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COUNTRY REPORT | February 2019



Cannabis Regulation in Europe: Country Report Netherlands

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ideas into movement

Introduction

Although cannabis is an illicit drug in the Netherlands, marijuana and hashish are openly sold in so-called 'coffeeshops' – thereby probably representing the most widely known example of Dutch drug policy. Originally, these coffeeshops were café-like places, where users could buy and use small amounts of cannabis. In general, this is still the case, although today some coffeeshops function more as take-away stores where one can buy, but not use cannabis.

Selling cannabis in coffeeshops is condoned, but subject to strict regulations. Coffeeshops sell cannabis to consumers from their 'front door', but of course this is only possible when the shops are sufficiently supplied. The supply of coffeeshops is commonly known in the Netherlands as the 'back door', even though in reality both suppliers and customers use the same door to enter the coffeeshop. The Dutch policy of tolerance towards coffeeshops does not apply to the back door, but this problem has been ignored for many years. In recent years, this inconsistency has become a major issue in the national debate on cannabis policy, not least because of pleas by local authorities for renewal, in particular to regulate the back door and to establish a closed circuit from cannabis cultivation to selling to consumers in coffeeshops.

Cannabis criminalisation and decriminalisation

In the Netherlands, the first statutory provisions on illicit drugs were enacted in 1919, in the *Opiumwet* (Opium Act), but were confined to opiates and cocaine. The import and export of cannabis was introduced into the Opium Act in 1928, because this had been made obligatory by the Geneva Convention of 1925.¹ Not until 1953 did hemp products come to receive the same treatment as opiates and cocaine; possession, manufacture and sale became criminal offences. Additional changes made to the Opium Act in 1956 reduced the definition of hemp to include only the dried tops of the plant.² Statutory decriminalisation of cannabis took place in 1976. De facto decriminalisation, however, set in somewhat earlier.

Prior to the Second World War, cannabis use had scarcely been heard of in the Netherlands, and this did not change much in the early post-war years. The 1950s can be seen as the introductory phase of cannabis in the Netherlands, when marijuana was used by small groups of jazz musicians and other artists who had learned to use it while abroad, as well as foreign sailors and German-based US military personnel, in particular in Amsterdam (Cohen 1975; De Kort and Korf 1992; de Kort 1995).

In the course of the 1960s, cannabis use in the Netherlands rapidly gained popularity. An increasing number of adolescents began smoking it, but not until the end of the decade was a users' subculture in evidence. Cannabis spread forcefully in the wake of the hippy movement. Smoking hash at the national monument in Dam Square or in the Vondelpark in Amsterdam became a must for a burgeoning international youth 'counterculture' (Leuw 1973).

In 1969, the Netherlands ratified the United Nations Single Convention on Narcotic Drugs (1961). In the first debate on ratification in the Dutch Parliament in 1963, it had been concluded that the Single Convention gave the national legislature freedom to set only those punishments pertaining to narcotic drugs which it deemed appropriate.³ During this parliamentary debate a representative of the Social Democratic Party was already questioning whether cannabis should be defined as an illicit drug in all cases. Legalisation of cannabis was frequently brought up during the parliamentary debates leading up to the revision of the Opium Act in 1976. As the Single Convention did not appear to allow legalisation,

a compromise between prohibition and legalisation seemed the only available route. The revised Opium Act for the first time drew a distinction between 'drugs presenting unacceptable risks', such as heroin, cocaine, amphetamines, and LSD (Schedule I) and 'hemp products' (Schedule II); moreover, it differentiated the related criminal offences and the penalties they carried. The old law had provided only one general penalty for all intentional trafficking in or possession of any prohibited drug, up to four years' imprisonment, or six months in jail for unintentional acts. In 1976 penalties relating to cannabis were reduced to a lower level than those for Schedule I drugs. The possession of hashish or marijuana up to 30g was reduced from a serious to a petty offence, carrying a maximum sentence of one month's imprisonment. This differentiation between 'soft' and 'hard' drugs was based on the concept that the use of different illicit drugs entails differential risks. It was believed that non-differential criminalisation of all drug users and drug dealers would more readily bring cannabis users into contact with hard drugs. Differentiating between soft and hard drugs was intended to separate the respective drug markets and thus reduce this risk.

There were two major reasons for the statutory decriminalisation of cannabis in 1976: the advent of heroin and the increasing use of cannabis, which brought with it a de-stigmatisation of cannabis use. Although opiate addiction was not unknown before the early 1970s, it had been considered to be chiefly a problem of renegade doctors and nurses, other morphine users, and a small group of elderly Chinese opium smokers. The introduction of heroin, and especially the intravenous use of it by young people, confronted legal authorities, the medical profession and social workers with a wholly new phenomenon. Combating the further spread of heroin obviously demanded a much higher priority than concerns about drugs which were far less dangerous – as seen by members of these various professions – such as hashish and marijuana. Initially, the latter two had been rated as extremely dangerous. After many years of defining users as criminals, authorities began redefining the use of these substances as a symptom of psychiatric or psychological pathology. Gradually they were seen as a symptom of social pathology. The focus began shifting away from the individual user as a delinquent or patient. Cannabis use came to be perceived as non-conformist behaviour, a collective protest of a new subculture against dominant social structures. The final step was the redefinition of cannabis use as recreational behaviour (Leuw 1972).

From underground market to coffeeshops

With regard to the cannabis retail market in the Netherlands until the mid-1990s, three phases can be distinguished (Korf, 1995; 2002).

