Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Eidgenössische Kommission für Suchtfragen
Commission fédérale pour les questions liées aux addictions
Commissione federale per le questioni relative alle dipendenze

The Federal Commission for questions related to Addictions (EKSF)'s Summary Report on Cannabis

July 2019

By Frank Zobel, Jennifer Hasselgård-Rowe and Barbara Broers[1]

[1] The three authors wrote the original report in French. Jennifer Hasselgård-Rowe then translated the entire report into English.

Table of Contents

Acronyms

CBD: Cannabidiol

CSC: Cannabis Social Club

ECDD: Expert Committee on Drug Dependence

EKDF: (former) Federal Commission for questions related to Drugs

EKSF: Federal Commission for questions related to Addictions

EMCDDA: European Monitoring Centre for Drugs and Drug Addiction

FOPH: Federal Office of Public Health

HIV : human immunodeficiency virus

INCB: International Narcotics Control Board

LStup : Federal Law on Drugs

UNODC : United Nations Office on Drugs and Crime

UNGASS : UN General Assembly Special Session

THC: Delta-9-Tetrahydrocannabinol

WHO : World Health Organization

1. Introduction

Twenty years after the first report of the Federal Commission for questions related to Drugs (abbreviated as EKDF in German) came out in 1999 and slightly more than 10 years after the Commission's most recent report of 2008, the new Federal Commission for questions related to Addictions (abbreviated as EKSF in German), decided to once again proceed with a review of Switzerland's policies with regard to cannabis and to formulate recommendations for the federal authorities.

In order to do so, the Commission conducted three preparatory pieces of work: the first is an update of the knowledge about cannabis, covering topics ranging from the botany of the plant to measures for reducing problems related to its use. It builds on information received from around 30 national and international experts who were interviewed by the Commission. The second piece of work focuses on the negative effects of the prohibition of cannabis, a subject which, up until now, has not really been discussed consistently. The third examines the new cannabis regulation models that have been developed in recent years and that have profoundly changed the way the production, distribution and use of cannabis is regulated in different regions around the world.

The willingness to take on this subject in 2019 and to update the knowledge and recommendations stems from the pursuit of a lively debate on cannabis-related policies in Switzerland. For example, this debate is illustrated by the initiatives of different Swiss cities to conduct pilot projects for the distribution of cannabis; by a number of questions related to this subject being raised in the Federal Parliament; by a growing interest for the therapeutic potential of cannabinoids; by the repercussions of international developments related to the regulation of cannabis; and by the unexpected changes at the national level (notably with the emergence of a legal CBD cannabis market).

This summary report begins with a brief history of cannabis-related policies in Switzerland before presenting the recommendations of the former EKDF in 1999 and 2008. The elements brought together by the new EKSF through the various pieces of work it conducted[2] are then summarised and the Commission's own recommendations set out. The latter focus not only on the general policy regarding cannabis but also, more specifically, on the principles that it should follow.

[2] All of the information referenced can be found in the following reports: Federal Commission on questions related to Addictions (2019). *Cannabis: Knowledge Update 2019*. Bern. Federal Office of Public Health. Philibert, Anne and Zobel, Frank (2019). *International review of cannabis regulation models*. Geneva: University of Geneva (Sociograph: Sociological Research Studies, 41) www.unige.ch/sciences-societe/socio/sociograph. Herzig Michael, Zobel Frank and Cattacin Sandro (2019), *Cannabis-related policies. The questions that nobody asks*, Zurich/Geneva, Seismo Edition, https://seismoverlag.ch.

2. A brief history of cannabis policy in Switzerland

2.1 From the 1920s to the end of the 1970s

The first Federal Law on Drugs dates back to 1924. The law was then revised in 1951 when cannabis (haschisch) was added to the controlled substances list, even if not much was known about cannabis, and it wasn't used very much at that time. This situation changed in the 1960s when some young persons in Switzerland started becoming interested in the use of this substance. The authorities considered the use of cannabis and that of other drugs a threat.[3] At the end of the decade, in 1969, the Federal Tribunal ruled that the use of drugs, which up until that point had been exempt from penal sanctions, had to be punished in the same way as the possession of drugs. This widening of the range of offences combined with the spread of the use of cannabis among young people led to a quick and dramatic increase in the number of denunciations linked to the use of cannabis in Switzerland.

A new revision of the Federal Law on Drugs was adopted in 1975. It followed a number of contradictory debates which then gave rise to a compromise which is still valid today: the law maintains the prohibition on the use of drugs but also gives the judicial authorities the possibility of waiving the charges of people caught using drugs by the police, under certain conditions (cases of minor significance; possession of small quantities; dependence; entering into treatment).[4] The criminal sanction incurred for use of cannabis or other drugs was an administrative fine, which does not go on any criminal record.

2.2 The drugs-related crisis of the 1980s and 1990s.

The next two decades were marked by the drugs-related crisis that concerned Switzerland. The crisis was not related to cannabis but to the spread of the use of heroin, the rise in the use of injection of drugs and the transmission of infectious diseases that was linked to it. The crisis reached its peak with the "open scenes", in particular those of Platzspitz and the former Letten train station in Zürich; and the thousands of drug-related deaths (overdoses, suicides, deaths linked to AIDS) that marked this period. In response to this crisis, the local authorities (cities and Cantons) and then the Swiss Confederation developed a new drug policy incorporating harm reduction as an addition to prevention, treatment and repression. This was the beginning of the 4 pillars drug policy. Measures

[3] It is often said that the cannabis that was used at that time contained much less THC than the cannabis that is used today and that it was therefore less dangerous for the people who used it. In the 1960s, however, the perception of the dangerousness of cannabis was the same as today.
[4] The revision of the Law on Drugs of 1975 introduced aggravating circumstances for the traffic of drugs, with the notion of a « serious case » which required being punished as a crime (by imprisonment of at least a year, including in addition to a fine of up to 1 million Francs).

such as the distribution of sterile injecting material, the prescription of methadone and then heroin, the opening of supervised consumption facilities and other low-threshold structures profoundly changed the content and the objectives of the Swiss drug policy and enabled the country to progressively regain control over what constituted a catastrophic social and sanitary situation.

