010. For 2015 and the following years, there is a stabilisation at just over 180,000 procedures¹⁶.

For 2021, the deployment of the fixed penalty fine (FPF) introduced in 2019, as well as the instructions given to police forces, led to a further strengthening of the repression of simple use. More than 210,000 offences were recorded and the results for the first half of 2022 show a further increase, compared with 2021, with almost 115,000 offences recorded¹⁷. Massive repression of use and stigmatisation of users are counter-productive in terms of combating risky use in particular. The testimonies and hearings on which the report is based have largely shown that the repressive focus on cannabis use leads to the saturation, or even "embolism", of the competent services, many of which are focused on a "policy of numbers" which in turn marginalises the social and health care of users without succeeding in reducing overall consumption. In addition, the lack of material and human resources makes it impossible for these services to carry out their missions properly.

The FPF can be seen as a standardised and simplified police procedure. Nevertheless, the FPF stigmatises certain categories of users and in fact reproduces all the stereotypes linked to cannabis use and policing, i.e. it affects a large majority of users from working-class neighbourhoods, men and racialised people¹⁸. Even if it gives the impression of a reduction in sanctions for users, it is not a simple contravention, but a criminal sanction for use registered in the criminal record with all the consequences that this entails. These sanctions, which have no real effect on trafficking and consumption, are also a source of congestion in the courts and inequality. Moreover, the delinquency and insecurity generated by cannabis trafficking are constantly increasing in the neighbourhoods concerned. Some of these neighbourhoods are gradually turning into lawless areas where the police intervene on a very occasional basis and above all for a very short time because they can no longer be present there permanently in view of the risks involved. Finally, trafficking affects many people by encouraging them to join criminal networks, thus trapping them in a vicious circle from which they will find it difficult to escape. This concerns both young minors and women who are exploited for utilitarian tasks (mules, lookouts, nannies, etc.), who are less likely to be questioned.

¹⁶ Statistics from the Ministry of the (cf. report).

¹⁷ Same.

¹⁸ National Consultative Commission on Human Rights (CNCDH), opinion "Usages de drogues et droits de l'homme", 8 November 2016, appeared in OJFR No 0055 of 5 March 2017.

The ineffectiveness of the fight against cannabis trafficking has other negative consequences: despite prohibition, the market is still fed to the level of demand and some neighbourhoods are in the process of being cartelised, insofar as traffickers take on a social function in the neighbourhood in place of the usual public services and social actors, who find it difficult to operate there.

3. Hemp, a growing market held back by current regulations

The varieties of hemp that are allowed to be cultivated are legally determined at both European and national level. This framework authorises the cultivation of 'industrial' hemp provided that its THC content does not exceed a threshold, previously set at 0.2% but increased to 0.3% as of 1 January 2023 under the new CAP rules. The varieties of hemp authorised for cultivation are listed in the official catalogue of species and varieties of cultivated plants.

World production of hemp fibre is currently 90,000 tonnes per year, which is still very marginal in relation to the overall production of fibre plants (10.2 million tonnes per year) and represents only 1.4%. The world's largest producer is China, with 66,700 hectares of Sativa under cultivation (source: Interchanvre, 2019 base). However, France is relatively well positioned in this production: of the 53,624 hectares of hemp cultivated in Europe, our country is the European leader with more than 37.3% of the European Union (EU)¹⁹ (EU), ahead of Germany (5,352 hectares), Estonia and Lithuania (about 5,000 hectares each). At its peak in nineteenth century, France had 176,000 hectares under cultivation. Today (in 2021), 20,000 hectares of hemp are grown by 1,300 producers.

Hemp cultivation has many advantages: it is grown in open fields (as there is no added value to greenhouse cultivation), it does not deplete the soil, it can easily be included in a crop rotation, and it does not require pesticides or inputs. Moreover, hemp cultivation has a good carbon storage capacity of around 15 tonnes per hectare per year (Interchanvre). It does not require irrigation, except in areas at high risk of drought, as the deep taproots provide good resistance to moisture deficit.

Hemp fibre is used in the production of building materials, bio-based insulation and textiles. For the latter, the economic potential is considerable: the annual expenditure of French men and women (clothing alone, excluding technical fabrics and decoration) is approximately 40 billion per year²⁰.

In addition to these uses of "hemp material", there is also a wide range of other applications for hemp seed, particularly in the food and cosmetics sectors. For food, its content of vegetable proteins and Omega 3 and 6 in the ideal proportions for human needs are unanimously recognised. In cosmetics, the richness of hemp oil in polyunsaturated fatty acids makes it a highly sought-after component, with an Omega 3 content 10 to 40 times higher than that of argan oil, which also used in this sector.

¹⁹ Hearing of Interchanvre representatives before the Temporary Committee, 2 June 2022.
²⁰ <https://modelesdebusinessplan.com/blogs/infos/chiffres-industrie-textile>.

As for the other cannabinoids, usually present in other parts of the plant, they are at the heart of a fast-growing global market, rising from an estimated \$1.45 billion in 2018 to a projected \$24 billion in 2025, according to the UIEVC's technical report *Filière des extraits de chanvre : pour un développement encadré et sécurisé d'un marché d'avenir*, June 2021 by the UIEVC²¹. In the US, the world's largest CBD market by value, the market is expected to reach \$7 billion by 2025 and £1 billion in the UK (the largest market for CBD products in Europe). In this context, the French sector has a strong development potential due to its status as the largest European producer in terms of cultivated hemp area.

Some hemp growers are calling for an increase in the THC content to 1%, as is already the case in Switzerland and Australia, for example, because too tight a limit on THC content prevents a high CBD content. The ratio of THC content may not exceed 1:20 to 1:40. With hemp at 1% THC, this would allow up to 40% CBD. This generates a form of competition that can put French producers in difficulty.

Another problem related to THC limitation is for processors who want to extract or isolate non-THC cannabinoids such as CBD or CBG from the plant. In these processes, the THC level before destruction exceeds the regulatory thresholds and is then in a legal status that falls under narcotics. This insecurity is forcing producers and processors to export their raw material abroad in order to carry out these operations before returning to the French market.

The vagueness of the current situation and France's repeated desire to prevent these activities on French territory therefore places producers in situations that are sometimes at the limits of legality and in all cases makes it impossible for them to secure the future of their production and their investments, being at the mercy of any new regulatory development.

²¹ The Union des industriels pour la valorisation des extraits de chanvre (UIEVC), which brings together industrial and economic actors interested in the exploitation of hemp extracts, was interviewed on 10 June 2022.

C. A desirable evolution of current public policies

1. Learning from existing models abroad, successes, obstacles and failures

DECRIMINALISATION IN PORTUGAL, AN ALTERNATIVE REFORM TO LEGALISATION

With the Law of 29 November 2000, which came into force on 1 July 2001, Portugal decriminalised the use of all drugs classified internationally as narcotics and adopted its first action plan against drugs (2000-2004), which focuses on risk reduction. In 2002, the Drug Deterrence Commissions attached to the Ministry of Health were established. They assess the needs of users and provide a response focused on health care, “*the Portuguese approach is unique above all because it makes the law the instrument of a health policy*”²².

Focusing on human rights and public health, this approach has proven to be effective in reducing drug-related mortality and increasing access to drug treatment. More than 20 years after its entry into force, this reform has not been accompanied by any significant increase in drug use levels. On the contrary, levels of drug use are well below the European average. According to EMCDDA figures for 2020, 45% of people report having used cannabis at least once in their lives in France, as opposed to only 11% in Portugal and 27% in Europe. As regards use during the year, 11% of French men and women report having used cannabis, compared with 5% of Portuguese men and women. In proportion, this use is therefore twice as high in France as in Portugal.

Nevertheless, the demand for care related to cannabis use is higher in Portugal than the European average, in that “*the Portuguese model of decriminalisation of the use of all drugs is a model that goes hand in hand with improved access to care.*”²³

URUGUAY AND CANADA: CONTROLLED LEGALISATION

In contrast, Uruguay has followed the path of strongly state-supervised legalisation from production to distribution. It was the first country in the world to legalise the production, consumption and sale of cannabis on 23 December 2013. The country has pursued the following priority objectives: the preservation of public health, by containing or even helping to reduce the consumption and levels of cannabis use in the population, and the drying up of trafficking.

The law now allows adults over 18 to possess up to 40 grams of cannabis herb per month. Consumers are required to register with a structure responsible for the implementation and regulation of this market, the Instituto de regulacion y control del cannabis (IRCCA), which also issues production licences and has a mission to educate and raise awareness of the risks associated with cannabis use. Sales to foreign tourists and advertising of recreational cannabis are prohibited.

Currently, cannabis users registered with the IRCCA represent less than 2% of the total population of the country²⁴. According to the Uruguayan Drug Observatory report published in December 2019, only one third of cannabis users obtained cannabis through the legal market in 2018, and the annual prevalence of cannabis use is estimated to have increased from 9.3% in 2014 to 14.6% in 2018.

22 Ivana Obradovic, Marguerite de Saint-Vincent, “Dépénalisation des drogues au Portugal : bilan 20 ans après”, summary note No. 2021-03, EMCDDA, June 2021, p. 2.

23 Hearing of Ms Marie-Jauffret-Roustide before the Temporary Committee, 5 May 2022.

24 Hearing of Ms Ivana Obradovic before the Temporary Committee, 7 April 2022.

On 17 October 2018, Canada became the first G7 country to legalise the recreational use of cannabis. This is an intermediate model, described as a "third way" between the strictly regulated Uruguayan model and the liberal American model.²⁵

The objectives of legalisation are stated in the explanatory memorandum to Bill C-45 as follows "to restrict access to cannabis by young people, to protect public health and safety by setting strict requirements for product safety and quality, and to deter criminal activity by imposing significant criminal penalties on those acting outside the legal framework. It also aims to reduce the burden on the criminal justice system in relation to cannabis."

