

# White Paper

The Global Business of Cannabis, it's complex



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Cannabis is by far the most widely cultivated, trafficked and abused illicit drug. Half of all drug seizures worldwide are cannabis seizures. The geographical spread of seizures is global. World Health Organisation estimates show that about 147 million people, 2.5% of the world population, consume cannabis compared with 0.2% consuming cocaine and 0.2% consuming opiates. In the present decade, cannabis abuse has grown more rapidly than cocaine and opiate abuse. The most rapid growth in cannabis abuse since the 1960s has been in developed countries in North America, Western Europe and Australia. Cannabis has become more closely linked to youth culture and the age of initiation is usually lower than for other drugs.<sup>1</sup>

## THE DEFINITIONS

In general, possession of the drug for personal use should be a crime, to deter use, and most countries make this punishable by imprisonment.<sup>2</sup> This is due mainly to the detrimental effects of its natural and chemical elements to human health and their destructive impact on communities. The United Nations Single Convention on Narcotic Drugs from 1961 lists cannabis as one of the substances under control. The drugs that fall into this definition are classified into four groups called "Schedules", with the measures for Schedules II and III being less strict. However, cannabis and cannabis resin are placed in both Schedules I and IV, and extracts and tinctures of cannabis are included in Schedule I alongside opium, heroin, cocaine and morphine. These drugs are subject to all measures of control applicable and pursuant to the Convention's provisions, including manufacturing, limiting their production for international trade, prohibition of possession and the penalties for doing so.<sup>3</sup> There are another two important international treaties that deal with this matter: the 1971 Convention on Psychotropic Substances and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Cannabis has many active chemical constituents and two of these, tetrahydrocannabinol (THC) and cannabidiol (CBD) have been investigated in respect of their medicinal value. THC is the major psychoactive constituent of cannabis and is considered responsible for giving "highs" to users of cannabis. CBD, on the other hand, is not psychoactive.<sup>4</sup> Depending on their application, cannabis-related products are divided into two major groups. According to a statement from the World Medical Association adopted by its 69<sup>th</sup> General Assembly held in Chicago in October 2017, "*cannabis for medical use refers to the use of cannabis and its constituents, natural or synthetic, to treat disease or alleviate symptoms under professional supervision; however, there is no single agreed upon definition.*", while "*recreational cannabis refers to the use of cannabis to alter one's mental state in a way that modifies emotions, perceptions, and feelings regardless of medical need.*" This WMA statement is intended to provide a position on legalisation of cannabis for medical use and highlight the adverse effects associated with recreational use.<sup>5</sup>

When liberalising the rules for cannabis-related products, countries apply the same criteria. They either legalise the substance for medicinal use, recreational use, or both. Liberalisation has different forms – decriminalisation means that possession of small amounts will not result in a jail sentence or a criminal record for the perpetrator (this legal regime is applicable in Jamaica and Portugal, for example). Legalisation, on the other hand, means that consumers face no punishment at all.<sup>6</sup>

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<sup>1</sup> [https://www.who.int/substance\\_abuse/facts/cannabis/en/](https://www.who.int/substance_abuse/facts/cannabis/en/)

<sup>2</sup> [http://www.emcdda.europa.eu/publications/topic-overviews/cannabis-policy/html\\_en](http://www.emcdda.europa.eu/publications/topic-overviews/cannabis-policy/html_en)

<sup>3</sup> [https://www.unodc.org/pdf/convention\\_1961\\_en.pdf](https://www.unodc.org/pdf/convention_1961_en.pdf)

<sup>4</sup> <https://www.england.nhs.uk/wp-content/uploads/2018/10/letter-guidance-on-cannabis-based-products-for-medicinal-use..pdf>

<sup>5</sup> <https://www.wma.net/policies-post/wma-statement-on-medical-cannabis/>

<sup>6</sup> <https://www.economist.com/the-economist-explains/2014/06/18/the-difference-between-legalisation-and-decriminalisation>