2.3 The revision attempts of the Federal Law on Drugs, of 2004 and 2008

After the Swiss population rejected the two popular initiatives at the end of the 1990s, which were geared either towards the return of a more restrictive drug policy ("Youth without drugs") or towards the legalization and regulation of all drugs (Droleg), the Federal Council proposed a new revision of the Federal Law on Drugs to Parliament in 2001, incorporating the recent developments in Swiss drug policy. The revision proposal also took into account the increase in the use of cannabis among young people during the 1990s and proposed a new approach for this substance, for which the dangers were considered far less significant than those related to heroin and cocaine. Taking note of the failure of repression, the Federal Council proposed to not prosecute the use of drugs in general and, under certain conditions, to also allow for the emergence of a tolerated cannabis market to stamp out the black market and enable more control in this field.

However, in 2004, Parliament rejected this reform proposal, due to the suggestions related to cannabis, which parliamentary representatives considered too audacious. The Parliament later proposed a new revision of the law institutionalizing harm reduction but not accepting any change to the repressive approach towards the use of drugs in general nor towards the cannabis market. In 2008, the Swiss people were called upon to take a decision on this revision (by Referendum), as well as on a popular initiative aiming to legalise cannabis and regulate its market. The Swiss voters supported the revision of the law and the institutionalization of harm reduction but opposed a change of policy with regard to cannabis.

2.4 The revision of the Federal Law on Drugs of 2011

The status quo on cannabis continued to be problematic, particularly because the number of denunciations to the judicial authorities of people using the substance continued to increase. That is why in 2011, the Federal Parliament adopted a new revision of the Law on Drugs that decriminalized the use of cannabis and from then on, and sanctioned it with a simple fine of 100 CHF. The fine is to be handed out by police as long as the person in question is an adult and is not carrying more than 10 grams of the substance. The new reform measure came into force on the 1st of October 2013. However, it has been applied in different ways in the different cantons, when one of the main objectives of the reform was precisely to harmonise the various practices. The new measure also gave rise to different cantonal and federal case-law that goes back to the ambiguities and

contradictions in the text of the law. Therefore, at present, according to the Federal Tribunal, possessing 10 grams or less of cannabis is not punishable in Switzerland, while consuming a bit of cannabis is.

2.5 The proposals of local cannabis distribution pilot projects since 2010

From the beginning of 2010, different local authorities (communal councils, municipalities of big cities or cantons) became involved in reflections with the view of developing local pilot projects for cannabis distribution. [5] These projects aimed to revive the reforms in this field and to evaluate the impact of a potential cannabis policy change. Article 8 paragraph 5 of the Federal Law on Drugs which enables the Federal Office of Public Health (FOPH) to grant exceptional authorizations to produce and distribute drugs within the framework of research projects, was seen as a legal tool enabling such pilot trials to be put in place. During the submission of the first authorization request by the City of Bern,[6] the Federal Office of Public Health (FOPH) nevertheless indicated that it could not grant such an authorization for these kinds of projects despite the fact that it acknowledged the interest that these projects represent for the community.

This refusal was followed by legislative action in Federal Parliament with the deposition of motions requiring the addition of a new article to the Federal Law on Drugs that would allow for such experiments to be conducted at the local level. A text (article of law and application order) was developed by the federal administration and subjected to a large consultation even before Parliament had accepted one of the motions that it had received. The public consultation revealed relatively wide support for the text and projects that it was going to allow for. The text was sent back to the federal chambers that will examine it in 2019.[7] In the meantime, the list of cities and cantons that wish to conduct a cannabis distribution trial in their area has grown even longer.

[5] In addition to the projects mentioned further on, it is significant to note that on the 1st of January 2012, the cantons of Geneva, Vaud, Neuchâtel and Fribourg adopted an arrangement aiming to allow adults to freely grow 4 plants of hemp, as long as they were not sold for commercial purposes. This arrangement was, however cancelled by the justice department in October of the same year.

[6] The project envisaged the sale of cannabis in pharmacies to about one thousand residents who were already using cannabis and who would accept to receive prevention and harm reduction measures on their telephones.

[7] The law provides that each project has to be geographically limited, have a maximum duration of 5 years, include no more than 5000 participants and guarantee that the cannabis be of controlled quality with a maximum THC percentage of 20%. The participants are not to receive more than the equivalent of 10 grams of THC per month, must be at least 18 years old, live in the geographical zone covered by the project, not be pregnant nor breastfeeding, and not have a mental health problem that would be incompatible with the use of cannabis.

2.6 Recent developments

Other recent political and legislative developments concerning cannabis in Switzerland are worth recalling. In 2018, the Parliament did not enter into a debate on the Green's parliamentary initiative that called for the legalisation and regulation of the cannabis market. At the same time, the association "Legalize It!" submitted a draft text to the federal Chancellery calling for a popular initiative with the aim of legalising the consumption of cannabis. As of early 2019, the collection of signatures has not yet started. Further developments are linked to the revision of the Law on Drugs accepted by the population in 2008 and implemented in 2011.

The first concerns the use of cannabis and cannabinoids for therapeutic purposes. The FOPH may grant exceptional individual authorizations to obtain and use cannabinoids (in the form of standardized medicines or compounded drugs) for medical purposes. Despite the fact that the procedure is demanding and that few doctors are trained in the prescription of these molecules, the number of applications has been increasing in the past few years, which also calls the "exceptional" aspect of the prescription into question. This dynamic led to the tabling of a motion aiming to simplify the access to cannabinoids for people who are severely ill which was accepted by Parliament. The FOPH is now examining new solutions to simplify this access. It will also have to create the necessary legal basis for the systematic collection of data in order to better evaluate the efficiency of treatments and improve the conditions for reimbursement of medicines based on cannabis.[8]

Upon the recommendation of the Swiss Society of Forensic Medicine, in 2011, the federal authorities increased the threshold separating licit agricultural hemp from illicit cannabis. This threshold is currently fixed at 1% THC. This change in the law led to the unexpected birth of a new market of "legal" cannabis, especially since the summer of 2016, with products with low doses of THC (less than 1%) but high levels of CBD (cannabidiol), another cannabinoid which is associated with a relaxing effect. This market grew rapidly and these products can now be found in supermarkets, kiosks, specialized shops and on the internet. The emergence of this market contributed to developing a new chain of production, transformation and distribution of cannabis in Switzerland.

2.7 Conclusions

To sum up, the policy debate on cannabis policy in Switzerland has not ceased since the 1960s. Despite the number of attempts at reform, up until now, the changes have been very rare, while prohibition has remained at the heart of the policy. The introduction of

[8] See Federal Office of Public Health, 4 July 2018, « Le cannabis comme produit thérapeutique » ("Cannabis as a therapeutic product") available at http://www.bag.admin.ch.

administrative fines has contributed to increasing problems and creating confusion in the way people who use drugs are sanctioned.