The Canadian government's objective was to guarantee "the best balance between prevention and public health on the one hand, and economic interests on the other, claiming a 'third way' [...] that does not sacrifice public health objectives in the name of economic interests, as in Colorado, but which allows for the participation of private actors, in contrast to Uruguay."

Federal law allows adults to possess and share with other adults up to 30 grams of legal cannabis, to purchase cannabis in the form of herb (dried or fresh) or oil, either from a provincially licensed retailer or online as defined by the provinces and territories. It also allows people to grow up to 4 plants at home for personal use.

Finally, there are federal rules governing commercial production, in particular requirements for cannabis producers, and health and safety standards for the industry (to avoid any kind of marketing, with a ban on the use of certain ingredients, traceability of seeds for sale and permitted THC levels).

One of the most important lessons of cannabis legalisation in Canada is about supply and demand. Since the launch of recreational cannabis sales in October 2018, Canadian producers have faced significant production challenges. For example, in just 3 years, Canadian producers have destroyed more than 500 tonnes of cannabis due to problems such as poor quality or low THC content and, most importantly, overproduction. This has led to many bankruptcies.

Illicit cannabis has been around for decades. Canada's experience shows us that the arrival of legal cannabis does not automatically put an end to the black market. Currently, even though cannabis is legal, about half of the sales still take place on the parallel market. Regulation plays a role in maintaining the historic market.

Some argue that Canada should have done more to integrate the legacy market. Instead of converting small-scale illegal producers and dealers into legal operators, the government has focused billions of dollars on legal production and distribution capacity. It was only later that regulators created micro-grower or micro-processor licences for traditional small-scale enterprises.

²⁵ Ivana Obradovic, "La légalisation du cannabis au Canada – Genèse et enjeux de la réforme", *OFDT Note No. 2018-04*, Saint-Denis, 11 October 2018, p. 8. <http://www.ofdt.fr/BDD/publications/docs/eisxioya.pdf>.

A precise dimensioning of the market and the integration of the historical players from the outset therefore seem to be indispensable conditions for the development of a legal cannabis trade that significantly reduces trafficking.

According to data from Statistics Canada, between 2018 and 2021, among adults, legalisation was accompanied by a small increase in consumption and a decrease among minors aged 15 to 17 (from 22% in 2018 to 19% in 2021). This should be seen in conjunction with the increased penalties for anyone selling illicit or legally produced cannabis to a minor and the introduction of new prevention policies.

THE UNITED STATES - A MODEL OF OPEN AND COMPETITIVE LEGALISATION AND REGULATION

In a statement published on the White House website on 6 October 2022, Joe Biden announced that those convicted at federal level for possession of cannabis would be granted amnesty, adding that a review of the federal legal categorisation of cannabis would be undertaken in the near future²⁶. This policy choice is a continuation of the one started under the Obama administration. The initial aim of the latter was not to pursue a public health policy but to reduce the prison population, which consisted largely of people convicted of trafficking and/or drug use, the majority of whom were petty criminals from African-American and Hispanic minorities, and whose discrimination has been widely documented. In addition to this objective, there was also the objective of financing public schools through the taxation resulting from legalisation.

In the United States, the "recreational" use of cannabis is now legal in 21 states, including the federal capital, Washington DC.

The objectives pursued by these states can be summarised as follows: to weaken the black market, to secure the conditions of production and distribution in order to better control the products consumed and to protect minors. To this end, the regulatory systems defined in the legalised states are based on production and distribution exclusively entrusted to the private sector, within the framework of a relatively open commercial market subject to competition. Self-cultivation is generally allowed for both medical and recreational use, provided that a maximum number of plants is observed (between 5 and 8 on average, up to 24 in Oregon). All the states that have legalised have developed regulatory methods based on the allocation of professional licences to private operators for all types of activities (cultivation, production, transport, distribution, etc.). These licences enable the competent authorities in charge of monitoring the sector to exercise greater control over operators and to ensure the traceability of products and their quality (composition, concentration, production and processing).

²⁶ <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/06/statement-from-president-biden-on-marijuana-reform/>.

Three main lessons can be drawn at this stage from the legalisation movement in the United States. Firstly, a decrease in consumption among minors and an increase for adults over 25. As far as the drying up of the black market is concerned, the picture is mixed. Colorado is often cited as a success story, with a proliferation of outlets to meet demand. The legal market has been able to cover most of the population's needs, and the state has been "more successful in reducing the size of its black market than California, in part because of lower prices and easier access to the product for consumers."²⁷

2. Successful deployment of a new protective public policy for education and empowerment

In France, the public policies put in place to prohibit cannabis since 1970 have been inconsistent and unrelated (e.g. public health and justice policies), which has partly led to their failure. A new public policy to regulate the use of cannabis seems necessary. It implies making societal choices upstream that prioritise prevention, risk reduction and education on use.

The ESEC supports the objective of developing a public prevention policy with regard to the health and social risks associated with cannabis use, particularly among adolescents and young adults. As with tobacco, the aim will be to dissuade the latter from using it as much as possible and to delay the age of first experimentation. It should be based on communication, awareness-raising and support strategies adapted to these audiences. To achieve this, several prevention actions can be deployed while:

- taking into account the fragility of the public concerned, in schools and in all structures welcoming young people under 25, as early as possible;
- favouring a multidisciplinary approach by the professionals called upon (health, justice, young people, etc.);
- coordinating their interventions around psychosocial risks and the consequences on neural development between the ages of 16 and 25;
- supporting parents in their educational role on this issue and developing programmes for them.

27 W. J. Meadows, "Cannabis Legalization: Dealing with the Black Market", DEPC Student Paper Series, The Ohio State University, No. 13, p. 4, October 2019. See Rick Sobey, "In Colorado, lower legal prices drive black market out of business", LOWELL SUN (Apr. 4, 2019), http://www.lowellsun.com/todayshheadlines/ci_32563908/colorado-lower-legal-prices-drove-black-market-out#ixzz5mh8rpgJa.

In addition, a new public policy on risk reduction and education in drug use could be developed in a cross-cutting and coherent manner for all users in order to alert and better limit the risks:

- inherent in problematic consumption;
- of addiction and dependence;
- for health and social life;
- related to multiple drug and alcohol use.

The financing of these new public policies on prevention, risk reduction and education in use could be ensured by the tax revenues generated by the production, processing, sale and use of cannabis, assuming the establishment of a legal market.

PART 02

Organising the public and participatory debate for a new approach to cannabis regulation

The failure of current public policies justifies thinking about a new way of regulating cannabis that meets the expectations of all stakeholders. In view of the millions of people concerned and the often dogmatic treatment of this issue, the need to move away from ideologies and reductive projections is central to the development of public policies.

In the ESEC's view, a two-pronged approach must be taken immediately with the aim of completely rethinking the approach to the issue of cannabis and the legislative framework governing it. The public authorities must seize this opportunity and initiate, in parallel, a participatory approach as well as the deployment of emergency measures aimed at placing the health aspect and prevention at the centre of their actions, while limiting the injustices and inconsistencies generated by the current framework.

To achieve this, organising a broad public debate as part of this process within society is a prerequisite for moving towards a desirable model. The contours could thus be defined within the framework of the participatory mechanisms made available to the ESEC by the Organic Law of 15 January 2021.

In order to allow a broad and dispassionate understanding of the issues raised by a new cannabis framework, stakeholders and, more broadly, all citizens interested in the subject could take part in the public debate.

The aim would be to take better account of the expectations of stakeholders, both from the point of view of users concerning, for example, the quality of products, their availability and traceability, etc.; of producers with regard to production capacities, environmental requirements, etc.; and of distributors regarding the conditions for issuing licences, information and support for consumers, etc.

A large number of actors could be involved in this debate, such as those involved in urban policy, public safety, national education and the voluntary sector, because of the issues raised by the need to rethink the local economy, particularly in areas currently affected by trafficking, as well as those from the educational sector on the issues of prevention and education on safer use, etc.

In addition, the ESEC could work jointly with the CESERs and local consultative bodies to carry out consultations at territorial level, thus enabling certain specific geographical features, particularly in the overseas territories, to be taken into account. In this respect, the trip to Toulon and then Marseilles by the committee responsible for this opinion provided an opportunity to meet various local political, public and associative actors who shared their experiences in the field and to hear the testimonies of families affected by cannabis trafficking and use. This experience highlighted the relevance of a process of reflection involving the actors of organised civil society, actors in the field and citizens.

The overhaul of the law presupposes the mobilisation of all actors in society, to guarantee sincerity, equality, transparency and impartiality, and that the media take up the issue with a similar logic. For example, the ESEC could set up an online consultation system so that everyone can express their views freely on the subject and/or take a stand on possible changes to the regulatory framework.

The main purpose of this public debate would be to provide food for thought on the objectives of a new cannabis framework and the form it could take. Its organisation should ensure:

- broad access to objective knowledge and information on cannabis (active ingredients, prevention, health impacts and consequences on social life, available statistical data, etc.);
- a pedagogical construction of the issues to be addressed in order to rule out any form of reductive questioning such as asking the population whether they are for or against the legalisation of cannabis. A thematic approach could be favoured;
- a truly inclusive approach ensuring a space for expression for all audiences, especially those directly concerned, those usually removed from participatory mechanisms, etc.;
- accountability defined in advance with regard to the follow-up to this public debate. This is fundamental to ensuring that participants' voices are heard.