- During the first stage (1960s and early 1970s) the Dutch cannabis retail market was a predominantly *underground* market. Cannabis was bought and consumed in a subcultural environment, which became known as a youth counterculture.
- The second stage was ushered in when Dutch authorities began to tolerate so-called *house dealers* in youth centres. Experiments with this approach were formalised in the statutory decriminalisation in the revised Opium Act of 1976. Official national Guidelines for Investigation and Prosecution came into force in 1979. These guidelines are founded in the expediency principle, which is a guiding principle in Dutch penal law and the opposite of the legality principle.⁴ A general prosecution of cannabis offences was believed to not serve the public interest, but to stigmatise many young people and isolate them from society. According to the national guidelines the retail sale of cannabis to consumers was tolerated when the house dealer met the so-called AHOJ-G criteria: no overt advertising (*Affichering*), no Hard drugs, no nuisance (*Overlast*), no underage clientele (*Jongeren*) and

no large quantities (*Grote hoeveelheden*). The small-scale dealing of cannabis was thus an offence from a legal viewpoint, but under certain conditions it was not prosecuted. It is important to acknowledge that the second stage was initiated *before*, and became most visible *after*, the Opium Act was revised in 1976 (the AHOJ-G criteria were made official in 1979). By the end of the 1970s the house dealer had become a formidable competitor of the street dealer.

- In the third stage, hashish and marijuana were sold predominantly in *coffeeshops*. Although the Dutch government never intended this development, through case law it was decided that coffeeshops were to be tolerated according to the same criteria as house dealers. During the 1980s coffeeshops captured an increasing share of the Dutch retail cannabis market (Jansen 1991).

Rethinking the ‘Dutch model’

The revised Opium Act of 1976 – and more generally Dutch drug policy since the 1970s – was based on the central notion that the drug problem is primarily a public health and welfare issue and that risk reduction is its core concept (Leuw and Haen Marshall 1994). However, in the course of the 1990s, the perspective gradually shifted towards repression and the control element became to play a role in Dutch drug policy almost equal to the health element (Blom 2006; Van Laar and Van Ooyen-Houben 2009).

Dutch drug policy became more focused on controlling crime and drug-related disorder, usually referred to as ‘nuisance.’ ... Unintended consequences and international criticism led to a more stringent approach. There was a shift in perspective from containment and risk reduction to the control of nuisance and crime as a goal in itself. (van Ooyen and Kleemans 2016: 167)

Several factors played a role in this shift. In terms of drug policy, the 1980s and early 1990s were dominated by the problem of HIV and Aids among intravenous drug users, and the focus was on harm reduction and low-threshold care for heroin and crack users. In addition, since the late 1980s there was the rapid emergence and spread of ecstasy (MDMA) – and here, too, the emphasis was on harm reduction. However, in the meantime urban ‘open drug scenes’ had evolved (with street dealers selling heroin, cocaine and crack-cocaine, drug related crime etc.) as well large-scale production of ecstasy for both the national and the international market. These problems overshadowed what was happening in the cannabis market, and less attention was paid coffeeshops. After the Schengen Agreement (1985) the number of coffeeshops rose rapidly, especially in municipalities near the border. This was accompanied by a strong increase in ‘coffeeshop tourism’ of cannabis users from neighbouring countries.

The national government in 1995 published a comprehensive white paper on drug policy entitled *Drug Policy in the Netherlands: Continuity and Change*. It concluded that ‘... in international terms the situation as regards public health is not unfavorable ...’, but also that ‘... the use of drugs and everything that is related to it constitutes an acute, major social and administrative problem in the Netherlands as elsewhere’.⁵ Among the problems that needed to be tackled, the white paper referred to nuisance from coffeeshops caused by large numbers of customers, including so-called ‘coffeeshop tourists’; an increase in organised crime involvement in supply and trafficking of drugs; and criticisms from abroad, the International Narcotics Control Board (INCB) in particular.

The white paper concluded that ‘*the in themselves valuable coffeeshops did, however, increase in number and burden*’,⁶ and supported local initiatives to ‘rationalise’ the coffeeshop policy and reduce their number. In a critical review of the ‘Dutch Model’ in drug policy, Van Ooyen-Houben and Kleemans (2016)

analysed the evolution of coffeeshop policy in the light of increased focus on control of nuisance and crime since 1995. They argue that this increased control is reflected in administrative and criminal laws and amendments to the Opium Act aiming at improvement and facilitation of the investigation and prosecution of drug offences. Some of these legal instruments are directly or indirectly related to coffeeshop policy.

Regulating the front door – national and local policy

Both criminal and administrative law apply to coffeeshops. As stated above, Guidelines for Investigation and Prosecution of Opium Act offences by the public prosecutor set out criteria for non-prosecution of coffeeshops (originally the so-called AHOJ criteria, later AHOJ-G criteria). The first specifications of these criteria date from 1991.

Box 1: National criteria governing coffeeshops

National AHOJ-G(I) Criteria Governing Coffeeshops⁷

(A) No advertising	No advertising, apart from a minor reference (on the shop).
(H) No hard drugs	It is forbidden to have or sell hard drugs in the shop.
(O) No nuisance	Nuisance (<i>Overlast</i>) may consist of parking problems around coffeeshops, noise, litter, or customers who loiter in front of or in the neighbourhood of the coffeeshop.
(J) No young people	No selling to or access by young people (<i>Jongeren</i>) under the age of 18; strict enforcement focuses on customers below 18 years.
(G) No large quantities	No selling of large quantities (<i>Grote hoeveelheden</i>) per transaction, which means quantities larger than suitable for personal use (5g). A transaction comprises all buying and selling in one coffeeshop on the same day by the same customer. Maximum selling stock set at 500g.
(I) No residents	Access only to residents (<i>Ingezetenen</i>).

Since then, the national criteria have been sharpened and expanded. In 1996, both the J- and G-criteria were redefined (Staatscourant 1996):

- Access was restricted to persons over the age of 18 (J-criterion).
- The maximum transaction per customer per day was reduced from 30g to 5g (G-criterion).
- The maximum amount of cannabis in stock was limited to 500g (G-criterion).

From the mid-1990s onwards, the focus of coffeeshop policy was to tighten the regulation of the front door. This included *curbing the number of coffeeshops*. Since then, the number of coffeeshops declined from an estimated 1,100–1,500 in 1995 (Bieleman and Goeree 2001; Van Ooyen-Houben and Kleemans 2015) to 813 in 2000, 729 in 2005, 660 in 2010 and 573 in 2016 (Bieleman et al. 2017). There are several reasons for and explanations of this drastic drop in the number of coffeeshops. On the one hand, municipalities were given more national legal instruments for local coffeeshop policy, and on the other hand, local communities had to observe stricter national criteria.