## WHO HAS DONE WHAT?

In recent years, many jurisdictions have reduced their penalties for cannabis users, and some have permitted supply of the drug, allowing us to observe different control models and their consequences in action. While international laws oblige countries to impose criminal penalties for supply of drugs for non-medical purposes, some jurisdictions are creating exceptions. “Medical marijuana” was legalised by popular vote in California, in 1996, to treat symptoms including chronic pain. As there is no objective test for pain, public access to legal smokable cannabis became a formality. The 2008 economic recession forced cuts to law enforcement budgets. In 2012, with medical cannabis available in 18 US states, voters in the states of Colorado and Washington approved systems of cannabis supply for recreational, not just medical, use. In the following year, the government of Uruguay passed a law to establish a system of supply via pharmacies and social clubs.<sup>7</sup> According to ProCon.org, as of 24 July 2019, 33 US states and the District of Columbia have legalised medical marijuana and 11 US states and the District of Columbia have legalised recreational marijuana. The possession limits vary between the states.<sup>8</sup> The use of medical cannabis has been legal in Canada since 2001 and in 2018 it became the second country to fully legalise the substance (after Uruguay).<sup>9</sup>

Europe has also seen some exceptions. A system of cannabis supply has been illegal but tolerated in the Netherlands since the 1970s. Since the late 1990s, decriminalisation and harm reduction policies had less negative impact than had been feared.<sup>10</sup> Among the European countries with less strict rules are Malta, Norway, Luxemburg, Italy, Ireland, Greece, Germany, France, the Czech Republic, Cyprus and Croatia.

## THE UK CASE

The liberalisation regimes differ in scope but there is one country that stands out – the United Kingdom.

On 6 March 2018, the Telegraph reported that findings by the UN's International Narcotics Control Board (INCB) showed that the UK produced 95 tonnes of legal cannabis in 2016 – more than double the 2015 total of 42 tonnes. The UK's production accounted for 44.9 % of the world total. The report put Canada in second place with 80.7 tonnes produced. Some 2.1 tonnes were exported from the UK, making it responsible for 67.7 % of the world total, followed by the Netherlands (16.4 %). A significant part of the UK's legal cannabis production goes towards a cannabis-based medicine called Sativex.<sup>11</sup>

Under the UK Misuse of Drugs Act 1971, Cannabis is a controlled drug. The Act makes it illegal for people to possess, supply, produce, or import/export-controlled drugs. However, changes to the Misuse of Drugs regulations 2001 in November 2018 have made it possible for cannabis-based medicinal products to be prescribed under certain circumstances.<sup>12</sup>

The amendments were preceded by an increased debate on the medical use of cannabis in the country. Two high-profile cases stood out earlier in 2018 – the one of Alfie Dingley, aged 7, and Billy Caldwell, aged 13. Both had severe epilepsy and their families said that their condition had been significantly improved by cannabis oil treatments that was not legally available in the UK. Billy's mother imported the product from Canada, but it was confiscated at the airport. In Alfie's case the Home Office initially denied the request for a medical cannabis licence.<sup>13</sup> The plight of both families prompted UK authorities to amend the rules for medicinal cannabis.

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<sup>7</sup> [http://www.emcdda.europa.eu/publications/topic-overviews/cannabis-policy/html\\_en](http://www.emcdda.europa.eu/publications/topic-overviews/cannabis-policy/html_en)

<sup>8</sup> <https://medicalmarijuana.procon.org/view.resource.php?resourceID=000881>

<sup>9</sup> <https://www.theguardian.com/world/2018/oct/17/cannabis-becomes-legal-in-canada-marijuana>

<sup>10</sup> [http://www.emcdda.europa.eu/publications/topic-overviews/cannabis-policy/html\\_en](http://www.emcdda.europa.eu/publications/topic-overviews/cannabis-policy/html_en)

<sup>11</sup> <https://www.telegraph.co.uk/news/2018/03/06/britain-largest-exporter-legal-cannabis-world-despite-ban/>

<sup>12</sup> <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8355>

<sup>13</sup> <https://www.bbc.com/news/health-46045487>

In a statement on 19 June 2018 the Home Secretary Sajid Javid announced that “it is time to review the scheduling of cannabis” but he underlined that “*this step is in no way a first step to the legalisation of cannabis for recreational use*”. Sajid Javid also stressed that “*this government has absolutely no plans to legalise cannabis and the penalties for unauthorised supply and possession will remain unchanged.*”<sup>14</sup> On 26 July 2018, the Home Secretary announced that, following this advice from the Advisory Council on the Misuse of Drugs and the Chief Medical Officer, he had decided to reschedule cannabis-derived medicinal products.