In this opinion, the EESC chooses to express its views on a desirable model for the controlled legalisation of cannabis. The aim is to make a contribution to the public debate, debated by our assembly, which is the result of a long collective process.

In the past, many steps have been taken to change the legislation on cannabis. The accompanying report details some of these that have attracted considerable media and political interest, even if they have not been translated into legislation. One of the most recent and significant initiatives is the information mission set up by the National Assembly.

This cross-party initiative proposed inventing a French model for legalising the production, distribution and use of cannabis, based in particular on an online consultation platform, which was a great success, with more than 250,000 participants.

During the same period, two other bills were introduced to legalise cannabis, one of which recommended an experiment on the scale of Polynesia before envisaging a generalisation of legalisation.

RECOMMENDATION

However, these numerous democratic attempts have not been supported by the parliamentary majority or the government to change the current legislation. The ESEC therefore recommends:

- considering a new approach that places the participatory approach at the centre of the democratic system and upstream of the legislative process in all territories, including overseas territories;
- enriching this opinion by mobilising the participatory tools opened up by the Organic Law of 15 January 2021 reforming the ESEC upon referral by the public authorities in order to enable broad participation and ownership of the health, social, economic and environmental issues involved in a new legislative framework for cannabis;
- making the principle of accountability effective by asking the public authorities to take into account the results of the public and participatory debate, the proposals of which could, if necessary, be transposed into a draft law.

PART 03

Deploying emergency measures for better regulation of cannabis in France

A. The urgent need to protect people

The current French prohibition system is failing in its results and is also affecting public policies towards the population. These impacts create inequities and inequalities between individuals but are also counter-productive with regard to the original objectives. Rather than having a global approach to health, support and health care, the current system tends to isolate users socially and professionally, and to punish them without educating them, thus provoking a feeling of incomprehension in a section of the population.

In the absence of a real political will to change this system, it will be difficult to change the legislation on cannabis, even though its impacts and effects are far removed from the health objectives of protecting people initially set out in the Law of 31 December 1970.

Therefore, there is an urgent need to put in place measures that can be implemented immediately in our current policies to address these problems, while at the same time initiating a gradual transition towards changes in legislation concerning the use, production and distribution of cannabis in France.

In order to meet the objective of reducing cannabis use, particularly among young people, and to delay the age of experimentation, it is essential to implement a prevention and risk reduction policy that is specific to cannabis and integrated with all addictive behaviours. France's current prohibition policy limits prevention capacities too much, especially in schools and companies. By promoting a single model of abstinence, it also fails to reduce the risks associated with its various uses, even though it is known that they exist and will continue to exist.

The deployment of this public action necessarily depends on a political will and the resulting funding to deploy a greater number of health professionals in all these places so that they can best fulfil their missions. An ambitious risk reduction policy must necessarily be accompanied by the introduction of measures to enable "better" use of cannabis, for those who use it, by reducing the health risks. Peer prevention or the presence of professionals and/or specialised associations at targeted events (parties, concerts, festivals, etc.) and in schools from secondary school onwards may be ways to follow. Finally, it would be necessary to rely on the existing network of associations that already carry out actions in these areas by developing permanent funding and facilitating their access to the target groups.

The protection of minors is a priority. Use, especially problematic use, has a greater impact on adolescents. Particular action must be taken among young people and vulnerable groups to dissuade them from using drugs, to reduce overall use, and to delay the age of experimentation and entry into use. Specific programmes already exist and have proven to be effective. For example, for minors, the sale of and incitement to use cannabis should be severely punished. Similarly, educational support for minors in contact with cannabis must be strengthened and applied, including through judicial educational assistance. It is also necessary to provide better support to users, especially parents, so that their use is more "responsible" and poses no risk to their homes or to those around them, particularly in terms of intoxication for children (protected boxes, for example).

In the interests of better understanding by the public and in order to target law enforcement efforts on the major trafficking networks while reducing certain injustices, the ESEC proposes that the use and cultivation of cannabis for personal use should no longer be a criminal offence for any individual of legal age. In conjunction with all the prevention and risk reduction policies to be developed in parallel, this measure will put an end to many misunderstandings among a large part of the population. Cultivation for individual use as well as the possibility of individual "collective" cultivation should also be allowed in order not to leave the distribution of the desired product to illegal trafficking networks. We should take as an example the Cannabis Social Clubs (CSCs), whose results are praised by various countries for their integration of a peer education dimension.

In a continuing effort to redress injustices that can have an impact throughout people's private and professional life, the ESEC supports the objective of removing from criminal records and police files the offences of use and possession for users. By implementing this measure, the state is giving these people the opportunity to access certain jobs or activities that are currently denied to them. This could be achieved by adopting a more lenient criminal law, bearing in mind that, in accordance with the principle of retroactivity *in mitius*, it could be applied retroactively to offences committed before its entry into force.

Finally, the methods of testing for cannabis use while driving should be reviewed. For the latter, screening is done by a saliva test and then by a blood test to detect the presence or absence of cannabis. However, it is known that cannabis can remain in the bloodstream for several days to weeks after use, even though it no longer affects the behaviour of the individual user. Thus, it is common for a driver to be sanctioned for this. One way of overcoming this limitation would be to sanction only addiction by developing scientific research and the implementation of behavioural tests, following the example of countries such as the United States and Canada.

These behavioural or psychometric tests are designed to identify impaired abilities that are incompatible with driving. Back in 2003, the French Academy of Medicine called for the introduction of these "sobriety tests", which consist of a series of simple physical examinations assessing various parameters such as balance, speech, coordination, etc. The Academy stated that "*it would not be reasonable to increase excessively the number and complexity of alcohol and drug detectors*²⁸".

The excess risk linked to the use of cannabis being 1.5 to 2, the accepted risk being 2 to 2.5 for certain drugs and alcohol, the simple fact of condemning the use of cannabis and not its influence, which was the legislator's intention, gives rise to a feeling of injustice for users who suffer the criminal, civil and social consequences.

RECOMMENDATION

In order to limit the injustices of the current system and to give a more important place to prevention in order to limit the risks, in particular for minors and young adults in our public policies concerning cannabis, the ESEC recommends:

Emergency measures for the prevention and protection of minors

- deploying a genuine prevention and harm reduction policy specific to cannabis and integrated with all addictive behaviours;
- protecting minors by strengthening the repression of trafficking aimed directly at them, by mobilising judicial educational assistance if necessary, and by creating specific reception and care structures;
- supporting parents faced with problematic cannabis use by their teenagers through the intermediary of associative structures or networks that develop information and discussion groups.

Emergency legal measures to limit injustices

- no longer penalising the use and cultivation of cannabis for personal use and including the possibility of individual cultivation in "collectives" (taking the example of the Cannabis Social Clubs (CSC) model, whose peer education dimension is welcomed in Spain, Germany, etc.);
- removing from criminal records and police files the offences of use and possession for both male and female users;
- reviewing the testing of cannabis use while driving: punishing only intoxication by developing the scientific study and practical implementation of behavioural tests.

²⁸ Source: Simplified proof of the *Standard Field Sobriety* used by the American police, decision of the National Academy of Medicine of 17 June 2003.

B. Developing knowledge about "recreational" cannabis and securing the hemp sector

Scientific knowledge about cannabis is to date incomplete and needs to be further developed. This calls for the removal of the obstacles to research on this subject, but also for the removal of the legal obstacles to the circulation of clear and objective information on the cannabis plant and its effects, in order to allow the development of a French industry and to ensure its traceability.

As the report tends to show, relatively little is known about cannabis, with prohibition acting as a brake both on the development of knowledge and on access to clear and objective information about the plant, its properties and its effects. At present, there is no public conservation of "recreational" cannabis seeds in France. This creates a real problem for the conservation of the genetics of this plant, which has been damaged by the political will to eradicate it established by prohibition, and in practice prevents any work on varietal development. Furthermore, France must show respect for the Nagoya Protocol, which it has signed, and ensure that the genetic stock that would be used for commercial or research purposes allows for the fair and equitable sharing of the benefits arising from their use in order to combat "biopiracy".

In the general context of prohibition, research on the plant and its properties remains unattractive. Therefore, finding funding to support it can be complex as it is not considered profitable for private funders and is difficult for public funders as it goes against the grain of the legislation. This also affects biological and botanical research on the plant.

This in turn has an impact on the French production of useful hemp, which is also affected by preconceived ideas about the plant and its psychotropic effects (disincentives for some users or consumers of hemp-based products, looting or attempted looting of fields²⁹), but also the production of cannabis for medical experimentation.

It is necessary to secure the cannabinoid hemp sector. Some hemp producers are calling for an increase in the THC content to 1%, as is already the case in Switzerland and Australia, for example. Limiting the THC content too much prevents a high CBD content from being achieved. The ratio of THC to CBD may not exceed 1:20 to 1:40. With a 1% THC hemp it would be possible to reach up to 40% CBD.

This situation generates a form of competition that can put French producers in difficulty.

Another problem related to THC limitation is for processors who want to extract or isolate non-THC cannabinoids such as CBD or CBG from the plant. In these processes, the THC level before destruction exceeds the regulatory thresholds and is then in a legal status that falls under narcotics. This insecurity is forcing producers and processors to export their raw material abroad in order to carry out these operations before returning to the French market.

The vagueness of the current situation and France's repeated desire to prevent these activities on its territory therefore places producers in situations that are sometimes at the limits of legality and in all cases makes it impossible for them to secure the future of their production and their investments, being at the mercy of any new regulatory development.

