



Research paper

Regulating Cannabis Social Clubs: A comparative analysis of legal and self-regulatory practices in Spain, Belgium and Uruguay



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ABSTRACT

Background: Cannabis Social Clubs (CSCs) are a model of non-profit production and distribution of cannabis among a closed circuit of adult cannabis users. CSCs are now operating in several countries around the world, albeit under very different legal regimes and in different socio-political contexts.

Aim: In this paper we describe and compare the legal framework and the self-regulatory practices of Cannabis Social Clubs in three countries (Spain, Belgium, and Uruguay). The objective of our comparative analysis is to investigate how CSCs operate in each of these countries. To foster discussions about how one might regulate CSCs to promote public health objectives, we conclude this paper with a discussion on the balance between adequate governmental control and self-regulatory competences of CSCs.

Methods: The data used for this analysis stem from independently conducted local studies by the authors in their countries. Although the particular designs of the studies differ, the data in all three countries was collected through similar data collection methods: analysis of (legal and other documents), field visits to the clubs, interviews with staff members, media content analysis.

Findings: We identified a number of similarities and differences among the CSCs' practices in the three countries. Formal registration as non-profit association seems to be a common standard among CSCs. We found nevertheless great variation in terms of the size of these organisations. Generally, only adult nationals and/or residents are able to join the CSCs, upon the payment of a membership fee. While production seems to be guided by consumption estimates of the members (Spain and Belgium) or by the legal framework (Uruguay), the thresholds applied by the clubs vary significantly across countries. Quality control practices remain an issue in the three settings studied here. The CSCs have developed different arrangements with regards to the distribution of cannabis to their members.

Conclusions: By uncovering the current practices of CSCs in three key settings, this paper contributes to the understanding of the model, which has to some extent been shaped by the self-regulatory efforts of those involved on the ground. We suggest that some of these self-regulatory practices could be accommodated in future regulation in this area, while other aspects of the functioning of the CSCs may require more formal regulation and monitoring. Decisions on this model should also take into account the local context where the clubs have emerged. Finally, the integration of medical supply within this model warrants further attention.

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Introduction

While the debate on cannabis policy has often been polarised around either total prohibition or legalisation, such positions tend to draw on an oversimplification of what 'legalisation' and

'prohibition' entails and do not capture well the range of options available (Caulkins et al., 2015a, 2015b; MacCoun, Reuter, & Schelling, 1996; MacCoun & Reuter, 2011; Transform, 2013). Caulkins et al. (2015a) identified and compared twelve broad supply models, which could be alternatives to the current prohibition regime. They referred to a range of middle ground options, including 'locally controlled retail sales' in line with the so-called Dutch coffee-shop model, which relies on non-enforcement against retail selling and possession (drawing on a

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expediency principle), under certain conditions (Korf, 2011; MacCoun, 2013; MacCoun and Reuter, 2001, 2011; Room, Fischer, Hall, Lenton, & Reuter, 2010). Domestic cultivation or a 'grow your own' model which allows users to cultivate their own cannabis has also been formally introduced or tolerated in several jurisdictions (MacCoun, 2013; MacCoun and Reuter, 2011). The introduction of a government monopoly with direct control of the supply of cannabis or the allocation of that role to a public authority are other possible avenues – with a view to reduce the involvement of for-profit firms in the market. Other middle ground options may be based on a license-system, granted for instance to a restricted number of for-profit-firms.

The focus of this paper is on yet another possible middle ground option: the Cannabis Social Clubs. A Cannabis Social Club (CSC)¹ is a legally constituted non-profit association of cannabis consumers. Cannabis Social Clubs collectively cultivate cannabis plants for their adult members, to meet their personal needs (Barriuso, 2005, 2011; Room et al., 2010). According to the 'Code of Conduct' of the European Coalition for Just and Effective Drug Policies (ENCOD, 2011), Cannabis Social Clubs are a model initiated by cannabis users, "to prevent cannabis consumers from being involved in illegal activities and assures that certain requirements concerning public health and safety are being fulfilled. Cannabis Social Clubs (CSC) are registered, non-profit associations that are formed by adult people who consume cannabis. They can be set up legally in any country where cultivation of personal amounts of cannabis has been decriminalised. In countries where this is not yet the case, CSC's can operate as an experiment in order to prepare for the moment when the laws on cannabis cultivation for personal use will change". The definition proposed by ENCOD underlines that transparency, democracy and non-profitability are essential characteristics of the model, and points at its potential for harm reduction: "Cannabis Social Clubs apply an active policy of prevention of harms and risks and promotion of safer methods of consumption of cannabis by its members" (see also: Belackova, Tomkova & Zabransky, 2016).