Before 1995, at the local level municipalities were already able to take measures against coffeeshops for infringement of the national AHOJ-G criteria. And that is what happened, especially in the case of possession or trafficking of hard drugs (the H-criterion). Even when only customers are caught for the possession of hard drugs coffeeshops have been closed, sometimes temporarily, but with repeat violations usually permanently. However, in practice it was often very complicated to close down coffeeshops on legal grounds because of nuisance (the O-criterion).

The latter was one of the reasons why in 1996 the national government provided *local communities* a legal instrument to decide whether to allow coffeeshops. By the end of 2016, about 70% of Dutch municipalities had opted for a *zero policy* and decided to not allow any coffeeshops (Bieleman et al. 2017). Consequently, they can close down such locations, even if they do not violate the AHOJ-G criteria. Municipalities may also decide to allow one or more coffeeshops and to provide them with a license. Amsterdam was probably the first city to introduce a licensing system for coffeeshops. This gradually became common practice across the country. To date, coffeeshops need a license issued by the mayor. The decision to permit coffeeshops is made at the municipal level, by the mayor in consultation with the public prosecutor and the police (the so-called ‘tripartite consultation’) and with the approval of the city council. Whether a Dutch community has one or more coffeeshops depends in part on its population size, with larger communities being more likely to have them. However, it more strongly depends on the political composition of the local council. *The larger the percentage of progressive councillors, the greater the probability that coffeeshops are allowed.* (Wouters et al. 2010: 315).

Box 2: Compliance with AHOJ-G criteria

If a coffeeshop fails to comply with one of the AHOJ-G criteria, the mayor can apply administrative measures, varying from a fine to closure of the shop for a definite or indefinite period. The public prosecutor can prosecute the coffeeshop owner and staff. The severity of the sanction depends on the violation, i.e. the presence of hard drugs and under-age customers is punished more severely than advertising violations, as are repeated violations (Van Ooyen-Houben and Kleemans 2016). Compliance is checked periodically by municipalities, local police, and other agencies such as tax authorities. Customer IDs and the stock of cannabis on the premises are checked. Within a ‘tripartite consultation model’, the mayor, the public prosecutor, and the chief of police agree on enforcement actions. Coffeeshops in general comply with all these criteria (Bieleman, Mennes and Sijstra 2017; Van Ooyen-Houben, Bieleman and Korf 2014). One explanation is that coffeeshops are lucrative businesses that their owners do not want to compromise (van Ooyen-Houben and Kleemans, 2016; Korf, Liebrechts and Nabben 2016).

Until 1996, with regard to coffeeshops there was no nationally uniform definition of 'Youth' (the J-criterion). In some municipalities this had been set at 16 years (at that time the minimum age for alcohol consumption), in others at 18 years (the age of majority in Netherlands). In 1996 this was harmonised, and 18 years became the uniform national criterion.

Furthermore, in 1996 at the national level it was decided that coffeeshops had to be *alcohol-free* premises (Staatscourant 1996). Although at the local level this already was common practice in many coffeeshops (whether or not because of additional local criteria), there were coffeeshops serving alcohol. Some of the latter stopped doing so. Other coffeeshops decided to split up their location into an alcohol-free coffeeshop and a physically separated café serving alcohol, while some stopped being a coffeeshop and continued as café. In this way, the alcohol-free policy contributed to reducing the number of coffeeshops.

A different type of instrument to regulate the front door is the *BIBOB* Act that was introduced in 2003.⁸ This act empowered mayors to use a screening procedure to check the criminal backgrounds of applicants for licenses. Although this law was not specifically aimed at coffeeshops, it has become quite common to use BIBOB to screen coffeeshop owners (Bieleman, Mennes and Sijstra 2017).

Another factor in the declining number of coffeeshops was the introduction of a *minimum distance from school* policy at the local level. The city of Rotterdam was probably the first municipality to include this additional local criterion, and in 2009 closed 16 coffeeshops located within 250m of schools. In 2011, the national government announced that from 1 January 2014 no coffeeshop should be located within 350m from schools for secondary education and secondary vocational education. However, by the end of 2012 the planned national distance criterion of 350m was rescinded, and the Minister of Justice decided that this criterion was a matter of local policy. By 2016, four out of five Dutch municipalities with one or more coffeeshops had implemented a distance from school policy, mostly 250m or less (Bieleman, Mennes and Sijstra 2017). One of these municipalities is Amsterdam, where a minimum 250m distance policy was introduced in exchange for not implementing the I-criterion (see below). Together with the closure of most coffeeshops in the Red Light Area and rapidly growing tourism, the minimum distance from school policy led to a large increase in the number of visitors in the remaining coffeeshops (Korf, Liebrechts and Nabben 2016).

In addition to the national criteria for permitting coffeeshops, communities can implement *specific local criteria*, such as the requirement to employ security and/or staff to help reduce nuisance, obligatory staff training and availability of drug-prevention information, and restricted opening hours. The latter can lead to coffeeshops being busier during the narrower time window, as for example in recent years was the case in Rotterdam (Korf and Liebrechts 2015).

Private club and residence criteria for coffeeshops

In 2009, a national expert advisory committee on drugs policy (*Adviescommissie Drugsbeleid* 2009) concluded that coffeeshops should return to their original purpose of selling small amounts to local consumers, especially in areas along the border. The government acted on this advice with a policy letter, and announced a more restrictive policy towards coffeeshops, with two additional criteria that coffeeshops had to observe in order for them to be tolerated coming into force: the private club and the residence criterion (Staatscourant 2011). From 2012 onwards, the new national policy intended that coffeeshops should be permitted to give access only to members (the 'private club criterion') and only

residents (the I-criterion) of the Netherlands – irrespective of nationality – were permitted to become a member. This tightened policy sought to make coffeeshops smaller and more controllable, to reduce the nuisance associated with them and to reduce the number of foreign visitors attracted to the coffeeshops (so-called ‘coffeeshop tourists’).

