

## Expert Dialogue on Cannabis Regulation Models San Sebastián (Donostia), 24-25 October 2014

### Executive Summary of the Dialogue Sessions

**The first session** of the Dialogue focused on examining some regulation models currently being implemented. *The Washington State model* – The main objectives of the law (known as *Initiative 502*) were: cease to criminalise either the drug user or the people who produce it for these users; protect the drug user's health, guaranteeing the product through quality control of the cannabis that is harvested, sold and used; and to promote a health approach to balance out the taxation approach.

The major challenge now in Washington is to ensure that the legal cannabis industry effectively protects children – in contrast to current practice by the alcohol and tobacco industries – and find ways to discourage the market in this population group. The ideal situation would be to have less regulation by the government and more self-regulation. But it does not seem altogether sure that this can be achieved, because the players in the market today are very focused on building large-scale cannabis businesses. Until regulation is able to demonstrate that it is having positive effects, it will continue to be the target of attacks.

*The Uruguay model* – The purpose of the law on cannabis and hemp for therapeutic, medical and recreational uses is to improve health and public information. This law is an integrated policy and the result of a combined effort by the government and civil society. Its main objectives are to separate different drug markets, combat drug trafficking, and promote social inclusion by ceasing to criminalise the user. Uruguay is aware that it faces a major challenge. The experience is new and there are no scientific points of reference or existing models to draw on. Another challenge is that regulation represents a change in social customs, a shift in the reference parameters, and that requires a long-term learning process. Nevertheless, the move from a criminal law approach to a public health approach is a major step forward.

*The Dutch model* – The initial objectives were to protect public health by separating out the markets for harmful and less harmful substances, and decriminalise drug use. The public health approach has changed over the years into a public safety approach, without taking into account that much of the public safety problem is due to the fact that regulation does not cover everything it should. The model has clearly failed. There have been several attempts to regulate the 'back door', but so far it has not been possible. Some political parties are currently preparing regulation proposals that could be presented in a future government.

*Other models in Europe:* Three tendencies regarding cannabis can be identified in Europe: the Spanish club model, which is influential in Belgium, France (where the

debate is beginning) and the United Kingdom; the Dutch model (similar to Denmark's), with its problems of incompatibility between what municipal governments say and the central government's position; and the Swiss model, which is likewise based on local/municipal activities rather than being national in scope.

**The discussion** in this session focused on a series of questions, including: What has changed in the actions of the police in the places where these models are being implemented? How do the regulatory agencies operate in these places? And, how do these regions experience the effects of international regulation?

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**The second session** focused on examining various specific experiences of the social club model.

**Catalonia:** The clubs here should be non-profit-making; they should be able to address the risks associated with cannabis use; the club should be a closed circuit of people; and production should be to order, in line with the demand. Unfortunately, the clubs today are operating in an environment where users are stigmatised. The system of licences is also a problem. Small clubs are under threat from the large ones with commercial interests.

**Switzerland:** In 2001 the government proposed a law that would legalise cannabis use and allow a regulated market. The proposal came from the Ministry of Health and was presented to Parliament but for various reasons it continues to be kept on hold. The canton of Geneva is currently working on a proposal whose purpose would not be legalisation but to bolster public safety and control drug dealing in the street. This proposal takes its inspiration from the membership clubs model but it will not be presented before the 2016 elections.

**Belgium:** The clubs are not very developed due to the country's proximity to Holland, where drug users can easily go. The announcement that the cannabis membership card would be introduced in Holland led to proposals to organise clubs in Belgium. The current trend is towards criminalising the clubs.

**Uruguay:** Users would like to set up clubs, copying the Spanish model, but the law does not make it easy to do this because of the limits it sets on the number of members. Cultivation has also come up against major obstacles in the law, including the fact that it does not allow plants to be grown outside. Because the majority of users are in the capital city, the clubs would be obliged to grow their plants indoors, with the consequences that this would have on cultivation techniques and practices.

Participants' contributions to **the discussion** revolved around issues such as: the importance of regulation to prevent the model becoming discredited, and the characteristics that the clubs should have; the importance of authorising individual

cultivation, because clubs that are too small do not manage to become operational; in a regulation model where commercial and non-commercial arrangements coexist, there is a need to adopt *protection measures* to ensure that the non-commercial ones can survive.

Participants discussed *the risks* faced by the clubs due to the fact that the wider environment is prohibitionist. Although they are tolerated in some places, clubs are frowned upon. A genuine change will only take place with a change in the law. In the meantime, clubs have to live with the risk that changes in the law will abolish them. Even limited legalisation is better than prohibition.

The models cannot be exported. Positive and negative lessons can be drawn from all the regulation models. Legislation (Uruguay-style) could be very limiting in Spain; it could create more problems and restrict the freedom the clubs have today. Spain's clubs may be interesting to other countries that decide to adopt models that rule out commercial interests.

