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The green wave hits Europe

Recent cannabis regulation initiatives in Europe

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Overview on recent cannabis regulation initiatives in Europe

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The most important political steps towards cannabis regulation has taken place in **Malta** during the past year. However, other relevant political developments also happened in other European countries. I will now briefly provide an overview of some of them, in particular recent political initiatives aiming at the regulation of recreational adult cannabis use in Germany, Luxembourg, Italy, and Spain.

Also, I will share a few considerations on the inclusion of the principles of social justice in the transition from cannabis prohibition to regulated markets.

Starting with national developments:

In **Germany**, the new government that emerged from the September 2021 elections - the so-called 'traffic light' coalition of the Social Democratic Party (SDP), the Greens and the Free Democratic Party (FDP) included in the coalition agreement - a fully regulated recreational cannabis market for adult users, through the controlled supply in licensed stores. The objectives declared are to ensure health protection of consumers by the introduction of a set of quality controls, and to protect young people¹.

It also includes an evaluation plan after four years of implementation, to make an assessment of the social impact of this policy, and to introduce the necessary adjustments.

According to German experts², drafting the bill and obtaining the majority at the Bundestag (Parliament) may take some time but seems to be feasible. But the passing of the law also requires the approval of the Bundesrat (Federal Council) which represents the German states - and this may be more complicated. No-

¹ See <https://www.bundestag.de/presse/hib/kurzmeldungen-882108>

² See <https://www.drugscience.org.uk/legalising-cannabis-in-germany-high-ambitions/>

wadays this Federal Council is controlled by the conservatives and to date, the CDU (Christian Democratic Union) has blocked similar plans.

The details of this regulation, if ready, are not public yet. The size of Germany, the European Union's leading economy with more than 80 million people, makes this plan of great importance, as it could incubate the birth of the largest legal market in Europe and, according to a recent report, cannabis regulation could bring €4.7 billion to the German economy³.

In **Luxembourg** the path followed was somehow similar. The Coalition Agreement from 2018 elections included the development of a recreational cannabis legislation⁴. In this agreement, the objectives were specified: to “decriminalize, or even legalize under conditions to be defined, the production on national territory as well as the purchase, possession and consumption of recreational cannabis for the personal needs of adult residents”.

On October 2021, the government presented the so-called “package of measures regarding the problem of drug-related crime” which included an update on the progress to create a system of controlled supply through the legal sale to residents⁵.

The government note had 2 parts. First, the home cultivation of cannabis up to 4 plants per household will be permitted, limiting the place of cultivation to the usual place of residence, and maintaining the ban on consuming in public. Second, there will be lower penalties for offenses of consumption, possession and transport in public and for acquisition, when the quantity of cannabis doesn't exceed 3 grams.

This initiative is expected to be considered by the Luxembourg Chamber of Deputies in the coming months. The government justifies the delays due to the pandemic, as well as international constraints and diplomatic relations.

On the other hand, in **Italy**, initiatives coming from civil society has been particularly crucial for the push of cannabis regulation.

Last Summer, over 600,000 people signed the request for a referendum which aimed to decriminalize the cultivation of cannabis for personal use and canceled prison sentences for “soft drugs”, as well as the sanction of withdrawal or suspension of driving license for users of all substances.

The Italian Constitutional Court decided that the referendum was inadmissible⁶. The sentence refers to possible violations of the obligations of the international conventions and of the European Council decision of 2004, ignoring the legal motivations and design of the referendum prepared by the promoters. Although very difficult, the promoters are appealing the decision. In the meantime, promoters have drafted the text of a European Citizens' Initiative on Cannabis to relaunch the issue at the European continental level.

In the Italian Parliament, a popular initiative law for the legal regulation of cannabis, endorsed by 70,000 people in 2016, was never taken into consideration, as well as the numerous parliamentary initiative laws filed on the subject. In these days, a more limited reform should reach the plenary of the lower Chamber

³ See <https://propartblogdv3.wpengine.com/wp-content/uploads/2021/11/cannabis-final-2021.pdf>

⁴ See <https://gouvernement.lu/dam-assets/documents/actualites/2018/12-decembre/accord-de-coalition-2018-2023.pdf>

⁵ See https://gouvernement.lu/fr/actualites/toutes_actualites/articles/2021/10-octobre/22-mesures-criminalite.html

⁶ See <https://www.marijuanamoment.net/top-italian-court-blocks-marijuana-and-psilocybin-referendum-from-going-before-voters/>

with a proposal to decriminalize the cultivation of up to 4 female plants, to reduce the penalties for minor facts distinguishing them for different substances, and to eliminate administrative penalties for cannabis users. The current term will end in February 2023. The composition of the Senate is more conservative than the Chamber, but the leaders of the major parties that support the Government have expressed their support to this reform.