Enforcement of these new criteria started as a pilot in May 2012 in three provinces in the south of the country (along the German and Belgian borders) where the problems of nuisance and drug tourism were defined as most urgent. The remaining provinces were supposed to follow in January 2013.

The introduction of these measures was evaluated in 14 municipalities, seven in the southern provinces where they were implemented (‘experimental group’) and seven in other provinces where they were not (‘comparison group’). A baseline assessment (before the implementation in the ‘experimental group’) and follow-ups at six and 18 months were undertaken. A combination of methods was applied: interviews with local experts, surveys with neighbourhood residents, coffeeshop visitors and cannabis users, and ethnographic fieldwork. Findings were reported after the first follow-up (Van Ooyen-Houben, Bieleman and Korf 2013) and after the second (Van Ooyen-Houben, Bieleman and Korf 2014). A short version of the results of the full study was published in English (van Ooyen-Houben, Bieleman, and Korf 2016). Key findings were:

- In the three southern provinces, drugs tourism to coffeeshops swiftly declined in 2012. Drug tourism fell, but street dealing flourished. However, 10 of the 14 municipalities in the study sample did not enforce the residence criterion. This criterion remained in force but was adapted: local authorities can decide whether to enforce it (Tweede Kamer 2012).
- The private club criterion had a number of adverse side-effects. After its implementation in the southern provinces (the ‘experimental group’), coffeeshops lost a large proportion of their local customers, since users did not want to register as a member. Residents turned away from coffeeshops and started buying cannabis on the illegal market, thus fostering nuisance from street dealers. These people did not want to register as a club member. There was a substantial increase in the illegal cannabis consumer market, attracting young customers aged 18–24 in particular. The growing illegal market attracted young dealers with a vulnerable background.
- The private club criterion was abolished at the end of 2012 (thus never implemented in the ‘comparison group’). From then on, residents returned to coffeeshops (in the southern provinces), but not all. The illegal cannabis market (i.e. cannabis transaction at consumer-level sales other than in coffeeshops) decreased but remained larger than it had been before the policy change.

Medicinal cannabis and CBD products

Since 1 January 2001, the *Bureau Medicinale Cannabis* (BMC – Office for Medicinal Cannabis) is the government office responsible for the production of cannabis for medical and scientific purposes.⁹ The BMC has a monopoly on supplying medicinal cannabis to pharmacies, and on its import and export. The quality of the medicinal cannabis is guaranteed by a constant supervision of the grower and the distributor. Since 2003, this cannabis has been produced by Bedrocan and is intended for medicinal use only. Five types of medicinal cannabis are exclusively available to pharmacies, pharmacy-holding general practitioners, hospitals and veterinarians: Bedrocan, Bedrobinol, Bediol, Bediol and Bedica. The composition and strength vary.¹⁰ All types come in the form of dried flower tips harvested from the

female cannabis plants. With Bediol, Bedica and Bedrolite, the dried flowers are ground, making the product easier for the patient to use.

Until 2015, only dried flower tips (ground or whole) were available as medicinal cannabis. Once medicinal cannabis oil became available, in short time the number of prescriptions sharply increased.¹¹ In the course of 2017, already around half of all medicinal cannabis prescriptions were for cannabis oil (PW 2017).

In part, medicinal cannabis oil can be understood as a response to calls from patients for more consumer / patient-friendly medicinal cannabis. These calls include pleas to allow patients to grow their own marijuana. For example, the patient platform PGMCG claims that it succeeded in gaining permission for patients in the city of Tilburg to legally grow five plants for personal use.¹²

In recent years, a swift and significant increase has been observed in oils and other products that contain CBD, but no THC. Cannabis oil that contains THC is subject to the Opium Act, so medicinal use requires a special prescription. However, CBD is not included in the Opium Act, as it is not defined as psychotropic. Cannabis oil with only CBD is freely available on the internet and in smart shops, tobacco shops, drugstores, etc. Cannabis oil that is sold online should not contain THC (PW 2017).

Controlling the back door

The Dutch policy of tolerance towards coffeeshops does not apply to the 'back door'. The police turn a blind eye to its purchase, as long as this is done discreetly and in small quantities (Van Ooyen-Houben and Kleemans 2016). This leaves coffeeshops in a complicated interface between the illegal production market and the tolerated sale of cannabis to consumers (Tijhuis 2006). This paradox, and its related problems, had been ignored for many years (Van de Bunt 2006), but this has changed drastically since the early 2000s, and the back-door issue gained prominence on the political agenda, not in the least because coffeeshops were increasingly selling domestically grown marijuana, instead of imported foreign hashish. This product substitution has been characterised as 'Green Avalanche' (Jansen 2002). The image was created of domestic marijuana production being increasingly in the hands of criminal organisations (Korf 2011). For example, Bovenkerk and Hogewind (2003) concluded that indoor cannabis cultivation was widespread and that criminal networks forced people to become involved, in particular in socio-economically vulnerable neighbourhoods.

In subsequent years, legislation was enacted to increase and harmonise sanctions on large-scale cannabis cultivation, and to create more room for local policy (Van Ooyen-Houben and Kleemans 2016). Already in 1999 specifications for 'professionalism' of cannabis cultivation had been defined in the Opium Act, more severe sanctions for professional cultivation, and higher maximum sanctions for large-scale production and trafficking of drugs, with special emphasis on large-scale cultivation. Also, the 'Damocles article' was added to the Opium Act (article 13b) enabling mayors to close drug-dealing premises in their municipality. In 2007 this article was broadened in scope and from then on applied to all drug-related premises, including, for example, apartments that had been used to grow marijuana.

A special Hemp Task Force was created, and from 2004 domestic cultivation has been tackled by a combination of administrative and financial measures (e.g. seizures of criminal proceeds) and criminal law. Annually around 5,000 cultivation sites have been dismantled (Korf 2011; van Laar et al. 2014). Side-effects of this intensified policy include moving to other less detectable locations, technological

innovation in indoor cultivation, and a transition to professional commercial cultivators and criminal networks (Wouters, Korf and Kroeske 2007; Emmett and Boers 2008) and to locations abroad (Jansen 2012; De Middeleer and De Ruyver 2017). As it is difficult to measure cannabis cultivation, these findings are merely observations and indications.