29 Hearing of Interchanvre representatives before the ESEC Temporary Committee, 2 June 2022.

Since "recreational" cannabis is prohibited by law, it is not supposed to circulate in the country. There would be no need to know the different properties of the plant, its different uses, the economic, social and environmental impacts, etc., even though the plant may have multiple uses outside the recreational context. However, studies³⁰ tend to show the beneficial effect that cannabis could have on certain women's health issues, particularly in relieving menstrual pain. CBD could also be used for pelvic pain. Similarly, a Swiss association, S-Endo, recommends the use of CBD for people with endometriosis³¹. It should be noted that, according to the ANSM, the use of painkillers and analgesics is currently predominantly female.

This goes even beyond the mere prohibition on the consumption and sale of the substance, as a result of a provision in the Public Health Code³² prohibiting the presentation of cannabis (or any other narcotic substance) "in a favourable light", which is subject to criminal sanctions.

However, the above-mentioned article does not specify what constitutes presentation in a favourable light. For example, convictions have been handed down for the simple act of depicting a cannabis leaf on a publicly visible medium. This provision raises questions in several respects: on the one hand, it generates a paradox with the 2013 decree authorising the medical use of cannabinoids. While it is assumed that it has medical benefits that are being tested, it is theoretically impossible to publicly present positive effects on certain symptoms or diseases, which would be tantamount to presenting cannabis as having positive effects.

On the other hand, this provision has been and can be an obstacle to the work of associations working to reduce the risks of drug use. For example, the association Techno+ was sued for a flyer aimed at raising awareness among drug users about the dangers of the quality of the products consumed, with the words "sniff clean" in it³³.

More generally, harm reduction policy is directed mainly at consumers, so the issue here is not to discourage consumption but to provide information on the substance consumed in order to manage consumption and protect oneself or at least reduce the impact of consumption on health. In fact, risk prevention actors are required to present and classify the modes of use from the most to the least dangerous for health, to advise on consumption practices and sometimes to accompany their learning.

30 Conducted by the Cannabis Research Centre at McMaster University (Canada).
 31 Endometriosis and CBD | S-Endo.
 32 Article L.3421-4 of the Public Health Code.
 33 <https://www.norml.fr/droit-legislation/liberte-de-sexprimer-drogues/>.

Representatives of associations working in the field of prevention³⁴, addiction and harm reduction unanimously stressed the need to support consumers in their practices.

But they cannot be the only ones on whom prevention policies can be based. All health personnel must be trained in prevention and risk reduction issues and be able to direct drug users to the appropriate actors to support them.

It is essential for consumers, public authorities and those involved in prevention and risk reduction to have a better understanding of the positive and negative effects of the substance and of the plant as a whole. They must be able to communicate freely and objectively on this issue and fight against the preconceived ideas that lead to the subject being addressed only through repression.

RECOMMENDATION

For all these reasons, the ESEC recommends:

- creating a national cannabis institute under the aegis of the OFDT [French Monitoring Centre for Drugs and Drug Addiction] to develop basic research on cannabis and its various aspects. This institute must mobilise researchers from a variety of backgrounds (biologists, doctors, economists, statisticians, sociologists, etc.) in order to cover all the fields associated with cannabis;
- strengthening the training of all health personnel on the endocannabinoid system (ECS) and both medical and "recreational" cannabis;
- amending Article L.3421-4 of the Public Health Code in order to remove the offence of "presenting narcotics in a favourable light" in order to allow the dissemination of clear, objective and accessible information on cannabis (and other narcotics), and to promote the development of effective prevention and risk reduction policies;
- undertaking public conservation and research on cannabis seeds and genetics in accordance with the Nagoya Protocol and ensuring their protection and management so as to regain control over the varieties of the cannabis plant, their properties and their genetic heritage;
- securing the cannabinoid hemp sector by raising the THC level to 1% for varieties authorised for cultivation and by protocols allowing the extraction and isolation of the various cannabinoids excluding THC without legal risks.

34 Met in Marseille as part of an "outreach" approach.

C. Preparing a new cannabis framework

These measures should serve to anticipate and organise the implementation of another regulatory policy during a 'transitional' phase, and then allow for its monitoring and adaptation in the long term.

In order to build a change of system in good conditions and to facilitate the transition from one system to another, a new section of the National Agency for the Safety of Medicines and Health Products (ANSM) must be created: the French Cannabis Agency, to coordinate and be a central place of exchange concerning public policies related to cannabis in France. Its composition must include all the actors and representative organisations concerned by these public policies, such as users, health and education professionals, families, social partners, or even actors in the justice system, for example. Enabling dialogue between these different actors is essential to develop and coordinate the best cannabis policies in our country.

The ESEC also proposes that public players carry out an initial assessment and then an impact study as part of the drafting of a bill, identifying in particular what works in international experiments in relation to the objectives to be met by our new regulatory system. This work will serve as a basis for the drafting of a bill that should allow for the evolution of the legislation for a gradual transition from our current model of prohibition to controlled legalisation. This assessment could also be based on the reports (e.g. ESEC and National Assembly) produced on the subject in recent years.

As a continuation of this legislative work, it is essential to define indicators in order to evaluate and develop public policies on cannabis, which will make it possible to produce harmonised statistics both in the near future and looking further ahead. They will make it easier to monitor the results of public policies according to the objectives assigned to them and will identify the shortcomings of these policies with a view to readjustment.

Finally, it is becoming urgent to accelerate and go beyond the stage of experimentation by setting up a French network, easily accessible to patients, for medical cannabis. The medical benefits of cannabis are proven and increasingly recognised. It has been used medically in various countries for several decades. It is therefore important not to fall further behind and to develop a national network that could control quality and distribution, for example, in order to provide a clear framework for medical use, which is different from "recreational" or useful use. International conventions also require a clear separation of the channels and their management.

RECOMMENDATION

To achieve this, the ESEC recommends:

- creating and defining the composition of a section of the ANSM: the French Cannabis Agency (a body integrating all stakeholders);
- carrying out an initial assessment and impact study in the context of drafting a bill and identify what works in international experiments, as well as the obstacles encountered;
- defining indicators in order to evaluate and develop public cannabis policies (harmonised statistics, short - medium - long term, etc.);
- setting up a French network for medical cannabis (quality control and management of distribution management in prerogatives).

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The rapid implementation of these measures would thus help to remedy the serious injustices experienced by many people, to continue to prosecute the trafficking networks while providing greater and better protection for the public concerned, particularly young people and minors. These measures would also help to establish a sound basis for a gradual transition from the current system of prohibition to a controlled legalisation that meets priority objectives, foremost among which is public health.

PART 04

Building a model for the controlled legalisation of cannabis

The political will to put in place a new, controlled legalisation of cannabis that meets stakeholders' expectations requires a holistic and multidisciplinary approach to deal with all the issues at stake, as well as an evaluative approach to objectively assess the effectiveness

of this new regulatory framework. These will be the preconditions for the deployment of a desirable model for structuring the recreational cannabis sector and meeting public health requirements.

A. Conditions for success

Since 1970, the normative framework for cannabis has focused on prohibition and repression, neglecting in particular prevention and reduction of the risks associated with consumption. In order to envisage the transition to a new model of regulation, it is necessary to be able to approach the subject differently and calmly in the public arena so as to encourage the emergence of a genuine open and impartial debate within society, in accordance with the recommendations set out in Part II of this opinion.

In addition, a global approach seems essential to deal with all the issues specific to cannabis (in relation to its uses, production, processing and distribution) but also all those related to it (health, security, financial, educational issues, etc.). Similarly, including the conditions for successful evaluation from the legislative drafting phase onwards meets the democratic requirements of transparency, accountability, efficiency and effectiveness of any new public policy that is set to last.

1. Developing a holistic approach

The issue of cannabis can be approached from many different angles, as detailed in the report accompanying this opinion. Without being exhaustive, public health, safety, economic, educational and ecological issues are central. The ESEC therefore proposes that a new legal and regulatory framework for cannabis be considered as part of a comprehensive approach to address all the above issues. A silo approach would be ineffective and inadequate to provide a cross-cutting response to stakeholders' expectations, as well as to health, education or security concerns in particular.

This comprehensive approach to health is in line with the main principles of health promotion laid down in the Ottawa Charter in 1986: "*Health promotion is the process of enabling people to increase control over, and to improve, their own health*", which in turn refers to the WHO definition of health (1946 constitution): "*Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.*"

Considering a model of controlled legalisation of "recreational" cannabis implies authorising use; strictly regulating the production and distribution of products; and financing and deploying various public actions to achieve prevention and risk reduction objectives that have been discussed and agreed upon with all stakeholders. This cross-cutting approach would nevertheless be insufficient because this controlled legalisation would, for example, result in a significant reduction in existing trafficking, which implies thinking about an alternative economy for all the people and territories that derive more or less substantial subsidies from this parallel economy.

In addition, a multitude of actors would be involved to contribute to the success of this new regulation, including those from urban policy, public security, public finance, education, public health, the agricultural sector, etc.

Beyond the actors, the cultural approach will be decisive in structuring the debate within society, including family circles. The social representation of cannabis has evolved considerably in recent years, as has the trivialisation of its multiple uses, for various reasons: feedback from countries that have recently legalised its recreational use; the experimentation currently under way in our country in relation to its medical uses; the trivialisation of its use in most social and cultural circles, etc.