On 31 October 2018, the National Health Service published guidance, which provided further details. The document contains a definition of the term “cannabis-based product” and states that cannabis-based products for medicinal use will be moved out of Schedule I to Schedule II, with the exception of synthetic cannabinoids.<sup>15</sup> The treatments can be prescribed in cases of children with rare, severe forms of epilepsy; adults with vomiting or nausea caused by chemotherapy and Adults with muscle stiffness caused by multiple sclerosis.<sup>16</sup>

In November 2018, the law changed to allow the prescribing of cannabis-based medicines in certain circumstances. The Regulations included a definition of cannabis-based medicines and set out that only doctors on the GMC specialist register could prescribe these.<sup>17</sup>

In contrast to Sajid Javid’s statement that the UK government does not intend to legalise cannabis, the BBC recently reported that a group of UK cross-party members of parliament have predicted that the country will fully legalise cannabis in five to ten years. The politicians went on a fact-finding mission to Canada, organised by a UK-based campaign group that advocates for the legalisation of cannabis in the UK. One of them even took cannabis oil instead of a sleeping pill.<sup>18</sup>

## THE FUTURE

Owing to the therapeutic benefits of cannabis and cannabis-related products and other factors, numerous countries are considering liberalising the regime through which cannabis can be cultivated, purchased, possessed and traded.

On 24 January 2019, the Director General of the World Health Organisation sent a letter to the Secretary General of the United Nations recommending, among other things, that cannabis and cannabis resin be removed from Schedule IV of the Single Convention of Narcotic Drugs, while cannabis extracts and tinctures be deleted from Schedule I of the same multilateral treaty.<sup>19</sup>

In early February 2019, following the recommendations of the World Health Organisation, the European Parliament voted on a resolution that would help advance medical cannabis in the countries that form the European Union. The resolution is not binding but it seeks to encourage European countries to increase access to medical cannabis, prioritising scientific research and clinical studies.<sup>20</sup>

A report, published by ResearchAndMarkets.com in April 2019 with the title “Medical Cannabis Market: Global Industry Trends, Share, Size, Growth, Opportunity and Forecast 2019-2024” says that the global medical cannabis market size was estimated to reach a value of USD 13.4

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<sup>14</sup> <https://www.gov.uk/government/speeches/home-secretary-statement-on-medical-use-of-cannabis>

<sup>15</sup> <https://www.england.nhs.uk/wp-content/uploads/2018/10/letter-guidance-on-cannabis-based-products-for-medicinal-use..pdf>

<sup>16</sup> <https://www.bbc.com/news/health-46045487>

<sup>17</sup> <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8355>

<sup>18</sup> <https://www.bbc.com/news/newsbeat-49073222>

<sup>19</sup> [https://www.who.int/medicines/access/controlled-substances/UNSG\\_letter\\_ECDD41\\_recommendations\\_cannabis\\_24Jan19.pdf?ua=1](https://www.who.int/medicines/access/controlled-substances/UNSG_letter_ECDD41_recommendations_cannabis_24Jan19.pdf?ua=1)

<sup>20</sup> <https://www.forbes.com/sites/javierhasse/2019/02/13/european-parliament-passes-cannabis-resolution-joins-who-in-supporting-medical-marijuana/#41156698fd5b>

billion in 2018. The authors of the document forecast that the market is expected to be worth USD 44.4 billion by 2024. The underlying forces behind this tendency are related to the increased use of cannabis-related products for treating chronic and severe pain that affects millions of people each year across the globe. The report also points out that cannabis is safer and has less severe side effects in comparison to other substances and sometimes it can neutralise adverse side-effects of aggressive treatments like chemotherapy. Similarly, it is also used in combination with traditional opioid painkillers, which enables patients to significantly reduce the dosage and frequency of opioids and imparts greater pain relief. A steadily rising ageing population has also played a significant role in driving the demand for medical cannabis, as geriatric patients are more likely to develop chronic illnesses and require more physician visits.<sup>21</sup>