In 2009, the aforementioned national expert advisory committee on drug policy also advocated more intense and integrated efforts to control organised crime involving cooperation between public and private parties at the regional level and administrative, fiscal, and criminal law authorities (*Adviescommissie Drugsbeleid* 2009). One of the consequences was that in 2014 another article was entered into the Opium Act that criminalised the preparation or facilitation of cannabis cultivation. This new article was specifically intended as a legal instrument against so-called *growshops*, as they not only sold seeds to grow marijuana for personal use, but had been shown to play a crucial role as 'facilitators' in commercial indoor cannabis cultivation by selling all kinds of equipment for cultivation sites (e.g. high-tech lamps). An increasing number of growshops came to be understood as important intermediaries in the supply chain to coffeeshops, as well as important facilitators and 'partners in crime' in marijuana production for the illegal export (Emmett and Broers 2008; Spapens, Van de Bunt and Rastovac 2007). It has been estimated that in the Netherlands more marijuana is grown for export than for the domestic market (Van der Giessen, Van Ooyen-Houben and Moolenaar 2016). It is difficult if not impossible to reliably estimate the total cannabis production, as well as what part is grown to supply coffeeshops. This also means that in practice the term 'back door' is not well-defined, if only because often it is unknown whether or not confiscated marijuana was intended to supply coffeeshops.

Local proposals for regulated supply to coffeeshops

In Dutch cannabis policy, the core of the back-door problem is that there is no official authorised system to supply coffeeshops. In recent years, an increasing number of Dutch mayors have voiced their concerns and demanded further regulation. For example, the city of Utrecht suggested a non-commercial social club model that would allow recreational cannabis users to grow up to five marijuana plants per participant/member (Wouters and Korf 2011).

In the course of 2013 – in response to a letter from the minister of Justice to the Parliament in February 2013, in which he offered municipalities the opportunity to present plans for cannabis cultivation – Utrecht as well as other municipalities from all over the country sent proposals to the national government to regulate cannabis supply to coffeeshops. These proposals varied, among others, in the level of detail; level of centralised cannabis cultivation (one cultivator for all local/regional coffeeshops or various cultivators); characteristics of cultivation site; safety issues; whether or not to include hashish; legal bodies and role of coffeeshops in cultivation; reference to quality criteria (e.g. maximum THC percentage) and (type of) quality control; details with regard to financial administration, taxing and control.

The local/regional proposals for regulated supply to coffeeshops were part of a wider strategy, initiated by three municipalities. In the course of 2013, this resulted in a *Manifest Joint Regulation*, in which they called for a regulation of cannabis cultivation to supply coffeeshops. This manifest was signed by 23 municipalities/mayors.

In response to the proposals and the manifest, the Minister of Safety and Justice (Ivo Opstelten, the same minister who had introduced the private club and residence criteria for coffeeshops) refused

Box 3: Examples of local/regional proposal for regulated cannabis supply to coffeeshops¹³

The mayors of eight communities in the southern province of Limburg presented a detailed proposal for a joint two to three-year pilot project with regulated supply to all coffeeshops in their communities by one or more certified companies. Cannabis should not contain more than 15 per cent THC. Enforcement of illegal cannabis cultivation should be continued.

The municipality of Smallerland concluded that the national enforcement policy towards cannabis cultivation had resulted in most small-scale growers being arrested or having stopped growing cannabis for coffeeshops because fear of arrest. The municipality proposed to return to a small-scale system of non-criminal, experienced growers who supply the two coffeeshops (located in the city of Drachten) with organically cultivated cannabis. Cash payments should not be allowed, and the Tax Office should control purchase and sale.

The municipality of Rotterdam called for a foundation that cultivates various types of marijuana to supply coffeeshops only. The cultivated marijuana should meet certain quality criteria (e.g. not too much THC).

The city of Leiden proposed choosing between two options: either one cultivation site for all local coffeeshops, or for each coffeeshop to have its own cultivation site.

The city of Groningen proposed a regulated cultivation site similar to the 'Bedrocan model' (see section on medicinal cannabis), i.e. an agricultural site, with no company name or reference to cannabis being visible to the public. Cannabis should be grown according to the standards of Good Agricultural Practice, and thus without pesticides or fungicides. Quality and purity (THC, CBD) should be professionally analysed and reported. Growers should not have a criminal record (with the exemption of violation of the Opium Act for cannabis cultivation); transparent financial administration; and cannabis to be safely transported to the coffeeshops.

to give permission to any of the proposed local or regional pilots. Instead, he argued that any type of formal regulation of cannabis cultivation for the recreational user market would violate the international drug treaties or European regulations, and would not solve the problem that most domestically cultivated cannabis is exported. According to the minister, the appropriate answer to organised crime would be strong measures against crime and nuisance, not regulation (Tweede Kamer 2013; 2014).

Manifest Joint Regulation and diverging views on international conventions

The Manifest Joint Regulation¹⁴ states that the national cannabis policy needs revision, and calls for the nationwide introduction of certified and regulated cannabis cultivation, in order to: a) better protect the health of cannabis users; b) improve safety in neighbourhoods in their cities; and c) more effectively control cannabis-related (organised) crime.

As for the health protection of cannabis users, the manifest argues that due to an unregulated supply in the cannabis market, users are not informed about its content and quality (e.g. high percentage THC).

With regard to safety problems, the manifest states that many fires are caused by illegal indoor cannabis cultivation in houses and apartments. As for more effective control of organised crime in domestic cannabis cultivation, the manifest argues that with certified and regulated cultivation, more human and financial resources would become available for a better targeted enforcement of remaining criminal actors and organisations involved in unregulated cultivation.