These changes in approach related to the issue of cannabis are part of a much broader logic, as it is indeed a real paradigm shift that is being envisaged. It is not just a matter of developing prevention, risk reduction or education policies, but all education policies must put citizens, especially the youngest, at the centre of these policies, notably in a logic of responsibility that gives them the ability to make their own informed choices. To do this, they must be given the means to do so. This means firstly strengthening public services in education, social welfare, health, etc., and secondly, giving a more important place to relatives and families, particularly by valuing their role and deploying public policies to support parenthood.

Equality must be a central principle of this approach if this paradigm shift is to succeed. For example, many small-scale traffickers are victims of a form of social exclusion, as our society has for many reasons failed to offer them a better future. Of course, some have managed to get out of their situation, their neighbourhood, their precariousness... but not all. From a social justice perspective, our collective responsibility is also to do everything to enable them to get a second chance, to accompany them towards an activity, work, a job. They have also acquired skills in the area of cannabis and the establishment of a legal market that can neither be ignored nor left out.

A holistic approach is therefore warranted to contribute to the success of a new public policy for the controlled legalisation of cannabis with a multi-sectoral scope.

2. An evolving legislative approach based on evaluation

In the event that a bill is presented, particularly as a result of the participatory process described above (in Part II), an impact assessment will be required. A prior evaluation of this new legislation is fundamental to initiate the virtuous circle of public policy evaluation over time.

This is why, in accordance with the proposals of the study entitled "*Étude d'impact : mieux évaluer pour mieux légiférer*"³⁵, the Council recommends that this bill should include, from the outset of its preparation, the conditions for the implementation of its evaluation during application and afterwards. To achieve this, the objectives pursued must be clearly identified in the explanatory memorandum, the evaluation criteria and impact indicators expressly defined in the articles, the availability of the data to be processed legally guaranteed and the evaluation times predefined. These prerequisites are essential if evaluation is to play its full democratic role of objectively assessing the effectiveness of the law, reporting to citizens on its application and, if necessary, changing the text to put an end to its undesirable effects or to respond to new challenges.

RECOMMENDATION #

To this end, the ESEC recommends that cannabis legislation be developed through a legislative process that ensures that a quality impact assessment is carried out to inform the public authorities about the long-term consequences of the law. In its study "*Étude d'impact : mieux évaluer pour mieux légiférer*"³⁵, the Council makes various proposals to ensure that this prior assessment exercise is not simply a *pro domo* plea for the bill it accompanies.

35 Study by the Delegation for Forward Studies and the Evaluation of Public Policies, adopted on 10 September 2019, rapporteur Jean-Louis Cabrespines.
36 Op. cit.

In addition, feedback from states that have embarked on a process of legalising or tolerating cannabis use must be taken into account in order to assess the full impact. The lessons learned from this comparative law exercise are likely, in the opinion of our assembly, to significantly improve the quality of the legislative work involved in drafting new laws and regulations relating to the controlled legalisation of cannabis. The examples of “good practice” identified in this way can be just as interesting and instructive as the induced or negative effects observed *in situ*.

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An ambitious participatory process with a commitment to accountability on the part of the public authorities will therefore be able to draw up the outlines of a desirable model for the legal regulation of cannabis that meets the expectations of the population and, more specifically, its public health and safety requirements.

B. A desirable model of controlled legalisation

The ESEC has chosen to adopt a position on the construction of a desirable model for the controlled legalisation of the use, production and distribution of “recreational” cannabis. Although various projections behind the word legalisation may suggest that it could lead to numerous abuses, the idea is to arrive at a model that protects people and public health.

We will not go into all the implications and details of the various aspects of controlled legalisation here, but we would like to bring to the public debate a shared vision of the broad outlines that appear necessary to meet the various objectives related to health and safety issues. We will also try to identify the various outstanding questions that need to be answered in the process of rolling out future developments.

Some of the measures contained in this model may appear to be identical to those advocated as part of the emergency measures to be deployed. However, it is a paradigm shift that needs to be considered. It is therefore necessary to inscribe them not only in time but also as an extension of the urgency of their implementation.

We recall here that the health dimension, which places the protection of people, in particular minors and vulnerable people, must be the unavoidable priority of such a normative evolution.

Another key principle in the construction of a French network must be the protection and security of its various actors, which will ensure them a fair and equitable remuneration by avoiding the creation of cannabis “giants” in France. Another key principle in the construction of a French network must be the integration of current actors, so that they are encouraged to leave the illegal network.

The construction of a legal network and the implementation of controlled legalisation also aims to fulfil another objective, namely to significantly reduce trafficking and associated crime and to allow a sustainable development model for the neighbourhoods and people who currently suffer the consequences.

1. Implementing a policy of prevention, risk reduction, education for use and care

As cannabis use presents potentially significant risks and dangers for users, a genuine policy of prevention, support and care should be developed as a matter of priority with the aim of minimising them as much as possible. In view of the failure of the policies pursued to date, a paradigm shift in approach and a concentration of resources on this objective is the main priority identified by the ESEC. In the light of experience in the field, both in France and internationally, it will be necessary to identify the most efficient practices, to draw inspiration from them and to ensure wide and simple access for all, whatever their age group or geographical location. As the risks are greater for young people, special attention will be paid to them, and adapted and specific programmes will also be put in place.

Prevention, education and risk reduction policies are a matter of absolute urgency. As such, they must be deployed without delay and fall largely within the scope of the emergency measures advocated in this opinion. However, it is in the logic of a radical change of approach that they must be included in long-term policies and in an integrated approach to comprehensive health education.

Cannabis and its use have their own specificities, but cannot be considered outside a global approach aimed at preventing all addictive behaviours. It is a question of consolidating an approach that makes each and every person an actor in his or her behaviour, life and uses. In order to achieve this, the acquisition of psychosocial skills is central to a comprehensive policy that protects, empowers and equips everyone to make their own informed and responsible choices, despite social influences.

More specifically, particular action must be taken with regard to young people and vulnerable groups in order to reduce the overall number of users and to delay the age of experimentation and entry into use. Specific programmes already exist and have proven to be effective (see Inset 1). Furthermore, for minors, the sale of and/or incitement to use cannabis should be severely punished. In addition, educational support for minors in contact with cannabis must be strengthened and applied, including through judicial educational assistance.

**INSET 1: AN EFFECTIVE EXAMPLE
OF INTEGRATED PREVENTION:
"THE UNPLUGGED PROGRAMME"**

The example of the "unplugged" programme is interesting because of its proven results and efficiency. *"Unplugged is a programme for the prevention of addictive behaviours in schools, with a particular focus on alcohol, tobacco and cannabis, with an opening to addictive behaviours linked to screens and video games. This programme is aimed at secondary school students (6th and 5th grade). It consists of 12 one-hour interactive classroom sessions, led by trained teachers who work - at least in the first year - in tandem with trained prevention professionals. Unplugged is useful beyond addiction prevention as it contributes to improving the school climate. The sessions allow students to develop self-confidence, self-expression and respect for others, as well as interpersonal skills of communication, assertiveness and conciliation. The programme invites them to decipher positive and negative attitudes towards products, group influences and expectations, beliefs about products and their effects, while exercising critical thinking skills."*³⁷

It also highlights the importance of involving different actors working in a network in the conduct of such processes, each in his or her own role. More generally, it is also a question of consolidating the role of adults with regard to the youngest children that needs to be put in place. This implies deploying appropriate means to enable families, educators, teachers and health professionals to play their part, each in their own role, and in synergy.

The place of national education and its actors is central. The educational community that works with young people plays an essential role in prevention, information, support, etc. The role of school health services should also be recalled, both in the areas of prevention, reception and listening, but also in their ability to identify, support and guide towards care when necessary. The young consumers' and consumers' consultations, for example, are mechanisms that have demonstrated their effectiveness and which are still struggling on a daily basis to finance their operation. Numerous testimonies from professionals during our work underline the difficulties linked to the financing of their activities and the impossible medium- and long-term projection linked to these financial issues. In view of the health issues at stake and the record levels of exposure to addictive products and behaviours in France, this is not acceptable and must become a real priority without delay, going beyond words and turning into concrete, evaluated and progressive actions. Current communication, which deals almost exclusively with the repressive aspects of the subject, is not a satisfactory response.

Adult use should not be forgotten either and requires specific measures to be put in place. Even if it presents less risk to people, it should not be the poor relation of prevention policies. In this respect, the prevention of risky use and the necessary care for people affected by problematic use must also be priorities and benefit from appropriate measures. Risk reduction and easier access to safer methods of use must be the subject of specific actions. The promotion of vaping as an alternative to combustion, for example, should be encouraged, in particular by promoting access to adapted equipment through financial support in view of the cost that it may represent for the user. Finally, as the world of work is also concerned, significant resources must be devoted to it in order to give it the possibility of implementing prevention and care actions for workers who need them.

RECOMMENDATION #

For all these reasons, the ESEC recommends:

- developing a comprehensive prevention strategy, particularly for young people, with significant resources, specific to cannabis, and integrated into prevention policies for all addictive behaviours with the support of partners already involved in this field;
- protecting minors as a matter of priority by developing a policy of support and care for minors, particularly when they have problems, and by prohibiting the sale of cannabis to minors or incitement to use it;
- introducing a risk reduction policy aimed at users that encourages less risky use and provides real education on use.

2. Regulating production

Regulating cannabis production aims first and foremost to ensure the quality and traceability of this production, while allowing the structuring of a French network that fairly remunerates producer farmers. This framework must allow for quality production that ensures real safety for users, with health as the main priority. France has developed an excellent wine production sector and is therefore in a position to demonstrate that a new model will enable quality to be given priority. It is also a response to the expectations of users, which is in line with the health objective of less but better consumption.

In the light of foreign experiences and international conventions, it will be necessary to separate the various production sectors in concrete terms, which must be the subject of specific frameworks that meet different objectives.