Emphasis was placed on the importance of *acting locally* to bring about social and cultural changes. Although legislation may only be passed at the national level, locally communities can do a lot to promote risk reduction and can regulate through social policies. Catalonia is a good example of this: a lot has been achieved at this level and a cultural shift is taking place whereby the idea of shared responsibility among users, growers and the authorities is taking hold.

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**The third session** highlighted the main criteria for regulation (public health and users' rights) and described the experiences (in the legal sphere) in the Basque Country and Catalonia. The health argument can be defended not just from the criminal law standpoint but also in terms of public health policies, bearing in mind the fundamental rights of users in a social state of law. The right to access essential medicines is another basic criterion for the regulation of all substances.

Work with dependent drug users has shown that rather than the substances themselves, the problem arises from the nature of our society – an unjust model that needs to be changed. Prohibitionism leaves users in a state of public insecurity and subjects them to threats and persecution by the justice system. The absence of regulation generates insecurity.

We need to know how to sell the benefits of regulation – its economic benefits but also its legal and social benefits. There is also a need to work on prevention, not by means of mass campaigns but through education or truthful, non-alarmist information, with the aim of enabling people to practice responsible drug use.

Public health is the paradigm for the 21st century: it places the emphasis on and negotiates with the individual, starting from the premise that the drug user can be included in the system. Clubs allow this reality to be viewed coherently. There are many opportunities for positioning drug policies and developing them in a participatory way from a public health perspective, and this can be achieved under existing law.

The regulation models being implemented today around the world infringe the UN conventions. This should be seen as a good reason for starting to think about the need to modify the conventions.

**During the discussion** in this session the conversation turned on *the restrictions imposed by the treaties*, the *health protection* argument, protection of *the individual's rights*, *therapeutic uses* of cannabis, *cannabis regulation*, and the problems that have arisen with the *regulation of cultivation* in Uruguay.

It was mentioned that it is necessary to go beyond the public health argument because there is a risk of creating models that are segregated from the rest of society. This is what is happening with the harm reduction sites and even the clubs. The stronger argument for legalisation is precisely the opposite: to create more inclusive and equal societies.

Politicians should adopt concrete positions on cannabis to take to UNGASS 2016.

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**The fourth session** addressed the cross-border problems associated with cannabis. These problems cannot be solved within a model like that of the social clubs, where people who are not members of the club have no access to it. The club arrangement is highly restrictive and unable to cater for a wider public. In Catalonia there is no problem of cannabis tourism, in contrast to some parts of Holland. The term 'drug tourism' is more a creation of the media.

The cannabis *economy* was also discussed: there is a tension in the clubs arrangement between the idea of preserving a microeconomic space (production and use, membership) and opening up the market and allowing the entry of businesses under free market mechanisms. Having a state monopoly is another option. It is necessary to avoid the clubs model becoming the key that opens the door to other economic operations.

**In the discussion**, concerns revolved around the economic aspects of regulation. There is a fear that legalisation will take place within the capitalist model, with a labour force doing the hard work while the benefits go to the distributors.

There was an extensive discussion of the role played by Moroccan hashish in driving the economy, both in northern Morocco and in Andalusia. The international cannabis

market has huge potential. There are other producer countries as well as Morocco that could supply their neighbours.

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**The fifth session** described the current situation regarding the regulation of the clubs. The situation in the Community of **Navarre** was explained first, where the process has taken the issue to society and thence to Parliament. A social mobilisation campaign has been organised to clean up the image of the user. The issue of cultivation and transport has not yet been addressed.

In **Andalusia** the subject of drug policy has ground to a halt and there is not much debate. The presentation summarised the work and strategies being taken forward by activists grouped in different organisations, who have set up a commission to study cannabis regulation in Andalusia.

**Catalonia.** From 2007 to 2012 the clubs model was being developed in the domain of civil society, led by activists with the support of lawyers who helped to refine the model. Since 2012 the situation has changed dramatically as clubs with clear commercial interests have entered the scene. A second federation has been set up for these clubs. In 2013 the two federations joined in the process proposed by the Department of Health, which keeps in contact with them. It set up a commission and invited the bodies of the Catalanian Parliament that had anything to say about the clubs to participate in it. The Parliament produced a paper which in itself represents recognition of the clubs and could help in the medium term to take the process to another level of discussion. There have been political differences, and the proposal also encroaches on national-level powers. It is clear that what the politicians are prepared to swallow is a law that does not mention cultivation or transport but limits itself to what goes on in a club – in other words, a law that would end up looking a lot like the Dutch model. Since the Catalanian Parliament's powers are insufficient to provide a comprehensive solution to the problem, it would be nothing more than a compromise solution. This carries the risk of continuing to introduce partial regulations that are incapable of solving the problem.

