

Luxembourg: Latest Developments on the Proposed Legalization and Regulation of Cannabis

Executive Summary

- The current Luxembourgish legal framework regulates the access and use of cannabis for medical use, but is still criminalizing the possession and production of cannabis for recreational use¹.
- The Grand-Duchy announced its plan to legalize cannabis for recreational use and production in Luxembourg.
- A legalized recreational cannabis market would allow market participants to use the full scale of the financial centre's holding structures and instruments for European-wide operations.

Luxembourg is seeking to legalize the production and consumption of cannabis for recreational use on its territory. By doing so, it would be the first EU country to fully legalize marijuana, following the example of Canada, Uruguay and some states of the United States of America. Contrary to popular belief, the production and consumption of cannabis for recreational use in the Netherlands is not fully legal. The selling of cannabis is allowed in the coffeeshops, but the production of cannabis itself remains illegal. This leads to the paradox that the coffeeshops need to purchase cannabis that was

¹ Loi du 27 avril 2001 modifiant la loi modifiée du 19 février 1973 concernant la vente de substances médicamenteuses et la lutte contre la toxicomanie; Règlement grand-ducal du 21 août 2018 déterminant les modalités de prescription et d'accès à l'usage de cannabis à des fins médicales, ainsi que le contenu et la durée de la formation spéciale pour les médecins-spécialistes, tel que modifié.

produced illegally², generating difficulties to control the quality of the products sold, and the development of criminal organizations. The country is now trying to limit such side-effects through, amongst others, an upcoming weed-test, where ten municipalities will be selling state produced weed³.

While in Luxembourg the final general framework has not been published yet, a provisional concept has been leaked by the media, giving an idea of which direction the legislation could take. Regardless of the exact provisions the new legislation will entail, there will be an impact on the Luxembourg financial center as well.

I. Current Legal Framework in Luxembourg

a. Medical Use

The medical use of cannabis has been legal in Luxembourg since 2018⁴, but is heavily regulated. As such, only pharmacies within hospitals can sell the substance and the prescription, as well as the training of medical practitioners allowed to prescribe it, is subject to several conditions.

² <https://nos.nl/nieuwsuur/artikel/2299111-legalisering-cannabis-vraagt-juist-om-meer-inzet-politie-en-justitie.html>, consulted 20 July 2020.

³ <https://www.bloomberg.com/news/articles/2019-09-11/the-netherlands-plan-to-legalize-cannabis-growing>, consulted 17 July 2020;

<https://www.rtlnieuws.nl/nieuws/nederland/artikel/4829501/wietproef-staatswiet-experiment-cannabis-marihuana-coffeeshop>, consulted 20 July 2020.

⁴ Règlement grand-ducal du 21 août 2018.



Following the huge success of the pilot regarding medical cannabis (the first batch of cannabis purchased by the government for medical use was sold out in July 2019), and the developing interest from professionals that have received training in that area, former Health Minister Etienne Schneider decided to increase the budget from €350,000 to €1.37m for 2020. This budget will be directly allocated to trainings and further acquisition of cannabis. The idea is to make cannabis products accessible in every pharmacy in the country.

b. Recreational Use

The recreational use of cannabis is not legal. However, the possession for personal use has been decriminalized, while the production of cannabis within the Luxembourgish territory remains illegal⁵.

II. Proposed Legalization and Regulation

The envisaged scenario by former Health Minister Etienne Schneider is a complete legalization of cannabis, from production, to selling, to consuming. The idea was first announced in August 2019 and was followed by visits to Canada in May 2019 by the Ministers of Health and Justice to gather information on how such a legal framework could possibly look like. At the beginning of the year, the Luxembourgish media announced that a provisory concept had been accepted by the Minister of Health, giving some more indications on the directions the legalization is taking. However, the final framework remains unclear and the provisory concept is still subject to possible changes⁶.

⁵ <https://www.healtheuropa.eu/first-european-country-legalise-cannabis-luxembourg/92793/>; consulted 21 November 2019.

⁶ Réponse de Madame la Ministre de la Santé à la question parlementaire n°1930 du 25 février 2020 de Madame la Députée Françoise Hetto-Gaasch et Monsieur le Député Claude Wiseler concernant le "Concept pour la légalisation du cannabis récréatif".

According to the media⁷, the current project provides for the complete legalization with a strict framework:

- the production would be limited and personal production remains illegal;
- the consumption in public spaces, as well as in the selling place would not be allowed;
- the possible amount of cannabis to be purchased by a person and per month would be limited to 30 grams;
- only 14 official places would be allowed to sell cannabis. The sellers would not be allowed to establish themselves in front of schools and need a state license; and
- only locally produced cannabis would be allowed to be sold⁸.

The plan further provides that only those who have been Luxembourg residents for more than 6 months are allowed to buy cannabis⁹ in order to avoid drug tourism in the country such as can be encountered in Amsterdam. This is also to reinsure the neighbouring countries, Belgium, France and Germany. Just like in Canada, there would be an age restriction as well¹⁰, which would be fixed at 18 years – the age of majority in Luxembourg.

Until the end of the summer, discussions between the Luxembourgish ministers and EU institutions and the governments of the neighbouring countries will follow and the final framework is expected to be presented to the parliament before the end of the year, if the COVID-19 pandemic allows it. The draft legislation will most probably include, among others, also further details on the level of tax that will be imposed¹¹.