The current international (radical policy changes in the United States of America, Canada and Uruguay) and national contexts (city initiatives, popular initiative projects, expansion of cannabis for medical purposes, CBD cannabis market) linked to the subject of cannabis are extremely dynamic, which has put the question of cannabis policy back at the heart of Swiss drug policy.

3. Review of the conclusions and recommendations of the Federal Commission for Questions Related to Drugs (EKDF) of 1999 and 2008

The Federal Commission for Questions related to Drugs (EKDF) is the ancestor of the EKSF, which is responsible for the present report. As mentioned at the beginning of this document, the EKSF had already examined Swiss cannabis policy at two previous times. The first was in 1999, to support the Federal Council in its preparation of the Law on Drugs (rejected by Parliament in 2004) and the second, in 2008, when the Swiss people were called upon to decide on a popular initiative aimed at the legalization and regulation of cannabis. The main conclusions of the two reports of the EKDF are presented below.

3.1 Conclusions and recommendations of the EKDF in 1999

At the end of the 1990s, upon the request of the federal authorities, the EKDF conducted a wide-ranging review of the existing knowledge on and policies related to cannabis. Based on its work, the Commission found that this substance occupies a particular place among illicit substances, both in terms of its use and social perceptions as well as its dangerousness. On the basis of this finding, the EKDF recommended placing cannabis in an intermediate position between illicit substances and legal drugs such as alcohol and tobacco. In practice, the Commission was recommending the depenalization of the possession and use of cannabis on the one hand and a legal, albeit restrained access to cannabis-based products on the other.

In order to remain in accordance with international conventions, the Commission recommended the introduction of a detailed trade regulation system, ruled by prescriptions, and based on the principle of opportunity. The acquisition of cannabis was not to be based on the freedom of trade, but rather be the object of clear regulation, in order to guarantee the protection of youth and prevent possible unwanted effects of legalization. Requirements needed to be placed on the professional qualifications of vendors, and specific rules established with regard to sale practices and the products

themselves. Publicity was to be forbidden and the prices possibly taxed. The age limit for cannabis was to be 18 and a specific number of cannabis plants that were to be allowed to be grown for personal use had to be determined. The EKDF also wished to reinforce prevention measures and guarantee access to advice and medical consultations for at risk and problematic consumers. Finally, the Commission recommended creating a legal basis to authorise scientific research on the use of cannabis for therapeutic purposes in Switzerland.

3.2 Conclusions and recommendations of the EKDF in 2008

In 2008, the EKDF, whose composition had changed quite a bit in the meantime, renewed its interest in the question of cannabis by conducting an update of its 1999 report. In order to do so, it collected the most recent knowledge and scientific data available at that time. However, this inventory did not lead to the Commission modifying its conclusions from a decade earlier, but rather served to confirm them. The EKDF was of the view that even if the use of cannabis implies health risks, using the penal code as the only means of prevention was not an appropriate response. As in 1999, the Commission recommended regulating the access to cannabis by means of a regulation model which would allow the necessary space for prevention and the protection of youth. Once again, it was about depenalising consumption and pre-consumption preparatory acts. Large scale trade was to remain punishable, in accordance with the international conventions, but it was meant to be possible to introduce a detailed trade regulation system by means of prescriptions, according to the opportunity principle. Nonetheless, a legal basis that would enable this still needed to be written into the Law on Drugs.

4. Developments and new knowledge since 2008

The last decade has seen a new set of data and knowledge emerge with regard to cannabis and its different uses, including for therapeutic purposes. Furthermore, while in 1999 and 2008 the only alternative to the prohibition of cannabis seemed to be the Dutch model that tolerates the sale and possession of small quantities of cannabis without allowing for its production, in the past few years different new approaches have been put in place in the United States of America, in Uruguay and in Canada. This exceptional change in the history of cannabis policy means that the question of cannabis regulation can be examined not only from a purely theoretical manner but also on the basis of experiences and models that have already been put in place.

4.1 Knowledge Update on cannabis in 2019

The first piece of work undertaken by the Commission focused on new knowledge about cannabis. Six research themes were identified :

1. The plant, the products, and their effects ;

2. The markets ;

3. The use of cannabis and the tendencies in this field ;

4. The negative and positive consequences attributed to the use of cannabis ;

5. Prevention, treatment and harm reduction measures ;
6. The medical use of cannabis and cannabinoids.

The EKSF does not have the means to conduct an exhaustive literature review on each of these subjects. The Commission therefore chose to conduct interviews with around 30 national and international experts and also gathered a series of recent reports on cannabis published by international actors such as World Health Organization (WHO) and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). A brief summary of the results of this collection of information is presented below.

4.1.1 The plant, its products and its effects

The previous reports of the EKDF did not focus that much on the cannabis plant itself. Today, we have much more information, not only about the different varieties of the plant (there are more than 700) and their origins, but also about modern cultivation practices, particularly those that create high yields and frequent harvests. The professionalization of the field and economic challenges in this new sector have led to new challenges linked to the commercial property of the different varieties of the plant, to the methods for extracting the active ingredients, and to the products that are put up for sale. In many respects, cannabis is becoming a commodity like any other.

For a long time, THC was the only subject of interest when looking at the active ingredients of cannabis. This situation has changed with the study and medical use of other cannabinoids (primarily CBD) as well as with the acknowledgement of an "entourage effect" which suggests that the different active ingredients within the plant (cannabinoids, terpenes) interact with and influence the effects attributed to cannabis. The techniques for extracting these active ingredients have also evolved and extracts containing nearly 100% of a given active ingredient can be found on the market today.

The products that appeared on the legal markets in North America, as well as on the cannabis CBD market in Switzerland are testimony to this evolution. Henceforth, cannabis is no longer reduced to marijuana (grass), to haschisch (resin), to oils and craft cakes, but includes a multitude of concentrated extracts, dyes, oils, e-liquids, edible or cosmetic products and medicines such as Sativex® and Epidiolex®. The range of cannabis products, as well as their manufacturing methods, have very little to do with the ones we knew about ten years ago. This has also led to a change in the consumption modes, with more space given to ingestion and vaporization within the legal and medical cannabis markets.

The desired effects of the use of "non-medical" cannabis are essentially a change in feelings, in perceptions and in mood. These same effects are, on the other hand, not desired by some of the people who use cannabis for therapeutic or well-being purposes. This is why new products have appeared to respond to the needs and the sensitivity of this group of consumers.