According to the municipalities that signed the manifest, the ministerial conclusion that the international drug conventions do not allow for certified and regulated cannabis cultivation has been based on a one-sided and politically biased interpretation of the treaties. In his conclusion, the Minister of Safety and Justice referred to a study commissioned by his ministry (Van Kempen and Federova 2014). Interestingly, in a second study, commissioned by three cities with coffeeshops, the same authors took a different legal line, i.e. human rights conventions regarding health and safety, and concluded that positive human rights obligations could result in allowing or even requiring the regulated production of and trade in cannabis (Van Kempen and Federova 2016).

Returning to the manifest, it proposes – in the event that it would not be possible to introduce regulated cannabis cultivation country-wide – to start at the local level. To date, over 60 mayors – mostly from municipalities with coffeeshops – have signed the manifest. Some simply signed to support the call for regulation, others presented detailed proposals (see previous section). Moreover, in 2017 the Union of Dutch Municipalities (VNG) called for local experiments in regulated cannabis cultivation (VNG 2017).

Preparing a national experiment with regulated cannabis supply

In February 2017, the Dutch Parliament voted for the '*Wet Gesloten Coffeeshopketen*' (Closed Coffeeshop Circuit Act), a proposal by MP Vera Bergkamp to revise the Opium Act by including a new article by which professional or commercial cannabis growers operating under strict conditions can be exempted from prosecution (Tweede Kamer 2017). This proposal was adopted by a slight majority (77 yes vs. 73 no).

In October 2017, a new government took office, a coalition of four political parties with different views on cannabis policy and coffeeshops: MP Bergkamp's 'liberal-progressive' party that had taken the initiative to revise the Opium Act, a 'liberal-conservative' party with a strong focus on fighting organised crime in cannabis production and trade, and two confessional (Christian) anti-coffeeshop parties giving highest priority to prevention of cannabis use. Despite conflicting perspectives, the coalition agreed to an experiment with 'closed coffeeshop circuit' in six to ten municipalities (cities).

In February 2018, the new Minister of (now) Justice and Safety and the Minister of Medical Care and Sports informed the parliament that an independent expert committee would be established to advise the government about the design of the experiment. In the ministerial plans announced in March 2018, the experiment was divided into three stages. (1) *Preparation*, beginning with the implementation of an Experiment Act¹⁵ and the underlying Administrative Decree.¹⁶ (2) *Experiment*: within the legal context of the experiment, cannabis can be produced, be delivered to and sold in coffeeshops in the participating municipalities. For this phase, a period of four years was foreseen in the draft version of the Experiment Act. (3) *Run-down*: within approximately six months bringing the situation back to as it was before the experiment.

In March 2018, the advisory committee – consisting of experts in the field of public health, addiction, surveillance, law enforcement, local administration, criminology and law – was established. The

committee gathered abundant information from the academic literature and through roundtable discussions with a wide variety of experts and practitioners, including mayors, law enforcers, researchers, scientists, cannabis producers, coffeeshop owners, cannabis users, and addiction and prevention experts, among others. By the end of June 2018, the advisory committee delivered its report (Adviescommissie Experiment Gesloten Cannabisketen 2018).

Regarding the content of the experiment (the ‘intervention’), the committee stated that during the preparation phase, it will make considerable effort to deliver a sufficiently varied range of cannabis to the outlets participating in the experiment. According to the committee, during the experiment a limited number of reliable and highly qualified growers has to be contracted, who are ready to meet the necessary requirements (e.g. no pesticides, information about type of cannabis, THC, CBD). Over time it could be decided whether it would be desirable and possible to include more cannabis growers in the closed circuit. As the committee concluded that variation in cannabis should not be limited to marijuana, it realised that it would be a major challenge to supply participating coffeeshops not only with various types of domestically cultivated marijuana, but also with a variety of domestically produced hashish. (Approximately 20 to 30 per cent of the cannabis sold in coffeeshops refers to hashish, predominantly imported from Morocco.)

With regard to transport and trading stock, the committee’s recommendations appear to go beyond the G-criterion (maximum 500g). While not mentioning specific numbers, the committee characterised transport as a vulnerable component in the chain, and concluded that the distribution from grower to seller should take place in the clearest way possible, with minimal risk of mistakes and through prevention of interference by, and ‘leakage’ of cannabis to, the criminal milieu. Therefore, the committee sought to minimise the number of cannabis transport movements as much as possible. It also recommended allowing outlets a maximum trading stock of at least enough for one day.

According to the committee, the retail price of cannabis should be aligned with the existing market. A surcharge could serve as a buffer against excessive margins between cost price and sales prices, and could support a fund for prevention of cannabis use and addiction. Finally, the committee pointed to the potential risk that regulation could lead to cannabis being perceived as safe and not harmful to health, because the government monitors the quality of the product. Moreover, most cannabis users in the Netherlands mix cannabis with tobacco. Therefore, the committee advised prevention measures as part of the ‘intervention’ that address the health damage that cannabis use, as well as tobacco smoking, can cause.

Concerning the scientific evaluation of the experiment, the committee recommended a mixed-method design: a process evaluation to investigate whether the experiment results in a well-functioning closed cannabis chain, and a study of effects. Leading questions in the *process evaluation* are, for example: is the chain truly closed and do the coffeeshops succeed in becoming exclusively supplied by legal cannabis growers and producers, and in fully abolishing the sale of illegally produced cannabis in their premises? How do processes within the chain work and evolve? Do cannabis users buy at a legal coffeeshop or do they turn to other outlets? How do users experience the closed chain? Do the ‘government approved’ selling points attract more young buyers and how do they alert them to potential health harms?

Regarding the *effect study* the committee pointed out several themes, including: cannabis use, combination of cannabis with other substances, cannabis dependence, cannabis-related immediate health effects, driving under the influence of cannabis, criminality, safety and nuisance. To determine certain effects of a closed cannabis chain, the committee noted that possible changes can best be

studied comparatively in municipalities where the intervention is implemented and where not. According to the committee, a solid, well designed comparative study could bring evidence-based findings on short-term effects, although health effects that are observable only in the longer term are beyond the scope of the effect study, which should be finalised in four years. The committee also concluded that the experiment will not make it possible to draw firm conclusions with regard to general consequences in terms of crime.