**Basque Country.** A presentation offering a regulatory solution for the so-called cannabis social clubs has been given to the Basque Parliament. A route map has been established for the Basque Parliament to approve a law on addiction that recognises the cannabis social clubs. This will lead to new legislation in the areas of health, public safety and justice administration. All this represents a step forward with regard to regulation, but it is only a limited step because central government legislation obstructs progress. The clubs model is socially accepted and institutionally recognised, but despite this the clubs have to be constantly justifying their legality.

**The debate** centred on the restrictions that national law places on the autonomous communities' ability to make progress on regulation, and the problems faced by the autonomous regions' different models as well as the constraints imposed by the Public

Prosecutor's Office and the Criminal Code on the proposals that may be developed by the autonomous communities. It is difficult to make progress at the autonomous level. Even so, the autonomous regions' regulation processes have been useful and have encouraged an important debate in society. For the time being, regulation is limited to the clubs and does not clash with national-level laws.

Within the autonomous regions, quite a lot of progress has been made at the municipal level. Rasquera and several communities in Euskadi and Navarre are examples of this. Until the legal framework can be changed, however, there can be no overall solution. The regional parliaments have very limited powers, the solutions are only partial, and what is required is a national-level solution.

Fractures are opening up inside Spain's cannabis movement which used to be cohesive. The large clubs have presented a problem that needs to be addressed. An agreement must be reached on which is the preferred model.

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**The sixth session** addressed the issue in the international arena, the process leading up to UNGASS 2016, and the proposal being worked on by Spain's cannabis associations with a view to that meeting. The session looked at the tensions that have arisen with the treaties and recent developments in the debate on drugs as part of the preparatory process for UNGASS 2016.

The regulation models (in Uruguay and the United States) have created tensions with the treaties. With regard to these tensions, one issue that is emerging now on the international agenda is the extent to which they may lead to an open discussion on reform of the treaties and modernisation of the treaty system. The US government and the Vienna triangle (INCB, CND and UNODC) maintain their position that the treaties should not be touched and they will manipulate the discussion as much as necessary to impose this. Meanwhile, the hypocritical attitude of the US government in allowing other countries only the degree of flexibility on drug policy that suits the US itself has been laid bare.

Nevertheless, there are hopes that some positive things could come out of UNGASS 2016, such as the setting up of an advisory committee to examine the inconsistency of the treaties. It is also hoped that countries will manage to change their relationship with the treaties by applying mechanisms such as *inter se modification*.

The process of developing a single proposal for regulation in Spain and progress with it was explained next. The objective of this proposal is to outline the Spanish model more clearly and get regulations passed on it once and for all by Parliament in the form of an integrated law that would cover everything, from prevention to cultivation, distribution and safeguards for the economic groups linked to cannabis. The cannabis federations have been working on this proposal, which includes setting up a multidisciplinary expert

working group. How this group would operate is currently being defined. The ideal arrangement would be for the cannabis movement to lead this initiative, but in view of the criticisms and charges made against the movement it is better for it to accompany the proposals rather than putting itself forward as responsible for them.

**The debate** revolved around the issue of *specific laws that need to be changed* in Spain in order to bring about regulation; the US-style concept of ‘flexibility’; the problems with the CND’s multilateral approach; and what can realistically be expected of the UNGASS.

The fact that the treaties are being infringed in parts of the US raises the hope that progress can be made in other parts of the world with regard to cannabis regulation.

If the multilateral approach was abandoned, countries would have more flexibility to decide on their own drug policies, but under the current state of affairs any treaty change requires multilateral consensus.

The worst thing that could happen in the UNGASS is a failure to recognise that there is a problem with the treaties. There is quite a risk that this will be the case. Despite the limitations of the UNGASS, countries will still be able to talk about what is going on with regard to cannabis. In other words, the issue of cannabis will certainly be on the agenda. The changes that are taking place today in drug policies are irreversible. It is possible that other US states will soon start to regulate their markets. Jamaica also intends to do so. Many countries will use the UNGASS as an opportunity for open reflection and discussion that allows them to say what they are thinking and discuss the direction that drug policy should be going in without the requirement to reach a consensus. Countries are not going to focus on the objective of arriving at a negotiated policy statement. Instead, they will use the opportunity to talk about achievements and changes. This is why the UNGASS may be important.

As far as Spain is concerned, part of the work being proposed by the movement in Spain is precisely to look at how the Spanish model fits with international commitments and treaties (with the UNGASS in mind). That is why it is important for Spain to have a unified proposal on regulation.

In short, not much can be expected of UNGASS 2016. Prohibitionism is not going to go away, and in the best case scenario the most that can be expected is a status upgrade for cannabis. That is why it is better to think beyond the UNGASS. Even so, the UNGASS still represents an important opportunity to promote the regulation agenda by presenting proposals, change the prohibitionist language, develop a normalising discourse, reinforce the values of the social state of law, deepen democracy (for all, including drug users), and continue to promote education, prevention and harm reduction.

[The full report in Spanish](#)

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