4.1.2. Cannabis and its markets

Legal cannabis markets now exist in certain countries, revealing a legal cannabis industry amounting to several billions of dollars, primarily in the United States of America and Canada. The legal production of cannabis destined towards the international medical market is estimated at several hundred tons per year. These different legal cannabis markets are continuously developing and it is possible to observe their characteristics and developments. On the other hand, knowledge of the illegal cannabis market has not evolved. In Switzerland, the estimations of the size of this market remain anecdotal and the knowledge of how it is organised is very limited.

What we do know is that it is a polymorphous market consisting of criminal organisations, small traffickers, amateur gardeners, self-growers in their own apartments; local productions, and imports, etc. This market is not a priority for the police who are focused on cocaine and heroin, and the public nuisance that is associated with their markets. The cases that do end up being processed, and that are sometimes on a big scale, often come from discoveries linked to other cases, from calls from people who witness drug dealing taking place or from interceptions at customs.

A second market that, on the contrary, we can analyse is that of CBD cannabis, that has spread in Switzerland since the summer of 2016. This new activity sector shed light on how a legal market of "non-medical" cannabis could develop in Switzerland: namely very quickly, with a multitude and wide diversity of products that some of the main distribution brands in the country (supermarkets, kiosks) were happy to integrate into their range of products. We also know that the clients of the CBD market include consumers who have recreational, therapeutic and wellness objectives, without there

always being clear boundaries between these objectives. This situation also reflects what can be observed in the legal cannabis markets in North America.

4.1.3. Consumption and its developments

Cannabis, with more than 1% THC, remains the most used illicit substance in Switzerland: recent use (last 30 days) is reported by about 3% of the adult population. Consumption is more widespread among men, adolescents and young adults. The majority of consumers are occasional consumers, with about 1% of the adult population reporting near-daily use (20 days or more per month).

Cannabis use increased significantly in the 1990s with a peak at the beginning of the 2000s. Since then, cannabis use has been mostly stable but with a slightly increasing tendency in the past ten years. Nevertheless, based on currently available tools, it is not possible to say whether this tendency also applies to regular use of cannabis, which is no doubt at the origins of most problems related to this substance. An increase in the requests for treatment suggests that these problems are growing but the situation is more complicated to interpret because part of the increase is linked to new practices (such as people being sent to treatment by the courts or by family members, and new treatment options), rather than to an actual increase in the number of problems.

4.1.4 The negative and positive consequences attributed to the use of cannabis

Generally speaking, the use of cannabis entails few risks. The real risks of use are for the most part linked to the combustion of the product with tobacco (respiratory tract and heart problems), to the presence of products that aren't in any way controlled or regulated and that may have very high THC rates, to early use among adolescents who are in important physiological development and/or professional training phases; as well as to the prolonged use of the substance. Cannabis use may also be the cause of road accidents. Furthermore, the substance may also be consumed with other licit or illicit psychoactive substances, which increases risk. People with pre-existing mental health disorders should avoid consuming cannabis.

On the other hand, it is now established that cannabis and cannabinoids can have beneficial effects on certain pathologies and symptoms (various ailments, sleep problems, nausea, vomiting, spasticity, etc). A recent study on people using CBD cannabis also revealed that they reported positive effects related to their consumption, particularly in relation to sleep, stress and pain.

4.1.5. Prevention, treatment and harm reduction measures

Since structural measures (age limitation, control of products, conditions for sale restrictions, prohibition of use in certain places, information for consumers, taxes, etc) exist, cannabis-related prevention primarily centers on the individual and the development of his/her skills, sometimes with relatively limited efficiency. Social media, which is constantly growing, is an interesting avenue to explore as a tool and change agent for prevention activities. There is also a need for continuing education for professionals who are working in the field of prevention as they are not always familiar with the efficiency principles of prevention. Ideally, prevention should concentrate on a combination of structural (prohibition of smoking in public places; restriction of places with access to the substance; where objects for sale are placed; the increase in the price of the substance, etc) and behavioural measures. Research on cannabis specific prevention strategies as well as an evaluation of the impact of the legalization and regulation of cannabis on prevention are elements to develop in the future.

Up until now, cannabis has rarely been the subject of work or measures in the field of harm reduction. Moreover, people with problematic cannabis use are sometimes difficult to reach because they prefer to use in private places. Nonetheless, we now know that there are different harm reduction measures that can be applied to the use of cannabis, such as for example, to not smoke the product. Other harm reduction messages are for example not to use cannabis if one is driving a car; to not use in cases of psychotic breakdowns or if experiencing hallucinations; or to regularly clean the vaporizers /sprays or other equipment.

Treatment for problematic use of cannabis essentially consists of motivational approaches and cognitive behavioural therapy that seem the most promising with systemic family approaches for young people. The offer of services in cities and in the countryside remains unequal and treatments that are specifically focused on problems linked to cannabis are rare. Few people for whom the consumption of cannabis is problematic look for help spontaneously, for various reasons, including the illicit status of the substance. The level of investment that is necessary for a potentially specific treatment for cannabis is difficult to determine because most people who use cannabis do not present the criteria for dependence and problematic use of cannabis most often resolves itself without treatment.

4.1.6 The medical use of cannabis/cannabinoids.

The Federal Office of Public Health recognises that cannabis has a “promising therapeutic potential”. Spasticity related to multiple sclerosis and other neurological diseases, chronic pain, nausea and lack of appetite for example are among the illnesses for which the

efficiency of medical cannabis has been demonstrated. Furthermore, research on the therapeutic effects of cannabis and cannabinoids is in full development.

Requests for exceptional authorizations for the prescription of medicines based on cannabinoids have increased in an exponential manner in the past few years. More than 3000 requests were made to the FOPH in 2017 as opposed to 250 in 2012. This reflects a growing interest among patients and doctors for cannabinoids. However, the medicines remain expensive and are very rarely reimbursed. The administrative procedures are also heavy. Following the "Kessler" motion, the FOPH has made recommendations to the Federal Council to improve this situation.[9]

4.1.7 Conclusions of the update report

Knowledge about cannabis has progressed somewhat in the past ten years. We now know more about the plant and its components, as well as their psychoactive and therapeutic effects. The plant cultivation techniques and methods of extracting the active components have also evolved which has led to a multiplication of cannabis-based products on the legal markets, including the CBD market in Switzerland.