⁷ <https://5minutes.rtl.lu/actu/luxembourg/a/1474375.html>, consulted 9 March 2020.

⁸ <https://www.lesfrontaliers.lu/societe/legalisation-du-cannabis-14-points-de-vente-au-luxembourg/>, consulted 9 March 2020; consulted on 24 June 2020.

⁹ <https://5minutes.rtl.lu/actu/luxembourg/a/1474375.html>, consulted 9 March 2020.

¹⁰ <https://www.politico.eu/article/luxembourg-legalize-cannabis/>; consulted on 20 November 2019.

¹¹ <https://www.theguardian.com/world/2019/aug/07/luxembourg-to-be-first-european-country-to-legalise-cannabis>.



III. Latest Market Developments

As more and more countries seem willing to invest in the cannabis industry (e.g. the development in Germany on research on medical cannabis), the market seems to be promising. In North America, “Cannabis has gone from illegal to an essential service in Canada, which is a great indication for the entire industry”, said Everett Knight, executive vice president of capital markets and corporate development at The Valens Company¹². Europe is likely to follow this pattern. The COVID-19 pandemic has surely impacted the industry, just like most other industries as well; however, it does not look like the sector will receive a disproportionately big economic hit.

International cannabis companies remain interested in entering the European market. With the US and Canadian markets reaching saturation, more and more companies are looking to expand their business on the European market. For now the UK and Germany were particularly interesting for international cannabis companies, especially in the field of medical cannabis¹³.

With the upcoming legalization, Luxembourg could become one of the central points of access to Europe for these companies focusing on either medical cannabis or recreational products.

¹² Europe remains promising market for cannabis companies, Author: Jimmie Franklin, Published: 27 May 2020; available on https://www.iflr.com/article/b1lt22f766p8t4/europe-remains-promising-market-for-cannabis-companies?LS=EMS1597225&utm_medium=email%20alerts&utm_campaign=IFLR%202011%20-%20Free&utm_content=2020_05_29&utm_source=ems%20email.

¹³ Europe remains promising market for cannabis companies, Author: Jimmie Franklin, Published: 27 May 2020; available on https://www.iflr.com/article/b1lt22f766p8t4/europe-remains-promising-market-for-cannabis-companies?LS=EMS1597225&utm_medium=email%20alerts&utm_campaign=IFLR%202011%20-%20Free&utm_content=2020_05_29&utm_source=ems%20email.

IV. Legal Implications

While the European cannabis market is becoming more and more attractive for companies, a lot remains unknown, especially when it comes to the use of Luxembourg holding structures. The predominant problem is that the cannabis business still remains illegal in most EU countries.

For instance, in the United Kingdom, the UK Proceeds of Crime Act 2002 provides that companies who receive payments from companies, who operate in the cannabis sector, commit a criminal offense, provided that they know or suspect the funds were derived from the sale of marijuana, even if the activities take place in a jurisdiction where they are deemed legal¹⁴. Similar laws exist in other countries as well.

Hence, before setting up a Luxembourg holding structure (“Lux-Holdco”) for foreign companies, a double-restriction-test with respect to both jurisdictions should be applied.

- a) Until the legalization of cannabis for recreational use in Luxembourg, a Lux-Holdco that holds participations in a foreign company operative in recreational cannabis would most likely be unlawful even if the operations of the foreign company are lawful in its country of residence. Luxembourg corporate law provides that a company shall be void if its corporate object is unlawful or contrary to the public policy¹⁵. In our view, the current illegality of recreational use of cannabis in Luxembourg extends to the mere holding activity of Lux-Holdcos even if operations are conducted legally by a subsidiary abroad. As a result, until the legalization of cannabis for recreational use, Lux-Holdcos are only usable to hold participations in national or foreign operating companies involved in the medical cannabis

¹⁴ <https://www.lexology.com/library/detail.aspx?g=eba38982-99fc-4521-881d-a2a070db5992>, consulted 20 July 2020.

¹⁵ Art. 100-18 of the law of 10 August 1915 on commercial companies, as amended.



industry, because only here the double-restriction-test is negative.

- b) After the envisaged cannabis legalization in Luxembourg, a Lux-Holdco would be permitted to hold participations in companies with production and trading activities not only in the medical, but also in the recreational cannabis industry, because the corporate object of the foreign operating company would be lawful both in its country of establishment and in Luxembourg.

Apart from pure legal implications, the cannabis industry has also to take into account that regulated investors and financial institutions may be reluctant to work with cannabis companies, be it holding or operating companies, even if they are operating legally. This has been one of the biggest challenges in Uruguay since the cannabis program started¹⁶. Indeed, besides presenting the potential legal framework for the legalisation of cannabis, the Luxembourgish ministry's document recognizes that banking and financing issues could prove to be a problem for the program's implementation. On the other hand, experience in Canada showed very successful access to financings through private equity, public markets and venture capital.

The future change of the cannabis regulatory framework hence implies changes and opportunities regarding the possibility to hold, finance and operate companies involved in the cannabis industry through a Luxembourg structure.

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¹⁶ <https://www.iflr.com/article/b1lmx9hvvp9fnw/banks-still-scared-of-cannabis-businesses>; consulted on 23 June 2020.



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