As stated above, the proposed experiment resulted from an agreement between four political parties with different views and preferences with regard to cannabis policy and coffeeshops. This required compromises. One was an experiment limited in terms of size: six to ten municipalities. However, according to the committee, the effect study requires the participation of ‘considerably more’ municipalities. The paradox here seems to be that exactly the additional criteria – and consequently a variety of effect objectives – of the political parties who were less enthusiastic about the experiment and preferred its limited size, led the committee to advise a larger-scale experiment.

Another sensitive issue concerns the third stage of the experiment: run-down (within six months). This too was a concession to the political parties in the coalition that prefer not to have coffeeshops. The advisory committee expressed a very clear opinion on this matter. *‘The committee finds the experiment to be successful when it has been shown that a closed cannabis chain can be realised and when the measured effects are either favourable or do not show a worsening of the current situation. Such an outcome is in the committee’s view an unequivocal result that pleads for regulation of the cannabis chain in the Netherlands’* (Adviescommissie Experiment Gesloten Cannabisketen 2018: 10). Moreover, the committee stated that if the experiment succeeds, it would be ‘illogical and risky’ to return to the situation ‘as it was before the experiment’. Instead, the committee advised the government to not phase out the experiment in the event of a successful outcome, and to make a clear statement beforehand that it intends to implement the closed cannabis chain nationwide if the experiment succeeds.

In early July 2018, in a letter to the Parliament, the Dutch government responded largely positively and in line with the committee’s advice, but disagreed with some proposals and persisted in restricting the experiment to a maximum of ten municipalities.¹⁷ In the following week, a first draft of the Experiment Act was sent to Parliament (Tweede Kamer 2018a). In the ensuing months, social discussions and political debates about the experiment continued.¹⁸ The Union of Dutch Municipalities¹⁹ kept calling for a larger number of cities in the experiment, and against the requirement that all coffeeshops in a municipality should participate, as this would not be realistic for cities like Amsterdam (which has about 170 coffeeshops) and Rotterdam (around 40 coffeeshops). Coffeeshops persisted in their concerns about sufficient varieties of marijuana and hashish. The Parliament’s Permanent Justice Committee extensively discussed the draft Experiment Act. By the end of November 2018, the government published its views (Tweede Kamer 2018b). In short, the principles and criteria of the experiment, and the expected timeline are as follows:

- In the course of 2019, the experiment will be further prepared in consultation with local authorities (including the Union of Dutch Municipalities).
- The experiment formally begins when the Experiment Act and the underlying lesser regulations (Administrative Decree) have come into force. This requires that volunteering municipalities have been nominated for participation in the experiment by the Advisory Committee, subsequently six to ten municipalities will have been selected by the government, mentioned in the Administrative Decree, and that the decree has been approved by the relevant political and legal authorities and

institutions. At that time, the participating coffeeshops will also be known, and thus mentioned in the decree.

- The next step is the *preparation phase* (expected to last at least a year). At the core is the selection of up to ten growers, who during this phase will have to bring proof that they can produce sufficient marijuana and hashish – in size and varieties –. To structurally supply the participating coffeeshops. Cultivation and production must take place in the Netherlands.
- During the *actual experiment* (i.e. production, supply to coffeeshops and sale of cannabis to consumers) participating coffeeshops may order cannabis from each of the selected growers. In contrast to the national G-criterion (500g), maximum stock is set at average weekly sales of each participating coffeeshop.
- The draft Experiment Act provides that the scientific *evaluation* will take place before the end of the experimental phase, in order to enable the then incumbent government to take evidence-based decisions about next steps. Should it be decided to convert the experiment into general legislation, the draft Experiment Act allows for the possibility to extend the experimental phase by up to 18 months, so that the total duration of the experiment, including the six months run-down phase, may be extended to a maximum of six years.

Summary and conclusion

In the Netherlands, cannabis was statutorily decriminalised in 1976, and placed on a separate list (II), with lower sentences than for ‘hard drugs’ (List I). This decriminalisation resulted from a fundamental national debate on drug policy. Already before 1976, at the local level selling cannabis to consumers had been informally tolerated under certain conditions and in specific settings (so-called house dealers in youth cultural centres). This approach became formalised at the national level, and in the course of the 1980s, coffeeshops increasingly took over the role of house dealers.

Over time, the pendulum in Dutch coffeeshop policy has been swinging between a stronger local and a stronger national orientation – and vice versa. Coffeeshops became increasingly regulated. In a dynamic process, local policies towards coffeeshops became formalised, and national criteria governing coffeeshops were defined – and enforced. The Dutch government provided legal instruments to create more room for local coffeeshop policy, i.e. to define additional criteria/requirements for coffeeshops, as well as the opportunity to opt for a zero policy, and thereby not allow coffeeshops at all. Currently about 100 municipalities allow one or more coffee shops to operate – about one quarter of all (380) Dutch municipalities.

Overall, the past decades have resulted in a well-defined set of national criteria to permit coffeeshops, and in a transparent enforcement policy. However, this policy of ‘tolerance’ only refers to the ‘front door’ of coffeeshops, i.e. the sale of small amounts of cannabis to consumers (up to 5g per transaction). Although the supply of cannabis to coffeeshops – the ‘back door’ – had been under debate for quite some years, calls from local policy-makers and politicians (municipalities) to take the next step, and to also regulate the supply side of the cannabis retail market, did not receive support from the national government. Instead, a repressive approach towards cannabis cultivation was intensified, thereby inadvertently contributing to an ongoing process of increased involvement of organised crime in the cannabis industry.

Interestingly, the difference between supporters and opponents of regulating cannabis cultivation is not so much in the analysis of the problem. Both sides recognise the paradox in Dutch cannabis policy (sales tolerated through the 'front door', no supply via the 'back door') and are concerned about the role of organised crime in cannabis production. The essential difference is in the political solution advocated: more enforcement in order to fight organised crime versus regulation to steal a march on organised crime.