Even though the legal markets may now be observed and analysed in detail, there is still a very big knowledge gap with regard to the size and functioning of the illegal market. Surveys suggest that the consumption of cannabis in Switzerland has not evolved much in the past decade.

Although the measures and knowledge in the fields of prevention and treatment have evolved relatively little in the past ten years, harm reduction has progressively appeared as a field worth developing. However, the prohibition of cannabis restricts the measures that may be taken in this field, as well as in that of prevention.

4.2 The collateral effects of the prohibition of cannabis in Switzerland

The prohibition of cannabis aims to reduce the supply and demand linked to the substance and, consequently, to reduce the health problems that are associated with its use. The efficiency of this prohibitionist policy is called into question by the size of the cannabis market and the prevalence of use among young people, as well as by the obstacles that the policy creates in terms of reaching people who have problems related to their use. Another aspect that is linked to this policy but which is hardly ever addressed, is that of the negative collateral effects that prohibition entails. Indeed, as all public

[9] See section 2 "A brief history of cannabis policy in Switzerland" above.

policies, the Swiss policy related to cannabis is accompanied by undesirable externalities that need to be taken into account when assessing the efficiency of this policy.

The EKSF mandated Michael Herzig, a School of Public Health Professor and former drugs coordinator of the city of Zürich, to examine this question, together with two members of the Federal Commission for questions related to addictions. Since the question has not been examined until now and since there is very little systematic data on the subject, the authors based their work on interviews as well as official documents and journal articles that recount the negative effects that the prohibition of cannabis entails. Three main areas came out of this work:

1) The Federal Law on Drugs and its application;
2) The Road Traffic Law and its application; and
3) Access to cannabis and cannabinoids for medical reasons.

4.2.1 The Federal Law on Drugs and its application

The last revision of the Law on the Drugs introduced administrative fines for people who are found using cannabis and are not transporting more than 10 grams of the substance. The measure aimed to standardize practices across Switzerland, to apply a sanction that was more appropriate to the offence; and to reduce the work of the criminal justice system. In reality, this text of law and its application have instead led to more confusion and to wider differences in its application. The sanctions applied to cannabis consumers are hence different depending on the cantons, with sometimes very strict and other times very tolerant interpretations of the law. Judicial security is thus not guaranteed and the objective of a standardization of practices in Switzerland has not been reached. In addition, the text of law as it currently stands is very confusing and case law from the cantonal or federal tribunals now determines the sense of the law. This leads to absurdities such as not punishing someone who possesses less than 10 grams of cannabis but imposing an administrative fine on someone who smokes a joint.

The narratives of people using cannabis who have been arrested by the police reveal that the application of the Law on the Drugs may be subject to arbitrary practices on the part of law enforcement and judicial agents. This can go from humiliating body searches to sanctions that are unrelated to what the law prescribes.

4.2.2 The Road Traffic Law and its application

The Road Traffic Law of 19 December 1958[10] provides that the detection of illicit substances such as cannabis, opiates, cocaine, amphetamine, methamphetamine and other synthetic drugs in the blood of a person driving a vehicle constitutes a serious breach of traffic regulations and hence a penal offence.[11] A THC limit has been set to this effect.[12] However, a person who has consumed cannabis, sometimes several days before driving, may still test positively even though he or she is no longer under the influence of the substance and perfectly capable of driving. The situation is different for the consumption of alcohol where the detection limits that have been set are directly related to the person's capacity to drive. The consequences for people who use cannabis are that they may be severely sanctioned even if they take all of the necessary precautions not to constitute a danger in terms of road traffic and safety.

Moreover, if a person who has been arrested, even outside of the road traffic field, declares that he or she uses cannabis more than twice a week, the Federal Office of Roads (FOR) considers there to be a suspicion of drug dependence. As a general rule, this leads to a precautionary withdrawal of the person's driving licence as well as technical steps such as an aptitude test to determine whether the person may drive, all at the person's expense.

The differential treatment between alcohol and cannabis in the road traffic field is largely based on arbitrary measures and not on road security. If we were to apply the rules used for cannabis (arbitrary detection threshold; suspicion of dependence/problematic use from twice a week) to alcohol, few Swiss people would still be allowed to drive a vehicle. Beyond the irony of this situation, it must be recalled that a number of people who use cannabis are no longer allowed to drive a vehicle or are at risk of having their licence withdrawn, even if they are not putting any other people on the road in danger. For these people, this situation can have not-insignificant professional and private consequences.

4.2.3 Access to cannabis and cannabinoids for medical reasons

Undesirable negative effects of the prohibition of cannabis in Switzerland can also be observed in the field of medical cannabis. The efficacy of cannabis for the treatment of certain illnesses and symptoms is now recognised. The FOPH may deliver exceptional

[10] The law was revised by Parliament in 2001, introducing new measures such as the change in the tolerated blood alcohol level (set at 0,5 "per mille") and zero tolerance for the use of illicit drugs.
[11] The sanction can go from a fine up to three years' imprisonment.
[12] The limit of 1.5 micrograms of THC per liter of blood is extremely low and has nothing to do with the real effect of THC on a person's capacity to drive. Rather, it is based on the zero-tolerance dogma instead of on the basis of scientific studies. See Herzig Michael, Zobel Frank and Cattacin Sandro (2019), *Cannabis-related policies. The questions that nobody asks*, Zurich/Geneva, Seismo Edition, pages 77-78.

authorizations for the use of cannabis (in the form of certified medicines or compounded drugs) for medical reasons and more and more requests are submitted by patients and their doctors. Nonetheless, there are a number of judicial and bureaucratic challenges that, combined with the frequent non-reimbursement of the medicines - which are very expensive because of a supply that is too limited – by insurance companies, make it very difficile and even impossible to access efficient treatment for patients for whom this kind of treatment would be truly useful.[13]

Furthermore, the police and justice departments do little to take into consideration the various ways in which cannabis is used. For example, a patient who grows a few plants to be able to treat an illness or its symptoms will be treated in exactly the same way as a person who is trafficking cannabis.

4.2.4 Conclusions of the "collateral effects of prohibition" report

Other negative externalities, such as the establishment of a black market or the presence of contaminated cannabis products, must also be mentioned. When one adds up all of the negative collateral effects and all of the inconsistencies that stem from the legislation, it has to be said that they are numerous. They have to be taken into account in the evaluation of the current policy, which normally does not concern itself with such factors.