As a last case, I will comment on recent developments in **Spain**: where I am speaking from and whose processes I've been following more closely.

Several years ago we had an intense political activity on cannabis, with the discussion of regional laws regulating cannabis social clubs - that were approved by several regional parliaments but rejected by the Constitutional Court⁷. After some years without relevant progress, last fall we experienced a boost from various initiatives.

In September 2021, three bills for recreational cannabis regulation were registered by three different parties -all of them left-wing parties. One of this bills was discussed and submitted to consideration by the Plenary of the Congress, without obtaining sufficient support to continue the procedures - due to the votes against of the right-wing parties and the Socialist Party -which is the majority party of the government coalition.

The draft that has more options (although limited) to be discussed and processed - is that submitted by Unidas Podemos (the other partner of the government coalition). This bill is the most ambitious in terms of the scope of the regulatory model proposed. The bill regulates in a very detailed way different aspects related to access to cannabis, including different models of cannabis users' associations, licenses for the entire production and distribution chain, or self-cultivation. The social debate around it has been intense. It's been welcomed but also criticized both from those who oppose to any type of regulation, and from those who considered that several issues, especially cannabis users' associations, should be regulated in a different way.

As we see, and not only in Spain but in all European countries, the more cannabis becomes an issue on the political agenda, the more intense becomes the debate on how regulation should be, even **within** the diverse stakeholders that support regulation.

These social and political debates are about which issues are priorities and should be addressed first, what should be the roadmap, and notably, what should be the role of the State and the civil society as opposed to the weight of the free market.

In Malta this issue has been resolved by designing a model in which commercial access to cannabis is not contemplated (at least for now). Rather, the intention of the Maltese law is to launch an eminently social and non-profit model, with the active participation of Maltese civil society. The initiative is also envisioning interesting ideas such as creating a **grievances board**, where people particularly affected by criminalization could expose their situations and find paths to reparation.

These are all very relevant issues when it comes to the design of a **more inclusive regulatory model based on the principles of social justice**. I will conclude with a few thoughts I believe can feed these debates, and contribute to the construction of a more inclusive regulatory framework⁸:

⁷ See <https://www.iceers.org/wp-content/uploads/2020/05/Drug-Policy-in-Spain-Sanchez-and-Collins.pdf>

⁸ Extract from my opinion at <https://www.lasdrogas.info/opiniones/regulacion-del-cannabis-lo-que-nos-dejo-el-otono-de-2021-y-que-esperar-para-el-2022/>

1- **First of all**, it is necessary to make a diagnosis of the state of cannabis markets in Europe from a social perspective. It is important to connect cannabis regulation with the processes of social exclusion and structural inequalities suffered by part of the social sectors involved in illicit cannabis cultivation and trade. It is necessary to identify who they are, what their situation is, what they think of regulation, and what role they want to play in a regulated market.

Regulatory proposals must go beyond “regulating a market”, or “bringing to the surface” a market. They must be a vehicle for social inclusion, since prohibition has been a catalyst for social exclusion.

2- **Second**, it is essential to differentiate between advocacy and lobby. That is, between the sectors that support cannabis regulation in defense of public and social interests, and between those sectors that are more focused on the defense of private and particular interests. Decisions on the regulatory model that will end up being implemented in each country are closely related to the dialectic between these two large groups, which are heterogeneous among themselves but also within themselves. It is important that particular interests are identified as such.

3- **Finally**, to conclude, I'd just say the transition to regulated cannabis markets raises many concerns and will involve decisions not easy to make. But, in my opinion, the most important one is whether we want cannabis regulation to be focused on life, care, users' rights and social justice for the most vulnerable, or simply to bring a market to the surface. *Because if prohibition has been opaque, imposed and punitive, regulation must be transparent, participatory and restorative. This would be the real "green wave" for Europe.*

Thank you.