France, with its experience and its position as European leader in hemp production, is in a position to develop a sector of excellence for "recreational" cannabis that is remunerative and rewarding for its producers. In the French production of hemp and, where applicable, "recreational" cannabis, the place of women must and should be the subject of particular attention, both from the point of view of their contribution to the sector and from the point of view of access to financing enabling them, for example, to acquire a farm³⁸.

Quality, traceability and transparency must be the constituent and guiding elements in its constitution and development. The cultivation of cannabis, a plant with ecological qualities, must be integrated into a holistic approach. This is directly linked to the health dimension, setting organic farming as the standard for this emerging sector. Consumption, for the moment mainly through smoking in France, presents much greater risks to health if residues of phytosanitary products or various forms of contamination are found.

The practical application of these intentions can be found in the framework of the volumes and area dedicated to the cultivation of "recreational" cannabis, in a production logic embodied by "family" farms, keen to give priority to quality. Foreign experiences show that large-scale cultivation models are always to the detriment of quality and therefore of health.

Moreover, cannabis is a plant that develops a diversity of exceptional aromatic profiles with more than a hundred terpenes (molecules with odoriferous properties) identified, much more than for grapes, for example. This diversity of unique and very different aromatic profiles is one of the main reasons that direct consumers' choices and uses. For the industry, it is also an opportunity to embody French excellence through the development of "grands crus", the promotion of terroirs and know-how which could also be the subject of labels such as PDO labels. This positioning is also able to embody a policy of risk reduction for users through the promotion of quality rather than quantity.

³⁸ This access to finance is more difficult for women wishing to set up in agriculture than for men, with smaller loans and longer terms. Opinion of the ESEC "Entre transmettre et s'installer, l'avenir de l'agriculture", 2020.

This cannabis sector must also embody excellence for its producers and their value, in particular through the fair remuneration it must provide. The creation of a new sector must be based on the experience of other sectors and be an opportunity to avoid making the same mistakes. Models such as full contractualisation and the establishment of fair and respectful purchase prices for farmers must be the norm and guaranteed over time.

The establishment of production licences should make it possible to set strict rules to guarantee the quality of production, and these rules should remain accessible and simple. Over-standardisation has been shown in foreign experiences to restrict access to a limited number of actors and to encourage the persistence of an illegal parallel market.

Traceability from the seed to the consumer, including access to all information related to production methods, genetics, concentrations of the main cannabinoids and aromatic profiles, is an essential issue in the creation of such a sector. To this end, a technology has emerged that guarantees a standard of transparency and security. This is the "public" blockchain³⁹. At the end of the cycle, the consumer can, by scanning a QR CODE, find all the information relating to the product, down to the last detail. For producers and actors in the sector, this significantly simplifies administrative management, management and control by and for public authorities and services (French Cannabis Agency, services of the Ministries of Agriculture, Health, Economy and Finance such as the DGCRF, Customs, etc.). This is a form of certificate of authenticity, which cannot be falsified and which should be managed by the regulatory authority and made available to actors in a standardised manner and free of charge. Tools already exist such as *cannatracking* for the CBD sector in France or *cancheck.org* in the Netherlands, initiated by producers. This demonstrates the feasibility and appropriateness of this solution to ensure the objectives of a protective framework.

39 A "public" blockchain is not a public service or an administration. Its main characteristics: it is accessible to all, decentralised and does not require a trusted third party. Although secure, the public blockchain does not offer the same flexibility as a "private" blockchain. For a definition of blockchain: <https://www.economie.gouv.fr/entreprises/blockchain-definition-avantage-utilisation-application#>.

Production for personal use by consumers should also be allowed, as it responds to an existing and massive need and reality. According to studies carried out by the OFDT in France, it concerns at least 200,000 people. This mode of production must have its place in the framework of a two-tiered system. Self-cultivation, in volumes suitable for personal use in the private home and collective self-cultivation in *Cannabis Social Clubs* (CSCs). CSCs are a non-market form of association and develop an innovative approach to reducing the risks associated with drug use through peer education. They have proven to be an excellent health response to these risks. Experiments in Spain, Belgium and many other countries have proven successful and Germany, in the context of its forthcoming legalisation, has already announced that this model will be part of its response. They are in line with the main principles of health promotion through the Ottawa Charter and the WHO definition of health.

RECOMMENDATION

The ESEC therefore recommends:

- allowing the coexistence of different production models by separating the medical, useful and "recreational" sectors;
- making organic farming the norm for the production of "recreational" cannabis, while at the same time regulating the volume or area devoted to such cultivation;
- ensuring complete and transparent traceability from seed to consumption thanks to a public blockchain, and under the control of the State services (regulatory authority, services of the Ministries of Agriculture, Health, Economy and Finance such as the DGCCRF and customs, etc.) ;
- allowing self-cultivation and *Cannabis Social Clubs* with a framework.

3. Regulating distribution

The controlled legalisation of cannabis distribution in France aims to provide users with safe access to products whose quality would be strictly controlled, while allowing the development of a risk reduction policy to which few have access at present. The ban in place exposes them to the dangers of crime associated with trafficking as well as to products with risks of contamination from plant protection products, cutting, and other fungi and moulds that can present serious or even fatal risks⁴⁰. Added to these risks is the possibility of being offered other more dangerous and addictive products. It is not a question of proselytising a potentially risky drug, but rather of providing the most appropriate response to protect people, develop less risky uses and dry up the black market.

In the interests of health and risk reduction, "recreational" cannabis cannot be considered as a product like any other and distributed in a form of free market by anyone who wishes to do so. It must be the subject of a specific approach, independent of any other form of trade, which favours individualised responses, information and prevention.

For these reasons, it appears that its distribution will have to take place in specific places dedicated to this activity. These outlets should not be conspicuous and should not constitute an incentive to use. Their frontage, for example, should be neutral and not allow the display of products related to its use. A distinctive sign, similar to that of pharmacies and tobacconists, will allow them to be identified. Similarly, their location should be carefully considered and not be located near schools, colleges, high schools or places dedicated to young people.

In order not to allow the creation of cannabis "giants", a licence will be required and be subject to a number of conditions. In the light of international experience, it seems appropriate to limit the number of licences to three for one person and to allow easy access to them. Franchises and other centralised systems should also have no place in this activity.

Specific training by professionals approved by the regulatory authority will be compulsory for all persons working in these sales outlets. It should allow for the acquisition and development of specific skills in risk reduction related to cannabis use and should be updated regularly.

40 Too Many Mouldy Joints – Marijuana and Chronic Pulmonary Aspergillosis <https://www.ncbi.nlm.nih.gov>.

As sales outlets are the preferred place to address consumers, they should be the first place to embody risk and harm reduction. The distribution of specific information and brochures promoting safer practices should be systematised and highlighted, and the sale of equipment adapted to these practices should be mandatory. Information on access to care and treatment facilities for problematic drug use should likewise be promoted in these places and offered to users.

The question of the selling price is essential in order to dry up the black market without encouraging use. A minimum price seems to be the best option in order to ensure a fair remuneration for all actors in the sector without encouraging use. This minimum price should not be too high either, so as not to continue to reserve a part of the market for traffickers. With current prices ranging from 7 to 10 euros per gram, a minimum price of 7 euros seems a good base.

The control of the legal age should be systematic in order to avoid reproducing the abuses observed with tobacco and alcohol. A form of entry lock should allow this control, which will also make it possible to reinforce the security of these sales outlets.

The model built with tobacco and alcohol should also be a reference for advertising aspects. As with alcohol, the law should limit the content to its "objective" elements (origin, description, mode of consumption, etc.) and strictly control the possibilities of dissemination.

Displaying the origin, the levels of the main cannabinoids and the aromatic profiles should be mandatory as they are the key elements to promote safer use. All the elements of the entire production and distribution chain contained in the blockchain ensuring the traceability of products will also have to be easily accessible. Any imports will have to meet the same criteria and specifications as domestic production.

Online sales and home delivery are often the subject of abuses in international feedback. They respond to a real demand from users, which is well understood by those involved in trafficking. They have quickly taken hold of it and have developed a "professional" offer in the major cities which it seems necessary to counter. In order to avoid once again commercial aberrations contrary to public health objectives, it seems necessary to allow the establishment of this type of service. These practices will be authorised only for authorised sales outlets and their geographical scope will be limited to the department or to a radius not exceeding the scale of the catchment area.

Taking into account international experiences and not repeating mistakes is also a must. With the aim of drying up traffic, reserving a place for the "historic" market from the outset is a key condition for success. Legacy operators will not suddenly disappear if they are excluded from the legal system that is deployed.

This consideration is also part of a logic of social justice. For many, their involvement in trafficking was not only a choice, but also the result of a social impasse in which they found themselves due to their situation or social distress. Their future prospects are currently very limited and their integration into trafficking is unfortunately one option among others that should not be simply summed up as a desire to do harm. This is also a consequence of current social realities.

Taking into account the “historical market” is essential to make it unpopular with both users and actors, and to ensure the transfer of consumers to legal sources. There is therefore a need to balance the priorities of public health, which must remain the primary objective, and criminal justice in order to establish a competitive market for legal cannabis that encourages legal purchase so that it becomes the norm. California is a counter-example in this respect. It is estimated that around 75% of transactions are carried out on the parallel market. There are a number of reasons for this. As the historical actors were not integrated, they adapted. As taxes are very high, they have adapted their prices and provide a 50% cheaper offer.