4.3 The different cannabis regulation models at the international level

On the 1st of January 2014, the State of Colorado was the first region in the world to put in place an entirely regulated legal market. It has since been followed by a dozen other States in the United States of America as well as by two countries: Uruguay and Canada. This new situation must now be taken into consideration when trying to understand and assess the different policy alternatives with regard to cannabis. That is why the Federal Commission for questions related to Addictions mandated Anne Philibert, a doctoral student of the University of Geneva, to write a report on the different cannabis regulation models at the international level;[14] that describes and analyses the different existing regulation or quasi-regulation models. Six models were taken into account for this work: the tolerance model in the Netherlands; the associations of consumers in Spain, the legal markets in the United States, in Canada and Uruguay, and the hybrid model focused on medical cannabis in Jamaica.

[13] Herzig Michael, Zobel Frank and Cattacin Sandro (2019), *Cannabis-related policies. The questions that nobody asks*, Zurich/Geneva, Seismo Edition, Chapter 6.
[14] Philibert, Anne and Zobel, Frank (2019). *International review of cannabis regulation models.* Geneva: University of Geneva (Sociograph: Sociological Research Studies, 41). www.unige.ch/sciences-societe/socio/sociograph.

The international experiences reveal that the regulation of cannabis – rather that its prohibition- is possible, even within the framework of the current international conventions. The types of market legalization and regulation models that have been applied up until now may be roughly divided into three categories:

1) A commercial model ;
2) A self-production model ;
3) A (quasi)-State monopoly model.

Each of these models has sub-categories and they may even be combined in different ways.

4.3.1. The commercial model

This is the most common model and the default model of neo-liberal economies. It is mostly found in the United States but also in a slightly different way in Canada. It is also part of the tolerance model of the Netherlands. Even if certain constraints are imposed on the market (age, access for consumers, quantities allowed to be sold, taxes, policing, limitations on the outlets/points of sale), and these are more restrictive than the prevailing ones that apply to alcohol and tobacco, the main point of the model is that cannabis be able to reach as many consumers as possible. This model is characterized by an important dynamism in production and distribution of cannabis. In that way, it is very close to the models for alcohol which we are already familiar with. It has already led to the birth of businesses with very high shareholder values that are coming from North America to the rest of the world, including the CBD market in Switzerland.

4.3.2 The self-production model

The self-production model is that of the associations of Spanish consumers and constitutes an alternative “no market” model in itself. This model developed around grey zones of the Spanish legalisation and it is the result of groups of consumers who created the Cannabis Social Clubs that produce cannabis meant for their members. This practice can also be observed as one of the procurement alternatives of the Uruguayan quasi State monopoly model (see below).

4.3.3 The (quasi) State monopoly

The Uruguayan model is a particular case because a priori it is very closely controlled by the State and oriented towards public health, but still rather complex to put in place. It proposes 3 forms of access to recreational cannabis (individual self-production, or as part of an association, or in pharmacies) from which the consumer has to choose. It also provides for a strong presence of the State in the regulation of the market. The State

defines the monthly quantities that a person who uses cannabis may access, supervises the production, defines the types of cannabis to be sold in pharmacies and their prices, and requires consumers to register in a database. This last point is certainly an obstacle to adhering to this model, even if from a public health perspective, it remains interesting.

4.3.4 The hybrid model

Even if it is first and foremost an economic model, the Canadian model nonetheless includes a strong State presence focused on a public health approach. "The model follows three objectives: 1) extend the restrictions on the use of tobacco in public places to cannabis products (including e-liquids); 2) limit the density and location of distribution points taking into consideration the distance to schools, community centres and public parks; and 3) apply restrictions to advertising, to the commercial promotion of cannabis and its related products, similar to those that apply to the advertising of tobacco products."[15] The model is based on the division of duties between the federal State, which is responsible for the supervision and control of cannabis production; and the provinces, which manage the distribution of products on their territories. This configuration provides for different approaches at the provincial levels, which will enable their respective efficiency to be evaluated, in particular from a public health perspective.

4.3.5 Changes at the international level of control of cannabis

The legalisation and regulation of cannabis in different countries, as well as the changes in the field of medical cannabis, have led to a reevaluation of the status of this substance at the international level. The World Health Organization's Expert Committee on Drug Dependence (ECDD)[16] recently conducted a review of the scientific studies examining the therapeutic value and the damages linked to cannabis. Following this review, the Committee recommended that cannabis and its resin be taken out of Schedule IV (the category for substances considered particularly toxic and with very limited therapeutic value) of the 1961 Single Convention on Narcotic Drugs, and be placed in Schedule I of the treaty.

The World Health Organization has thus recognised the medical uses of cannabis and cannabinoids. The Committee also recommended that THC and its isomers be removed

[15] See Philibert, Anne and Zobel, Frank (2019). International review of cannabis regulation models. Geneva: University of Geneva (Sociograph: Sociological Research Studies, 41). www.unige.ch/sciences-societe/socio/sociograph for more details on the Canadian model.

[16] The Expert Committee on Drug Dependence (ECDD) of the World Health Organization (WHO) is responsible for formulating recommendations to help WHO play its consultative role towards the Commission on Narcotic Drugs. Its primary mandate is to evaluate psychoactive substances with a view to whether they should be under international control, but it also touches on other scientific questions during its meetings.

from the 1971 Convention on Psychotropic Substances and added to Table I of the 1961 Convention. Even if these recommendations have not yet been put in place (they have to first be approved by the 53 Member States of the Commission on Narcotic Drugs in Vienna and the vote has been postponed to March 2020), they nonetheless represent an important change in the international policy arena with the potential of influencing cannabis-related policies at national levels.

4.3.6 Conclusion of the « regulation models » report

When the then Federal Commission for questions related to Drugs (EKDF) published its last report on cannabis in 2008, no country or region had legalised cannabis. In 2019, there are more than 110 million people who live in a region where access to cannabis is legal and regulated. There is also the Dutch tolerance model and various experimentations in Spanish regions and in Jamaica. This change is significant because it puts an end to a situation of deadlock that lasted more than half a century and it is also profoundly transforming the world of cannabis-related policies. Hence, the question "should cannabis be legalised and regulated instead of prohibited?" is now more and more being replaced by: "how should cannabis be regulated to minimise the risks and increase the benefits in terms of public health?". Several models put in place in the United States, in Canada and in Uruguay are trying to answer this question while other models, such as the cannabis social clubs in Spain, could potentially offer other alternatives.