In response to the continued focus on enforcement, local policy-makers and politicians intensified their collaboration in pleas to regulate the 'back door', and published a Manifest Joint Regulation. While initially the national government refused to create any legal room for regulating supply to coffeeshops, a swift change took place in the course of 2017. The Dutch parliament voted for a proposal to revise the Opium Act – albeit with a very small majority – that creates legal room for cannabis supply to coffeeshops in a closed circuit from plant to consumer. With the new national government that took office in October 2017, developments came rapidly. An experiment was announced that would allow six to ten municipalities to participate in an experiment in which coffeeshops under strict conditions within a regulated, closed circuit will be supplied with cannabis.

As of June 2018, an independent advisory committee of scientists and experts reported on their recommendations for the research design and content of the experiment, including: a sufficiently varied range of cannabis in the coffeeshops (both marijuana and hashish); larger stock of cannabis in coffeeshops; and prevention measures. In the course of 2019, the experiment will be further developed in consultation with local authorities, as a next step in a complex process to prepare, implement and evaluate the experiment, with the aim of learn evidence-based lessons that in around 2025 will allow the then incumbent government to decide upon future steps in Dutch cannabis policy.

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Endnotes

1. This agreement required the inclusion of Indian hemp in the list of prohibited substances (Krabbe 1989).
2. In order to exempt cultivation of hemp plants for use as windbreaks in farming and for the manufacture of thread, chicken feed, birdseed and fishing bait (Krabbe 1989).
3. For a more detailed description, including more specific references, of this and the next section, see: Korf 1995; De Kort 1995.
4. The expediency principle allows authorities to refrain from prosecution of criminalisable behaviour without first asking permission of the courts. Basically, the expediency principle can be applied in two ways. The first takes prosecution as its starting point, but waives it if there are good reasons to do so (negative application: prosecution, unless); this 'case directed' approach was common in the Netherlands until the end of the 1960s. The second way is the positive application of the expediency principle; prosecution only takes place if it is expedient by serving the public interest (no, unless).
5. Original quote in: Tweede Kamer (1995, p. 9). English translation from: Van Ooyen-Houben and Kleemans 2016 p. 177
6. Original quote in: Tweede Kamer (1995, p. 37). English translation from: Van Ooyen-Houben and Kleemans 2016, p. 196
7. Slightly adapted overview from Van Ooyen-Houben and Kleemans (2016).
8. BIBOB: Bevordering Integriteitsbeoordelingen door Openbaar Bestuur (Promoting Integrity Reviews by Public Administration).
9. www.cannabisbureau.nl/English. Retrieved January 4, 2018.
10. Bedrocan 22% THC / <1% CBD; Bedrobinol 13.5% THC / <1% CBD; Bediol 6.3% THC / 8% CBD; Bedica 14% THC / <1% CBD; Bedrolite <1% THC / 9% CBD. From: www.cannabisbureau.nl/English. Retrieved January 4, 2018.
11. For example the Transvaal Apotheek (Transvaal Pharmacy) makes magistral preparations with THC and/or CBD from medicinal cannabis plants (Bediol CBD 2.0% / THC 1.3%; Bedica THC 2.0%; Bedrocan THC 2.0%; Bedrolite CBD 2.0%; Bedrolite CBD 10% - each in 10 ml dosages). Retrieved from www.transvaalapotheek.nl 28 May 2018.
12. PGMCG stands for: Stichting Patiënten Groep Medicinale Cannabis Gebruikers (Patients Group Medicinal Cannabis Users), a foundation for and by patients who (wish to) use medicinal cannabis. Retrieved from www.pgmcg.nl 15 May 2018.
13. Examples are only shortly summarized here, and do not include all characteristics or requirements in the proposals.
14. As published January 31, 2014 by the initiators: mayor Depla (Heerlen), deputy Everhardt (Utrecht) and mayor Van Gijzel (Eindhoven). www.vng.nl. Retrieved January 4, 2018.
15. The aim of this *Experiment Act* is to regulate that the Opium Act will not apply to the actions that are defined as illegal in this act, but that are necessary for the production of cannabis and for the supply to coffeeshops, in as far as these actions take place within the framework of the experiment.
16. The *Administrative Decree* (in Dutch: Algemene Maatregel van Bestuur, AMvB) formulates the conditions for the experiment.
17. Letter of July 6, 2018 by the Minister of Medical Care and Sport, and the Minister of Justice and Safety. (137242-178738-VGP) "Kabinetsreactie rapport Adviescommissie Experiment gesloten cannabisketen."
18. For example "Oppositie vreest mislukken wietproef », in newspaper *Trouw*, January 18, 2019.
19. <https://vng.nl/onderwerpenindex/veiligheid/softdrugsbeleid/nieuws/aandachtspunten-vng-voor-amvb-wietexperiment>. Retrieved January 23, 2019.

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NEW APPROACHES ON HARM REDUCTION POLICIES AND PRACTICES

The NAHRPP project (New Approaches in Harm Reduction Policies and Practices) is a joint project of the Transnational Institute (TNI), based in the Netherlands, ICEERS (Spain), Forum Droghe (Italy) and Diogenis (Greece), supported by the European Union. The project addresses recent drug policy developments in Europe.

One section of this project, led by TNI, is focused on the role of local authorities in cannabis regulation. Local and regional authorities across Europe are confronted with the negative consequences of a persisting illicit cannabis market. Increasingly, local and regional authorities, non-governmental pressure groups and grassroots movements are advocating for regulation of the recreational cannabis market, rather than prohibition. This project analyses the possibility of cannabis market regulation models, alongside political, policy, and legal steps under exploration by local authorities in Belgium, Spain, Switzerland, Germany, Denmark and the Netherlands. It is hoped that the information collected through this initiative will help to improve the understanding of regulating drug markets as a means to reduce the negative consequences of illicit drug markets on individuals and society.

In order to better understand the situation around, and possibilities for, local and regional cannabis regulation, a series of six country reports were developed, providing background for an overarching analytical report. The country reports provide detailed information about the state of cannabis policy, and the possibilities for change, within each country. This report addresses the past, present, and future of cannabis policy in the Netherlands.

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