Overly burdensome licensing requirements have also been a major obstacle to the deployment of legal services and have prevented the integration of historical players. The issue of geographical distribution also played an important role in this failure. As 161 of the 482 municipalities and 24 of the 48 counties did not allow sales within their borders, this left a large market for traffickers to concentrate their efforts. Canada’s experience also shows us that the arrival of legal cannabis does not automatically put an end to the black market. Currently, even though cannabis is legal, about half of the sales are still for unregulated operations. Regulatory barriers and the failure to take into account the legacy market are the main causes.

Taking the time to set up a legal cannabis market in France must therefore take account of these experiences in order not to repeat the same mistakes. The launch of a legal distribution offer is therefore a key moment. The integration of the historical market players from the outset is essential. A paradigm shift therefore also consists in not considering all these actors as traffickers, but as people first and foremost. As we pointed out in the report, most of these actors are ultimately just poorly paid “workers” exploited by large unscrupulous traffickers. It is imperative to ensure a two-stage deployment as recommended by the ESEC, with an initial emergency phase associated with a public debate, followed by a carefully considered and evolving deployment.

RECOMMENDATION

For these reasons, the ESEC recommends:

- allowing distribution to adults only in dedicated licensed outlets;
- subjecting distributors to mandatory training in risk prevention and reduction, which is updated regularly;
- prohibiting all direct or indirect propaganda and advertising for cannabis (except on shop signs, under conditions) as well as all free or promotional distribution on the model of the Évin law⁴¹;
- ensuring the mandatory display of levels of the main cannabinoids and aromatic profiles alongside public health messages;
- considering the actors of the “historical” market.

4. Regulating use

Regulating for better prevention is what should direct the reflections around the central question of use. Failure to meet users' expectations risks the persistence of the black market and exposure to risk. Users are not necessarily sick and should not be systematically considered as such, even if abuses are possible and should not be underestimated. Authorisation is not incitement, and vulnerable groups, particularly young people, must be the subject of special attention and measures.

Allowing the use of cannabis by adults is first and foremost to put an end to a situation with significant consequences for them. Certain repressive policies have resulted in them being stigmatised, which affects their personal and even professional lives. Faced with a de facto illegal market, health aspects are neglected, exposing them to products whose damage from cutting substances or plant protection products contained in cannabis pose the most serious risks to their health. France's record consumption levels have demonstrated the failure of the policies pursued so far, so taking up this issue is a sign of responsibility. It is therefore necessary to set rules that correspond to the realities of a use that has become widespread, while at the same time providing the best possible protection for individuals, and in particular for vulnerable groups.

Young people whose brains are maturing are the first to be exposed to the risks and dangers of cannabis use, especially regular use. The sale of cannabis should therefore be restricted to people of legal age and access to sales outlets should be strictly controlled so as not to repeat the mistakes made with other legal drugs such as alcohol and tobacco.

⁴¹ Article L.3511-3 of the Public Health Code: “Direct or indirect propaganda or advertising for tobacco or tobacco products and any free distribution are prohibited.”

INSET 2: FOCUS ON 18- TO 25-YEAR-OLDS

Particular attention should be paid to people aged 18-25 wishing to use cannabis. Regular use can present the same risks to brain development as for underage users. However, as the objective is not to have two-tier legislation for 18- to 25-year-olds (legally adults) and others, targeted prevention actions and specific awareness-raising at the time of sale should be carried out to explain the greater risks for this sensitive group.

The purchase, possession and cultivation of quantities of cannabis for personal use will therefore be permitted for adults and regulated by law.

Sales to minors will remain prohibited in order not to facilitate access and to maintain a form of educational prohibition. Prevention and support should be the norm for them. Nor does criminal punishment have any place in a policy of education and responsibility that aims to build adults who are active in their lives and behaviour.

There is a debate on the issue of a possible THC limit. Feedback shows that taking such measures offers little protection in practice. This leaves the parallel market with a hand in this more highly dosed cannabis and generates even more problematic consumption of products with all the other problems linked to the quality of production and the practices of traffickers.

Users' expectations focus on the display of this rate, the level of the main cannabinoids and information. This allows them to know the expected effect, to adapt their consumption and to be able to make choices corresponding to their use. The parallel with alcohol is obvious: you don't consume cider and whisky in the same way, you adapt your use.

The Portuguese example, which has demonstrated its relevance through the quality of its results in terms of consumption levels in the general population, should serve as a model for the treatment of minors. Since 2001, Portugal has changed the way in which all "illicit" psychoactive substances are regulated from a public health perspective.

If the amount found does not exceed the legal limit, the user must appear, within 72 hours, before a drug abuse deterrence commission (CDT), created by the 2000 law, composed of a panel of three members: a legal professional (who chairs it) and two representatives of the medical (doctor or psychologist) and social (social worker or sociologist) professions. The geographically competent CDT decides on the user's situation after three interviews:

- if the user is found to be in a non-problematic use situation, the procedure is suspended;
- if there is a "moderate" risk of problematic use, a brief intervention can be offered to them (on an optional basis), including psychological help(*counselling*);
- if the risk of problematic use and dependence is 'high', the user may be referred to a specialised treatment service (not mandatory)⁴².

42 OFDT - Decriminalisation of drugs in Portugal: 20 years later.

Based on this model, a minor who is checked for use, referred by a parent or the national education system and who identifies the need, could have access to a commission of this type in order to assess his or her situation and be offered possible support if necessary.

Within this framework, minors in a situation of danger will continue to be liable to be referred to the children's judge acting in a protective capacity, pursuant to Articles 375 et seq. of the Civil Code, and may have educational and care measures imposed on them.

For adult use, it is also necessary to regulate the places where use would be allowed.

This could be based on the tobacco model, as is the case in countries that have moved their regulations in this direction: *"Smoking is prohibited in all enclosed public places, including cafés and restaurants. Smoking areas can be provided. Smoking is also prohibited on public transport, in schools, in children's playgrounds and in the workplace. There are many possibilities for people who want to stop smoking"⁴³.*

The main risk of adult use is related to combustion. Use in France is almost exclusively characterised by the consumption of cannabis in smoked form, furthermore associated with tobacco. This often leads to parallel smoking and even greater difficulty in stopping. It is therefore necessary to encourage lower-risk use, in particular through the development of vaping, which makes it possible to "enjoy" the aromas and effects of cannabis by heating it to a temperature slightly lower than that of combustion without the damage associated with smoking. Unfortunately, these devices represent a significant investment compared with combustion, which is a hindrance to their development.

In order to facilitate this lower-risk mode of consumption, a financial incentive should be envisaged for these materials. This would include models incorporated into medical protocols or equivalent, such as those provided to patients in the current French trial.

Repairing the social injustices linked to trafficking is a question that must be central to a reflection that goes beyond the simple subject of cannabis and is an imperative condition in the deployment of a new regulatory model.

The social impacts of cannabis trafficking are numerous and have totally destabilised entire neighbourhoods, leaving the field open to a whole range of associated delinquency. One of the main challenges of a controlled legalisation of cannabis in our country is to succeed in reinvesting these neighbourhoods and to offer decent living conditions and future prospects to the people who live there.

For all the people left behind so far, abandonment is not an option. For them, the only solution offered at the moment, which would seem to be a success, would be to move out of these areas permanently. Changing the paradigm of drug policy also means changing the paradigm of urban policy and providing the means to solve all forms of social exclusion. The question that arises is therefore more global and becomes: how do we rethink urban policy, and more generally, how do we rethink our society in an inclusive manner within a logic of equity? Equity is not equality. Equity means giving everyone the means to achieve the same ideals in life, and therefore starts with solving injustices. Protecting people is also, and above all, protecting our society.

43 Department of Legal and Administrative Information (DILA), Service of the Prime Minister, verified on 19 October 2021. <https://www.demarches.interieur.gouv.fr/particuliers/interdiction-fumer-tabagisme#:~:text=Introduction,on%20the%20place%20of%20work>.

The issue of redressing the harm caused by the 'war on drugs' has become increasingly prominent and is now central to recent legalisation initiatives, as in the US and Canada. These initiatives are based on the logic of social justice as well as on the observed failures to integrate the *legacy market*. In Canada, for example, there is now talk of a transition to the legal market. The main manifestation of reparation of damages is the amnesty laws that are enacted. In the United States, 21 states have enacted or are planning to enact amnesty laws. This also applies to states that have not legalised "recreational" cannabis. These amnesties take different forms: individual according to social characteristics or automatic according to the quantities involved and/or the types of offences. For example, in Illinois, waiver is automatic for quantities up to 30 g (1 ounce) and becomes individualised from 30 to 500 g. Other criteria may call into question the waiver of penalties, such as sale to minors or conviction for associated violent offences.

The introduction of a controlled legalisation of the cannabis market in France is therefore an opportunity to address these issues and not simply to build a new market whose interest lies mainly in its economic aspects. A new tax system associated with this controlled legalisation is capable of providing new resources and therefore requires the financing of effective public services for the weakest and for social cohesion.

Repairing the injustices caused by cannabis trafficking and related crime must rest first and foremost with the people themselves and the actors on the ground who live or work there. The place of women must also be given special attention. This logic of "empowerment", which consists in giving people back the power to act in order to imagine and build their collective future, must be the basis of reflection. It would be a clear mistake to imagine that thinkers coming in to provide solutions from above could work. It is by starting from the current realities and by reserving places for all those people who suffer or benefit from trafficking, whether they are actors or not, that real sustainable solutions can emerge. Addressing the social injustices of trafficking is an opportunity for action for an inclusive society that cares about problems and tries to turn them into solutions.