5. Recommendations of the Federal Commission for questions related to Addictions

5.1. General Recommendations

The EKSF takes note of:

- the conclusions of the former EKDF that in 1999 and in 2008 pronounced itself in favour of a change of cannabis-related policy, in particular because of limits linked to the prohibitionist policy of cannabis and the real level of dangerousness of cannabis;
- the development of the knowledge brought together in its *Update* report; in particular of the fact that cannabis is not a substance without any dangers but that its prohibition does not protect consumers (including minors); that therapeutic uses have been (and are still) underestimated and hampered by the prohibitionist policy; that the knowledge about cannabis and cannabinoids is rapidly developing with regard to the regulated markets and in medicine; that on the contrary, the illegal markets remain opaque and that an understanding of how they work is very

limited, thereby preventing the implementation of context-specific measures; that measures that lead to a reduction in cannabis-related problems, such as structural prevention measures, the early detection of problems and harm reduction, are underdeveloped; and that, contrary to what many may believe, the levels of cannabis use in the population change relatively little.

- the results of the study that it mandated on the negative effects of the prohibition of cannabis and of the fact that they are far from being insignificant; that the Federal Law on Drugs is applied in different ways and sometimes arbitrarily towards people who are arrested for using cannabis, thereby questioning judicial security; that people who use cannabis may be exposed to sanctions which are difficult to justify in the field of road traffic; that people who use cannabis for therapeutic reasons are confronted with a series of unnecessary obstacles that may be harmful to their health; and that the policy of prohibition encourages a black market with products of unregulated quality that are potentially harmful to people's health.
- the results of the study that it mandated on the international cannabis regulation models and in particular of the fact that there are now, since more than five years, regions that have legalised and regulated cannabis; that there are different models to put in place such a regulation, each with their strengths and weaknesses and that each of these models is still developing; that the question that is now asked is less and less "should cannabis be legalised and regulated?" but rather "how should it be done?".

On the basis of all of these pieces of work, the EKSF can only reiterate the recommendations of the former EKDF, namely : to no longer prohibit cannabis but to regulate access to products by means of a regulation model that provides the requisite space for prevention and the protection of young people.

Nevertheless, the situation is different to 2008 since several regions around the world have implemented a change in their cannabis-related policies. This change has led to the birth of different regulation models as well as a burgeoning cannabis industry. Care must now be taken in thinking about the regulation model that will enable Switzerland to legalise and regulate the market while protecting the health of the Swiss population as much as possible, particularly young people, and at the same time maintaining a certain control of the market (its size, products, etc).

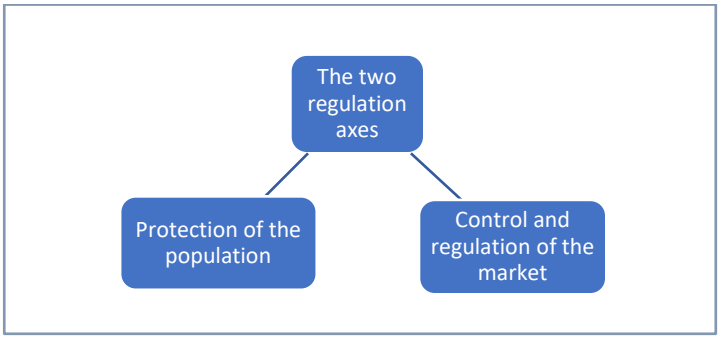
5.2 The basic principles for cannabis regulation

The two previous reports of the EKSF recommended the depenalization of the use of cannabis, accompanied by the strict regulation of the sale and production of cannabis, with a strong emphasis on the protection of young people. The members of the present EKSF share this vision but are also of the view that it is now necessary to propose more concrete recommendations without imposing a regulation model that is too precise. It is in this spirit that the Commission proposes a list of principles and basic regulation rules to respect, but for which the detailed implementation measures ought to be fixed by the Swiss Confederation and Cantons.

The Commission reviewed different models that could be applied in Switzerland. One of these models was the proposal of a working group that brought together actors from the fields of the prevention of addictions and the Swiss cannabis sector.[17] This model pursues security and public health objectives, while allowing for the development of a local economy of Swiss cannabis, that respects the principles of sustainability and responsibility. It takes into consideration the federalist nature that characterizes the Swiss political and administrative system and aims to generate tax revenues that cover the costs of accompanying measures.

The two axes on which the model is based are as follows: 1) the protection of the population and 2) the control and regulation of the market. On the one hand, the aim is to protect vulnerable groups (particularly young people), to encourage low-risk uses and minimise damage that may be associated with cannabis use. On the other hand, the market must respond to clear rules, the government authorities must possess the necessary tools for regulation and part of the government revenues must be attributed to accompanying measures.

Figure 1 : The priority axes of cannabis regulation



[17] The members of the working group were : Simon Anderfuhren-Biget, Cédric Heeb, Jean-Félix Savary and Frank Zobel. See https://www.grea.ch/sites/default/files/regulationcannabis_fr_0.pdf.

The EKSF is of the view that these two axes are essential to any form of cannabis regulation in Switzerland. The authors of the above-mentioned model also established ten principles that ought to guide the regulation model in our country:

1. Protect young people from the negative effects of the consumption of cannabis ;
2. Encourage the use of cannabis-related products that are of low risk for people's health;
3. Inform consumers about the risks linked to cannabis;
4. Prevent and sanction driving and certain professional activities when under the influence of cannabis;
5. Limit the presence of cannabis and its advertising in public spaces;
6. Control the production of cannabis and its quality, and ensure its traceability;
7. Separate the medical market from the non-medical market of cannabis;
8. Sell cannabis products in specialized shops;
9. Tax cannabis to finance accompanying measures;
10. Provide a framework for the production of cannabis for personal use.

The EKSF proposes the classification of these ten principles into 3 groups, each with the same level of importance with regard to the regulation, but enabling the suggested principles to be grouped together.