## THE COMPLIANCE CHALLENGES

The bigger the revenues from this business niche, the more regulations are expected to come into play so that relevant authorities can assure that violations are not committed and organisations dealing with cannabis-related products are not threatening human lives. Currently, these companies have to obtain the relevant permits and licences. But there's also the financial factor. Trade needs finance, so companies operating in this field need to legally access the financial system. In other words, they need bank accounts in order to be able to keep their business running – from receiving money from customers, through depositing revenues to paying employees. This can be an issue with countries like the USA, for example, because even though cannabis has been legalised in many states, it remains federally illegal, creating a legal “grey area”.

Aaron Klein from the Brookings Institution writes that while banks have begun addressing the needs of this new industry, they are far behind. Out of the almost 11,000 banks and credit unions in America, fewer than 500 will serve cannabis-related businesses<sup>22</sup>. These tend to be small, local institutions, leaving large segments of the state-licensed cannabis business unbanked. Estimates are that as many as two-thirds of cannabis businesses are unbanked. The author argues that even though banks are heavily regulated on a federal level and despite the state-federal legal collision, they are not banned from accepting cannabis-related businesses as customers. Doing so means substantial reporting by banks, because should they find red flags during the know your customer (KYC) process, they need to file Suspicious Transaction Reports. There is also potential legal liability, should the federal government reverse course and crack down on state-licensed marijuana businesses.<sup>23</sup> In order to bring clarity to the matter, on 14 February 2014 FinCEN issued guidance to financial institutions that choose to provide services to marijuana-related businesses (on the website of the United States Drug Enforcement Administration the words “marijuana” and “cannabis” are used interchangeably<sup>24</sup>). According to the FinCEN document, obliged entities should conduct customer due diligence that includes, among other obligations, verifying licences and registration details, requesting available information about the business and related parties from state licensing and enforcement authorities, and ongoing monitoring of publicly available sources for adverse information about the relevant businesses.<sup>25</sup> According to Aaron Klein, the guidance was a welcome but insufficient step, because FinCEN is an arm of the Treasury Department that looks for financial crimes and not a bank regulator: each bank in America has a primary federal regulator.

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<sup>21</sup> [https://www.researchandmarkets.com/reports/4763121/medical-cannabis-market-global-industry-trends?utm\\_source=BW&utm\\_medium=PressRelease&utm\\_code=vlm48c&utm\\_campaign=1241389+-+The+Global+Medical+Cannabis+Market+is+Projected+to+Reach+%2444.4+Billion+by+2024%2c+Growing+at+a+CAGR+of+22.9%25&utm\\_exec=joca220prd](https://www.researchandmarkets.com/reports/4763121/medical-cannabis-market-global-industry-trends?utm_source=BW&utm_medium=PressRelease&utm_code=vlm48c&utm_campaign=1241389+-+The+Global+Medical+Cannabis+Market+is+Projected+to+Reach+%2444.4+Billion+by+2024%2c+Growing+at+a+CAGR+of+22.9%25&utm_exec=joca220prd)

<sup>22</sup> <https://www.fincen.gov/sites/default/files/shared/285053%20Q%20FY2019%20Marijuana%20Banking%20Uodate+Public+final.pdf>

<sup>23</sup> <https://www.healtheuropa.eu/banking-cannabis-related-businesses/91295/>

<sup>24</sup> <https://www.dea.gov/taxonomy/term/336>

<sup>25</sup> <https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses>

Moreover, the Anti-Money Laundering and KYC regimes in the US are not constructed to deal with a situation in which states are legalising a federally illicit act.<sup>26</sup>

Legal and operational vagueness can be overcome if countries that liberalise cannabis-derived products amend not only the legislation that re-schedules them but also the rules for dealing with violations, and make them applicable on all levels. Law enforcement authorities should have clear instructions around what should be punishable and companies active in this industry should know in detail what their obligations are. Like many other compliance-related matters, this will be settled either by market forces or by major events that will convince lawmakers that procrastination and legal “greyness” are not in the interest of any of the parties involved.

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<sup>26</sup> <https://www.healtheuropa.eu/banking-cannabis-related-businesses/91295/>