Although CSCs can be found in many countries, the label often covers very different empirical realities. In fact, they have emerged as part of bottom-up (grassroots) initiatives (in Spain and Belgium, and several European countries), but they have also been part of top-bottom policies (as in Uruguay). Uruguay has adopted a legal framework for CSCs since December 2013. In the absence of a clear legal framework in European countries (such as Belgium and Spain), these organisations continue to operate at best in a grey zone (as discussed below). Many of such clubs chose to self-regulate and adhere to the five main principles as laid out in the above mentioned 'Code of Conduct': supply should follow demand, the CSCs should be non-profit, transparent, health-oriented and open to dialogue with authorities. However, other CSCs have adopted practices that diverge from those principles (Bewley-Taylor, Blickman & Jelsma, 2014; Decorte, 2015).

Any discussion of possible regulatory approaches starts with a clarification of the main objectives of regulation. In this paper we explicitly adopt a public health perspective: we assume that the debate about whether and how Cannabis Social Clubs should be regulated, should primarily seek to fulfil public health objectives: minimizing access, availability, and use by youths; minimizing drugged driving; minimizing dependence and addiction; minimizing consumption of cannabis products with unwanted contaminants and uncertain potency, and minimizing concurrent use of cannabis and alcohol, particularly in public settings (Pacula, Kilmer, Wagenaar, Chaloupka, & Caulkins, 2014). Our starting point

is that any regulatory approach of CSCs should help to ensure their transparent and safe way of working, and to constitute a healthier alternative for the black market, enabling CSCs to apply an active policy of prevention of harms and risks and promotion of safer methods of consumption of cannabis by its members (Ritter, 2010).

In this paper we aim to describe and compare the legal frameworks and (self-) regulatory practices of CSCs in Spain, Belgium and Uruguay (see also: Pardo, 2014). We use the normative definition put forward by the cannabis movement (in this case, ENCOD) as a starting point. Aspects included in our comparative analysis are the domestic legal framework, the establishment procedures or practices, the characteristics of the formal organisation and management of the clubs, and their cannabis cultivation and distribution procedures. The objective of our comparative analysis is to investigate how CSCs operate in each of these countries, taking into account both the legal framework and the self-regulatory practices. To foster discussions about how one might regulate CSCs from a public health perspective, we conclude this paper with a discussion on the balance between adequate governmental control and self-regulatory competences of CSCs.

Spanish cannabis activists established the first cannabis associations in the early nineties,² and in the first decade of the 21st century the number of Cannabis Social Clubs increased in a linear fashion, with the model spreading throughout Spain (Parés & Bouso, 2015). While no official source has, to our knowledge, information on the exact amount of operating CSCs in Spain, based on previous estimates (e.g., Muñoz Sánchez, 2015), informal sources and expert interviews we estimate that there may be between 800 and 1.000 CSCs currently open and distributing cannabis and other cannabis derivatives (January 2016).³ Catalonia and the Basque Country are the autonomous regions where CSC presence is more extended. The Spanish model soon began being introduced by activists in other European countries, in particular Belgium, but also in the United Kingdom, and even in France (Bewley-Taylor et al., 2014) – although little is known about the functioning of CSCs in the two latter countries. In Belgium, a first mapping by Decorte (2015) pointed to the existence of five CSCs active as of February 2014. While some of those clubs have meanwhile ceased their activities, new CSCs have emerged. An ongoing study by Pardal (forthcoming) has, at the time of writing, identified seven active CSCs. In Uruguay Cannabis Social Clubs are now allowed under the new cannabis law approved in December 2013 (Montañés, 2014). In Uruguay, at November 2016, there are 27 CSCs that fully comply with the regulations and therefore are completely legal. Other clubs are currently undergoing the process of formalisation before the governmental cannabis regulation body, i.e. the Institute for the Regulation and Control of Cannabis (hereinafter IRCCA). There might also be other clubs operating bypassing the regulation entirely, but it is virtually impossible to determine their number.

The data used for this analysis stem from independently conducted local studies by the authors in their respective countries, with different research designs. Therefore, data were not collected through identical data collection methods. The data on the Spanish CSCs (collected by co-authors Sanchez and Pares) are based on an analysis of the multiple regulatory proposals recently developed in Spain, a review of the literature, interviews with relevant political and social representatives,

¹ The terms 'club', 'organisation' or 'association' are used interchangeably to refer to Cannabis Social Clubs throughout the paper.

² The first known association of this type was ARSEC ("Asociacion Ramon Santos de Estudios del Cannabis") which was established in 1991, adopting the designation of 'association for the study of cannabis' (Marín, 2008).

³ In addition, we have also consulted the national registry of legal associations and identified nearly 1000 registered CSCs so this estimate seems plausible.

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