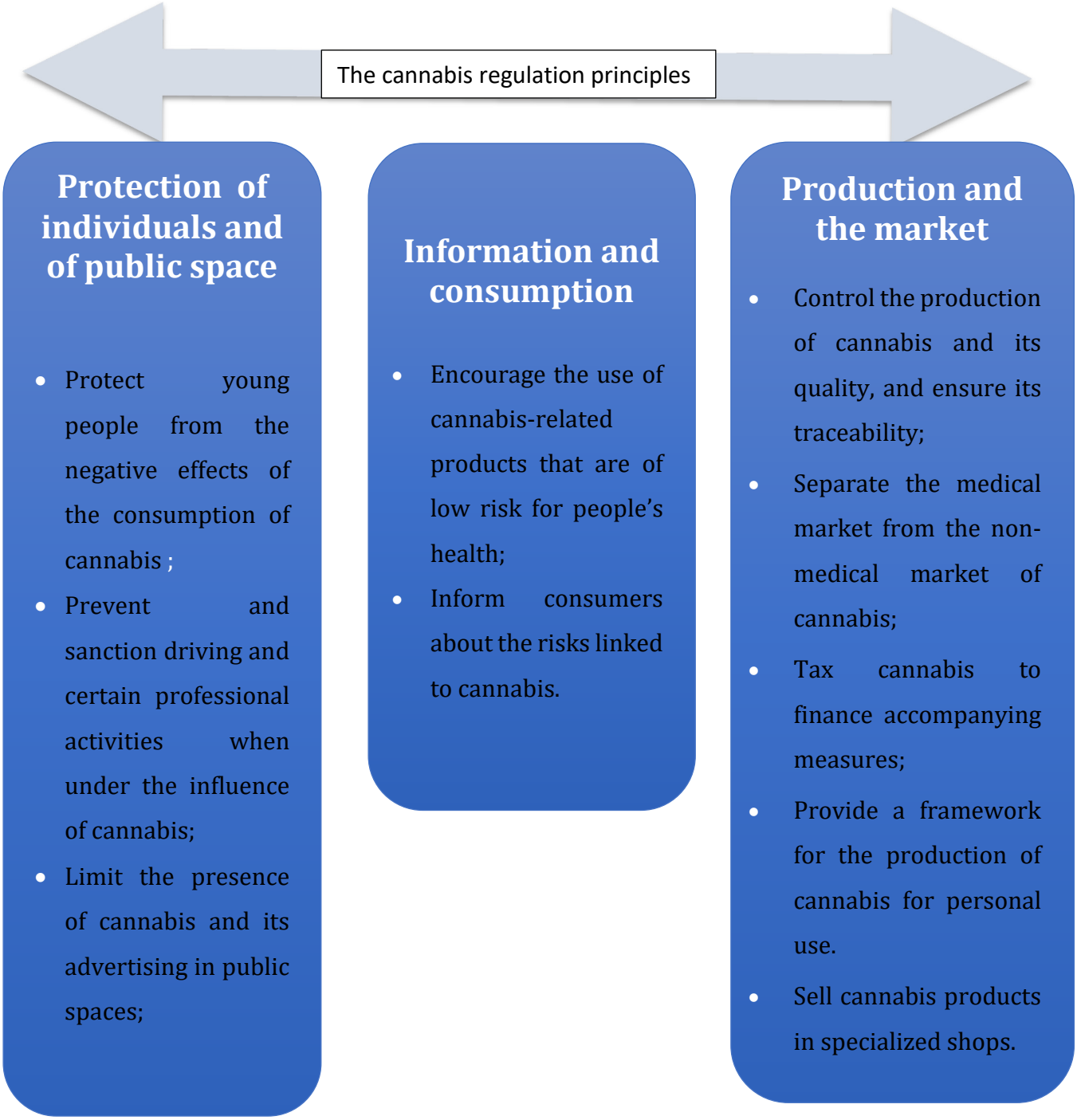


Figure 2 : The cannabis regulation principles, as classified by the EKSF

It is important to the Federal Commission for questions related to Addictions that cannabis regulation in Switzerland first and foremost guarantees the protection of public health. In this regard, local products provided by and controlled by local actors could constitute a preferable market compared to a free market, dominated by big multinational companies that possess significant lobbying resources. Other than that, the taxation of products according to their dangerousness, the protection of young people, strict constraints or even the banning of advertising, the encouragement of low-risk consumption patterns, and the control of the market through a national governance mechanism are key elements to protect public health.

The experiences of cannabis legalisation in the United States have highlighted the risks of a regulation which is too open, similar to what has happened in the field of tobacco. Such a scenario is not desirable in Switzerland. That is why the Commission is of the opinion that one has to accept that certain freedoms be constrained in order to protect young people; to limit any potential damage to third parties (such as from driving); and to reduce advertising and prevent a market that is out of control. On the other hand, with regard to low-risk use, the role of the State and hence the regulatory framework should be reduced.[18]

The EKSF defends the notion that a regulation based on the principles identified above will enable cannabis to be regulated in a responsible and controlled way. The details concerning the implementation of each principle remain the business of each Canton.

6. Conclusion

The Federal Commission for questions related to Addictions reiterates the recommendations of the former EKDF: that it is time to propose and to develop the legalisation and regulation of cannabis in Switzerland. The present policy has widely revealed its limits and inconsistencies. Cannabis needs to be considered as a substance that distinguishes itself from other illicit drugs, in particular by its numerous medical and non-medical uses. The scientific developments of the past years have improved the knowledge about this plant and its potential uses. The international situation has also evolved, in particular with the recent wave of legalisation and regulation of cannabis in the United States of America, in Uruguay and in Canada, where the experiences enable us

[18]Such an approach with different levels of intervention by the State is inspired by the Stewardship Model ethics framework of the Nuffield Council on Bioethics in the United Kingdom. More information is available here: http://nuffieldbioethics.org/report/public-health-2/ethical-framework This model was also proposed in the report by the Federal Commission for questions Related to Addictions (2019). The ten years of the Law on Drugs (LStup): reflections for the future. An analysis of the Federal Commission for Questions Related to Addictions (EKSF). Bern: Federal Office of Public Health. Soon to be published.

to better understand the impact of different regulation models. At present, the EKSF cannot and does not wish to recommend a particular regulation model, but is proposes principles that should stand at the heart of the regulation model for Switzerland. The application of these principles must protect the health of the population and control the cannabis market.

7. Appendix 1 : List of members of the Federal Commission for questions related to Addictions (EKSF)

1. Toni Berthel
2. Eveline Bohnenblust
3. Barbara Broers
4. Sandro Cattacin
5. Bidisha Chatterjee
6. Dagmar Domenig
7. Pierre Esseiva
8. Carlo Fabian
9. Martin Hafen
10. Sylvie Petitjean
11. Renanto Poespodihardjo
12. Dominique Sprumont
13. Vigeli Venzin
14. Julia Wolf
15. Frank Zobel

Relevant Head of Office: Mirjam Weber, Federal Office of Public Health, Schwarzenburgstrasse 157, 3003 Bern, Switzerland.