RECOMMENDATION

The ESEC therefore recommends:

- allowing use by people of legal age, while paying particular attention to those aged 18-25;
- not penalising use by minors, but directing them to an educational and therapeutic support committee made up of specialists;
- regulating use in public places, taking into account existing models;
- guiding and supporting consumers towards safer use;
- redressing the social injustices caused by cannabis trafficking.

5. Financing, budget and investment orientation

The current estimated turnover of "recreational" cannabis in France is around 3.4 billion euros. In addition to creating the jobs necessary for the establishment of a new industry with assured and significant outlets, the establishment of a legal cannabis market will allow for the collection of associated revenues (fiscal, parafiscal and social). Without undertaking an economist's work here with its associated figures, we feel it is important to outline some avenues for reflection and to set out some major principles.

The first step, prior to the deployment of controlled legalisation, is the necessary calibration of the market, which must be as precise as possible. This stage is essential for the dimensioning of the network: production volume, number of farms, processing units, control of the whole supply chain, sales points, etc.

A study by Terra Nova in 2014 estimated the total budgetary effect of legalisation at 2.1 billion euros in the case of legalisation with an unchanged sales price⁴⁴. The estimated turnover of the "recreational" cannabis market has changed significantly and is now 50% higher than estimated at the time.

There are two types of taxation associated with the creation of a legal market for "recreational" cannabis in France. On the one hand, there are taxes specific to this market; on the other hand, there are general taxes linked to the normal functioning of the economy of a sector, their allocation being distinguished in practice by an earmarking on the one hand and by a contribution to the general budget of the state on the other.

For the ESEC, the health dimension of such an approach is the main priority. Its financing must therefore be guaranteed on a permanent basis by allocating the revenue from these specific taxes to dedicated public policies.

44 Christian Ben Lakhdar, Pierre Kopp and Romain Perez, "Cannabis : réguler le marché pour sortir de l'impasse", Terra Nova, 2014.

Public policies on prevention, risk reduction and care related to cannabis use must be integrated into a comprehensive approach aimed at a paradigm shift in the approach to the issue. It is indeed a logic of global health and education that must be reinforced by the constitution of citizens who are free to make their own choices in an informed manner. Experiences in developing prevention programmes along these lines are producing convincing results and should therefore be generalised so that everyone can benefit from them.

The taxes linked to a specific taxation of this market are estimated at between 240 and 360 million euros, in a study carried out by Génération Libre in 2021, within the framework of a taxation that would be set at 15%⁴⁵. In the United States, this specific tax varies from 15% to 37% depending on the state. The ESEC therefore believes that all of this taxation should be allocated to this essential need.

The legal aspects of cannabis taxation are very similar to those of tobacco or gambling taxation, for example. The introduction of a specific tax can therefore be done through an excise tax and can be imposed according to three principles: the quantity of the product, the quantity of the active ingredient and the value.

An addition to this specific revenue, the revenue generated by the various taxes and social contributions resulting from the creation of a legal sector will be added to the general state and social security budgets. This would allow the state and social security, each in their own area of competence, to directly finance other public policies related to the issue of cannabis.

Research is currently the poor relation of everything related to cannabis. In addition to the fact that it is difficult for researchers to work on cannabis in France because of its legal status, public funding is almost non-existent.

There are very few studies on the medical potential of cannabis, for example, but science is seeing more and more potential. This issue has often been reduced to the use of the main cannabinoids, THC and CBD. However, more than a hundred cannabinoids have been identified, and the little research that exists shows that limiting ourselves to them is regrettable, and that the human endocannabinoid system is involved in a number of situations that were unsuspected until recently.

Public research on seeds, genetics and their conservation is non-existent at present, and the agricultural sector in the making must have the means to achieve its ambition of excellence. Only public research can make this possible and its funding is essential.

Another aspect of particular importance to the ESEC is directly linked to the social injustices that have resulted from cannabis prohibition and the development of trafficking and associated crime, which affect entire neighbourhoods and many people.

45 Kevin Brookes and Édouard Hesse, *Pour un marché libre du cannabis en France - Lutter contre le marché noir, protéger les consommateurs*, Génération Libre, 2021.

It is essential to finance and put in place significant means to redress these injustices, which affect the weakest first. Supporting people must be the priority, by deploying all the means that often already exist but cannot act because of the commandeering of these areas by traffickers. The simple fact of no longer forcing many users to buy their supplies there will allow a reappropriation of the space by a local economy that will have to be supported in the first instance. The necessary rehabilitation of these areas is part of this overall approach and will benefit from these new tax revenues.

RECOMMENDATION

The ESEC recommends:

- creating a specific earmarked tax and directing a defined part of the overall tax towards prevention and care;
- funding cannabis research;
- financing the rehabilitation of neighbourhoods and the support of people who have suffered the consequences of trafficking with a view to the development of the local economy (in particular through the professional and educational follow-up of young people who have emerged from drug trafficking).

6. Security and control policy

The vision that leads us to advocate a controlled legalisation of use, production and distribution is based above all on a logic of pragmatism and justice. The aim of establishing a legal offer is to protect people and to significantly reduce trafficking. This also has consequences for the police and the judiciary, who will see part of their activity disappear. The direct consequence is the possibility of reallocating these resources to other priorities and tends to allow a decrease in general crime. Moreover, regulated legalisation does not mean the absence of control.

Many services will have to change the way they operate and their missions: police, gendarmerie, customs, fraud control, etc. These missions will have to be reallocated to better protect the population.

The whole legal chain, especially when dealing with a substance such as cannabis, the use of which presents health risks, requires monitoring and control at all levels to avoid potential abuses. We have already detailed a number of measures that require resources to be allocated in order to guarantee the quality and excellence of the sector while providing the best possible protection for individuals and society.

As minors are particularly exposed to the risks associated with cannabis, it is primarily in their direction that efforts should be directed. A massive development of prevention with significant resources will increase the number of services offered in the field of prevention and risk reduction. The police and gendarmerie should also be involved and receive specific training in order to intervene as effectively as possible to prevent risky use and direct the people concerned to support and care structures.

Particular attention should be paid to the trafficking that persists towards them: efforts should be concentrated on those who might be tempted to consider minors as privileged clients. Increased sanctions may be considered for the most serious and important situations.

The enforcement of legal age-related access conditions in retail outlets should also be important and lead to the loss without notice and for good of any distribution licence for those who violate them.

Specialised services will also have to concentrate resources to prevent abuses on the internet and social networks, particularly in relation to advertising. This is a particularly sensitive issue, highlighted by many of the problems found in experiments abroad.

The question of online sales and home delivery is part of the same logic and will have to be the subject of particular vigilance.

Throughout the supply chain, quality will need to be checked, monitored and special procedures devised and deployed.

Finally, close collaboration between all the players in the sector and the police and gendarmerie will have to be built up in order to protect the production, processing and distribution sites.

Protecting is not an option. The implementation of a controlled legalisation means above all a framework by law and, unlike a system based on prohibition, its respect is an attainable objective.

RECOMMENDATION #

To this end, the ESEC recommends:

- strengthening the repression of trafficking, especially to minors;
- controlling the quality of the products as well as the display of the levels of the different cannabinoids, the origin and the cultivation methods;
- protecting production, processing and distribution sites.

conclusion

The ESEC is in favour of a controlled legalisation of cannabis for so-called recreational use, the aim being not to trivialise the product or promote its use. On the contrary, the objectives pursued must respond first and foremost to the requirements of public health and safety, by favouring, for example, prevention actions targeted at minors but also at adults aged 18 to 25 because of the consequences that regular consumption of cannabis can have on neuronal development. Better information on the quality of the products, their psychotropic effects and the possible abuses in the event of excessive consumption are also essential objectives, as is the drying up of the black market, which cannot be envisaged without social support measures for those involved in small-scale trafficking.

In order to achieve this, many steps are needed to respond, firstly, to the emergency situations identified in the report, and then to develop a new sustainable public policy. To this end, the Council is issuing three sets of recommendations that are at once pragmatic, systematic and immediately applicable in order to organise the public debate, respond to the imperatives of public health and legal security for users, and lay the foundations for a desirable model in the longer term.

This process will only succeed if a number of democratic, institutional and political preconditions are met. First of all, it is necessary to ensure the social acceptability of this reform on a societal issue that has divided public opinion and the political class for many years. In this respect, the ESEC has made various recommendations which, in particular, favour a holistic approach in order to address all the issues at stake and an evaluative dimension in order to initiate

the virtuous process of evaluation upstream and downstream of any new public policy. It must also be possible to collectively map out the way forward for the regulation of cannabis. In the past, numerous attempts to propose legislation on the subject have been unsuccessful. The EESC is therefore proposing a new participatory approach to the legislative process. In accordance with the provisions of the Organic Law of 15 January 2021 on the reform of the ESEC, participatory tools could be mobilised on the basis of referrals from the public authorities, drawing in particular on the conclusions of this report and opinion, which are themselves enriched by the public debate and an online consultation. This innovative initiative, because of the complementarity of the consultative and participatory mechanisms thus deployed, would be likely to strengthen the legitimacy of the proposals that would emanate from it among political leaders, with the executive power retaining control of the decision-making process by means of legislation and regulations. This new regulation must be able to evolve and be adjusted according to the results obtained in the framework of a continuous evaluation expressly provided for by the legislator. To continue with the current policy, which is essentially based on repression, would be irresponsible both for the citizens concerned because of the public health issues at stake and for society as a whole because of the insecurity generated by trafficking. Public actors cannot therefore remain inactive and must take the initiative to organise a public and participatory debate, provide security for users and victims of trafficking as soon as possible, and propose a new framework for the regulation of cannabis that meets society's expectations.

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